

[RECKLESSLY] ENDANGERING ANOTHER PERSON¹
(N.J.S.A. 2C:12-2b(2))

The defendant is charged with the crime of Endangering Another Person.

(Read appropriate count of the indictment)

The law upon which this charge is based reads as follows:

A person commits a crime...if he... [p]urposely or knowingly offers, gives or entices any person to take or accept any treat, candy, gift, food, drink or other substance that is intended to be consumed which is poisonous, intoxicating, anesthetizing, tranquilizing, disorienting, deleterious or harmful to the health or welfare of such person, without the knowledge of the other person as to the identity and effect of the substance....

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

1. That defendant offered, gave or enticed (**insert name of victim**) to take or accept any treat, candy, gift, food, drink or other substance that was intended to be consumed which is poisonous, intoxicating, anesthetizing, tranquilizing, disorienting, deleterious or harmful to the health or welfare of (**insert name of victim**);
2. That defendant did so without (the victim's) knowing the identity and effect of the substance; and
3. That defendant did this purposely or knowingly.

Some of the words I have used require definition. To "entice" means to convince by presenting temptation or by exciting desire. "Poisonous" means having the effect of a

¹ While N.J.S.A. 2C:12-2 is entitled "Recklessly Endangering Another Person," the body of the statute does not refer to reckless conduct but only to purpose and knowledge. The court and counsel should obviously avoid any reference to recklessness before the jury.

substance that, through its chemical action, usually kills, injures or impairs anyone who ingests it. To "intoxicate" means to make drunk or inebriate. To "anesthetize" is to render insensible. To "tranquilize", as used here, is to render calm and peaceful by the use of substances. To "disorient" is to confuse. "Deleterious" means having the tendency to injure or harm.²

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.³

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

Purpose and knowledge are conditions 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

2 The definitions provided are dictionary definitions of words of common understanding.

3 N.J.S.A. 2C:2-2b(1).

particular state of mind. It is within your power to find that proof of purpose or knowledge 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.

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

[CHARGE WHERE APPROPRIATE]

If, and only if, you find the defendant guilty of the crime charged beyond a reasonable doubt, you must proceed to determine whether the State has also proven beyond a reasonable doubt that the defendant committed the crime of endangering another person with the purpose to commit or facilitate the commission of the crime of _____, the crime specifically alleged by the State.⁵ You may not consider here any purpose to commit or facilitate the commission of any other criminal offense but _____. **[Define the crime alleged and its elements].**

Earlier, I defined purpose for you, and that definition applies here, as well. In considering whether the State has proven the specific purpose charged, you may weigh any reasonable inferences that may arise from all that was said or done and all of the surrounding circumstances of this case. To facilitate the commission of a crime is to make it easier. The State need not prove that defendant accomplished the unlawful purpose charged by actually

4 N.J.S.A. 2C:2-2b(2).

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committing the crime of _____, if you are satisfied beyond a reasonable doubt that he/she acted with the purpose to commit or facilitate a (name of crime).

So, if, and only if, you find the defendant guilty of endangering another person, beyond a reasonable doubt, then your verdict must also specify whether you find that the State has proven beyond a reasonable doubt that defendant committed the crime of endangering another person with the purpose to commit or facilitate the commission of the crime of _____.

5 The statute refers to "another criminal offense." The term "criminal offense" equates with "crime" and does not include disorderly or petty disorderly offenses. See State v. Olivera, 344 N.J. Super. 583, 589 (App. Div. 2001).