

14-621. Child abuse resulting in death; child at least 12 but less than 18; essential elements.

For you to find _____ (*name of defendant*) guilty of child abuse resulting in death of a child of at least twelve (12), but less than eighteen (18) years of age, [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. _____ (*name of defendant*)
_____ (*describe conduct or course of conduct alleged to have been child abuse*).²

2. By engaging in the conduct described in Paragraph 1, _____ (*name of defendant*) [caused] [or] [permitted]³ _____ (*name of child*)

[to be placed in a situation that endangered the life or health of _____ (*name of child*);]⁴

[OR]

[to be exposed to inclement weather;]

[OR]

[to be [tortured] [or] [cruelly confined] [or] [cruelly punished]]

3. _____ (*name of defendant*) showed a reckless disregard [without justification]⁵ for the safety or health of _____ (*name of child*).

To find that _____ (*name of defendant*) showed a reckless disregard, you must find that _____ (*name of defendant*)'s conduct was more than merely negligent or careless. Rather, you must find that _____ (*name of defendant*) [caused] [or] [permitted]³ a substantial and unjustifiable risk of serious harm to the safety or health of _____ (*name of child*). A substantial and unjustifiable risk is one that any law-abiding person would recognize under similar circumstances and that would cause any law-abiding person to behave differently than _____ (*name of defendant*) out of concern for the safety or health of _____ (*name of child*);⁶

[4. _____ (*name of defendant*) was a parent, guardian or custodian of the child, or _____ (*name of defendant*) had accepted responsibility for the child's welfare;]⁷

5. _____ (*name of defendant*)'s conduct resulted in the death of _____ (*name of child*);

6. _____ (*name of child*) was at least twelve (12), but less than eighteen (18) years of age;

7. 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. As used in this instruction, "conduct" may describe an act or a failure to act that causes child abuse or that permits child abuse to occur.

3. In most cases, only one of the bracketed alternatives should be given in a single instruction. However, both alternatives may be given in the same instruction if the evidence supports a finding beyond a reasonable doubt that the defendant either “caused or permitted” child abuse. See *State v. Leal*, 1986-NMCA-075, ¶13, 104 N.M. 506, 723 P.2d 977 (“Since abuse will frequently occur in the privacy of the home, charging a defendant with ‘causing or permitting’ may enable the state to prosecute where it is not clear who actually inflicted the abuse, but the evidence shows beyond a reasonable doubt that the defendant either caused the abuse or permitted it to occur.”).

4. Use only applicable alternative or alternatives.

5. If “justification” is an issue, this bracketed alternative must be given if requested.

6. This paragraph sets forth the minimum level of culpability required to sustain a conviction for child abuse resulting in death of a child of at least twelve (12), but less than eighteen (18) years of age. See NMSA 1978, § 30-6-1(F), (G) (providing that child abuse resulting in death of a child of at least twelve (12), but less than eighteen (18) years of age, whether committed intentionally or with reckless disregard, is a first degree felony); Cf. *State v. Consaul*, 2014-NMSC-030, ¶ 23, 332 P.3d 850 (“[T]he punishment for child abuse resulting in great bodily harm, whether done knowingly, intentionally, negligently, or recklessly, is the same.” (emphasis omitted)). In most cases, evidence that a defendant acted knowingly or intentionally will satisfy the standard set forth in this paragraph, and thus separate instructions for knowing and intentional conduct are not provided. See *State v. Montoya*, 2015-NMSC-010, ¶ 33, 345 P.3d 1056 (“[I]n most cases when the abuse does not result in the death of a child under twelve, it is not necessary to specify the defendant’s mental state or to provide separate jury instructions for reckless or intentional conduct; evidence that the defendant acted ‘knowingly, intentionally or [recklessly]’ will suffice to support a conviction.”); accord Model Penal Code § 2.02(5) (“When the law provides that . . . recklessness suffices to establish an element [of an offense], such element also is established if a person acts purposely or knowingly.”).

7. Use this element only when there is evidence that the defendant permitted child abuse.

[Adopted by Supreme Court Order No. 15-8300-001, effective for all cases filed or pending on or after April 3, 2015.]