

HUMAN TRAFFICKING:
TO ENGAGE IN SEXUAL ACTIVITY AND/OR TO PROVIDE LABOR OR SERVICES
(N.J.S.A. 2C:13-8a(1))

Count _____ of the indictment in this case charges the defendant with:

(Read count of indictment)

The statute upon which this charge is based provides:

A person commits the crime of human trafficking if he knowingly **[Choose one or more, as appropriate:** (holds/recruits/lures/entices/harbors/transport/provides/obtains)], by any means, another, (to engage in sexual activity/to provide labor or services) by: **[Choose one or more, as appropriate:** (a) causing or threatening to cause serious bodily harm or physical restraint against the person(s) or any other person; (b) means of any scheme, plan, or pattern intended to cause the person(s) to believe that the person(s) or any other person would suffer serious bodily harm or physical restraint; (c) criminally coercing the person(s); (d) destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document, or other document issued by a governmental agency to any person(s) which could be used as a means of verifying the person's/persons' identity or age or any other personal identifying information; (e) means of the abuse or threatened abuse of the law or legal process; (f) means of fraud, deceit, or misrepresentation against the person(s); (g) facilitating access to a controlled dangerous substance or controlled substance analog].

In order for the defendant to be convicted of this offense, the State must prove the following elements beyond a reasonable doubt:

- (1) Defendant knowingly **[Choose one or more, as appropriate:** (held/recruited/lured/enticed/harbored/transported/provided/obtained)], by any means, another person(s), namely (victim(s));
- (2) Defendant did so to **[Choose one or more, as appropriate:** engage in sexual activity/provide labor or services]; and
- (3) Defendant did so by **[Choose one or more, as appropriate:** (a) causing or threatening to cause serious bodily harm or physical restraint against the person(s) or any other person(s); (b) means of any scheme, plan, or pattern intended to cause the person(s) to believe that the person(s) or any other person would suffer serious bodily harm or physical restraint; (c) criminally coercing the person(s); (d) destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document, or other document issued by a governmental agency to any person(s)

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which could be used as a means of verifying the person's/persons' identity or age or any other personal identifying information; (e) means of the abuse or threatened abuse of the law or legal process; (f) means of fraud, deceit, or misrepresentation against the person(s); (g) facilitating access to a controlled dangerous substance or controlled substance analog].

The first element the State must prove beyond a reasonable doubt is that **(on/between) (dates alleged in the indictment)**, defendant knowingly **[Choose one or more, as appropriate: held/recruited/lured/enticed/harbored/transported/provided/obtained]**, by any means, another person(s), namely (victim(s)).

[If in your case, include: "recruit" means to persuade another to join or to help.^{1]}

[If in your case, include: "lure" means to cause or persuade another to go somewhere or to do something.^{2]}

[If in your case, include: "entice" means: to attract another, including by offering or showing something that is appealing or interesting.^{3]}

[If in your case, include: "harbor" means to hide, or to give shelter to, another.^{4]}

[If in your case, include: "transport" means to transfer, convey, or carry away from one place or another.^{5]}

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her 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 his/her conduct will cause such a result. "Knowing," "with knowledge," or equivalent terms have the same meaning.⁶

Knowledge is a condition of the mind that cannot be seen and that can be determined only from inferences from conduct, words or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that he/she acted with a particular state of mind. It is within your power to find that proof of knowledge has been furnished beyond a reasonable doubt

¹ Merriam-Webster's Collegiate Dictionary, 1041 (11th ed. 2012).

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ N.J.S.A. 2C:2-2b(1).

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by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

The second element the State must prove beyond a reasonable doubt is that the defendant **[Choose one or more, as appropriate:** held/recruited/lured/enticed/harbored/transported/provided/obtained], by any means, (victim(s)) **[Choose one or both, as appropriate:** to engage in sexual activity/to provide labor or services).]

[If in your case, include: “Sexual activity” includes, but is not limited to, sexual intercourse, including genital-genital, oral-genital, anal-genital, and oral-anal contact, whether between persons of the same or opposite sex; masturbation; touching of the genitals, buttocks, or female breasts; and sadistic or masochistic abuse and other deviate sexual relations.⁷

The third element the State must prove beyond a reasonable doubt is the defendant **[Choose one or more, as appropriate:** held/recruited/lured/enticed/harbored/transported/provided/obtained], by any means, (victim(s)) **[Choose one or both, as appropriate:** to engage in sexual activity/to provide labor or services)] by **[choose appropriate subsection(s)⁸:**

(a) causing or threatening to cause serious bodily harm or physical restraint against the person(s) or any other person.

Serious bodily harm” means as any physical pain, or temporary disfigurement, or impairment of physical condition which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ or which results from aggravated sexual assault or sexual assault.⁹

[If in your case, include: “Aggravated sexual assault” is defined as “an act of sexual penetration with another person under any one of the following circumstances: **[Choose one or more, as appropriate:** (1) The victim is less than 13 years old; (2) The victim is at least 13 but less than 16 years old; and (a) The actor is related to the victim by blood or affinity to the third degree, or (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or (c) The actor is a resource family parent, a

⁷ N.J.S.A. 2C:34-1a(2).

