

1 **14-7017. [~~Death penalty sentencing~~]Life imprisonment without possibility of release or**
2 **parole proceeding; aggravating circumstances; murder in the commission of criminal sexual**
3 **penetration; essential elements.**

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

- 9 1. [The crime of]^[2] [an attempt to commit]² criminal sexual penetration was
10 committed;
- 11 2. _____ (*name of victim*) was murdered while defendant was
12 [committing]^[2] [or] [attempting to commit]² criminal sexual penetration; and
- 13 3. The defendant had the intent to kill.
- 14

15 USE NOTES

- 16 1. This instruction is to be used only in a [~~death penalty sentencing~~] life imprisonment
17 without possibility of release or parole proceeding.
- 18 2. Use applicable alternative.
- 19 3. The court shall give the applicable essential elements instruction modified in the
20 manner illustrated by UJI 14-140 NMRA, “Underlying felony offense; sample instruction”.
21 Instructions required to be given with the essential elements instruction, including definitions,
22 must also be given.

- 1 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,
- 2 effective for all cases pending or filed on or after December 31, 2021.]