

LEWDNESS
(Victim with mental disease or defect)
(N.J.S.A. 2C:14-4b(2))¹

The defendant is charged with the offense of lewdness, in that (he/she) is alleged to have **(Summarize the appropriate portions of indictment)**.

The pertinent part of the statute (N.J.S.A. 2C:14-4b(2)) on which this indictment is based reads as follows:

A person commits an act of lewdness if:

(He/she) exposes (his/her) intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects (he/she) is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.

Therefore, the elements that the State must prove beyond a reasonable doubt are as follows:

1. That the defendant exposed (his/her) intimate parts;
2. That the defendant did so for the purpose of arousing or gratifying the sexual desire of the actor and/or any other person;
3. That the defendant exposed (himself/herself) under circumstances where the actor knew or reasonably expected that (he/she) was likely to be observed by a person with a mental disease or defect; and
4. That the victim, because of (his/her) mental disease or defect, was unable to understand the sexual nature of the defendant's conduct.

The first element that the State must prove beyond a reasonable doubt is that the defendant exposed (his/her) intimate parts. "Intimate parts" include the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person. Specifically, the defendant in this case is charged with exposing **(insert facts of case)**.

The second element that the State must prove beyond a reasonable doubt is that the

¹ In order to commit fourth degree lewdness, the defendant must expose his genitals for sexual gratification and know or reasonably expect that he is likely to be observed by a person who is under the age of 13 and at least four years younger than the defendant. Moreover, the nudity "must be occasioned by the sexual desire of the actor to be observed by a minor who is less than thirteen." State v. Hackett, 166 N.J. 66 (2001).

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defendant acted with the purpose of arousing or gratifying the sexual desire of (himself/herself) or any other person. **(If charge is related to gratifying another, insert specifically alleged facts).**

A person acts purposely with respect to the nature of (his/her) conduct or a result thereof if it is a person's 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 a person is aware of the existence of such circumstances or a person believes or hopes that they exist. One can be deemed to be acting purposely if one acts with design, with a purpose, with a particular object, if one really means to do what (he/she) does.²

Purpose is a condition of the mind that cannot be seen and that can often 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 purpose has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question. The third element that the State must prove beyond a reasonable doubt is that the defendant knew or reasonably expected that (he/she) was likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the defendant's conduct.³ Here, the State alleges **(Insert applicable facts)**.

A person acts knowingly with respect to the nature of (his/her) conduct or the attendant circumstances if a person is aware that (his/her) conduct is of that nature, or that such circumstances exist or a person is aware of a high probability of their existence. A person acts knowingly with respect to a result of (his/her) conduct if a person is aware that it is practically certain that (his/her) conduct will cause such a result. One is said to act knowingly if one acts with knowledge, if one acts consciously, if (he/she) comprehends (his/her) acts.⁴

Like purpose, knowledge is a condition of the mind that cannot be seen and that can often be determined only from inferences from conduct, words or acts.

² N.J.S.A. 2C:2-2b(1).

³ The mental element accompanying the defendant's act is a critical part of this offense. The State must prove beyond a reasonable doubt that the defendant knew or reasonably expected that (he/she) was likely to be observed by non-consenting persons who could be affronted or alarmed. State v. Zeidell, 154 N.J. 417, 430 (1998).

⁴ N.J.S.A. 2C:2-2b(2)

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The fourth element that the State must prove beyond a reasonable doubt is that the victim of the alleged lewd act was unable to understand the sexual nature of the defendant's conduct because of mental disease or defect. In this case, the State alleges that the victim is suffering from _____.

If you find that the State has proven every element beyond a reasonable doubt, then you must find the defendant guilty. If, however, the State has failed to prove any element beyond a reasonable doubt, then you must find (him/her) not guilty.