

1 **14-612. Child abuse not resulting in death or great bodily harm; essential elements.**

2 For you to find \_\_\_\_\_ (*name of defendant*) guilty of child abuse, [as  
3 charged in Count \_\_\_\_\_],<sup>1</sup> the state must prove to your satisfaction beyond a reasonable doubt  
4 each of the following elements of the crime:

5 1. \_\_\_\_\_ (*name of defendant*)  
6 \_\_\_\_\_ (*describe conduct or course of conduct alleged to*  
7 *have been child abuse*).<sup>2</sup>

8 2. By engaging in the conduct described in Paragraph 1, \_\_\_\_\_  
9 (*name of defendant*) [caused] [or] [permitted]<sup>3</sup> \_\_\_\_\_ (*name of child*)  
10 [to be placed in a situation that endangered the life or health of \_\_\_\_\_  
11 (*name of child*)];<sup>4</sup>

12 [OR]

13 [to be exposed to inclement weather];

14 [OR]

15 [to be [tortured] [or] [cruelly confined] [or] [cruelly punished]];

16 3. \_\_\_\_\_ (*name of defendant*) showed a reckless disregard [without  
17 justification]<sup>5</sup> for the safety or health of \_\_\_\_\_ (*name of child*). To find that  
18 \_\_\_\_\_ (*name of defendant*) showed a reckless disregard, you must find that  
19 \_\_\_\_\_ (*name of defendant*)'s conduct was more than merely negligent or careless.  
20 Rather, you must find that \_\_\_\_\_ (*name of defendant*) [caused] [or] [permitted]<sup>3</sup> a  
21 substantial and unjustifiable risk of serious harm to the safety or health of \_\_\_\_\_  
22 (*name of child*). A substantial and unjustifiable risk is one that any law-abiding person would  
23 recognize under similar circumstances and that would cause any law-abiding person to behave

1 differently than \_\_\_\_\_ (*name of defendant*) out of concern for the safety or health  
2 of \_\_\_\_\_ (*name of child*);<sup>6</sup>

3 [4. \_\_\_\_\_ (*name of defendant*) was a parent, guardian or custodian of  
4 the child, or \_\_\_\_\_ (*name of defendant*) had accepted responsibility for the child's  
5 welfare];<sup>7</sup>

6 5. \_\_\_\_\_ (*name of child*) was under the age of eighteen (18);

7 6. This happened in New Mexico on or about the \_\_\_\_\_ day of  
8 \_\_\_\_\_, \_\_\_\_\_.

9 USE NOTES

10 1. Insert the count number if more than one count is charged.

11 2. As used in this instruction, "conduct" may describe an act or a failure to act that  
12 causes child abuse or that permits child abuse to occur.

13 3. In most cases, only one of the bracketed alternatives should be given in a single  
14 instruction. However, both alternatives may be given in the same instruction if the evidence  
15 supports a finding beyond a reasonable doubt that the defendant either "caused or permitted" child  
16 abuse. *See State v. Leal*, 1986-NMCA-075, ¶13, 104 N.M. 506, 723 P.2d 977 ("Since abuse will  
17 frequently occur in the privacy of the home, charging a defendant with 'causing or permitting'  
18 may enable the state to prosecute where it is not clear who actually inflicted the abuse, but the  
19 evidence shows beyond a reasonable doubt that the defendant either caused the abuse or permitted  
20 it to occur.").

21 4. Use only applicable alternative or alternatives.

22 5. If "justification" is in issue, if requested, this bracketed alternative must be given.

1           6.       This paragraph sets forth the minimum level of culpability required to sustain a  
2 conviction for child abuse. *Cf. State v. Consaul*, 2014-NMSC-030, ¶ 23, 332 P.3d 850 (“[T]he  
3 punishment for child abuse resulting in great bodily harm, whether done knowingly, intentionally,  
4 negligently, or recklessly, is the same.” (emphasis omitted)). In most cases, evidence that a  
5 defendant acted knowingly or intentionally will satisfy the standard set forth in this paragraph, and  
6 thus separate instructions for knowing and intentional conduct are not provided. *See State v.*  
7 *Montoya*, 2015-NMSC-010, ¶ 33, [\_\_\_\_P.3d\_\_\_\_] 345 P.3d 1056 (“[I]n most cases when the abuse  
8 does not result in the death of a child under twelve, it is not necessary to specify the defendant’s  
9 mental state or to provide separate jury instructions for reckless or intentional conduct; evidence  
10 that the defendant acted ‘knowingly, intentionally or [recklessly]’ will suffice to support a  
11 conviction.”); *accord Model Penal Code* § 2.02(5) (“When the law provides that . . . recklessness  
12 suffices to establish an element [of an offense], such element also is established if a person acts  
13 purposely or knowingly.”).

14           7.       Use this element only when there is evidence that the defendant permitted child  
15 abuse.

