

**SEXUAL ASSAULT - VICTIM LESS THAN 13
ACTOR AT LEAST 4 YEARS OLDER THAN VICTIM
(N.J.S.A. 2C:14-2b)**

The indictment charges (defendant) with sexual assault as follows:

[Read pertinent count(s) of indictment]

The statute on which this charge is based provides, in pertinent part, that:

“An actor is guilty of sexual assault if he commits 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.”

To find (defendant) guilty of sexual assault under this statute, you must find that the State has proven each of the following elements beyond a reasonable doubt:

First, that (defendant) committed an act of sexual contact with (another person). **[IF THE SEXUAL CONTACT ALLEGED INVOLVES THE ACTOR’S TOUCHING HIMSELF/HERSELF, ADD:** The touching must have been in view of the other person whom the actor knows to be present].

Second, that (the other person) was less than 13 years old at that time.

Third, that at that time (defendant) was at least four years older than (the other person).

The first element that the State must prove beyond a reasonable doubt is that (defendant) committed an act of sexual contact with (another person). Sexual contact means an intentional touching by (the other person) or by the defendant, either directly or through clothing, of the other’s or defendant's intimate parts for the purpose of degrading or humiliating (the other person) or sexually arousing or gratifying (defendant).

Intimate parts means **[CHOOSE AS APPROPRIATE]** sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person.

To find that (defendant) committed an act of criminal sexual contact, you must find beyond a reasonable doubt both that the touching was intentional and that it was done with the purpose of degrading or humiliating (the other person) or sexually arousing or sexually gratifying the defendant.

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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 the attendant circumstances if he/she is aware of the existence of such circumstances or believes or hopes that they exist.

[IF APPROPRIATE, ADD: To constitute criminal conduct, sexual contact of (defendant) with himself/herself must be in view of another person whom defendant knows to be present, and must be done with the purpose of degrading or humiliating the other person or sexually arousing or gratifying (defendant). “In view of” is defined as within the child’s field of vision.¹ State v. Zeidell, 154 N.J. 417, 432 (1998). I have just defined the concept of “purpose”. As to “knowing”, 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 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 conduct will cause such a result. “Knowing”, “with knowledge”, or equivalent terms have the same meaning.]

“Purpose” [and “knowing”] is/are [a] condition[s] of the mind. It/they cannot be seen. Often, it/they can only be determined by inferences from 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. You may 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, from all he/she said and did at the particular time and place and from all surrounding circumstances established by the evidence.

The second element that the State must prove beyond a reasonable doubt is that (the other person) was less than thirteen years old at the time that the sexual contact occurred. The State must prove only the age of (the other person) at the time of the offense beyond a reasonable

¹ Whether the child must actually have seen the conduct is an open question. See State v. Zeidell, *supra*, 154 N.J. at 431.

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doubt. It does not have to prove that (defendant) knew or reasonably should have known that (the other person) was under the age of 13.²

The third element that the State must prove beyond a reasonable doubt is that (defendant) was at least four years older than (the other person) at that time.

If the State has proven each of these elements beyond a reasonable doubt, you must find (defendant) guilty of sexual assault. On the other hand, if the State has failed to prove any of these elements beyond a reasonable doubt, you must find (defendant) not guilty.

² N.J.S.A. 2C:14-5c.