

**14-623. Child abuse resulting in death; intentional act; child under 12; essential elements.**

For you to find \_\_\_\_\_ (name of defendant) guilty of intentional child abuse resulting in death of a child under twelve (12) years of age, [as charged in Count \_\_\_\_],<sup>1</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. \_\_\_\_\_ (name of defendant) \_\_\_\_\_  
(describe conduct or course of conduct alleged to have been child abuse).

2. By engaging in the conduct described in Paragraph 1, \_\_\_\_\_ (name of defendant) caused \_\_\_\_\_ (name of child)  
[to be placed in a situation that endangered the life or health of \_\_\_\_\_ (name of child);]<sup>2</sup>

[OR]

[to be exposed to inclement weather;]

[OR]

[to be [tortured ] [or] [cruelly confined] [or] [cruelly punished]]

3. \_\_\_\_\_ (name of defendant) acted intentionally<sup>3</sup> [and without justification];<sup>4</sup>

4. \_\_\_\_\_ (name of defendant)'s conduct resulted in the death of \_\_\_\_\_ (name of child);

5. \_\_\_\_\_ (name of child) was under the age of twelve (12);

6. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_, \_\_\_\_.

**USE NOTE**

1. Insert the count number if more than one count is charged.  
2. Use only applicable alternative or alternatives.  
3. The definition of "intentionally," UJI 14-141 NMRA, must also be given with this instruction.

4. If "justification" is an issue, this bracketed alternative must be given if requested.  
[Adopted by Supreme Court Order No. 15-8300-001, effective for all cases filed or pending on or after April 3, 2015.]

**Committee commentary.** — See NMSA 1978, § 30-6-1; UJI 14-612 NMRA committee commentary.

Separate instructions are provided for intentional child abuse resulting in death of a child under 12 years of age and for child abuse with reckless disregard resulting in death of a child under 12 years of age because the Legislature has defined the offenses separately and provided different punishments for each offense. See *State v. Consaul*, 2014-NMSC-030, ¶¶ 21-22, 332 P.3d 850 (noting that "the Legislature meant to punish only the most deliberate and reprehensible forms of child abuse" as intentional child abuse resulting in the death of a child under 12 years of age). When appropriate, a jury instructed under UJI 14-623 NMRA (Child abuse resulting in death; intentional act; child under 12; essential elements) may also be instructed under UJI 14-622 NMRA (Child abuse resulting in death; reckless disregard; child under 12; essential elements) provided that UJI 14-625 NMRA (Jury procedure for various degrees of child abuse resulting in death of a child under twelve years of age) is also given. See *State v. Montoya*, 2015-NMSC-010, ¶¶ 41-42, \_\_\_ P.3d \_\_\_ (holding that reckless child abuse resulting in the death of a child under twelve is a lesser-included offense of intentional child abuse resulting in the death of a child under 12 and that the use of a step-down instruction therefore is appropriate).

[Adopted by Supreme Court Order No. 15-8300-001, effective April 3, 2015.]