16 [Adopted by Supreme Court Order No. 15-8300-001, effective for all cases filed or pending on or  
17 after April 3, 2015; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for  
18 all cases pending or filed on or after December 31, 2025.]

19 **Committee commentary.** — *See* NMSA 1978, § 30-6-1. The child abuse instructions were  
20 substantially revised in 2015 to reflect amendments to the child abuse statute, 2005 N.M. Laws,  
21 ch. 59, § 1, and recent holdings of New Mexico’s appellate courts *see, e.g., State v. Montoya*, 2015-  
22 NMSC-010, [\_\_\_\_P.3d\_\_\_\_] 345 P.3d 1056; *State v. Consaul*, 2014-NMSC-030, 332 P.3d 850.

23 *Reckless disregard*

1 The New Mexico Supreme Court has held that recklessness is the minimum level of culpability  
2 required for the crime of child abuse. *See Consaul*, 2014-NMSC-030, ¶ 38. The Court stated:  
3 [T]he Legislature did not mean to punish ordinary acts of negligence when it amended the child  
4 abuse statute to require proof of recklessness . . . The Legislature intended to punish acts done with  
5 a reckless state of mind consistent with its objective of punishing morally culpable acts and not  
6 mere inadvertence.

7 *Id.* ¶ 36. The third elements of UJIs 14-612, -615, and -621 NMRA are consistent with the  
8 recklessness standard set forth by the legislature. *Compare* UJI 14-612, ¶ 3, *with* NMSA 1978, §  
9 30-6-1(A)(3) (defining criminal negligence as having knowledge of the danger involved and acting  
10 “with a reckless disregard for the safety or health of the child.”). *See also Consaul*, 2014-NMSC-  
11 030, ¶ 37 (“Typical definitions of recklessness require an actor to consciously disregard a  
12 substantial and unjustifiable risk of such a nature and degree that its disregard involves a gross  
13 deviation from the standard of conduct that a law-abiding person would observe in the actor’s  
14 situation.”).

15 *Separate instructions*

16 The punishment for child abuse resulting in great bodily harm, whether done knowingly,  
17 intentionally, or with reckless disregard, is the same. *See Consaul*, 2014-NMSC-030, ¶ 23; Section  
18 30-6-1(E) (“If the abuse results in great bodily harm to the child, the person is guilty of a [~~first~~  
19 ~~degree~~]first-degree felony.”). The same is true for child abuse not resulting in death or great bodily  
20 harm and for child abuse resulting in the death of a child at least twelve but less than eighteen  
21 years of age. *See* NMSA 1978, § 30-6-1(E) (“A person who commits abuse of a child that does  
22 not result in the child’s death or great bodily harm is, for a first offense, guilty of a [~~third~~  
23 ~~degree~~]third-degree felony and for second and subsequent offenses is guilty of a [~~second~~

1 ~~degree]~~second-degree felony.”); § 30-6-1(F), (G) (providing that child abuse resulting in death of  
2 a child of at least twelve (12), but less than eighteen (18) years of age, whether committed  
3 intentionally or with reckless disregard, is a [~~first-degree]~~first-degree felony). As a result, UJIs 14-  
4 612, -615, and -621 require that the State prove that the defendant acted with a minimum of  
5 reckless disregard. Separate instructions for intentional child abuse, with the exception of abuse  
6 resulting in the death of a child under twelve, are not provided because evidence that the  
7 defendant’s conduct was knowing or intentional will meet the reckless disregard standard. *See*  
8 *Montoya*, 2015-NMSC-010, ¶ 33 (“[I]n most cases when the abuse does not result in the death of  
9 a child under twelve, it is not necessary to specify the defendant’s mental state or to provide  
10 separate jury instructions for reckless or intentional conduct; evidence that the defendant acted  
11 ‘knowingly, intentionally or [recklessly]’ will suffice to support a conviction.”); *accord Model*  
12 *Penal Code* § 2.02(5) (“When the law provides that . . . recklessness suffices to establish an  
13 element [of an offense], such element also is established if a person acts purposely or knowingly.”).  
14 Nevertheless, “child abuse . . . will sometimes also require separate jury instructions . . . [w]hen  
15 two or more different or inconsistent acts or courses of conduct are advanced by the State as  
16 alternative theories as to how a child’s injuries occurred[.]” *Consaul*, 2014-NMSC-030, ¶ 23.  
17 “[T]he jury must make an informed and unanimous decision, guided by separate instructions, as  
18 to the culpable act the defendant committed and for which [he] [the defendant] is being punished.”  
19 *Id.* Therefore, the child abuse instructions require the jury to agree on the conduct or course of  
20 conduct alleged to have been child abuse.  
21 For a discussion of child abuse resulting in the death of a child under twelve years of age, see the  
22 commentary to UJI 14-622 NMRA.

- 1 [Adopted by Supreme Court Order No. 15-8300-001[, ~~effective April 3, 2015~~]; as amended by
- 2 Supreme Court Order No. S-1-RCR-2025-00126.]