PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL
PROPOSAL 2023-019

March 24, 2023

The Uniform Jury Instructions - Criminal Committee has recommended new Uniform Jury Instructions 14-4513, 14-4514, 14-4515, and 14-4516 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at http://supremecourt.nmcourts.gov/open-for-comment.aspx or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
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505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 24, 2023, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

[NEW MATERIAL]
14-4513. Leaving the scene of an accident involving death or personal injury; essential elements.[1]

For you to find the defendant guilty of leaving the scene of an accident involving death or personal injury [as charged in Count ____][2], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant drove a vehicle involved in an accident;
2. The defendant knew that there was an accident;
3. The accident resulted in [injury] [great bodily harm] [or] [death][3] to _____;
4. The defendant [failed to immediately stop at the scene or stop as close to the scene as possible without obstructing traffic more than necessary]

[or]

[failed to remain at the scene until defendant had:

(a) given defendant's name, address, and registration number to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][4];

(b) displayed, upon request, defendant's license to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][4]; and

(c) rendered reasonable assistance to any person injured in the accident, including by taking or making arrangements to take the injured person to a physician or hospital for medical treatment if it was apparent that such treatment was necessary or such treatment was requested by the injured person] [4];

5. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. For use when the defendant is charged under Subsections (B) or (D) of Section 66-7-201 NMSA 1978. For knowingly leaving the scene of an accident involving great bodily harm or death under Subsection (C) of Section 66-7-201, use UJI 14-4514 NMRA. When the defendant is charged with leaving the scene of an accident involving only damage to another vehicle driven or attended by someone else under Section 66-7-202 NMSA 1978, use UJI 14-4515 NMRA. If the defendant is charged with failing to give information or render aid following an accident involving personal injury or death or damage to a vehicle driven or attended by another person under Section 66-7-203 NMSA 1978, use UJI 14-4516 NMRA.

2. Insert the count number if more than one count is charged.

3. Use only the applicable bracketed alternative established by the evidence. If there is dispute as to whether there is personal injury, which may establish a misdemeanor, or great bodily harm or death, which may establish a fourth-degree felony, separate instructions should be given or a special verdict form should be used to clarify the jury's finding. If great bodily harm is instructed, the definition of great bodily harm contained in UJI 14-131 NMRA should be given.

4. Use only the applicable bracketed alternative or alternatives established by the evidence.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* NMSA 1978, § 66-7-201 (1989); *see also* NMSA 1978, § 66-7-202 (1978) (Accidents involving damage to vehicle); NMSA 1978, § 66-7-203 (1978) (Duty to give information and render aid); UJI 14-4514 NMRA (Knowingly leaving the scene of an accident involving great bodily harm or death); UJI 14-4515 NMRA (Leaving the scene of an accident involving damage to vehicle); UJI 14-4516 NMRA (Failing to give information and render aid).

This instruction is to be used when the defendant is charged with the misdemeanor or fourth-degree felony of leaving the scene of an accident involving personal injury or death under Subsections (B) or (D) of Section 66-7-201. If the defendant is charged with the third-degree felony of knowingly leaving the scene of an accident involving great bodily harm or death under Subsection (C) of the same statute, use UJI 14-4514.

New Mexico courts have not squarely decided whether, for purposes of Subsections (B) and (D) of Section 66-7-201, the defendant must have knowledge of an accident or of injury to another or whether some lesser awareness may suffice. *See State v. Hertzog*, 2020-NMCA-031, ¶ 9 n.2, 464 P.3d 1090 (questioning whether knowledge of the accident was a required element of the offense under Subsection (B) of 66-7-201 but deeming it unnecessary to decide based on the issues raised on appeal); *State v. Kuchan*, 1943-NMSC-025, ¶¶ 6-7, 47 N.M. 209, 139 P.2d 592 (declining to decide if, under a prior version of the statute, knowledge of the accident or knowledge that a person was struck or injured are elements of the crime).

However, the Committee believes that New Mexico would follow the "vast majority of courts construing these statutes" and require knowledge of the accident even in the absence of any explicit statutory language. *Pardo v. State*, 160 A.3d 1136, 1146-47 (Del. 2017); *State v. Sidway*, 431 A.2d 1237, 1239 (Vt. 1981) ("A majority of the states . . .have hit and run statutes, and many of these statutes, like ours, contain no express requirement of knowledge on the part of the driver of the car that he was involved in an accident. Most courts, however, in interpreting the legislative intent behind these statutes, have taken the view that actual knowledge of the collision is an essential element of the offense.")

