

**14-403A. Kidnapping; second degree; essential elements.**

For you to find the defendant guilty of [second degree]<sup>1</sup> kidnapping [as charged in Count \_\_\_\_\_],<sup>2</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [took]<sup>3</sup> [or] [restrained] [or] [confined] [or] [transported] \_\_\_\_\_ (*name of victim*) by [force]<sup>3</sup> [or] [intimidation] [or] [deception] [by \_\_\_\_\_ (*describe conduct*)];<sup>4</sup>

[2. The defendant's act was unlawful];<sup>5</sup>

3. The defendant intended:

[to hold \_\_\_\_\_ (*name of victim*) for ransom<sup>6</sup>]<sup>3</sup>

[OR]

[to hold \_\_\_\_\_ (*name of victim*) as a [hostage]<sup>3</sup> [or] [shield] against \_\_\_\_\_'s (*name of victim*) will]

[OR]

[to inflict [death]<sup>3</sup> [or] [physical injury] [or] [a sexual offense] on \_\_\_\_\_ (*name of victim*)]

[OR]

[to [make \_\_\_\_\_ (*name of victim*) \_\_\_\_\_ (*name specific act*)]<sup>3</sup> [or] [keep \_\_\_\_\_ (*name of victim*) from \_\_\_\_\_ (*name specific act*)] against \_\_\_\_\_'s (*name of victim*) will for the purpose of \_\_\_\_\_ (*identify benefit to defendant*)]<sup>7</sup>;

[4. The [taking]<sup>3</sup> [or] [restraint] [or] [confinement] [or] [transportation] of \_\_\_\_\_ (*name of victim*) was not slight, inconsequential, or merely incidental to the commission of another crime (*or name of offense*)];<sup>8</sup>

5. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**USE NOTES**

1. Only identify the degree if second-degree kidnapping is being instructed as a lesser-included offense of first-degree kidnapping. UJI 14-6002 NMRA, "Necessarily included offense," along with UJI 14-403 NMRA, "Kidnapping, first degree," should be given.

2. Insert the count number if more than one count is charged.
3. Use applicable alternative or alternatives.

4. If a secondary offense is also charged that was committed during the course of the kidnapping, use ordinary language to describe the taking, restraint, or confinement by force, intimidation, or deception. A description of precisely what conduct constituted this actus reus assists reviewing courts to distinguish crimes committed near in time. See *State v. Montoya*, 2011-NMCA-074, 150 N.M. 415, 259 P.3d 820 (finding double jeopardy violation because “[w]e are unable to determine from the record whether the jury found that the kidnaping [sic] was accomplished by the truck’s confinement of Victim’s vehicle or by Defendant’s restraint of Victim inside the vehicle. The jury instruction supported either theory of kidnaping [sic].”); *State v. Trujillo*, 2012-NMCA-112, 289 P.3d 238 (“We conclude . . . that the Legislature did not intend to punish as kidnapping restraints that are merely incidental to another crime.”).

5. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is instructed, UJI 14-132 NMRA, “Unlawfulness as an element,” must be given after this instruction.

6. The definition of “ransom,” UJI 14-406 NMRA, should be given after this instruction.

7. Holding to service requires that the kidnapping’s purpose be to make the victim perform some act or forgo performing an act, to the effect of conferring an independent assistance or benefit to the perpetrator of the crime, or another.

8. Use the bracketed element if the evidence raises a genuine issue of incidental conduct, whether or not a secondary offense is simultaneously charged. See *Trujillo*, 2012-NMCA-112; see also Committee commentary to UJI 14-403 NMRA. If a particular crime is identifiable, the name of the offense may be used, and unless the court has instructed on the essential elements of that offense, these elements must be given in a separate instruction immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

[Adopted by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]