

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CRIMINAL
PROPOSAL 2026-028**

March 6, 2026

The Uniform Jury Instructions-Criminal Committee has recommended adoption of new Uniform Jury Instructions 14-973, 14-974, and 14-975 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed new instructions set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2026, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

[NEW MATERIAL]

14-973. Child solicitation by electronic communication device; child under 13.

For you to find the defendant guilty of child solicitation by electronic communication device of a child under the age of thirteen (13) [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant knowingly and intentionally solicited [_____] (*insert name of child*)² [_____] (*insert name of peace officer*), a peace officer posing as a child] to engage in [sexual intercourse]² [sexual contact] [a sexual or obscene performance³] [or] [sexual conduct by _____ (*describe conduct*)⁴];

2. [_____] (*insert name of child*) was]² [_____] (*insert name of peace officer*), a peace officer, was posing as] a child under the age of thirteen (13);

3. The defendant [knew or believed _____ (*insert name of child*)² [believed _____ (*insert name of peace officer*), a peace officer posing as a child,] was a child under the age of thirteen (13);

4. The defendant was at least four (4) years older than [_____] (*insert name of child*)² [the child _____ (*insert name of peace officer*) was posing as];

5. [The defendant appeared for, attended, or was present at a meeting that the defendant arranged pursuant to the solicitation;]⁵

6. The solicitation was through the use of an electronic communication device;⁶

7. This happened in New Mexico on or about the ____ day of _____, ____.

USE NOTES

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternative or alternatives.
3. If the obscenity of the performance is at issue, a definition of “obscene” shall be given. *See* NMSA 1978, Section 30-6A-2.
4. *See* NMSA 1978, Section 30-37-1(C) for a definition of “sexual conduct.”
5. Use this element if the State is pursuing an enhanced penalty under NMSA 1978, Section 30-37-3.2(C)(2) based on the defendant appearing for, attending, or being present at a meeting and the element is supported by the evidence.
6. The definition of “electronic communication device,” as provided by NMSA 1978, Section 30-37-3.2(F), must be given after this instruction.
[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. – *See* NMSA 1978, Section 30-37-3.2 (2007). This instruction contains the essential elements of child solicitation by electronic communication device, including the knowledge element discussed in *State v. Ebert*, 2011-NMCA-098, 263 P.3d 918. Unlawfulness is not an essential element of child solicitation by electronic communication device, and the lack of an unlawfulness element does not render Section 30-7-3.2 unconstitutionally vague. *Ebert*, 2011-NMCA-098, ¶ 18.

Solicitation of minors through electronic communications is not a “matter” or “performance” subject to the notice requirements of NMSA 1978, Section 30-37-4, which requires the state to make a determination that the acts underlying a defendant’s charges are harmful to minors. *State v. Julg*, 2021-NMCA-058, ¶ 20, 497 P.3d 678.
[Adopted by Supreme Court Order No. _____.]

[NEW MATERIAL]

14-974. Child solicitation by electronic communication device; child 13 to 16.

For you to find the defendant guilty of child solicitation by electronic communication device of a child at least thirteen (13) but less than sixteen (16) years of age [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant knowingly and intentionally solicited [_____ (*insert name of child*)]² [_____ (*insert name of peace officer*), a peace officer posing as a child] to engage in [sexual intercourse]² [sexual contact] [a sexual or obscene performance³] [or] [sexual conduct by _____ (*describe conduct*)⁴];
2. [_____ (*insert name of child*) was a child]² [_____ (*insert name of peace officer*), a peace officer, was posing as a child] at least thirteen (13) but less than sixteen (16) years of age;
3. The defendant [knew or believed _____ (*insert name of child*)]² [believed _____ (*insert name of peace officer*), a peace officer posing as a child,] was a child under sixteen (16) years of age;
4. The defendant was at least four (4) years older than [_____ (*insert name of child*)]² [the child _____ (*insert name of peace officer*) was posing as];

5. [The defendant appeared for, attended, or was present at a meeting that the defendant arranged pursuant to the solicitation;]⁵
6. The solicitation was through the use of an electronic communication device;⁶
7. This happened in New Mexico on or about the ____ day of _____, _____.

USE NOTES

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternative or alternatives.
3. If the obscenity of the performance is at issue, a definition of “obscene” shall be given. *See* NMSA 1978, Section 30-6A-2.
4. *See* NMSA 1978, Section 30-37-1(C) for a definition of “sexual conduct.”
5. Use this element if the State is pursuing an enhanced penalty under NMSA 1978, Section 30-37-3.2(C)(1) based on the defendant appearing for, attending, or being present at a meeting and the element is supported by the evidence.
6. The definition of “electronic communication device,” as provided by NMSA 1978, Section 30-37-3.2(F), must be given after this instruction.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. – *See* NMSA 1978, Section 30-37-3.2 (2007). This instruction contains the essential elements of child solicitation by electronic communication device, including the knowledge element discussed in *State v. Ebert*, 2011-NMCA-098, 263 P.3d 918. Unlawfulness is not an essential element of child solicitation by electronic communication device, and the lack of an unlawfulness element does not render Section 30-7-3.2 unconstitutionally vague. *Ebert*, 2011-NMCA-098, ¶ 18.

Solicitation of minors through electronic communications is not a “matter” or “performance” subject to the notice requirements of NMSA 1978, Section 30-37-4, which requires the state to make a determination that the acts underlying a defendant’s charges are harmful to minors. *State v. Julg*, 2021-NMCA-058, ¶ 20, 497 P.3d 678.

[Adopted by Supreme Court Order No. _____.]

[NEW MATERIAL]

14-975. Criminal sexual communication with a child.

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

1. The defendant knowingly and intentionally communicated directly with _____ (*name of child*);
2. The defendant sent _____ (*name of child*) obscene² images of the defendant’s _____³ by means of an electronic communication device⁴;
3. _____ (*name of child*) was a child under the age of sixteen (16);
4. The defendant knew or believed _____ (*name of child*) was under the age of sixteen (16);
5. The defendant was at least four (4) years older than _____ (*name of child*);
6. This happened in New Mexico on or about the ____ day of _____, _____.

USE NOTES

1. Insert the count number if more than one count is charged.
2. If the obscenity of the image is in issue, a definition of “obscene” shall be given. *See* NMSA 1978, § 30-6A-2.
3. Name one or more of the following parts of the anatomy depicted: “groin,” “anus,” “buttocks,” “breast,” “mons pubis,” “penis,” “testicles,” “mons veneris,” “vagina,” or “vulva.” If more than one body part is at issue, the parties can list them followed by “or more than one of these.” When definitions are provided in UJI 14-981 NMRA, they must be given after the instruction; otherwise, no definition need be given unless the jury requests one.
4. The definition of “electronic communication device” must be given after this instruction. *See* NMSA 1978, § 30-37-3.3(C)(2).
[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

**No Comments
Received**