New Mexico law has long recognized that "[w]hen a criminal statute is silent about whether a *mens rea* element is required, we do not assume that the [L]egislature intended to enact a no-fault or strict liability crime. Rather, we presume criminal intent as an essential element of the crime unless it is clear from the statute that the [L]egislature intended to omit the *mens rea* element." *State v. Ramos*, 2013-NMSC-031, ¶ 16, 305 P.3d 921 (internal quotation marks and citations omitted). Hence, New Mexico courts have repeatedly determined that knowledge of particular circumstances giving rise to or increasing criminal penalties is required even when the statutes are otherwise silent on the required mental state. *See id.* ¶ 26 (requiring a knowing violation of a protection order); *State v. Nozie,* 2009-NMSC-018, ¶ 30, 146 N.M. 142, 207 P.3d 1119 (deeming knowledge that the victim is a peace officer an element of battery on a peace officer); *see also State v. Valino,* 2012-NMCA-105, ¶¶ 15, 17, 287 P.3d 372 (holding that knowledge that a victim is a health care worker is an essential element of the crime of battery on a health care worker).

In addition, the majority of other jurisdictions require knowledge of an accident or collision. *See* Marjorie A. Caner, Annotation, *Necessity and Sufficiency of Showing, in Criminal Prosecution under "Hit-And-Run" Statute, Accused's Knowledge of Accident, Injury, or Damage*, 26 A.L.R.5th 1 (1995) ("Under most 'hit-and-run' statutes, knowledge of the occurrence of the collision, injury, or damage is a prerequisite to a conviction under the statute."); *accord* 1 Charles E. Torcia, Wharton's Criminal Law § 27 (15th ed.) (August 2020 Update); *but see People v. Manzo*, 144 P.3d 551, 556, 558-59 (Colo. 2006) (noting that imposing strict liability for leaving the scene of an accident with injury was constitutional despite the resulting felony conviction because the statute constitutes a public welfare offense and the penalties, including up to eight years imprisonment, "are small in comparison to many common law crimes"); *see also People v. Hernandez*, 250 P.3d 568, 573 (Colo. 2011) (*en banc*) (describing the Colorado hit-and-run statute as a "strict liability offense" (citing *Manzo*, 144 P.3d at 555, 558)).

States requiring knowledge of an accident or collision include jurisdictions with "hit-and-run statutes nearly identical to New Mexico's [statutes]." *Hertzog*, 2020-NMCA-031, ¶¶ 16-17, 464 P.3d 1090 (deeming authority from Alaska, Arizona, and Texas persuasive because of similar statutory language); *see, e.g., Kimoktoak v. State*, 584 P.2d 25, 29-33 (Alaska 1978) (requiring knowledge of an accident and knowledge of injury or "that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person"); *State v. Porras*, 610 P.2d 1051, 1053-54 (Ariz. Ct. App. 1980) (requiring knowledge of an accident and knowledge of injury or "that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person"); *Mayer v. State*, 494 S.W.3d 844, 848-50 (Tex. Crim. App. 2016) (requiring knowledge of an accident). Given New Mexico's strong presumption against strict-liability offenses and the consensus on this element elsewhere, the Committee believes New Mexico's statute requires knowledge of an accident as an element of the offense.

There is less agreement as to whether knowledge of injury is also required. *See Pardo*, 160 A.3d at 1146-47 (indicating courts "are divided as to whether knowledge of the collision alone is required to hold a driver accountable, or whether the prosecution must prove both the driver's knowledge of his involvement in a collision and that he knew death or injury resulted"); 7A Am. Jur. 2d *Automobiles* § 328 (Feb. 2022 Update) ("Criminal liability under a [hit-and-run] statute … may require proof that the motorist knew of the damage or injury, or, at least, proof that the motorist reasonably should have known, from the nature of the accident, of the resulting damage or injury, or that the circumstances were such that a reasonable person would have believed that an accident had occurred resulting in death, damage, or injury to another.") Accordingly, the Committee takes no position on whether a defendant's knowledge of injury or some lesser degree of knowledge is required and has not included such an element in the instruction at this time.

