

1 **14-634. Consensual possession defense.**¹

2 In evaluating the elements of sexual exploitation of children (possession) [as charged in
3 Count ____]², it is a defense to the crime that a teenager possessed depictions of another teenager,
4 consensually created and consensually possessed. If you find the following elements satisfied, you
5 must find the defendant not guilty:

6 1. The defendant was under the age of eighteen (18) when the defendant possessed
7 the depiction(s);

8 2. The depicted child was aged fourteen (14) to eighteen (18) at the time the image
9 was captured;

10 3. The depicted child knowingly and voluntarily consented to the image's creation;
11 and

12 4. The depicted child knowingly and voluntarily consented to the defendant's
13 possession of the image.

14 USE NOTES

15 1. For use with UJI 14-631 NMRA when the consensual possession defense defined
16 in NMSA 1978, Section 30-6A-3(B) is in issue.

17 2. Insert the count number if more than one count is charged.

18 [Adopted by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or
19 after December 31, 2019.]

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

21 The Legislature amended Section 30-6A-3 in 2016, adding Subsection B, an affirmative defense
22 for consensual possession among teenagers. 2016 N.M. Laws ch. 2, § 1 (eff. Feb. 25, 2016).

1 Under New Mexico law, consent to the image’s creation may be withdrawn at any time before the
2 creation, and presumably consent to the possession can also be withdrawn. *Cf. State v. Pizio*,
3 1994-NMCA-152, ¶ 38, 119 N.M. 252, 889 P.2d 860 (“A person is entitled to withdraw [~~his or~~
4 ~~her~~] their consent or express a lack of consent to an act of criminal sexual penetration at any point
5 prior to the act itself.”); accord *State v. McCormack*, 1984-NMCA-042, ¶ 13, 101 N.M. 349, 682
6 P.2d 742 (stating that criminal trespass is established if the defendant “entered or remained without
7 authorization or permission, knowing that consent to enter had been denied or withdrawn”).
8 [Adopted by Supreme Court Order No. 19-8300-016[, ~~effective for all cases pending or filed on~~
9 ~~or after December 31, 2019~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]