

1 **14-956. Criminal sexual penetration in the second degree; force or coercion; essential**  
2 **elements.<sup>1</sup>**

3 For you to find the defendant guilty of criminal sexual penetration in the second degree [as  
4 charged in Count \_\_\_\_\_]<sup>2</sup>, the state must prove to your satisfaction beyond a reasonable doubt  
5 each of the following elements of the crime:

6 1. The defendant<sup>3</sup>  
7 [caused \_\_\_\_\_ (*name of victim*) to engage in \_\_\_\_\_<sup>4</sup>];  
8 [OR]  
9 caused the insertion, to any extent, of a \_\_\_\_\_<sup>5</sup> into the \_\_\_\_\_<sup>6</sup> of  
10 \_\_\_\_\_ (*name of victim*);]

11 2. [The defendant used physical force or physical violence;]<sup>3</sup>  
12 [OR]  
13 [The defendant (used threats of physical force or physical violence against  
14 \_\_\_\_\_ (*name of victim or other person*)<sup>3</sup> (OR) (threatened to  
15 \_\_\_\_\_<sup>7</sup>); AND \_\_\_\_\_ (*name of victim*) believed that the  
16 defendant would carry out the threat;]

17 [OR]  
18 [\_\_\_\_\_ (*name of victim*) was (unconscious)<sup>3</sup> (asleep) (physically  
19 helpless) (suffering from a mental condition so as to be incapable of understanding the nature or  
20 consequences of what the defendant was doing); AND the defendant knew or had reason to know  
21 of the condition of \_\_\_\_\_ (*name of victim*);]

22 3. The defendant's acts resulted in \_\_\_\_\_<sup>8</sup>; OR the defendant acted with  
23 the help or encouragement of one or more persons;

1 [4. The defendant’s act was unlawful;]<sup>9</sup>

2 5. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_,  
3 \_\_\_\_\_.

4 USE NOTES

5 1. This instruction sets forth the elements of all three types of “force or coercion” in  
6 [~~Section 30-9-10(A) NMSA 1978~~] NMSA 1978, Section 30-9-10(A): (1) use of physical force or  
7 physical violence; (2) threats; (3) mental or other incapacity of the victim. The instruction also sets  
8 forth two of the [~~five~~] six types of criminal sexual penetration in the second degree: (1) penetration  
9 resulting in personal injury; (2) contact while aided or abetted by another. NMSA 1978, Section  
10 30-9-11(E). If the evidence supports one or more theories of “force or coercion” and also supports  
11 both of these theories of criminal sexual penetration, this instruction may be used. If the evidence  
12 also supports one or more of the other three theories of criminal sexual penetration, the appropriate  
13 instruction or instructions must also be given: (1) UJI 14-945 NMRA for crimes committed before  
14 July 1, 2007, for penetration of a person 13 to 18 years old by a person in a position of authority;  
15 (2) UJI 14-954 NMRA for penetration during the commission of a felony; (3) UJI 14-955 NMRA  
16 for penetration while armed with a deadly weapon.

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

18 3. Use only the applicable alternatives.

19 4. Name the sexual act or acts: i.e., “sexual intercourse,” “anal intercourse,”  
20 “cunnilingus” or “fellatio.” The applicable definition or definitions from UJI 14-982 NMRA must  
21 be given after this instruction.

22 5. Identify the object used.

1           6.       Name the part or parts of the body: i.e., “vagina,” “penis” or “anus.” The applicable  
2 definition or definitions from UJI [~~14-980~~] 14-981 NMRA must be given after this instruction.

3           7.       Describe threats used against the victim or another in [~~layman's~~] layperson's  
4 language. *See* [~~Section 30-9-10(A)(3) NMSA 1978~~] § 30-9-10(A)(3) for examples of types of  
5 threats.

6           8.       Name victim and describe personal injury or injuries. *See* [~~Section 30-9-10(C)~~  
7 ~~NMSA 1978~~] § 30-9-10(D) for types of personal injuries.

8           9.       Use the bracketed element if the evidence raises a genuine issue of the unlawfulness  
9 of the defendant’s actions. If this element is given, UJI 14-132 NMRA, “unlawful defined,” must  
10 be given after this instruction.

11 [As amended, effective January 20, 2005; as amended by Supreme Court Order No. 13-8300-023,  
12 effective for all cases pending or filed on or after December 31, 2013; as amended by Supreme  
13 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after  
14 December 31, 2025.]

15 **Committee commentary.** — *See* Section 30-9-11B NMSA 1978; [~~second degree~~]second-degree  
16 felony.

17 This instruction combines UJI 14-946 NMRA (physical force or physical violence; personal  
18 injury), UJI 14-947 NMRA (threats; personal injury), UJI 14-948 NMRA (unconscious, etc.;  
19 personal injury), UJI 14-950 NMRA (physical force or physical violence; aided or abetted), UJI  
20 14-951 NMRA (threats; aided or abetted) and UJI 14-952 NMRA (unconscious, etc.; aided or  
21 abetted).

22 This instruction may be used if the evidence supports two theories of aggravation of the offense;  
23 i.e., personal injury and aided or abetted. However, in some circumstances the individual and

1 particularized Uniform Jury Instructions may be more clear and therefore preferable. The court  
2 has discretion as to which instruction should be given for these essential elements.

3 This combined instruction does not include UJI 14-945 NMRA (position of authority), nor UJI 14-  
4 954 NMRA (commission of a felony) nor UJI 14-955 NMRA (deadly weapon). It is awkward and  
5 confusing to combine these methods of commission of the offense with the other [~~second~~  
6 ~~degree~~]second-degree sexual penetrations because UJI 14-945, 14-954 and 14-955 NMRA contain  
7 no definitions of “force or coercion.” If the evidence also supports the giving of UJI 14-945, 14-  
8 954 and 14-955 NMRA, that individual instruction should also be given. For a person thirteen (13)  
9 to eighteen (18) years old, *see* UJI 14-956A NMRA.

10 *See* the committee commentary to UJI 14-941 NMRA.

11 [As amended by Supreme Court Order No. 13-8300-023]~~[- effective for all cases pending or filed~~  
12 ~~on or after December 31, 2013]~~; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]