The statute does not define the term "accident" or the phrase "involved in an accident." However, the New Mexico Court of Appeals has explained that, "[b]ased on the plain meaning of the term, the history of Section 66-7-201, the purposes of the hit-and-run statute, and guidance from courts in other jurisdictions," the language "involved in an accident" has a broader meaning than "collision" and includes scenarios where someone jumps out of a moving vehicle, whether or not the vehicle collides with anything. *Hertzog*, 2020-NMCA-031, ¶¶ 7, 18.

The New Mexico Court of Appeals has also explained that "a driver may be convicted under Section 66-7-201(D) by failing to 'immediately stop the vehicle at the scene of the accident or as close thereto as possible' *or* failing to 'immediately return to' and 'remain at the scene of the accident until he has fulfilled the requirements of Section 66-7-203.'" *State v. Esparza*, 2020-NMCA-050, ¶ 17, 475 P.3d 815 (quoting § 66-7-201(A)). Because "[t]he failure to perform either of these duties is grounds for a violation," the Committee has crafted an instruction reflecting these alternative means of committing the crime. *Id*.

To further ensure consistency with *Esparza* and the language of Section 66-7-201, the Committee has included the defendant's failure to satisfy the requirements of Section 66-7-203 before leaving the scene as "an essential element when it is alleged that the driver unlawfully failed to remain at the scene of the accident." *Id.* ¶ 12. A defendant is not required to remain at the scene indefinitely under Section 66-7-201. Inclusion of this element thus ensures that criminal liability attaches only if the jury finds that the defendant has failed "to satisfy the requirements of Section 66-7-203 before leaving the scene." *Id*.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

14-4514. Knowingly leaving the scene of an accident involving great bodily harm or death; essential elements.[1]

For you to find the defendant guilty of leaving the scene of an accident involving death or personal injury [as charged in Count ____][2], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant drove a vehicle involved in an accident;
2. The defendant knew that there was an accident;
3. The accident resulted in [great bodily harm] [or] [death][3] to _____;
4. [The defendant knew that the accident involved injury;][4]

5. The defendant [failed to immediately stop at the scene of an accident or stop as close to the scene as possible without obstructing traffic more than necessary]

[or]

[failed to remain at the scene of an accident until defendant had:

(a) given defendant's name, address, and registration number to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][5];

(b) displayed, upon request, defendant's license to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][5]; and

(c) rendered reasonable assistance to any person injured in the accident, including by taking or making arrangements to take the injured person to a physician or hospital for medical treatment if it was apparent that such treatment was necessary or such treatment was requested by the injured person] [5];

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

USE NOTES

1. For use when the defendant is charged with the third degree felony of knowingly leaving the scene of an accident involving great bodily harm or death under Section 66-7-201(C) NMSA 1978 (1989). If the defendant is charged with the misdemeanor or fourth degree felony of leaving the scene of an accident involving personal injury or death under Subsections (B) and (D) of Section 66-7-201, use UJI 14-4513 NMRA. If the defendant is charged with leaving the scene of an accident involving only damage to another vehicle driven or attended by someone else under Section 66-7-202 NMSA 1978, use UJI 14-4515 NMRA. If the defendant is charged with failing to give information or render aid following an accident involving personal injury or death or damage to a vehicle driven or attended by another person under Section 66-7-203 NMSA 1978, use UJI 14-4516 NMRA.

2. Insert the count number if more than one count is charged.

3. Use only the applicable bracketed alternative established by the evidence. If great bodily harm is instructed, the definition of great bodily harm contained in UJI 14-131 NMRA should be given.

4. The status of this element is unclear under New Mexico law. *See* Committee commentary.

5. Use only the applicable bracketed alternative or alternatives established by the evidence.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* NMSA 1978, § 66-7-201 (1989); *see also* NMSA 1978, § 66-7-202 (1978) (Accidents involving damage to vehicle); NMSA 1978, § 66-7-203 (1978) (Duty to give information and render aid); UJI 14-4513 NMRA (Leaving the scene of accident involving death or personal injury); UJI 14-4515 NMRA (Leaving the scene of an accident involving damage to vehicle); UJI 14-4516 NMRA (Failing to give information and render aid).

