Exposing a child under 16 to an indecent object etc s 210(1)(e)

The prosecution must prove that:

1. **The defendant wilfully exposed a child.**

   The word "wilfully" means that the defendant deliberately or intentionally exposed the child (or that the defendant deliberately did an act, aware at the time that the result charged was a likely consequence of the act and yet recklessly proceeded regardless of the risk).[1]

   "Exposed" will usually mean showed but in some factual circumstances the allegation may be that the exposure was not visual but through some other means (e.g. sound). In those cases "exposed" means that the defendant in some (specified) manner made the child aware of the act or object etc.

2. **To an indecent object or any indecent film, videotape, audiotape, picture, photograph or printed or written matter.**

   "Indecent" bears its ordinary everyday meaning, that is what the community regards as indecent. It is what offends against currently accepted standards of decency. Indecency must always be judged in the light of time, place and circumstances.[2]

3. **The complainant was under 16 years at the time.[3]**

4. **The defendant had no legitimate reason to expose the complainant to the object etc.**

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[1] The word "wilfully" was considered in *R v Lockwood, ex parte Attorney-General* [1981] Qd R 209 in relation to s 496 (wilful damage) and Chapter 46 of the *Criminal Code*. The Court of Criminal Appeal extended the meaning to include reckless conduct. Neither *R v Lockwood* nor any later case (see, for example, *R v T* [1997] 1 Qd R 623 at 630) has considered the meaning to be given to the term under this section. It is debateable whether the extended concept of recklessness should apply to this offence. The Crown case, in any event, will usually be an alleged deliberate act by the defendant. In relation to the word "likely" in the direction concerning recklessness see comments in *R v T* (above) that the concept conveys a substantial – a real and not remote – chance.

[2] *R v Dunn* [1973] 2 NZLR 481.

[3] If the offence is alleged to have been committed in respect of a child of or above 12 years, it is a defence to prove that the defendant believed, on reasonable grounds, that the child was of or above 16 years(s 210(5)). See also s229 which provides that, except as otherwise stated, it is immaterial that the defendant did not know the person was under the specified age or believed that the person was not under that age.

The law leaves it to the good sense of the jury as representatives of the community whether the defendant acted without legitimate reason.[4] A legitimate reason could include for the benefit of the complainant's sexual education.

The onus of proof is on the prosecution. The defendant does not have to satisfy the jury that he or she had a legitimate reason. The prosecution has to satisfy the jury beyond a reasonable doubt that the defendant had no legitimate reason.

5. Refer to any circumstances of aggravation.[5]

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[4] The phrase "legitimate reason" is derived from the *Protection of Children Act* 1978 (UK). Lord Scarman said during the debate on the Act: "This phrase really embraces a question of fact on which courts and juries are well able to reach a sensible decision in determining the meaning."

[5] Section 210(3) and (4). See also Circumstances of Aggravation in Sexual Offences. The offence is a prescribed offence under s 161Q *Penalties and Sentences Act* 1992 so a serious organised crime circumstance of aggravation is applicable.