⁸ If the State alleges multiple methods, separate with “The State also alleges that the defendant did so by ...”

⁹ N.J.S.A. 2C:3-11d, -11e.

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guardian, or stands in loco parentis within the household; (3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape; (4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object; (5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion; (6) The actor uses physical force or coercion and severe personal injury is sustained by the victim; or (7) The victim is one whom the actor knew or should have known was physically helpless or incapacitated, intellectually or mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of (his/her) conduct, including, but not limited to, being incapable of providing consent.”¹⁰ “Sexual penetration” means “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction[,]” regardless of the depth of the insertion.^{11]}

[If in your case, include: “Sexual assault” is defined as 1) “an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.” “Sexual contact” means “an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself/herself must be in view of the victim whom the actor knows to be present.”¹² and/or 2) “an act of sexual penetration with another person under any one of the following circumstances: (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury; (2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status; (3) The victim is at least 16 but less than 18 years old and: (a) The actor is related to the victim by blood or affinity to the third degree; or (b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the

¹⁰ N.J.S.A. 2C:14-2a.

¹¹ N.J.S.A. 2C:14-1c.

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household; (4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.”¹³ “Sexual penetration” means “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction[.]” regardless of the depth of the insertion.^{14]}

(b) means of any scheme, plan, or pattern intended to cause the person(s) to believe that the person(s) or any other person would suffer serious bodily harm or physical restraint.

“Serious bodily harm” means any physical pain, or temporary disfigurement, or impairment of physical condition which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ or which results from aggravated sexual assault or sexual assault.¹⁵

[If in your case, include: “Aggravated sexual assault” is defined as “an act of sexual penetration with another person under any one of the following circumstances: **[Choose one or more, as appropriate:** (1) The victim is less than 13 years old; (2) The victim is at least 13 but less than 16 years old; and (a) The actor is related to the victim by blood or affinity to the third degree, or (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household; (3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape; (4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object; (5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion; (6) The actor uses physical force or coercion and severe personal injury is sustained by the victim; or (7) The victim is one whom the actor knew or should have known was physically helpless or incapacitated, intellectually or mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of

¹² N.J.S.A. 2C:14-2b; N.J.S.A. 2C:14-1d.

¹³ N.J.S.A. 2C:14-2c.

¹⁴ N.J.S.A. 2C:14-1c.

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understanding the nature of (his/her) conduct, including, but not limited to, being incapable of providing consent.”¹⁶ “Sexual penetration” means “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction[,]” regardless of the depth of the insertion.^{17]}

[If in your case, include: “Sexual assault” is defined as 1) “an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.” “Sexual contact” means “an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself/herself must be in view of the victim whom the actor knows to be present.”¹⁸ and/or 2) “an act of sexual penetration with another person under any one of the following circumstances: (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury; (2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status; (3) The victim is at least 16 but less than 18 years old and: (a) The actor is related to the victim by blood or affinity to the third degree; or (b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household; (4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.”¹⁹ “Sexual penetration” means “vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction[,]” regardless of the depth of the insertion.^{20]}

(c) criminally coercing the person(s).

The defendant “criminally coerced” the person(s) if the defendant threatened to **[choose as appropriate:** inflict bodily injury on anyone or commit any other offense/accuse anyone of

¹⁵ N.J.S.A. 2C:3-11d, -11e.

¹⁶ N.J.S.A. 2C:14-2a.

¹⁷ N.J.S.A. 2C:14-1c.

¹⁸ N.J.S.A. 2C:14-2b; N.J.S.A. 2C:14-1d.

¹⁹ N.J.S.A. 2C:14-2c.

²⁰ N.J.S.A. 2C:14-1c.

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an offense/expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair (his/her) credit or business repute/take or withhold action as an official, or cause an official to take or withhold action/bring about or continue a strike, boycott or other collective action, except that such a threat shall not be deemed coercive when the restriction compelled is demanded in the course of negotiation for the benefit of the group in whose interest the actor acts/testify or provide information or withhold testimony or information with respect to another's legal claim or defense/perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to (his/her) health, safety, business, calling, career, financial condition, reputation or personal relationships] and the defendant did so with purpose to unlawfully to restrict the person's/persons' freedom of action to engage or refrain from engaging in conduct.²¹

[If in your case, include: “Bodily injury” is defined as “physical pain, illness or any impairment of physical condition.”²²]

A person acts purposely with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if the individual is aware of the existence of such circumstances or the individual believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.²³

Purpose is a condition of the mind that cannot be seen and can only be determined by inferences drawn from the defendant's conduct, words or acts. It is not necessary for the State to prove the existence of such a mental state by direct evidence such as a statement by the defendant that he/she had a particular purpose. It is within the power of the jury to find that the proof of purpose has been furnished beyond a reasonable doubt by inferences which you may draw from the nature of the acts and circumstances surrounding the conduct of the defendant as they have been presented in the evidence you have heard and seen in this case.