This instruction is to be used when the defendant is charged with the third degree felony of knowingly leaving the scene of an accident involving great bodily harm or death under

Subsection (C) of Section 66-7-201. If the defendant is charged with the misdemeanor or fourth degree felony of leaving the scene of an accident involving personal injury or death under Subsections (B) and (D) of the same statute, use UJI 14-4513 NMRA.

New Mexico courts have not squarely determined whether defendants must have knowledge of the accident or any awareness of injury for the misdemeanor or fourth degree felony versions of the offense of leaving the scene of an accident under Subsections (B) and (D) of Section 66-7-201. *See* UJI 14-4513 NMRA, Committee commentary. Because the "vast majority of courts construing these statutes" have determined that knowledge of the accident is required even in the absence of any explicit statutory language, the Committee believes that knowledge of the accident is required as an element for all versions of leaving the scene of accident contained in Section 66-7-201. *Pardo v. State*, 160 A.3d 1136, 1146-47 (Del. 2017); *State v. Sidway*, 431 A.2d 1237, 1239 (Vt. 1981) ("A majority of the states … have hit and run statutes, and many of these statutes, like ours, contain no express requirement of knowledge on the part of the driver of the car that he was involved in an accident. Most courts, however, in interpreting the legislative intent behind these statutes, have taken the view that actual knowledge of the collision is an essential element of the offense."); *see* UJI 14-4513 NMRA, Committee commentary. The Legislature's use of the term "knowingly" in Subsection (C) further necessitates that knowledge of the accident is required and therefore includes it as an element.

The Committee believes the Legislature's use of the term "knowingly" in Subsection (C) also requires the defendant to have some degree of knowledge that the accident involved injury. *See* Model Penal Code § 202(4) (2021) ("When the law defining an offense prescribes the kind of culpability that is sufficient for the commission of an offense, without distinguishing among the material elements thereof, such provision shall apply to all the material elements of the offense, unless a contrary purpose plainly appears"); *see also State v. Granillo*, 2016-NMCA-094, ¶ 16, 384 P.3d 1121 (collecting authority relying upon the Model Penal Code and "look[ing] to the Model Penal Code to inform our definition of an intentional *mens rea*").

In *State v. Cumpton*, 2000-NMCA-033, 129 N.M. 47, 1 P.3d 429, the New Mexico Court of Appeals indicated that "the knowledge required of Defendant [under Subsection (C)] is not the degree of his crime, but the extent of the factual circumstances of the incident." *Id.* ¶¶ 14-15. This suggests some degree of knowledge of injury to another is required under Subsection (C), but it does not clarify if actual knowledge of the extent of the injury or some lesser awareness will suffice. *See, e.g.*, Barbara J. Van Arsdale et al., *Driver's knowledge or mental state after accident*, 7A Am. Jur. 2d Automobiles § 328 (August 2021 Update) ("Criminal liability under a [hit-and-run] statute … may require proof that the motorist knew of the damage or injury, or, at least, proof that the motorist reasonably should have known, from the nature of the accident, of the resulting damage or injury, or that the circumstances were such that a reasonable person would have believed that an accident had occurred resulting in death, damage, or injury to another.") Accordingly, the Committee includes knowledge of injury as an element for purposes of Subsection (C), but takes no position on whether actual knowledge of great bodily harm or death is required.

The statute does not define the term "accident" or the phrase "involved in an accident," but the New Mexico Court of Appeals has explained that the phrase "involved in an accident" has a broader meaning than "collision" and includes scenarios where someone jumps out of a moving vehicle, whether or not the vehicle collides with anything. *State v. Hertzog*, 2020-NMCA-031, ¶ 18, 464 P.3d 1090.

The New Mexico Court of Appeals has also explained that a driver may be convicted under Section 66-7-201 "by failing to 'immediately stop the vehicle at the scene of the accident or as close thereto as possible' *or* failing to 'immediately return to' and 'remain at the scene of the accident until he has fulfilled the requirements of Section 66-7-203.'" *State v. Esparza*, 2020-NMCA-050, ¶ 17, 475 P.3d 815 (quoting § 66-7-201). Because "[t]he failure to perform either of these duties is grounds for a violation," the Committee has crafted an instruction reflecting these alternative means of committing the crime. *Id*.

