**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.]