

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CRIMINAL
PROPOSAL 2026-043**

May 15, 2026

The Uniform Jury Instructions-Criminal Committee has recommended adoption of new Uniform Jury Instruction 14-986 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments 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 June 14, 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]

14-986. “Physical force or physical violence” defined.¹

In establishing that physical force or physical violence occurred for purposes of Count[s] _____², the State does not need to prove that a significant amount of strength or exertion was used, nor that the victim protested or physically resisted. Instead, the State must prove that, at the time of the alleged sexual offense, the defendant was aware of, and consciously and unjustifiably disregarded, a substantial possibility that the victim did not consent.

USE NOTES

1. This instruction should be given when, for purposes of sexual offenses contained in NMSA 1978, Section 30-9-10 through NMSA 1978, Section 30-9-16, the issue of physical force or physical violence (as a part of the element of “force or coercion”) is in issue. *See* NMSA 1978, § 30-9-10(A)(1) (defining the “physical force or physical violence” alternative of the “force or coercion” element in sexual offenses).

2. Insert the appropriate Count or Count numbers.

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

Committee commentary. — In *State v. Apodaca*, 2025-NMSC-015, ¶ 37, 572 P.3d 913, the New Mexico Supreme Court clarified that the “physical force or physical violence” alternative of the force or coercion element in sexual offenses “does not require the State to prove that a significant amount of strength or exertion was used to perpetrate the sexual penetration.” Instead,

the Court explained that “the question is not whether the victim protested or physically resisted but rather whether the defendant was aware of, and consciously disregarded, a substantial and unjustifiable possibility that [the penetration] was being conducted without [the victim’s] consent.” *Id.* (internal citation omitted). The Committee drafted this definitional instruction for use when physical force or physical violence is in issue in such cases. *See* NMSA 1978, § 30-9-10(A)(1) (2005).

The New Mexico Supreme Court has not extended the *Apodaca* definition to cases involving the “use of threats to use physical violence or physical force” alternative of the force or coercion element. *See* NMSA 1978, § 30-9-10(A)(2). The view of the Committee is that the definition in *Apodaca* and UJI 14-986 NMRA does not apply to the “use of threats” alternative. It is unclear what a threat to consciously disregard a substantial possibility that the victim did not consent would entail, leaving it open to confusion and potentially disparate interpretation and enforcement. *State v. Quintin C.*, 2019-NMCA-069, ¶ 9, 451 P.3d 901 (recognizing that it is a “fundamental role of constitutional law that crimes must be defined with appropriate definiteness”). Because of these concerns, the Committee does not believe that UJI 14-986 should be used with the “use of threats” alternative of the force or coercion element.

[Adopted by Supreme Court Order No. _____.]



New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

1 message

Supreme Court <noreply@nmcourts.gov>

Mon, May 18, 2026 at 4:24 PM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Name Jack

Jacks

Phone Number 5054631021

Email jack.jacks@da2nd.nm.gov

Proposal Number 2026-043 Physical Force or Violence

Comment The language of the rule appears to be in conflict with holding and reasoning in State v. Apodaca, 2025-NMSC-015. The language of the rule also creates an affirmative defense and put the burden on the State to prove actual knowledge of the defendant which is not consistent with the statutory definitions and the body of case law surrounding this issue. I would ask the committee to reject this new instruction entirely or at least modify the language to track the statutory language rath that the Am. Jur. quote language which is what this instruction seems to track.



**New Mexico
Courts**

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>

Fri, Jun 5, 2026 at 11:11 AM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Name Van

Snow

**Phone
Number** 505-220-8608

Email vesnow7@gmail.com

**Proposal
Number** Proposal 14-986

Comment Dear Clerk,

I strongly recommend that the Court reject Proposal 14-986, which would create a new uniform jury instruction defining "physical force or violence" for the purposes of criminal sexual penetration and criminal sexual contact prosecutions. Although well-intentioned, the proposal relies on dicta in *State v. Apodaca*, 2025-NMSC-015, to 1) create a new, heightened mens rea requirement for sex crimes, and 2) place the victim's consent to engage at sexual activity at issue in every case proceeding under a physical force theory.

