

**14-7017. Life imprisonment without possibility of release or parole proceeding; aggravating circumstances; murder in the commission of criminal sexual penetration; essential elements.**

The state has charged the aggravating circumstance of murder in [the commission of] [an attempt to commit]<sup>2</sup> criminal sexual penetration. Before you find the aggravating circumstance of murder in [the commission of] [an attempt to commit]<sup>2</sup> criminal sexual penetration, you must find that the state has proved to your satisfaction beyond a reasonable doubt each of the following elements:

1. [The crime of] [an attempt to commit]<sup>2</sup> criminal sexual penetration was committed;
2. \_\_\_\_\_ (*name of victim*) was murdered while defendant was [committing] [or] [attempting to commit]<sup>2</sup> criminal sexual penetration; and
3. The defendant had the intent to kill.

USE NOTES

1. This instruction is to be used only in a life imprisonment without possibility of release or parole proceeding.
2. Use applicable alternative.
3. The court shall give the applicable essential elements instruction modified in the manner illustrated by UJI 14-140 NMRA, "Underlying felony offense; sample instruction". Instructions required to be given with the essential elements instruction, including definitions, must also be given.

[As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008, effective for all cases filed or pending on or after December 31, 2021.]