

14-961. Criminal sexual penetration in the first degree; force or coercion; great bodily harm or great mental anguish; essential elements.¹

For you to find the defendant guilty of criminal sexual penetration causing [great bodily harm]² [great mental anguish] [as charged in Count _____]³, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant²
[caused _____ (*name of victim*) to engage in _____⁴;
[OR]
[caused the insertion, to any extent, of a _____⁵ into the
_____⁶ of _____ (*name of victim*);]
2. [The defendant used physical force or physical violence;]²
[OR]
[The defendant (used threats of physical force or physical violence against
_____ (*name of victim or other person*))² (OR)
(threatened to _____⁷); AND
_____ (*name of victim*) believed that the defendant
would carry out the threat;]
[OR]
[_____ (*name of victim*) was (unconscious)² (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 [great bodily harm⁸]² [great mental
anguish⁹] to _____ (*name of victim*);
- [4. The defendant's act was unlawful;]¹⁰
5. 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 Section 30-9-10(A) NMSA 1978: (1) use of physical force or physical violence; (2) threats; (3) mental or other incapacity of the victim. If the evidence supports two or more of these theories of "force or coercion," this instruction may be used.
2. Use only the applicable alternatives.
3. Insert the count number if more than one count is charged.
4. Name the sexual act or acts: i.e., "sexual intercourse", "anal intercourse", "cunnilingus" or "fellatio." The applicable definition or definitions from Instruction 14-982 NMRA must be given after this instruction.
5. Identify the object used.
6. Name the part or parts of the body: i.e., "vagina", "penis" or "anus". The

applicable definition or definitions from Instruction 14-981 NMRA must be given after this instruction.

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

8. The definition of "great bodily harm", Instruction 14-131 NMRA, must be given after this instruction.

9. The definition of "great mental anguish," Instruction 14-980 NMRA, must be given after this instruction.

10. 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.]