The proposed instruction consists of two parts. First, it would tell juries that the degree of physical force employed need not be great. This is unobjectionable and consistent with New Mexico caselaw. But the second part goes much further. It would tell the jury that the state "must prove that, at the time of the alleged sexual offense, the defendant was aware of, and consciously and unjustifiably disregarded, a substantial possibility that the victim did not consent." In effect, the second part would raise the state's burden and engraft a new element onto the crimes of CSC and CSP which the Legislature did not provide for.

Currently, the State must only prove that a defendant intentionally committed the acts constituting the sex crime. If the issue of unlawfulness is in question--say, because there is some evidence that the victim might have consented or that the act was really a lawful exercise of reasonable parental care--the State must also prove that the defendant acted with the intent to gratify sexual desire or to intrude upon the victim's bodily integrity or personal safety. See UJI 14-132 NMRA.

The proposed instruction would create a new mens rea requirement not contemplated by the statute: the state would have to prove that the defendant was at least reckless with regard to the victim's consent or non-consent. Moreover, that element would require the jury to pass on whether the victim actually consented under the facts. Again, consent only comes into play when there is some evidence to place unlawfulness at issue. See *id.* Automatically placing consent at issue in every force or coercion prosecution is directly contrary to Supreme Court precedent: "Under that form of CSP, if the

prosecution has proved that force or coercion was used by the perpetrator, it has also necessarily proved that the act was non-consensual, and a separate finding of a lack of consent is not required.” State v. Samora, 2016-NMSC-031, ¶ 26.

Apodaca did not change this. For one, the language the Committee relied on in paragraph 37 was dicta drawn from a nonbinding secondary source. The Court included the quoted language to support the broader, noncontroversial statement that “The physical force or physical violence alternative of force or coercion does not require the State to prove that a significant amount of strength or exertion was used to perpetrate the sexual penetration; force or coercion simply means that the victim did not consent.” 2025-NMSC-015, ¶ 37. In the following paragraphs, the Court discussed how consent was at issue in that case—among other facts, the defendant claimed that the victim consented and the victim denied that. Because consent was at issue, that would require the jury to resolve unlawfulness under UJI 14-132. But the Court never suggested that the state must, at the outset of every force or coercion prosecution, prove both the absence of consent as well as the defendant’s subjective knowledge of that absence. So Samora remains unaltered—a jury’s finding that defendant caused the penetration to occur through force or coercion proves that the act was not consensual, so a separate finding of fact on consent or is unnecessary.

Moreover, by requiring the State to prove the absence of consent in every force or coercion case would place the victim’s actions front an center in sex crime prosecutions. Defendants will have an obvious incentive to argue that they were not reckless as to the victim’s lack of consent because, for example, the victim did not physically resist his advances, was dressed a certain way, placed themselves in an isolated space, and so on. But there are many good reasons why a victim might not physically or overtly resist forcible acts, and how a victim comports herself never justifies being forced or coerced into a sex act.

This Court should reject proposal Proposal 14-986.



**New Mexico
Courts**

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>

Fri, Jun 5, 2026 at 11:18 AM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Name Van

Snow

**Phone
Number** 505-220-8608

Email vesnow7@gmail.com

**Proposal
Number** 505-220-8608

Comment ---Resubmitted because my previous comment had the wrong proposal number---

Dear Clerk,

I strongly recommend that the Court reject Proposal 2026-043, which would create a new uniform jury instruction defining "physical force or violence" for the purposes of criminal sexual penetration and criminal sexual contact prosecutions. Although well-intentioned, the proposal relies on dicta in *State v. Apodaca*, 2025-NMSC-015, to 1) create a new, heightened mens rea requirement for sex crimes, and 2) place the victim's consent to engage at sexual activity at issue in every case proceeding under a physical force theory.

The proposed instruction consists of two parts. First, it would tell juries that the degree of physical force employed need not be great. This is unobjectionable and consistent with New Mexico caselaw. But the second part goes much further. It would tell the jury that the state "must prove that, at the time of the alleged sexual offense, the defendant was aware of, and consciously and unjustifiably disregarded, a substantial possibility that the victim did not consent." In effect, the second part would raise the state's burden and engraft a new element onto the crimes of CSC and CSP which the Legislature did not provide for.

Currently, the State must only prove that a defendant intentionally committed the acts constituting the sex crime. If the issue of unlawfulness is in question--say, because there is some evidence that the victim might have consented or that the act was really a lawful exercise of reasonable parental care--the State must also prove that the defendant acted with the intent to gratify sexual desire or to intrude upon the victim's bodily integrity or personal safety. See UJI 14-132 NMRA.

