

14-972. Aggravated criminal sexual penetration in the first degree; child under thirteen;¹ essential elements.

For you to find the defendant guilty of aggravated criminal sexual penetration of a child under the age of thirteen [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. _____ (name of victim) was twelve (12) years of age or younger;
3. [The defendant acted with an intent to kill]³
[OR]
[the act of the defendant was greatly dangerous to the lives of others, indicating a depraved mind without regard for human life;]
4. The defendant's act was unlawful;⁷
5. This happened in New Mexico on or about the ____ day of _____, _____.

A person acts with a depraved mind by intentionally engaging in outrageously reckless conduct with a depraved kind of wantonness or total indifference for the value of human life. Mere negligence or recklessness is not enough. In addition, the defendant must have a corrupt, or malicious state of mind, such as when a person acts with ill will, hatred, spite, or evil intent. Whether a person acted with a depraved mind may be inferred from all the facts and circumstances of the case.

USE NOTES

1. This instruction is to be used for crimes that occurred on or after July 1, 2009. For crimes occurring on or after July 1, 2007, but before July 1, 2009, the child's age must be under nine (9).
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 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 UJI 14-981 NMRA must be given after this instruction.
7. 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.

[Adopted by Supreme Court Order No. 11-8300-037, effective for cases pending or filed in the district court on or after November 18, 2011.]