

1 **14-633. Sexual exploitation of children; manufacture.**

2 For you to find the defendant guilty of sexual exploitation of children (manufacture) [as
3 charged in Count ____]¹, the state must prove to your satisfaction beyond a reasonable doubt each
4 of the following elements of the crime:

5 1. ~~[The defendant]~~ _____ (*name of defendant*) intentionally manufactured a
6 visual or print medium^[2] that depicts a prohibited sexual act² [or simulation of such act]³;

7 ~~[2. — The medium depicts a prohibited sexual act² [or simulation of such act]³;~~

8 ~~[3.]~~ 2. One or more of the participants in that act is a child under eighteen (18) years of
9 age;

10 3. _____ (*name of defendant*) intended for one or more of the participants in the
11 act to be a child under eighteen (18) years of age;

12 [4. The depictions are obscene⁴;]³ and

13 5. This happened in New Mexico on or about _____, 20__.

14 USE NOTES

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

16 2. If in issue, the statutory definitions of “manufacture,” “visual or print medium”
17 and/or “prohibited sex act” shall be given. *See* NMSA 1978, § 30-6A-2.

18 3. Instruct with bracketed language only if in issue.

19 4. If this element is instructed, a definition of “obscene” shall be given. *See* NMSA
20 1978, § 30-6A-2.

21 [Adopted by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or
22 after December 31, 2019; as amended by Supreme Court Order No. S-1-RCR-2024-00077,
23 effective for all cases pending or filed on or after December 31, 2025.]

1 **Committee commentary.** — *See* NMSA 1978, § 30-6A-3(E) (2016).

2 Section 30-6A-3(E) defines the crime of child pornography manufacture. UJIs were not
3 created for statutory definitions that are contained in NMSA 1978, Section 30-6A-2 (2001),
4 including “manufacture,” “visual or print medium,” “prohibited sex act,” and “obscene.”

5 The New Mexico Court of Appeals held that “copying the information from a computer to
6 an external drive to another computer” falls within the statutory definition of manufacture
7 as “copying by any means.” *State v. Smith*, 2009-NMCA-028, ¶¶ 14-15, 145 N.M. 757, 204 P.3d
8 1267.

9 In 2011, the New Mexico Court of Appeals held that the unit of prosecution of manufacture
10 was unambiguous so that each act of taking a photograph constituted a count of manufacture. *State*
11 *v. Leeson*, 2011-NMCA-068, ¶ 17, 149 N.M. 823, 255 P.3d 401 (“A violation of the statute occurs
12 where a criminal defendant intentionally produces or copies a photograph, electronic image, or
13 video that constitutes child pornography.”); *see also* § 30-6A-2(D) (defining “manufacture” to
14 include “the production, processing, copying by any means, printing, packaging or repackaging”
15 of exploitation materials). The Supreme Court subsequently distinguished *Leeson* to find the units
16 of prosecution for possession and distribution ambiguous and that only one count could be
17 punished for multiple images if the defendant acted unitarily. *State v. Olsson*, 2014-NMSC-012, ¶¶
18 23, 31, 43-47, 324 P.3d 1230; *see also State v. Sena*, 2016-NMCA-062, ¶¶ 3-4, 9-19, 376 P.3d
19 887. The Court of Appeals held that convictions for possession and manufacture-by-recording do
20 not violate double jeopardy if distinct evidence can support a continuing knowing possession after
21 the manufacture crime was complete. *State v. Gwynne*, 2018-NMCA-033, ¶¶ 12-15, 417 P.3d
22 1157.

1 The Legislature amended Section 30-6A-3 in 2016, recompiling distribution as Subsection
2 E. *See* 2016 N.M. Laws Ch. 2, § 1 (eff. Feb. 25, 2016). The Legislature also amended the basic
3 sentence from a “second-degree felony” to a “second-degree felony for sexual exploitation of
4 children,” and added new subsections for felonies “for sexual exploitation of children” to NMSA
5 1978, Section 31-18-15 (2016). *See* 2016 N.M. Laws Ch. 2, §§ 1, 2.

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

11 [Adopted by Supreme Court Order No. 19-8300-016~~[-effective for all cases pending or filed on~~
12 ~~or after December 31, 2019]~~; as amended by Supreme Court Order No. S-1-RCR-2024-00077.]