The proposed instruction would create a new mens rea requirement not contemplated by the statute: the state would have to prove that the defendant was at least reckless with regard to the victim's consent or non-consent. Moreover, that element would require the jury to pass on whether the victim actually consented under the facts. Again, consent only comes into play when there is some evidence to place unlawfulness at issue. See id. Automatically placing consent at issue in every force or coercion

prosecution is directly contrary to Supreme Court precedent: "Under that form of CSP, if the prosecution has proved that force or coercion was used by the perpetrator, it has also necessarily proved that the act was non-consensual, and a separate finding of a lack of consent is not required." *State v. Samora*, 2016-NMSC-031, ¶ 26.

Apodaca did not change this. For one, the language the Committee relied on in paragraph 37 was dicta drawn from a nonbinding secondary source. The Court included the quoted language to support the broader, noncontroversial statement that "The physical force or physical violence alternative of force or coercion does not require the State to prove that a significant amount of strength or exertion was used to perpetrate the sexual penetration; force or coercion simply means that the victim did not consent." 2025-NMSC-015, ¶ 37. In the following paragraphs, the Court discussed how consent was at issue in that case—among other facts, the defendant claimed that the victim consented and the victim denied that. Because consent was at issue, that would require the jury to resolve unlawfulness under UJI 14-132. But the Court never suggested that the state must, at the outset of every force or coercion prosecution, prove both the absence of consent as well as the defendant's subjective knowledge of that absence. So *Samora* remains unaltered—a jury's finding that defendant caused the penetration to occur through force or coercion proves that the act was not consensual, so a separate finding of fact on consent or is unnecessary.

Moreover, by requiring the State to prove the absence of consent in every force or coercion case would place the victim's actions front an center in sex crime prosecutions. Defendants will have an obvious incentive to argue that they were not reckless as to the victim's lack of consent because, for example, the victim did not physically resist his advances, was dressed a certain way, placed themselves in an isolated space, and so on. But there are many good reasons why a victim might not physically or overtly resist forcible acts, and how a victim comports herself never justifies being forced or coerced into a sex act.

This Court should reject Proposal 2026-043.



**New Mexico
Courts**

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>

Fri, Jun 5, 2026 at 11:24 AM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Name Judge Emilio

Chavez

**Phone
Number** 575-751-8608

Email taodejc@nmcourts.gov

**Proposal
Number** 2026-043

Comment The proposed instruction is problematic because it does not actually define the term "physical force or physical violence," despite that being the stated purpose or title of the instruction. Rather than explaining what conduct constitutes physical force or violence, the instruction focuses on the defendant's awareness of a lack of consent/incapacity and the conscious disregard of a substantial possibility that the victim did not consent. Those concepts relate to consent and mens rea, not to the use of force.

If the purpose of the proposed instruction is to address the concerns discussed in State v. Apodaca, 2025-NMSC-015, ¶ 37, then the title should be revised because "Physical Force or Physical Violence Defined" does not accurately reflect the substance of the instruction.

The proposed language is not actually defining physical force or physical violence; instead, it addresses the role of consent and the significance of resistance or protest.

Additionally, Paragraph 37 of Apodaca should be approached with caution when drafting a jury instruction. The Supreme Court's discussion was part of its legal analysis regarding the defendant's claim to a mistake-of-fact instruction and was not suggested jury instruction language. The Court was explaining that the inquiry is not focused on whether the victim physically resisted or the degree of force employed, but rather on whether the sexual penetration occurred without consent given state's theory of lack of capacity.

The Court's reference to whether the defendant was aware of and consciously disregarded a substantial possibility of non-consent was made in the context of analyzing the defendant's legal arguments and should not necessarily be incorporated directly into a jury instruction. Doing so risks importing a recklessness-type mens rea standard that is not contained in the statutory elements or existing uniform jury instructions and may create confusion regarding the State's burden of proof.

A better approach would be to draft an instruction in a manner that reflects Apodaca's focus on consent/incapacity without altering the elements of the offense. Indeed, one could reasonably argue that a separate definitional instruction may be unnecessary because Apodaca repeatedly emphasizes

New Mexico State Judiciary Mail - [rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court that, under the physical force or physical violence alternative, the central issue is whether the sexual penetration occurred without the victim's consent, not the amount of force used.

