

14-403. Kidnapping; first degree; essential elements.

For you to find the defendant guilty of [first degree]¹ kidnapping [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 defendant [took]³ [or] [restrained] [or] [confined] [or] [transported] _____ (*name of victim*) by [force]³ [or] [intimidation] [or] [deception] [by] _____ (*describe conduct*);⁴

[2. The defendant's act was unlawful;]⁵

3. The defendant intended:

[to hold _____ (*name of victim*) for ransom⁶]³

[OR]

[to hold _____ (*name of victim*) as a [hostage]³ [or] [shield] against _____'s (*name of victim*) will

[OR]

[to inflict [death]³ [or] [physical injury] [or] [a sexual offense] on _____ (*name of victim*)]

[OR]

[to [make _____ (*name of victim*) _____ (*name specific act*)]³ [or] [keep _____ (*name of victim*) from _____ (*name specific act*)]³ against _____'s (*name of victim*) will, for the purpose of _____ (*identify benefit to defendant*);⁷

4. The [taking]³ [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*);⁸

5. [The defendant did not voluntarily free _____ (*name of victim*) in a safe place;]³

[OR]

[The defendant inflicted physical injury upon _____ (*name of victim*) during the course of the kidnapping;]

[OR]

[The defendant inflicted a sexual offense upon _____ (*name of victim*) during the course of the kidnapping;]

6. 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. UJI 14-6002 NMRA, “Necessarily included offense,” along with UJI 14-403A NMRA, “Kidnapping second 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. See Committee commentary.

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. 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.

[As amended, effective September 1, 1994; August 1, 1997; as amended 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.]