

1 **14-403. Kidnapping; first degree; essential elements.**

2 For you to find the defendant guilty of [first degree]¹ kidnapping [as charged in Count
3 _____²], the state must prove to your satisfaction beyond a reasonable doubt each of the
4 following elements of the crime:

5 1. The defendant [took]³ [or] [restrained] [or] [confined] [or] [transported]
6 _____ (*name of victim*) by [force]³ [or] [intimidation] [or] [deception] [by
7 _____ (*describe conduct*)];⁴

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

9 3. The defendant intended:

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

11 [OR]

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

14 [OR]

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

17 [OR]

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

21 4. The [taking]³ [or] [restraint] [or] [confinement] [or] [transportation] of
22 _____ (*name of victim*) was not slight, inconsequential, or merely incidental to the
23 commission of another crime (*or name of offense*);⁸

1 Defendant’s restraint of Victim inside the vehicle. The jury instruction supported either theory of
2 kidnaping [sic.]”); *State v. Trujillo*, [~~2012-NMCA-112~~] 2012-NMCA-112, ¶ 39, 289 P.3d 238
3 (“We conclude ... that the Legislature did not intend to punish as kidnapping restraints that are
4 merely incidental to another crime.”).

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

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

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

13 8. Use the bracketed element if the evidence raises a genuine issue of incidental
14 conduct, whether or not a secondary offense is simultaneously charged. *See Trujillo*, 2012-NMCA-
15 112; *see also* Committee commentary. If a particular crime is identifiable, the name of the offense
16 may be used, and unless the court has instructed on the essential elements of that offense, these
17 elements must be given in a separate instruction immediately following this instruction. To instruct
18 on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

19 [As amended, effective September 1, 1994; August 1, 1997; as amended by Supreme Court Order
20 No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015; as
21 amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed on or
22 after December 31, 2021; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
23 effective for all cases pending or filed on or after December 31, 2025.]

1 **Committee commentary.** — *See* NMSA 1978, § 30-4-1. This instruction is for the crime of first-
2 degree felony kidnapping. Previously, first and second-degree kidnapping relied on a single
3 elements instruction, and the differentiating elements were instructed only through special
4 interrogatories, leaving the court to determine the appropriate offense degree. Because this
5 approach may lead to confusion in differentiating first and second-degree kidnapping, separate
6 instructions were created for first and second-degree kidnapping that incorporate the distinguishing
7 findings as essential elements. *See, e.g., State v. Dominguez*, 2014-NMCA-064, ¶¶ 13-19, 327 P.3d
8 1092 (noting that only second-degree kidnapping could be imposed if the interrogatories were not
9 given, but relying on the jury’s guilty verdict for separately charged sex offense to satisfy the
10 finding that a sex offense was inflicted during the kidnapping) (citing *State v. Gallegos*, 2009-
11 NMSC-017, ¶ 13, 146 N.M. 88, 206 P.3d 993).

12 In clarifying New Mexico’s rejection of “incidental restraint” as a basis for kidnapping, the Court
13 of Appeals evaluated and functionally applied various tests from other jurisdictions. *See State v.*
14 *Trujillo*, 2012-NMCA-112, ¶¶ 31-39, 289 P.3d 238, *cert. quashed*[~~2015-NMCERT-003~~], 2015-
15 NMCERT-003, 346 P.3d 1163. Without adopting one specific test, the Court found the various
16 tests informative and applied them to the facts in turn in order to evaluate whether the restraint in
17 *Trujillo* was incidental to the crime of battery. *Id.* The Court applied a totality of the circumstances
18 test including the following factors:

- 19 1. whether the conduct is necessary to the commission of another crime;
- 20 2. whether the conduct carried some significance independent of another crime in that it could
21 make that crime substantially easier to commit or substantially lessen the risk of detection;
- 22 3. whether the conduct substantially increased the risk of harm to the victim, or was
23 particularly terrifying or dangerous;

1 4. whether the defendant took, restrained, confined, or transported the victim for a longer
2 period of time or to a greater degree than that which is necessary to commit another crime;

3 5. whether the defendant acted with a purpose or intent beyond the commission of another
4 crime.

5 *Id.*; see also *State v. Tapia*, 2015-NMCA-048, ¶¶ 28-36, 347 P.3d 738 (applying *Trujillo* factors
6 to reverse kidnapping convictions).