Also it may be covered in the instruction by just adding committee commentary regarding using the appropriate alternative in non-consent cases of

[_____ (name of victim) was (unconscious)3 (asleep) (physically helpless) (suffering from a mental condition so as to be incapable of understanding the nature or consequences of what the defendant was doing); AND the defendant knew or had reason to know of the condition of _____ (name of victim);]

and not using the other alternatives relating to force.



New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Fri, Jun 5, 2026 at 12:09 PM

Name Felicity

Strachan

Phone Number 5054904060

Email fstrachan@nmdoj.gov

Proposal Number 2026-043

Comment Please do not implement this proposed jury instruction.

First, the proposed language would require the State to prove that "the defendant was aware of, and consciously and unjustifiably disregarded, a substantial possibility that the victim did not consent." This requirement is not in the statutes this jury instruction is meant to instruct on. The proposed language thus creates an element of the crimes that is not present in the statutes as written by the Legislature, effectively re-writing the law.

Second, the use of the word "unjustifiably" implies that there are circumstances under which a defendant could be aware of, and then justifiably disregard, a substantial possibility that the victim did not consent.



New Mexico Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Fri, Jun 5, 2026 at 12:37 PM

Name Lee

Green

Phone Number 505-934-3227

Email lgreen@nmdoj.gov

Proposal Number Proposal 2026-043 – Physical Force or Violence

Comment Adding a consent element would effectively rewrite the criminal sexual penetration and criminal sexual contact statutes governing force or coercion claims. Although a consent-based model might be a worthy legislative reform, grafting one onto the existing statutes would saddle the State with an additional burden—proving recklessness as to lack of consent—in the very cases where force itself supplies the answer.



New Mexico
Courts

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>

Fri, Jun 5, 2026 at 12:45 PM

Reply-To: noreply@nmcourts.gov

To: rules.supremecourt@nmcourts.gov

Name Tyler

Sciara

Phone Number 5055512996

Email tsciara@nmdoj.gov

Proposal Number 2026-043

Comment I am concerned that the proposed definition of "physical force or physical violence" does not accurately state the law on the subject. The proposed definition introduces a mens rea requirement to CSP I, II, and III that goes beyond what is actually required. "[F]orce or coercion simply means that the victim did not consent." State v. Apodaca, 2025-NMSC-015, ¶ 37; see also id. ¶ 12 (stating that the defendant used physical force or physical violence if the victim "had the capacity to consent but did not consent").

Cases published both before and after Apodaca reiterate the same: "so long as the jury finds that, considering all of the circumstances, the victim did not consent and the penetration was involuntary," that is sufficient on its own to find physical force was used. State v. Calderon, 2026-NMCA-026, ¶ 26. See also 65 Am. Jur. 2d Rape § 3 (2025) ("Physical force need only be sufficient to support a finding that the sexual activity was against the victim's will[.]"). An illustrative example predating Apodaca is State v. Huff, 1998-NMCA-075. There, the COA found sufficient evidence of "force" (as used in "physical force") simply by evidence that the defendant "grabbed [the v]ictim's breasts and squeezed them. Id. ¶ 11. The COA explained, quoting committee commentary for UJI 14-902 NMRA, that the physical force or physical violence element requires only that some amount of physical force be used without the victim's consent. Huff, 1998-NMCA-075, ¶ 12. And it is sufficient for that force to be the same as "that used in consensual intercourse." Calderon, 2026-NMCA-026, ¶ 1.

Because the proposed definition seemingly adds a factual element that is not required by law, please consider amending it further or discarding it.



**New Mexico
Courts**

Alyssa Segura <supams@nmcourts.gov>

[rules.supremecourt-grp] Open for Comment Form submitted on Supreme Court

Supreme Court <noreply@nmcourts.gov>
Reply-To: noreply@nmcourts.gov
To: rules.supremecourt@nmcourts.gov

Fri, Jun 5, 2026 at 4:54 PM

Name Henry

Chynoweth

Phone Number 505-627-2189

Email hchynoweth@nmdoj.gov

Proposal Number 2026-042

Comment I am opposed to this proposal. It seems to create an additional element for the State to prove. I think a more appropriate definition of physical force or violence would be along the lines of "the power or agency by which a person is able to negate another person's consent."
