

ENDANGERING INJURED VICTIM
(N.J.S.A. 2C:12-1.2)

(**Defendant**) is charged with endangering an injured person¹, (**name**), on (**date**). This conduct is prohibited by a statute providing:

A person is guilty of endangering an injured victim if he causes bodily injury to any person or solicits, aids, encourages, or attempts or agrees to aid another, who causes bodily injury to any person, and leaves the scene of the injury knowing or reasonably believing that the injured person is physically helpless, mentally incapacitated, or otherwise unable to care for himself.

To find (**defendant**) guilty of endangering an injured person, the State must prove beyond a reasonable doubt each of the following elements:

[Choose appropriate category]

1. That he/she
 - a. knowingly caused bodily injury to another,

Or

 - b. knowingly solicited, aided, encouraged, purposely attempted or knowingly agreed to aid another person in causing bodily injury to the victim²;
2. That the injured person was physically helpless, mentally incapacitated, or otherwise unable to care for himself/herself; and

¹ The statute used the term “victim” in subsection a, the word “person” in subsection b, and the word “victim” in subsection c. “Person” has been used to refer to the injured party here where the statute is not directly quoted in order to avoid any emotional connotation which might flow from repeating the word “victim.”

² In State v. Munafo, 222 N.J. 480 (2015), the Court specifically noted that the mental state for this crime is “knowingly,” as required by the gap filler provision, N.J.S.A. 2C:2-2(c). Id. at 489, 493. An attempt crime, however, requires a “purposeful” state of mind. Cf. State v. McAllister, 211 N.J. Super. 355, 362 (App. Div. 1986). Therefore, if attempt is alleged, then the court must instruct the jury on the definition of purposeful conduct.

Furthermore, the Munafo Court approved of counsels’ decision not to read or discuss those portions of the statute that were not involved in the case (i.e., “solicited, aided, encouraged, attempted or agreed to aid another...”). Id. at 485 n.1. Therefore, the Committee suggests that counsel and the court tailor the charge to the specific acts alleged in the indictment or as adduced at the trial. In other words, the court should only read those portions of section 1b that are alleged in the indictment or as adduced at the trial.

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3. That he/she left the scene of the injury knowing or reasonably believing that the injured person was physically helpless, mentally incapacitated, or otherwise unable to care for himself/herself.

The first element that the State must prove beyond a reasonable doubt is that **(defendant)** **[choose appropriate language]** knowingly caused bodily injury to another or knowingly solicited, aided, encouraged, or purposely attempted or knowingly agreed to aid a third person in causing bodily injury to another. Bodily injury means physical pain, illness, or impairment of physical condition.

As to causation, the State must prove beyond a reasonable doubt that, but for **(defendant's)** conduct, the victim would not have suffered bodily injury.

[Choose if appropriate]

As to soliciting, aiding, encouraging, or attempting or agreeing to aid a third person in causing bodily injury to another, the State must prove beyond a reasonable doubt that **(defendant)** solicited, aided, encouraged, or attempted or agreed to endanger another person or solicited, aided, encouraged, or attempted to aid another in doing so. It does not matter whether **(defendant)** actually caused such injury. A person is guilty of an attempt if he/she purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in the commission of a crime.

[If "knowing" conduct is involved, read the following]

A person acts knowingly when he/she is aware that it is practically certain that his/her conduct will cause bodily injury. 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 the high probability of their existence. A person acts knowingly as to a result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such 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 the 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

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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.

[If “purposeful” conduct is involved (i.e., if attempt is alleged), read the following]

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

Purpose is a condition of the mind. It cannot be seen. It can only be determined by inference from the 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.

[Resume Main Charge: Charge in All Cases]

The second element that the State must prove beyond a reasonable doubt is that the person who suffered bodily injury was [**CHOOSE AS APPROPRIATE**] physically helpless, or mentally incapacitated, or otherwise unable to care for himself/herself at that time.

“Physically helpless” means the condition in which a person is unconscious, unable to flee, or physically unable to summon assistance.³

“Mentally incapacitated” means that condition in which a person is rendered temporarily or permanently incapable of understanding or controlling one’s conduct, or of appraising or controlling one’s condition, which incapacity shall include but is not limited to an inability to comprehend one’s own peril.⁴

³ N.J.S.A. 2C:12-1.2(b)(1).

⁴ N.J.S.A. 2C:12-1.2(b)(2).

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The third element that the State must prove beyond a reasonable doubt is that **(defendant)** left the scene of the injury knowing or reasonably believing that the injured person was **[CHOOSE AS APPROPRIATE]** physically helpless, or mentally incapacitated, or otherwise unable to care for himself/herself at that time. The State need not prove defendant's flight increased the risk that further harm would come to the victim.⁵

[CHARGE AS APPLICABLE: AFFIRMATIVE DEFENSE]

It is an affirmative defense to the crime that **(defendant)** summoned medical treatment for (the injured person) or knew that medical treatment had been summoned by another person and protected (the injured person) from further injury or harm until emergency assistance personnel arrived. **(Defendant)** must prove this defense by a preponderance of the evidence - that is to say, the greater weight of the credible evidence (or evidence that is more probable, more persuasive, or of greater probative value). For **(defendant)** to prove this defense, the evidence supporting it must weigh more heavily in your minds and be more convincing than the evidence opposing it. The burden of proof is sustained by the quality of the evidence, not the quantity.

[CHARGE IN ALL CASES]

If the State has proved beyond a reasonable doubt that **(defendant)** **[choose appropriate phrase: knowingly caused bodily injury to (the injured person), or knowingly solicited, aided, encouraged, or purposely attempted or knowingly agreed to aid another in causing bodily injury to (the injured person), and he/she knew or reasonably believed that (that [injured] person) was physically helpless, or mentally incapacitated, or otherwise unable to care for himself/herself at that time, [CHARGE AS APPLICABLE: and (defendant) has not proved by a preponderance of the evidence that he/she summoned medical treatment for the injured person or knew that medical treatment had been summoned by another person, and that he/she protected the victim from further injury until emergency assistance arrived], you must find him/her guilty of endangering an injured person.**

However, if the State has failed to prove beyond a reasonable doubt any one or more of the elements of the crime, that **(defendant)** **[choose appropriate phrase: knowingly caused bodily injury to (the person), or knowingly solicited, aided, encouraged, or purposely attempted**

⁵ State v. Munafo, *supra*, 222 N.J. at 489-93.

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or knowingly agreed to aid another in causing bodily injury to **(the injured person)**, and he/she knew or reasonably believed that **(that [injured] person)** was physically helpless, or mentally incapacitated, or otherwise unable to care for himself/herself at that time, injured, **[CHARGE AS APPLICABLE]**: or if (defendant) has proved by a preponderance of the evidence that he/she summoned medical treatment for the injured person or knew that medical treatment had been summoned by another person, and that he/she protected the victim from further injury until emergency assistance arrived], you must find him/her not guilty.