To further ensure consistency with *Esparza* and the language of Section 66-7-201, the Committee has included the defendant's failure to satisfy the requirements of Section 66-7-203 before leaving the scene as "an essential element when it is alleged that the driver unlawfully failed to remain at the scene of the accident." *Id.* ¶ 12. A defendant is not required to remain at the scene indefinitely under Section 66-7-201. Inclusion of this element thus ensures that criminal liability attaches only if the jury finds that the defendant has failed "to satisfy the requirements of Section 66-7-203 before leaving the scene." *Id*.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

14-4515. Leaving the scene of an accident involving damage to vehicle; essential elements.[1]

For you to find the defendant guilty of leaving the scene of an accident involving only damage to a vehicle [as charged in Count ____][2], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant drove a vehicle involved in an accident;
2. The defendant knew that there was an accident;
3. The accident resulted in damage to a vehicle driven or attended by another person;
4. The defendant [failed to immediately stop at the scene or stop as close to the scene as possible without obstructing traffic more than necessary]

[or]

[failed to remain at the scene until defendant had:

(a) given defendant's name, address, and registration number to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][3]; and

(b) displayed, upon request, defendant's license to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][3]][3]

5. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. For use when the defendant is charged with leaving the scene of an accident involving only damage to another vehicle driven or attended by someone else under Section 66-7-202 NMSA 1978. If the defendant is charged with the misdemeanor or fourth degree felony of leaving the scene of an accident involving personal injury or death under Subsections (B) or (D) of Section 66-7-201 NMSA 1978, use UJI 14-4513 NMRA. If the defendant is charged with the third degree felony of knowingly leaving the scene of an accident involving great bodily harm or death under Subsection (C) of Section 66-7-201, use UJI 14-4514 NMRA. If the defendant is

charged with failing to give information or render aid following an accident involving personal injury or death or damage to a vehicle driven or attended by another person under Section 66-7-203 NMSA 1978, use UJI 14-4516 NMRA.

2. Insert the count number if more than one count is charged.

3. Use only the applicable bracketed alternative or alternatives established by the evidence.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* NMSA 1978, § 66-7-202 (1978); *see also* NMSA 1978, § 66-7-201 (1989) (Accidents involving death or personal injury); NMSA 1978, § 66-7-203 (1978) (Duty to give information and render aid); UJI 14-4513 NMRA (Leaving the scene of an accident involving death or personal injury); UJI 14-4514 NMRA (Knowingly leaving the scene of an accident involving great bodily harm or death); UJI 14-4516 NMRA (Failing to give information and render aid).

New Mexico courts have not squarely decided whether, for purposes of Subsections (B) and (D) of Section 66-7-201, the defendant must have knowledge of an accident or of injury to another or whether some lesser awareness may suffice. *See State v. Hertzog*, 2020-NMCA-031, ¶ 9 n.2, 464 P.3d 1090 (questioning whether knowledge of the accident was a required element of the offense under Subsection (B) of 66-7-201 but deeming it unnecessary to decide based on the issues raised on appeal); *State v. Kuchan*, 1943-NMSC-025, ¶¶ 6-7, 47 N.M. 209, 139 P.2d 592 (declining to decide if, under a prior version of the statute, knowledge of the accident or knowledge that a person was struck or injured are elements of the crime).

However, the Committee believes that New Mexico would follow the "vast majority of courts construing these statutes" and require knowledge of the accident even in the absence of any explicit statutory language. *Pardo v. State*, 160 A.3d 1136, 1146-47 (Del. 2017); *State v. Sidway*, 431 A.2d 1237, 1239 (Vt. 1981) ("A majority of the states . . . have hit and run statutes, and many of these statutes, like ours, contain no express requirement of knowledge on the part of the driver of the car that he was involved in an accident. Most courts, however, in interpreting the legislative intent behind these statutes, have taken the view that actual knowledge of the collision is an essential element of the offense.")

New Mexico law has long recognized that "[w]hen a criminal statute is silent about whether a *mens rea* element is required, we do not assume that the [L]egislature intended to enact a no-fault or strict liability crime. Rather, we presume criminal intent as an essential element of the crime unless it is clear from the statute that the [L]egislature intended to omit the *mens rea* element." *State v. Ramos*, 2013-NMSC-031, ¶ 16, 305 P.3d 921 (internal quotation marks and citations omitted). Hence, New Mexico courts have repeatedly determined that knowledge of particular circumstances giving rise to or increasing criminal penalties is required even when the statutes are otherwise silent on the required mental state. *See id.* ¶ 26 (requiring a knowing violation of a protection order); *State v. Nozie,* 2009-NMSC-018, ¶ 30, 146 N.M. 142, 207 P.3d 1119 (deeming knowledge that the victim is a peace officer an element of battery on a peace officer); *see also State v. Valino,* 2012-NMCA-105, ¶¶ 15, 17, 287 P.3d 372 (holding that knowledge that a victim is a health care worker is an essential element of the crime of battery on a health care worker).

