

14-936. Criminal sexual contact of a minor in the third degree; force or coercion; essential elements.¹

For you to find the defendant guilty of criminal sexual contact of a minor in the third degree [as charged in Count _____]², the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant
[touched or applied force to the _____³ of _____ (*name of victim*);]⁴
[OR]
[caused _____ (*name of victim*) to touch the _____³ of the defendant;]
2. The defendant
[used threats of physical force or physical violence against _____ (*name of victim or other person*)]⁴
[OR]
[threatened to _____⁵]; AND [_____ (*name of victim*) believed that the defendant would carry out the threat;]
[OR]
[_____ (*name of victim*) was (unconscious)⁴ (asleep) (physically helpless) (suffering from a mental condition so as to be incapable of understanding the nature or consequences of what the defendant was doing); AND the defendant knew or had reason to know of the condition of _____ (*name of victim*);]
3. The defendant=s acts resulted in _____⁶; OR the defendant acted with the help or encouragement of one or more persons;
4. _____ (*name of victim*) was at least thirteen (13) but less than eighteen (18) years old;
- [5. The defendant's act was unlawful;]⁷
6. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. This instruction sets forth the elements of all three types of *force or coercion* in NMSA 1978, Section 30-9-10(A) (2005): (1) use of physical force or physical violence, (2) threats, and (3) mental or other incapacity of the victim. The instruction also sets forth two of the four types of criminal sexual contact of a minor thirteen (13) to eighteen (18) years old in the third degree in NMSA 1978, Section 30-9-13(C) (2003): (1) contact resulting in personal injury, and (2) contact while aided or abetted by another. If the evidence supports one or more theories of *force or coercion* and also supports both of these theories of criminal sexual contact of a minor in the third degree, this instruction may be used. If the evidence also supports either of the other two theories of criminal sexual contact of a minor thirteen (13) to eighteen (18) years old in the third degree, the appropriate instruction or instructions must also be given: (1) UJI 14-926 NMRA for contact by a person in position of authority, or (2) UJI

14-935 NMRA for contact while armed with a deadly weapon.

2. Insert the count number if more than one count is charged.

3. Name one or more of the following parts of the anatomy touched: "buttocks," "breast," "groin," "anus," "mons pubis," "penis," "testicles," "mons veneris," or "vulva." When definitions are provided in UJI 14-981 NMRA, they must be given after this instruction; otherwise, no definition need be given unless the jury requests one.

4. Use only the applicable alternative or alternatives.

5. Describe threats used against the victim or another in layman's language. See NMSA 1978, ' 30-9-10(A)(3) for examples of types of threats.

6. Name victim and describe personal injury or injuries. See NMSA 1978, ' 30-9-10(D) for types of personal injuries.

7. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant=s actions. If this element is given, UJI 14-132 NMRA, "unlawful defined," must be given after this instruction.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or after December 31, 2018.]