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 performance[3]] [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 (2001).

4. *See* NMSA 1978, Section 30-37-1(C) (1973) 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) (2007) 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 Section 30-37-3.2(F), must be given after this instruction.

[Adopted by Supreme Court Order No. S-1-RCR-2024-00074, effective for all cases pending or filed on or after December 31, 2026.]

Committee commentary. – *See* NMSA 1978, § 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, 150 N.M. 526, 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 30-37-3.2 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 (1973), 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. S-1-RCR-2024-00074.]