

SOLICITATION, RECRUITMENT TO JOIN CRIMINAL STREET GANG
(N.J.S.A. 2C:33-28)

The indictment, which charges (defendant) with soliciting or recruiting another person to join or actively participate in a street gang, reads:

(Read Indictment)

The statute on which this charge is based reads:

An actor who solicits or recruits another to join or actively participate in a criminal street gang with the knowledge or purpose that the person who is solicited or recruited will promote, further, assist, plan, aid, agree, or attempt to aid in the commission of criminal conduct by a member of a criminal street gang, commits a crime

To convict (defendant) of this crime, the State must prove beyond a reasonable doubt each of these elements:

1. That (defendant) solicited or recruited another person to join or actively participate in a criminal street gang.
2. That he/she did so with the knowledge or purpose that the other person will participate, or attempt to participate, in criminal conduct committed by a member of that gang.

The first element that the State must prove beyond a reasonable doubt is that (defendant) solicited or recruited another person to join or actively participate in a criminal street gang.¹ A criminal street gang means three or more persons associated in fact. Persons are associated in fact if they have in common a group name or identifying sign, symbol, tattoo or other physical marking, style of dress or use of hand signs or other indicia of association or common leadership, and, individually or in combination with other members of a criminal street gang, while engaging in gang related activity, have committed, conspired or attempted to commit, within the preceding three years, two or more criminal acts [specify the nature of the acts].²

¹ The definitions in this paragraph are found in N.J.S.A. 2C:44-3(h).

² See N.J.S.A. 2C:44-3(h). The specific crimes delineated in the statute are robbery, carjacking, aggravated assault, assault, aggravated sexual assault, sexual assault, arson, burglary, kidnapping, extortion, or certain weapons and drug laws.

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The second element that the State must prove beyond a reasonable doubt is that he/she solicited or recruited another to join or actively participate in a criminal street gang with the knowledge or purpose that that other person will participate, or attempt to do so, in criminal conduct committed by a member of that gang.

A person acts purposely with respect to the nature of his/her conduct or a result of his/her conduct 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 he/she believes or hopes that they exist. “With purpose,” “designed,” “with design” or equivalent terms have the same meaning.³

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 such conduct will cause a result. “Knowing,” “with knowledge,” or equivalent terms have the same meaning.⁴

Purpose and knowledge are conditions of the mind which cannot be seen and 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, members of the jury, that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. 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 his/her conduct, and from all he/she said and did at the particular time and place, and from all of the surrounding circumstances.

One has the requisite knowledge or purpose if he/she knows that the person being solicited or recruited will engage in some form, although not necessarily which form, of criminal activity.⁵

A person attempts to perform an act if he/she does or omits to do anything with the purpose of performing that act without further conduct on his/her part, or purposely does or omits to do

³ N.J.S.A. 2C:2-2b(1).

⁴ N.J.S.A. 2C:2-2b(2).

⁵ N.J.S.A. 2C:33-28(h).

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anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step planned to culminate in the performance of that act. The step taken must strongly show (defendant's) criminal purpose. It must be substantial and not just a very remote preparatory act and must show that the accused has a firmness of criminal purpose.

So, for (defendant) to be guilty of a criminal attempt, the State must prove beyond a reasonable doubt that he/she acted purposely and that he/she engaged in conduct which would constitute a substantial step in soliciting or recruiting another to join or actively participate in a criminal street gang. I have already defined purposely.

As I noted, to prove an attempt, the State must prove beyond a reasonable doubt that (defendant) purposely did or omitted to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission that is a substantial step in the course of conduct planned to culminate in his/her commission of the crime.

If the State has failed to prove any one of these elements beyond a reasonable doubt you must find (defendant) not guilty of this crime.

