

1 **14-904. Criminal sexual contact; victim unconscious, asleep, physically or mentally helpless;**
2 **essential elements.**

3 For you to find the defendant guilty of criminal sexual contact [as charged in Count
4 _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following
5 elements of the crime:

6 1. The defendant
7 [touched or applied force to the unclothed _____² of
8 _____ (*name of victim*) without _____'s (*name of victim*)
9 consent;]³

10 [OR]

11 [caused _____ (*name of victim*) to touch the _____² of the
12 defendant;]

13 2. _____ (*name of victim*) was [unconscious]³ [asleep] [physically
14 helpless] [suffering from a mental condition so as to be incapable of understanding the nature or
15 consequences of what the defendant was doing];

16 3. The defendant knew or had reason to know of the condition of
17 _____ (*name of victim*);

18 4. _____ (*name of victim*) was eighteen (18) years of age or
19 older;

20 [5. The defendant's act was unlawful;]⁴

21 6. This happened in New Mexico on or about the _____ day of _____,
22 _____.

23 USE NOTES

- 1 1. Insert the count number if more than one count is charged.
- 2 2. Name one or more of the following parts of the anatomy touched: "groin," "anus,"
3 "buttocks," "breast," "mons pubis," "penis," "testicles," "mons veneris," or "vulva." When
4 definitions are provided in UJI 14-981 NMRA, they must be given after this instruction; otherwise,
5 no definition need be given unless the jury requests one.
- 6 3. Use only the applicable alternative or alternatives.
- 7 4. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness
8 of the defendant's actions. If this element is given, UJI 14-132 NMRA, "unlawful defined," must
9 be given after this instruction.
- 10 [As amended, effective September 1, 1994; January 20, 2005; as amended by Supreme Court Order
11 No. 18-8300-012, effective for all cases pending or filed on or after December 31, 2018.]
- 12 **Committee commentary.** — See [~~Section 30-9-12 NMSA 1978; misdemeanor~~] NMSA 1978, §
13 30-9-12(D) (describing misdemeanor criminal sexual contact perpetrated with the use of force or
14 coercion).
- 15 This instruction contains the essential elements of criminal sexual contact perpetrated through the
16 use of force or coercion. In this instruction "force or coercion" is supplied by the inability of the
17 victim to consent. This statutory definition for force or coercion focuses on the status of the victim
18 and not on the intention of the actor. The defendant must have the same general intent as for all
19 sex crimes and, in addition, must have knowledge of the helpless status of the victim. This
20 knowledge of the victim's condition is measured by either an objective or subjective standard, i.e.,
21 the defendant is culpable for what [~~he~~] the defendant knew or had reason to know.
- 22 The term "physically helpless" means incapable of giving consent. "Unconscious" and "asleep"
23 have meanings which are generally understood.

1 In *State v. Nagel*, [~~87 N.M. 434, 535 P.2d 641 (Ct. App.)~~] 1975-NMCA-026, 535 P.2d 641, [~~cert.~~
2 ~~denied~~] cert. denied, 87 N.M. 450, 535 P.2d 657 (1975), the court [~~cited~~] quoted with approval
3 from *McDonald v. United States*, [~~114 U.S. App. D.C. 120, 312 F.2d 847, 851 (1962)~~] 312 F.2d
4 847, 851 (D.C. Cir, 1962), [~~"... [A]~~] “[A] mental disease or defect includes any abnormal
5 condition of the mind which substantially affects mental or emotional processes and substantially
6 impairs behavioral [~~control.~~] controls.” If the jury requests a definition of "mental condition,"
7 the language from [~~*State v. Nagel, supra,*~~] *Nagel* may be used because the dictionary is inadequate
8 to define the term.
9 *See also* the commentary to UJI 14-902.
10 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]