

14-954. Criminal sexual penetration in the second degree; commission of a felony; essential elements.

For you to find the defendant guilty of criminal sexual penetration while committing another felony [as charged in Count _____],¹ 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 _____;]³

[OR]

[caused the insertion, to any extent, of a[n] _____⁴ into the _____⁵ of _____ (*name of victim*);]

[2. The defendant's act was unlawful;]⁶

3. The defendant committed the act during the commission of _____;⁷

4. The commission of _____⁷ was against _____ (*name of victim*);

5. The commission of _____⁷ assisted the defendant in

[causing _____ (*name of victim*) to engage in _____;]³

[OR]

[causing the insertion, to any extent, of a[n] _____⁴ into the _____⁵ of _____ (*name of victim*);] and

6. This happened in New Mexico on or about the ____ day of _____, _____.

USE NOTES

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

2. Use only the applicable alternatives.

3. 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.

4. Identify the object used.

5. Name the part or parts of the body: i.e., “vagina”, “penis”, or “anus”. The applicable definition or definitions from UJI 14-981 NMRA must be given after this instruction.

6. 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.

7. Identify the felony, and give the essential elements unless they are covered in an essential element instruction for the substantive offense. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

8. Age of the victim is not an essential element of the *offense*. However, where the state has not charged a violation of Section 30-9-11(E)(1), NMSA 1978, and is seeking the mandatory three-year minimum sentence because the victim is 13 to 18, the victim’s age is an essential sentencing fact that must be determined by the jury beyond a reasonable doubt, using UJI 14-6019A NMRA. See *State v. Stevens*, 2014-NMSC-011, ¶ 40, 323 P.3d 901.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]