

DISEASED PERSON COMMITTING AN ACT OF SEXUAL PENETRATION
N.J.S.A. 2C:34-5(b)

(Defendant) is charged with committing an act of sexual penetration while infected with a specific virus. The indictment charging this offense reads:

[READ INDICTMENT]

The statute prohibiting this conduct provides, in pertinent part:

“A person is guilty of a crime ... [...if he/she], knowing that he or she is infected with human immune deficiency virus (HIV) or any other related virus identified as a probable causative agent of acquired immune deficiency syndrome (AIDS), commits an act of sexual penetration without the informed consent of the other person.”

For (defendant) to be guilty of this crime, the State must prove each of the following elements beyond a reasonable doubt:

First, that, at the time charged in the indictment, (defendant) was infected with **[CHOOSE AS APPROPRIATE: human immune deficiency virus (HIV) or any other related virus identified as a probable causative agent of acquired immune deficiency syndrome (AIDS)]**.

Second, that, at that time, (defendant) knew that he/she was so infected;

Third, that, at the time, (defendant) committed an act of sexual penetration with (another person);

Fourth, that (that other person) did not provide (defendant) with his/her informed consent.

The first element that the State must prove beyond a reasonable doubt is that (defendant) was infected with human immune deficiency virus or any other related virus identified as a probable causative agent of acquired immune deficiency syndrome.

The second element that the State must prove beyond a reasonable doubt is that (defendant) knew that he was so infected. A person acts knowingly with respect to the

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nature of his/her conduct or the attendant circumstances if he/she is aware that his conduct is of that nature, or that such circumstances exist, or he/she is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result. “Knowing”, “with knowledge”, and other equivalent terms have the same meaning.

Knowing is a state of mind. It cannot be seen. Often, it can be proved only by inference drawn from conduct, words, and acts, as well as surrounding circumstances. Therefore, it is not necessary that the State present testimony that (defendant) said that he /she had a certain state of mind when he/she did something. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inferences which may arise from the nature of (defendant’s) acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

The third element that the State must prove beyond a reasonable doubt is that (defendant) engaged in sexual penetration with another person.

Sexual penetration means [**SELECT APPROPRIATE TERMS:** vaginal intercourse, cunnilingus¹, fellatio², anal intercourse, or the insertion of the hand, finger, or object into the anus or vagina by (defendant) [**WHERE APPROPRIATE ADD:** or at his/her instruction]]. Any amount of insertion, however slight, constitutes penetration; the depth of the insertion is not relevant.

The fourth element that the State must prove beyond a reasonable doubt is that (defendant) so acted without having the informed consent of the other person. Informed consent means the person’s voluntary and knowing agreement to submit to an act of sexual penetration with a person having [the specified virus]. The State must prove beyond a reasonable doubt that (the other person) was not informed of [the specified virus] with which (defendant) was infected.

¹ “Cunnilingus”, oral stimulation of the female sexual organ, is a form of sexual penetration even if one does not insert his/her tongue into the other’s vagina.

² “Fellatio”, oral stimulation of the male sexual organ, is a form of sexual penetration even if one’s penis does not enter the other’s mouth. Placing the mouth of another person on the penis constitutes fellatio.

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If the State has proved each of these elements beyond a reasonable doubt, your verdict must be guilty of this charge. If, on the other hand, the State has failed to prove any of these elements beyond a reasonable doubt, your verdict must be not guilty.