In addition, the majority of other jurisdictions require knowledge of an accident or collision. *See* Marjorie A. Caner, Annotation, *Necessity and Sufficiency of Showing, in Criminal*

Prosecution under "Hit-And-Run" Statute, Accused's Knowledge of Accident, Injury, or Damage, 26 A.L.R.5th 1 (1995) ("Under most 'hit-and-run' statutes, knowledge of the occurrence of the collision, injury, or damage is a prerequisite to a conviction under the statute."); *accord* 1 Charles E. Torcia, Wharton's Criminal Law § 27 (15th ed.) (August 2020 Update); *but see People v. Manzo*, 144 P.3d 551, 556, 558-59 (Colo. 2006) (noting that imposing strict liability for leaving the scene of an accident with injury was constitutional despite the resulting felony conviction because the statute constitutes a public welfare offense and the penalties, including up to eight years imprisonment, "are small in comparison to many common law crimes"); *see also People v. Hernandez*, 250 P.3d 568, 573 (Colo. 2011) (*en banc*) (describing the Colorado hit-and-run statute as a "strict liability offense" (citing *Manzo*, 144 P.3d at 555, 558)).

States requiring knowledge of an accident or collision include jurisdictions with "hit-and-run statutes nearly identical to New Mexico's [statutes]." *Hertzog*, 2020-NMCA-031, ¶¶ 16-17, 464 P.3d 1090 (deeming authority from Alaska, Arizona, and Texas persuasive because of similar statutory language); *see, e.g., Kimoktoak v. State*, 584 P.2d 25, 29-33 (Alaska 1978) (requiring knowledge of an accident and knowledge of injury or "that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person"); *State v. Porras*, 610 P.2d 1051, 1053-54 (Ariz. Ct. App. 1980) (requiring knowledge of an accident and knowledge of injury or "that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person"); *Mayer v. State*, 494 S.W.3d 844, 848-50 (Tex. Crim. App. 2016) (requiring knowledge of an accident). Given New Mexico's strong presumption against strict-liability offenses and the consensus on this element elsewhere, the Committee believes New Mexico's statute requires knowledge of an accident as an element of the offense.

There is less agreement as to whether knowledge of damage is also required. *See Pardo*, 160 A.3d at 1146-47 (indicating courts "are divided as to whether knowledge of the collision alone is required to hold a driver accountable, or whether the prosecution must prove both the driver's knowledge of his involvement in a collision and that he knew death or injury resulted"); *State v. Johnson*, 630 A.2d 1059, 1064 (Conn. 1993) (concluding that knowledge of the accident was required but that knowledge of damage was not); 7A Am. Jur. 2d *Automobiles* § 328 (Feb. 2022 Update) ("Criminal liability under a [hit-and-run] statute … may require proof that the motorist knew of the damage or injury, or, at least, proof that the motorist reasonably should have known, from the nature of the accident, of the resulting damage or injury, or that the circumstances were such that a reasonable person would have believed that an accident had occurred resulting in death, damage, or injury to another.") Accordingly, the Committee takes no position on whether a defendant's knowledge of damage or some lesser degree of knowledge is required and has not included such an element in the instruction at this time.

The statute does not include a definition of the term "accident" or of the phrase "involved in an accident," but the New Mexico Court of Appeals has held that the phrase "involved in an accident" has a broader meaning than "collision." *State v. Hertzog*, 2020-NMCA-031, ¶ 18, 464 P.3d 1090 (interpreting identical language in Section 66-7-201). Nonetheless, the Committee does not believe that the phrase is so broad for purposes of Section 66-7-202 as to include situations where the only vehicle involved in the accident is the defendant's vehicle. Instead, the Committee believes that the statutory scheme requires involvement of another vehicle driven or attended by someone other than the defendant. *See e.g.*, § 66-7-202 (requiring a defendant to remain until the requirements of Section 66-7-203 are satisfied); § 66-7-203 (requiring a defendant to provide information to "the driver or occupant of or person attending any vehicle collided with"). The

Committee has therefore specified in element 3 of this instruction that the vehicle damaged must be "driven or attended by another person."

