

1 **13-1312. Trespassing children (attractive nuisance).**

2 An [owner] [occupant] has a duty to prevent injury to a trespassing child resulting from
3 _____ (*describe structure or artificial condition*) artificial condition of the land
4 if:

5 (1) The place where the condition is maintained is one upon which the [owner]
6 [occupant] knows or has reason to know that children are likely to trespass;

7 (2) The condition is one which involves an unreasonable risk of injury to trespassing
8 children and the [owner] [occupant] knows or has reason to know of such risk; and

9 (3) The child because of [~~his~~ ~~her~~] the child's youth does not discover the condition
10 or realize the risk involved by intermeddling with it or coming into the area made dangerous by it.

11 In such a case, the [owner] [occupant] has a duty to exercise ordinary care, considering the
12 youth of the child, to prevent injury to the child.

13 USE NOTES

14 This instruction may be used when the injured trespasser is a child.

15 [As amended, effective January 1, 1987; November 1, 1991; as amended by Supreme Court Order
16 No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

17 **Committee commentary.** — A line of New Mexico cases recognizes and applies the attractive
18 nuisance doctrine. For a discussion of the elements of the doctrine and its relation to ordinary
19 negligence principles, *see Latimer v. City of Clovis*, 1972-NMCA-040, 83 N.M. 610, 495 P.2d
20 788[~~-(Ct. App. 1972)~~]. *See also* Restatement (Second) of Torts § 339 (1965), from which the
21 foregoing instruction is adapted.

22 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]