

14-956. Criminal sexual penetration in the second degree; force or coercion; essential elements.¹

For you to find the defendant guilty of criminal sexual penetration in the second 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 defendant³
[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;]³
[OR]
[The defendant (used threats of physical force or physical violence against
_____ (*name of victim or other person*)³ (OR) (threatened to
_____⁷); AND _____ (*name of victim*) believed
that the defendant would carry out the threat;]
[OR]
[_____ (*name of victim*) was (unconscious)³ (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 _____⁸; OR the defendant
acted with the help or encouragement of one or more persons;
- [4. The defendant's act was unlawful;]⁹
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. The instruction also sets forth two of the five types of criminal sexual penetration in the second degree: (1) penetration resulting in personal injury; (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 penetration, this instruction may be used. If the evidence also supports one or more of the other three theories of criminal sexual penetration, the appropriate instruction or instructions must also be given: (1) UJI 14-945 NMRA for crimes committed before July 1, 2007, for penetration of a person 13 to 18 years old by a person in a position of authority; (2) UJI 14-954 NMRA for penetration during the commission of a felony; (3) UJI 14-955 NMRA for penetration while armed with a deadly weapon.

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

3. Use only the applicable alternatives.
 4. Name the sexual act or acts: i.e., “sexual intercourse,” “anal intercourse,” “cunnilingus” or “fellatio.” The applicable definition or definitions from UJI 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 UJI 14-980 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. Name victim and describe personal injury or injuries. See Section 30-9-10(C) NMSA 1978 for types of personal injuries.
 9. 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. 13-8300-023, effective for all cases pending or filed on or after December 31, 2013.]