7 Element 5 provides the findings differentiating second and first-degree kidnapping. If more than
8 one alternative for Element 5 is given, the jury need only find Element 5 satisfied and unanimity
9 as to theory is not required to uphold the verdict. *Cf. State v. Salazar*, 1997-NMSC-044, ¶¶ 32-42,
10 123 N.M. 778, 945 P.2d 996 (affirming general verdict for first-degree murder without requiring
11 unanimity as to theory of deliberate intent or depraved mind); Rule 5-611 NMRA.

12 In addition to the lesser-included offense of second-degree kidnapping, false imprisonment may
13 be a lesser-included offense of kidnapping. See *State v. Fish*, 1985-NMCA-036, [¶17] ¶¶ 17, 21,
14 102 N.M. 775, 701 P.2d 374 (holding that a failure to instruct on false imprisonment as a
15 necessarily included lesser offense of kidnapping required reversal, where there was some
16 evidence that the defendant lacked the intent necessary for kidnapping); *State v. McGuire*, 1990-
17 NMSC-067, ¶ 29, 110 N.M. 304, 795 P.2d 996 (noting with approval that trial court gave “an
18 instruction on false imprisonment as a lesser included offense of kidnapping”).

19 While false imprisonment requires subjective knowledge that the restraint is unauthorized,
20 kidnapping requires a specific intent to do a further act, thereby distinguishing the crime of
21 kidnapping from the crime of false imprisonment. See NMSA 1978, [~~§ 30-4-4~~] §§ 30-4-1, -3; *State*
22 *v. Sotelo*, 2013-NMCA-028, ¶ 12, 296 P.3d 1232; *State v. Clark*, 1969-NMSC-078, 80 N.M. 340,
23 455 P.2d 844. Subsequent Court of Appeals cases have reaffirmed the “intent” distinction making

1 false imprisonment a lesser included offense of kidnapping. *See, e.g., Fish*, [~~1985-NMCA-036~~
2 1985-NMCA-036, ¶¶ 17, 21, (holding that a failure to instruct on false imprisonment as a
3 necessarily included lesser offense of kidnapping required reversal, where there was some
4 evidence that the defendant lacked the intent necessary for kidnapping); *State v. Armijo*, [~~1977-~~
5 ~~NMCA-070~~] 1977-NMCA-070, ¶¶ 10-11, 90 N.M. 614, 566 P.2d 1152 (both offenses require
6 confining or restraining, and the difference is whether the defendant had the specific intent to hold
7 for service against the victim’s will).

8 Previous versions of the instruction did not include the optional “unlawfulness” element, despite
9 Section 30-4-1 requiring that “taking, restraining, transporting or confining” be done unlawfully.
10 Recognizing that parents have a natural and legal right to the custody of their children, in the
11 context of custodial interference, *see* NMSA 1978, Section 30-4-4, *State v. Sanders*, [~~1981-~~
12 ~~NMCA-053~~] 1981-NMCA-053, ¶ 2, 96 N.M. 138, 628 P.2d 1134, held the mere fact that a parent
13 [~~had taken his infant daughter~~] took their infant child to Texas [~~with intent to keeping her~~
14 intending to keep the child there for a protracted period was insufficient to show [~~that he~~] the
15 parent knew that [~~he~~] they had no legal right to do so. If unlawfulness is at issue for kidnapping
16 purposes, Use Note 4 requires its instruction and definition.

17 In *State v. Vernon*, [~~1993-NMSC-070~~] 1993-NMSC-070, ¶ 13, 116 N.M. 737, 867 P.2d 407, the
18 Supreme Court held “that the ‘hold to service’ element of kidnapping requires that the victim be
19 held against [~~his or her~~] the victim’s will to perform some act, or to forego performance of some
20 act, for the benefit of someone or something.” *Vernon* further clarified that when a victim is moved
21 to facilitate a murder, “no ‘service’ is performed by the victim ... because the victim does not
22 confer any independent assistance or benefit to the perpetrator of the crime.” [~~Id.~~] Id. ¶ 15. That
23 conduct is nevertheless covered by the alternative intent theory of kidnapping “with intent[] ... to

1 inflict death.” See § 30-4-1(A)(4); *State v. Baca*, [~~1995-NMSC-045~~] 1995-NMSC-045, ¶ 41, 120
2 N.M. 383, 902 P.2d 65 (recognizing that the 1995 amendment to Section 30-4-1 added alternative
3 of specific intent “to inflict death.”).
4 [As amended by Supreme Court Order No. 15-8300-004[, ~~effective for all cases filed or pending~~
5 ~~on or after December 31, 2015~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]