**[CHARGE FOLLOWING SENTENCE ONLY IF DEFENDANT IS NOT ACCUSED OF
INJURING VICTIM OR THREATENING BODILY INJURY OR COMMITTING THIS
OFFENSE WHILE ON SCHOOL PROPERTY⁶]**

On the other hand, if the State has proved all of these elements beyond a reasonable doubt, you must find (defendant) guilty of this crime.

**[CHARGE FOLLOWING PARAGRAPH IF DEFENDANT IS ACCUSED OF
THREATENING BODILY INJURY]**

If the State has proved each of the above elements beyond a reasonable doubt, you must consider an additional element. The State must prove beyond a reasonable doubt that (defendant) threatened another person with bodily injury on two or more separate occasions within a thirty day period, in the course of soliciting or recruiting another person to join the criminal street gang. Bodily injury means physical pain, illness, or any impairment of physical condition.

[CHARGE FOLLOWING PARAGRAPH IF DEFENDANT IS ACCUSED OF

⁶ P.L. 2013, c. 202 amended this statute to create the third degree crime for offenses committed on school property on or after January 17, 2014.

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INFLECTING SIGNIFICANT BODILY INJURY UPON ANOTHER]

If the State has proved each of the above elements (that is, that [defendant] solicited or recruited another to join or actively participate in a criminal street gang, with the knowledge or purpose that the other person will participate, or attempt to do so, in criminal conduct committed by a member of that gang) beyond a reasonable doubt, you must consider an additional element. The State must prove beyond a reasonable doubt that (defendant), in the course of such solicitation or recruitment, inflicted significant bodily injury upon another person. “Significant bodily injury” means bodily injury which creates a temporary loss of the functions of any bodily member or organ or temporarily loss of any one of the five senses. Bodily injury means physical pain, illness, or any impairment of physical condition.

**[CHARGE FOLLOWING PARAGRAPH IF DEFENDANT IS ACCUSED OF
COMMITTING THIS OFFENSE WHILE ON SCHOOL PROPERTY⁷]**

If the State has proved each of the above elements beyond a reasonable doubt, you must consider an additional element. The State must prove beyond a reasonable doubt that (defendant), in the course of soliciting or recruiting another person to join the criminal street gang, did so while on any school property. The term “school property” means any property which is used for school purposes and is owned by or leased to an elementary school, secondary school or school board.⁸ It does not matter whether the school is public, private or parochial. It is also no defense to this charge that no juveniles were present on the school property at the time of the offense, or that the school was not in session. The possibility that defendant may have been unaware that the prohibited conduct

⁷ P.L. 2013, c. 202 amended this statute to create the third degree crime for offenses committed on school property on or after January 17, 2014.

⁸ Where there is a question whether the property was used for school purposes charge the following:

“In addition to determining whether property is school property, you must determine the purpose for which it is used. You must decide whether the property is regularly, consistently, and actually used for school purposes, and whether the property’s appearance would give an objectively reasonable person reason to know that it was used regularly, consistently, and actually for school purposes.” State v. Ivory, 124 N.J. 582, 587, 592 (1991).

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took place on school property is not a defense to this crime and shall not be considered by you in your deliberations.

If the State has proved beyond a reasonable doubt all elements of the offense charged, you must find (defendant) guilty of soliciting or recruiting to join a criminal street gang **[CHOOSE APPLICABLE ALTERNATIVE]** while threatening another with bodily injury on two or more occasions within a 30-day period **OR** while inflicting significant bodily injury upon another **AND/OR** while on any school property. On the other hand, if the State has failed to prove the additional element(s) beyond a reasonable doubt, but has proved the first two elements beyond a reasonable doubt, you must find (defendant) guilty of soliciting or recruiting to join a criminal street gang without **[CHOOSE APPLICABLE ALTERNATIVE]** threatening another with bodily injury on two or more occasions within a 30-day period **OR** inflicting significant bodily injury upon another **AND/OR** while on any school property. Finally, if you find that the State has failed to prove either of the first two elements beyond a reasonable doubt, you must find (defendant) not guilty.