Charge if the affirmative defense to criminal coercion is alleged:

The defendant claims that he/she believed the accusation or secret to be true or the proposed official action justified and that his/her purpose was limited to compelling (victim(s))

²¹ N.J.S.A. 2C:13-5a.

²² N.J.S.A. 2C:11-1a

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to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, by **[Choose as appropriate:** desisting from further misbehavior/making good a wrong done/refraining from taking any action or responsibility for which he/she believed (victim's/victims' name(s)) were disqualified]. If the State proves beyond a reasonable doubt that the defendant did not have such a belief or that his/her purpose was not so limited, then you must find the defendant criminally coerced (victim(s)). If the State fails to prove beyond a reasonable doubt that the defendant did not have such a belief or that his/her purpose was not so limited, then you must not find defendant criminally coerced (victim(s)).²⁴

(d) destroying, concealing, removing, confiscating, or possessing any passport, immigration-related document, or other document issued by a governmental agency to any person(s) which could be used as a means of verifying the person's/persons' identity or age or any other personal identifying information.

[If in your case, include: "Immigration-related document" is defined as "any birth certificate or marriage certificate; any document issued by the government of the United States, any foreign country, any state, or any other public entity relating to a person's(s') immigration or naturalization status."^{25]}

(e) means of the abuse or threatened abuse of the law or legal process.

(f) means of fraud, deceit, or misrepresentation against the person(s).

[If "deceit" is in your case, include: "A person deceives if he/she purposely creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose. The term deceive does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed. Deception as to a person's intention to perform a promise cannot be inferred solely from the fact that he/she did not subsequently perform the promise. Moreover, not only must the defendant's statement[s] have been false, but defendant must have known of [its] [their] falsity. The State does not have the burden to prove that the

²³ N.J.S.A. 2C:2-2b(2).

²⁴ N.J.S.A. 2C:13-5a.

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defendant disbelieved; if he/she created the impression that he/she believed something to be true when in fact he/she had no belief on the subject, deception has occurred.^{26]}

(g) facilitating access to a controlled dangerous substance or controlled substance analog.

[Charge one or both, as appropriate: The various kinds of “controlled dangerous substances” are defined in another part of our statute. (Name of CDS prohibited by statute) is a dangerous substance prohibited by statute. **[and/or]** A “controlled substance analog” is a substance which has a chemical structure substantially similar to that of a controlled dangerous substance and was specifically designed to produce an effect substantially similar to that of a controlled substance. In this case, the indictment alleges that the defendant facilitated access to _____, which is an analog of the controlled dangerous substance _____. Thus, to establish this element, the State must prove beyond a reasonable doubt that _____ has a substantially similar chemical structure to the controlled dangerous substance _____, and that _____ was specifically designed to produce an effect substantially similar to the controlled dangerous substance _____.²⁷

(IF NO AFFIRMATIVE DEFENSE IS ALLEGED)

If you find that the State has proven to you all of these elements beyond a reasonable doubt, then you must find defendant guilty of human trafficking. If the State has failed to prove any of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

(IF AFFIRMATIVE DEFENSE IS ALLEGED)

The defendant, as part of his/her denial of guilt, asserts that during the time of the alleged commission of the offense of human trafficking, defendant was a victim of human trafficking.^{28,}

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²⁵ N.J.S.A. 2C:21-31a(3).

²⁶ From Model Jury Charge (Criminal), “Theft by Deception, N.J.S.A. 2C:20-4” (rev. 4/15/13) (citing Final Report of the New Jersey Criminal Law Revision Comm’n, Vol. II: Commentary, at 224-25 n.6 (1971)).

²⁷ N.J.S.A. 2C:35-2.

²⁸ N.J.S.A. 2C:13-8c.

²⁹ The statute does not define “victim of human trafficking.” Others states’ statutes provide varying definitions. See, e.g., Colo. Rev. Stat. Ann. § 18-3-502 (“Victim” means a person who is alleged to have been, or who has been, subjected to human trafficking, as described in section 18-3-503 or section 18-3-504.”); Iowa Code Ann. § 710A.1 (“person subjected to human trafficking”); Ky. Rev. Stat. Ann. § 529.010 (“Victim of human trafficking” is a person who has been subjected to human trafficking.”); Md.

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If you conclude that the State has proven all of the elements of human trafficking beyond a reasonable doubt, but you are still not satisfied beyond a reasonable doubt that the State has disproved defendant's claim that he/she was a victim of human trafficking, then you must find defendant not guilty. However, if you find that the State has proven all of the elements of human trafficking and has also proven beyond a reasonable doubt that defendant was not a victim of human trafficking, then you must find defendant guilty of human trafficking.

Code Ann., State Gov't § 7-301(f) (““Victim of human trafficking” means an individual who has been recruited, harbored, transported, provided, or obtained for labor, services, or a sexual act through the use of force, fraud, or coercion.”); Mass. Gen. Laws Ann. ch. 233, § 20M (““Human trafficking victim” or “victim”, a person who is subjected to the conduct prohibited under sections 50 or 51 of chapter 265.”). It will be up to the parties, and ultimately the court, to determine the appropriate definition.