

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CRIMINAL
PROPOSAL 2025-017**

March 6, 2025

The Uniform Jury Instructions-Criminal Committee has recommended amendments to UJIs 14-633 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

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New Mexico Supreme Court
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Your comments must be received by the Clerk on or before April 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

14-633. SEXUAL EXPLOITATION OF CHILDREN; MANUFACTURE

For you to find the defendant guilty of sexual exploitation of children (manufacture) [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. _____ (name of defendant) ~~[The defendant]~~ intentionally manufactured a visual or print medium that depicts a prohibited sexual act² [or simulation of such act]^{3[2]};
2. ~~[The medium depicts a prohibited sexual act² [or simulation of such act]³]~~
3. _____ (name of defendant) intended for one or more of the participants in the act to be a child under eighteen (18) years of age;
4. The depictions are obscene⁴;³ and
5. This happened in New Mexico on or about _____, 20 ____.

USE NOTES

1. Insert the count number if more than one count is charged.
2. If in issue, the statutory definitions of “manufacture,” “visual or print medium” and/or “prohibited sex act” shall be given. *See* NMSA 1978, § 30-6A-2.
3. Instruct with bracketed language only if in issue.
4. If this element is instructed, a definition of “obscene” shall be given. *See* NMSA 1978, § 30-6A-2.

[Adopted effective Dec. 31, 2019.]

Committee Commentary. See NMSA 1978, § 30-6A-3(E) (2016). Section 30-6A-3(E) defines the crime of child pornography manufacture. UJIs were not created for statutory definitions that are contained in NMSA 1978, Section 30-6A-2 (2001), including “manufacture,” “visual or print medium,” “prohibited sex act,” and “obscene.” The New Mexico Court of Appeals held that “copying the information from a computer to an external drive to another computer” falls within the statutory definition of manufacture as “copying by any means.” *State v. Smith*, 2009-NMCA-028, ¶¶ 14-15, 145 N.M. 757, 204 P.3d 1267.

In 2011, the New Mexico Court of Appeals held that the unit of prosecution of manufacture was unambiguous so that each act of taking a photograph constituted a count of manufacture. *State v. Leeson*, 2011-NMCA-068, ¶ 17, 149 N.M. 823, 255 P.3d 401 (“A violation of the statute occurs where a criminal defendant intentionally produces or copies a photograph, electronic image, or video that constitutes child pornography.”); see also § 30-6A-2(D) (defining “manufacture” to include “the production, processing, copying by any means, printing, packaging or repackaging” of exploitation materials). The Supreme Court subsequently distinguished *Leeson* to find the units of prosecution for possession and distribution ambiguous and that only one count could be punished for multiple images if the defendant acted unitarily. *State v. Olsson*, 2014-NMSC-012, ¶¶ 23, 31, 43-47, 324 P.3d 1230; see also *State v. Sena*, 2016-NMCA-062, ¶¶ 3-4, 9-19, 376 P.3d 887. The Court of Appeals held that convictions for possession and manufacture-by-recording do not violate double jeopardy if distinct evidence can support a continuing knowing possession after the manufacture crime was complete. *State v. Gwynne*, 2018-NMCA-033, ¶¶ 12-15, 417 P.3d 1157.

The Legislature amended Section 30-6A-3 in 2016, recompiling distribution as Subsection E. See 2016 N.M. Laws Ch. 2, § 1 (eff. Feb. 25, 2016). The Legislature also amended the basic sentence from a “second-degree felony” to a “second-degree felony for sexual exploitation of children,” and added new subsections for felonies “for sexual exploitation of children” to NMSA 1978, Section 31-18-15 (2016). See 2016 N.M. Laws Ch. 2, §§ 1, 2.

In 2024, the Supreme Court held that the statutory mens rea of intent to commit manufacture applies both to the act of manufacture and to the depiction of a child under eighteen years of age. *State v. Rael*, 2024-NMSC-010, ¶ 49, 548 P.3d 66. “[T]he mens rea required to violate Section 30-6A-3(E) is (1) to intentionally manufacture pornography that (2) intentionally depicts a child under eighteen years of age.” *Id.* ¶ 51.

[Commentary adopted effective December 31, 2019.]

**New Mexico
Courts**

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1 message

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Fri, Mar 28, 2025 at 2:30 PM

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Comment	What is the thinking behind putting the name of the defendant in the elements instead of just "the defendant"? Is this going to be done for all UJIs?

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