

1 **14-7015. [~~Death penalty sentencing~~] Life imprisonment without possibility of release or**
2 **parole proceeding; aggravating circumstances; murder in the commission of kidnapping;**
3 **essential elements.¹**

4 The state has charged the aggravating circumstance of murder in [the commission of]^[2] [an
5 attempt to commit]² a kidnapping. Before you may find the aggravating circumstance of murder
6 in [the commission of]^[2] [an attempt to commit]² kidnapping, you must find that the state has
7 proved to your satisfaction beyond a reasonable doubt each of the following elements:

- 8 1. [The crime of]^[2] [an attempt to commit]² kidnapping was committed;
- 9 2. _____ (*name of victim*) was murdered while
10 _____ (*name of defendant*) was [committing]^[2] [or] [attempting to commit]²
11 kidnapping; and
- 12 3. The defendant had the intent to kill.

13
14 USE NOTES

- 15 1. This instruction is to be used only in a [~~death penalty sentencing~~] life imprisonment
16 without possibility of release or parole proceeding.
- 17 2. Use applicable alternative.
- 18 3. The court shall give the applicable essential elements instruction modified in the
19 manner illustrated by UJI 14-140 NMRA, Underlying felony offense; sample instruction.
20 Instructions required to be given with the essential elements instruction, including definitions,
21 must also be given.
- 22 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,
23 effective for all cases pending or filed on or after December 31, 2021.]

1 **Committee commentary.** — The penalty of [~~death~~] life imprisonment without possibility of
2 release or parole may be imposed if the defendant committed murder while committing or
3 attempting to commit one of three felonies: kidnapping, criminal sexual contact of a minor or
4 criminal sexual penetration. Even if the jury has found the defendant guilty of a felony murder in
5 the commission of a kidnapping, it must also find that the murder was committed with an intent to
6 kill in order to find this aggravating circumstance.

7 If the jury has not previously been instructed pursuant to [~~UJI 14-404, Kidnapping~~] UJI
8 14-403 NMRA, Kidnapping, and UJI 14-2801 NMRA, Attempt to Commit a Felony; UJIs 14-921
9 to 14-936 NMRA, Criminal Sexual Contact of a Minor; or UJI 14-941 to [~~14-961~~] 14-963 NMRA,
10 Criminal Sexual Penetration, the appropriate instruction must be given.

11 If UJI 14-7016 NMRA or UJI 14-7017 NMRA [~~are~~] is to be given with this instruction,
12 there must be evidence of an independent factual basis for each of the offenses. [~~Unless there is an~~
13 ~~independent separate factual basis that each offense has been committed, UJI 14-7015A NMRA~~
14 ~~must be given.~~] For example, the evidence may create a jury issue regarding the existence of a
15 factually separate aggravating factor of murder during the course of a kidnapping.

16 [~~See also committee commentary to UJI 14-7013 [withdrawn] and 14-7014.~~]

17 [As amended by Supreme Court Order No. 21-8300-008, effective for all cases pending or filed
18 on or after December 31, 2021.]