

SEXUAL ASSAULT - VICTIM UNDER SUPERVISION
(N.J.S.A. 2C:14-2c(2))

Defendant is charged in count _____ of the indictment with sexual assault. **[READ
COUNT OF THE INDICTMENT].**

That section of our statutes provides in pertinent part:

An actor is guilty of sexual assault if he commits an act of sexual penetration with another person and 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.

In order to convict defendant of the charges, the State must prove the following elements beyond a reasonable doubt:

1. That defendant committed an act of sexual penetration with another person.
2. That defendant acted knowingly.
3. That the victim was **[on probation]** **[on parole]**

OR

That the victim was detained in a **[hospital]** **[prison]** **[institution]**.

4. That the actor had **[supervisory]** **[disciplinary]** power over the victim by virtue of the defendant's legal, professional or occupational status.

The first element that the State must prove beyond a reasonable doubt is that defendant committed an act of sexual penetration with **(name of victim)**.

According to the law, **[choose appropriate]** 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 defendant or by another person upon the defendant's instruction, constitute(s) "sexual

penetration.” Any amount of insertion, however slight, constitutes penetration; that is, the depth of insertion is not relevant.

[Choose the appropriate definition(s):]

The definition of “vaginal intercourse” is the penetration of the vagina, or **[where appropriate]** of the space between the labia majora or outer lips of the vulva.¹

The definition of “cunnilingus” is oral contact with the female sex organ.²

The definition of “fellatio” is oral contact with the male sexual organ.³

The definition of “anal intercourse” is penetration of any depth into the anus.⁴

The second element that the State must prove beyond a reasonable doubt is that defendant acted knowingly. 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

¹ State v. J.A., 337 N.J. Super. 114 (App. Div. 2001). The Appellate Division upheld the charge given by the trial court in that case which included the following language which can be used if the circumstances of the specific case are appropriate: “This means that if you find from all of the evidence presented beyond a reasonable doubt that there was [penile] penetration to the outer area of the vaginal opening, what is commonly referred to as the vaginal lips, that is sufficient to establish penetration under the law.”

² State v. Fraction, 206 N.J. Super. 532, 535-36 (App. Div. 1985), certif. denied, 104 N.J. 434 (1986). Penetration is not necessary for this act.

³ State in the Interest of S.M., 284 N.J. Super. 611, 616-19 (App. Div. 1995). Penetration is not necessary for this act.

⁴ State v. Gallagher, 286 N.J. Super. 1, 13 (App. Div. 1995), certif. denied, 146 N.J. 569 (1996).

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the 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 the victim was **[on probation] [on parole] OR** that the victim was detained **[in a hospital] [in a prison] [in another institution]**.

The fourth element that the State must prove beyond a reasonable doubt is that the defendant had supervisory or disciplinary power over the victim by virtue of the defendant’s legal, professional or occupational status.

In this case, the State alleges that defendant had **[supervisory] [disciplinary]** power over **(name of victim)** because of defendant’s status as **(insert allegation)**. In determining whether defendant had **[supervisory] [disciplinary]** power over **(name of victim)**, you must examine the entire context of the relationship between the defendant and **(name of victim)**. To do so, you should consider the nature of the relationship between the defendant and the victim and whether the

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relationship was so unequal as to vest [**supervisory**] [**disciplinary**] power in the defendant.

Among the factors you may consider are whether there was a significant disparity in ages and/or maturity level between the defendant and victim, whether the defendant offered advice and guidance to the **(name of victim)** on questions and issues outside the defendant's role as _____ and the power or ability of the defendant to affect the **(name of victim)** future participation or success.⁵

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

⁵ These factors are suggested by State v. Buscham, 360 N.J. Super. 346, 362 (App. Div. 2003), where the issue was defendant's role as a coach. The parties should identify factors in their particular case which would be significant for the jury to consider in determining whether the defendant had supervisory or disciplinary power over the victim.