**14-952. Criminal sexual penetration in the second degree; victim unconscious, asleep, physically or mentally helpless; aided or abetted by another; essential elements.**

For you to find the defendant guilty of criminal sexual penetration when aided or abetted by another [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 defendant2

[caused \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of victim*) to engage in \_\_\_\_\_\_\_\_\_\_3;]

[OR]

[caused the insertion, to any extent, of a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_4 into the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_5 of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of victim*);]

2. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of victim*) was [unconscious]2 [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];

3. The defendant knew or had reason to know of the condition of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (*name of victim*);

4. The defendant acted with the help or encouragement of one or more persons;

[5. The defendant's act was unlawful;]6

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. Use only the applicable alternatives.

3. Name the sexual act or acts: i.e., "sexual intercourse", "anal intercourse", "cunnilingus" or "fellatio". The applicable definition or definitions from Instruction 14-982 NMRA must be given after this instruction.

4. Identify the object used.

5. Name the part or parts of the body: i.e., "vagina", "penis" or "anus". The applicable definition or definitions from Instruction 14-981 NMRA must be given after this instruction.

6. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant's actions. If this element is given, UJI 14-132 NMRA, "unlawful defined", must be given after this instruction.

[As amended, effective January 20, 2005.]