In *State v. Esparza*, 2020-NMCA-050, 475 P.3d 815, the New Mexico Court of Appeals explained that a driver may be convicted under Section 66-7-201 "by failing to 'immediately stop the vehicle at the scene of the accident or as close thereto as possible' *or* failing to 'immediately return to' and 'remain at the scene of the accident until he has fulfilled the requirements of Section 66-7-203.'" *Id.* ¶ 17 (quoting § 66-7-201). Because Section 66-7-202 includes identical language, the Committee has crafted an instruction reflecting that "[t]he failure to perform either of these duties is grounds for a violation" under Section 66-7-202. *Id*.

To further ensure consistency with *Esparza* and the language of Section 66-7-202, the Committee has included the defendant's failure to satisfy the requirements of Section 66-7-203 before leaving the scene as "an essential element when it is alleged that the driver unlawfully failed to remain at the scene of the accident." *Id.* ¶ 12. A defendant is not required to remain at the scene indefinitely. Inclusion of this element thus ensures that criminal liability attaches only if the jury finds that the defendant has failed "to satisfy the requirements of Section 66-7-203 before leaving the scene." *Id*. However, because Section 66-7-202 applies to accidents that involve only damage to another person's vehicle and not accidents involving physical injury, the Committee does not believe that a defendant's duty to render reasonable assistance to an injured party under Section 66-7-203 is applicable. Consequently, the Committee has removed that particular requirement of Section 66-7-203 from this instruction.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[NEW MATERIAL]

14-4516. Failing to give information and render aid; essential elements.[1]

For you to find the defendant guilty of failing to give information or render aid [as charged in Count ____][2], the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant drove a vehicle involved in an accident involving [injury] [great bodily harm] [death] [or] [damage to any vehicle driven or attended by another person][3];

2. The defendant knew that there was an accident;

3. The defendant failed to:

(a) give defendant's name, address, and registration number to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][4];

(b) display, upon request, defendant's license to [the person struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided with][4]; and

(c) render reasonable assistance to any person injured in the accident, including by taking or making arrangements to take the injured person to a physician or hospital for medical treatment if it was apparent that such treatment was necessary or such treatment was requested by the injured person] [4];

4. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. For use when the defendant is charged with failing to give information or render aid following an accident involving injury or damage to a vehicle driven or attended by another person under Section 66-7-203 NMSA 1978. If the defendant is charged with the misdemeanor or fourth degree felony of leaving the scene of an accident involving personal injury or death under Subsections (B) or (D) of Section 66-7-201 NMSA 1978, use UJI 14-4513 NMRA. If the defendant is charged with the third degree felony of knowingly leaving the scene of an accident involving great bodily harm or death under Subsection (C) of Section 66-7-201, use UJI 14-4514 NMRA. If the defendant is charged with leaving the scene of an accident involving only damage to another vehicle driven or attended by someone else under Section 66-7-202 NMSA 1978, use UJI 14-4515 NMRA.

2. Insert the count number if more than one count is charged.

3. Use only the applicable bracketed alternative or alternatives established by the evidence. If there is dispute as to whether there is personal injury, which may establish a misdemeanor, or great bodily harm or death, which may establish a third or fourth-degree felony, separate instructions should be given or a special verdict form should be used to clarify the jury's finding. If great bodily harm is instructed, the definition of great bodily harm contained in UJI 14-131 NMRA should be given.

4. Use only the applicable bracketed alternative or alternatives established by the evidence.

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary – *See* NMSA 1978, § 66-7-203; *see also* NMSA 1978, § 66-7-201 (1989) (Accidents involving death or personal injury); NMSA 1978, § 66-7-202 (1978) (Accidents involving damage to vehicle); UJI 14-4513 NMRA (Leaving the scene of an accident involving death or personal injury); UJI 14-4514 NMRA (Knowingly leaving the scene of an accident involving great bodily harm or death); UJI 14-4515 NMRA (Leaving the scene of an accident involving damage to vehicle).

