

ENDANGERING THE WELFARE OF A CHILD, ABUSE OR NEGLECT
(Second Degree)
N.J.S.A. 2C:24-4a(2)

Defendant is charged with endangering the welfare of a child

(Read Pertinent Count(s) of the Indictment)

The statute upon which this charge is based reads, in pertinent part:

Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who causes the child harm that would make the child an abused or neglected child . . . is guilty of a crime.

To find (defendant) guilty of this crime, the State must prove beyond a reasonable doubt these elements:

1. That (name of victim) was a child.
2. That defendant knowingly caused the child harm that would make the child abused or neglected;
3. That defendant knew that such conduct would cause the child harm that would make the child abused or neglected.
4. That defendant had a legal duty for the care of the child or had assumed responsibility for the care of the child.

The first element that the State must prove beyond a reasonable doubt is that (name of victim) was a child.

A "child" means any person under the age of eighteen (18) years at the time of the offense. The State must prove only the age of (name of victim) at the time of the offense beyond a reasonable doubt. It does not have to prove that defendant knew or reasonably should have known that (name of victim) was under the age of eighteen (18).¹

The second element that the State must prove beyond a reasonable doubt is that defendant knowingly caused the child harm that would make the child abused or neglected.²

¹ See State v. Perez, 177 N.J. 540, 555 (2003).

² In this regard, see State v. N.I., 349 N.J. Super. 299 (App. Div. 2002), which holds that the term "willfully forsaken" as used in N.J.S.A. 9:6-1 requires an intent to abandon a child permanently - "a permanent giving up or relinquishment of the child." N.I. interprets "willfully" to mean "intentionally or purposely as distinguished from inadvertently or accidentally." Id. at 313-314, quoting State v. Burden, 126 N.J. Super. 424 (1974) at 427. Note that N.I. holds that, despite the use of the word "intent" above, the relevant mental condition is that of acting "knowingly."

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[CHARGE APPROPRIATE DEFINITION]
(N.J.S.A. 9:6-1; 9:6-3)

Abuse of a child shall consist in any of the following acts: (a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (h) in an institution³, willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution⁴, with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

³ See definition of institution in N.J.S.A. 9:6-8.21.

⁴ See definition of institution in N.J.S.A. 9:6-8.21.

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Cruelty to a child shall consist in any of the following acts: (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical; (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child; (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.

OR

[CHARGE IF APPROPRIATE]
(N.J.S.A. 9:6-8.21; 9:6-3)

An abused or neglected child means **[Choose appropriate:**

- (1) that the defendant inflicted or allowed to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;
- (2) that the defendant created or allowed to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;
- (3) that the defendant committed or allowed to be committed an act of sexual abuse against the child;
- (4) a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of the defendant to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;
- (5) a child who has been willfully abandoned;

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(6) a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others, or property;

(7) a child who is in an institution and (a) has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being or (b) who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.]

[RESUME MAIN CHARGE]

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

Knowledge is a condition of the mind. It cannot be seen. It can only be determined by inference from (defendant's) conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she did a particular thing. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference which may arise from the nature of his/her acts and conduct and from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The third element that the State must prove beyond a reasonable doubt is that defendant knew that his/her conduct would cause the child harm that would make the child abused or neglected. I have previously defined the concept of "knowing" for you.

The fourth element that the State must prove beyond a reasonable doubt is that defendant had a legal duty for the care of the child or assumed responsibility for the care of the child. A person having a legal duty for the care of a child, or who has assumed responsibility for the care of the child, includes a natural parent, adoptive parent, resource family parent, step-parent or any other person

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who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. A person who has assumed the responsibility for the care of the child includes any person who assumes a general and ongoing responsibility for the child and who establishes a continuing or regular supervisory or caretaker relationship with the child.⁵

The general and ongoing responsibility for the care of the child may be legal and formal or it may arise from informal arrangements. It may be based, not only on a parental relationship or legal custody, but also on less structured relations such as cohabitation with the parent of the child.

A person who assumes temporary, brief or occasional caretaking functions such as irregular or infrequent babysitting would not meet the standards of general and ongoing responsibility for the care of a child.

A person who supervised a child on a regular and continuing basis over extended periods of time and engages in matters that are generally committed to the child's parents would meet this standard of general and ongoing responsibility for the care of a child.

In determining the nature of the relationship between the defendant and the child you should consider these factors: the disparity in ages or maturity; the importance of the activity or activities the adult supervises to the child, the extension of the supervising relationship beyond "guidance and advice" expected given the adult's supervising role, and the degree of dependence and trust the child places in the adult.⁶

If the State has proven every element of the offense beyond a reasonable doubt, then you must find defendant guilty of endangering the welfare of a child. If the State has failed to prove any of the elements of the offense beyond a reasonable doubt, then you must find defendant not guilty.

⁵ State v. Galloway, 133 N.J. 631, 659-62 (1993). A person who has assumed responsibility for the care of a child may include a teacher, employee, volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare, or a person who legally or voluntarily assumes the care, custody, maintenance, or support of the child. It can also include any staff person, as well as teaching staff members or other employees, who have a legal duty for the care and supervision of the child.

⁶ State v. Galloway, 133 N.J. 631, 659-62 (1993). No reliance upon the definitions provided in N.J.S.A. 9:6-2 or 9:6-8.21 should be utilized in describing the role of a parent, guardian or custodian. State v. McInerney, 428 N.J. Super. 432, 449 (App. Div. 2012), certif. denied, 214 N.J. 175 (2013).