

14-952. Criminal sexual penetration in the second degree; victim unconscious, asleep, physically or mentally helpless; aided or abetted by another; essential elements.

For you to find the defendant guilty of criminal sexual penetration when aided or abetted by another [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 _____⁴ into the
_____⁵ of _____ (*name of victim*);]
2. _____ (*name of victim*) was [unconscious]² [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];
3. The defendant knew or had reason to know of the condition of
_____ (*name of victim*);
4. The defendant acted with the help or encouragement of one or more
persons;
- [5. The defendant's act was unlawful;]⁶
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 Instruction 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 Instruction 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.
[As amended, effective January 20, 2005.]