New Mexico courts have not squarely decided whether, for purposes of Subsections (B) and (D) of Section 66-7-201, the defendant must have knowledge of an accident or of injury to another or whether some lesser awareness may suffice. *See State v. Hertzog*, 2020-NMCA-031, ¶ 9 n.2, 464 P.3d 1090 (questioning whether knowledge of the accident was a required element of the offense under Subsection (B) of 66-7-201 but deeming it unnecessary to decide based on the issues raised on appeal); *State v. Kuchan*, 1943-NMSC-025, ¶¶ 6-7, 47 N.M. 209, 139 P.2d 592 (declining to decide if, under a prior version of the statute, knowledge of the accident or knowledge that a person was struck or injured are elements of the crime).

However, the Committee believes that New Mexico would follow the "vast majority of courts construing these statutes" and require knowledge of the accident even in the absence of any explicit statutory language. *Pardo v. State*, 160 A.3d 1136, 1146-47 (Del. 2017); *State v. Sidway*, 431 A.2d 1237, 1239 (Vt. 1981) ("A majority of the states . . . have hit and run statutes, and many of these statutes, like ours, contain no express requirement of knowledge on the part of the driver of the car that he was involved in an accident. Most courts, however, in interpreting the legislative intent behind these statutes, have taken the view that actual knowledge of the collision is an essential element of the offense.")

New Mexico law has long recognized that "[w]hen a criminal statute is silent about whether a *mens rea* element is required, we do not assume that the [L]egislature intended to enact a no-

fault or strict liability crime. Rather, we presume criminal intent as an essential element of the crime unless it is clear from the statute that the [L]egislature intended to omit the *mens rea* element." *State v. Ramos*, 2013-NMSC-031, ¶ 16, 305 P.3d 921 (internal quotation marks and citations omitted). Hence, New Mexico courts have repeatedly determined that knowledge of particular circumstances giving rise to or increasing criminal penalties is required even when the statutes are otherwise silent on the required mental state. *See id.* ¶ 26 (requiring a knowing violation of a protection order); *State v. Nozie,* 2009-NMSC-018, ¶ 30, 146 N.M. 142, 207 P.3d 1119 (deeming knowledge that the victim is a peace officer an element of battery on a peace officer); *see also State v. Valino,* 2012-NMCA-105, ¶¶ 15, 17, 287 P.3d 372 (holding that knowledge that a victim is a health care worker is an essential element of the crime of battery on a health care worker).

In addition, the majority of other jurisdictions require knowledge of an accident or collision. *See* Marjorie A. Caner, Annotation, *Necessity and Sufficiency of Showing, in Criminal Prosecution under "Hit-And-Run" Statute, Accused's Knowledge of Accident, Injury, or Damage*, 26 A.L.R.5th 1 (1995) ("Under most 'hit-and-run' statutes, knowledge of the occurrence of the collision, injury, or damage is a prerequisite to a conviction under the statute."); *accord* 1 Charles E. Torcia, Wharton's Criminal Law § 27 (15th ed.) (August 2020 Update); *but see People v. Manzo*, 144 P.3d 551, 556, 558-59 (Colo. 2006) (noting that imposing strict liability for leaving the scene of an accident with injury was constitutional despite the resulting felony conviction because the statute constitutes a public welfare offense and the penalties, including up to eight years imprisonment, "are small in comparison to many common law crimes"); *see also People v. Hernandez*, 250 P.3d 568, 573 (Colo. 2011) (*en banc*) (describing the Colorado hit-and-run statute as a "strict liability offense" (citing *Manzo*, 144 P.3d at 555, 558)).

States requiring knowledge of an accident or collision include jurisdictions with "hit-and-run statutes nearly identical to New Mexico's [statutes]." *Hertzog*, 2020-NMCA-031, ¶¶ 16-17, 464 P.3d 1090 (deeming authority from Alaska, Arizona, and Texas persuasive because of similar statutory language); *see, e.g., Kimoktoak v. State*, 584 P.2d 25, 29-33 (Alaska 1978) (requiring knowledge of an accident and knowledge of injury or "that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person"); *State v. Porras*, 610 P.2d 1051, 1053-54 (Ariz. Ct. App. 1980) (requiring knowledge of an accident and knowledge of injury or "that the accident was of such a nature that one would reasonably anticipate that it resulted in injury to a person"); *Mayer v. State*, 494 S.W.3d 844, 848-50 (Tex. Crim. App. 2016) (requiring knowledge of an accident). