

14-944. Criminal sexual penetration in the third degree; force or coercion; essential elements.¹

For you to find the defendant guilty of criminal sexual penetration [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 act was unlawful;]⁸
4. 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. If the evidence supports two or more of these theories of "force or coercion," this instruction may be used.
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 14-974 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 Instruction 14-981 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. 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.]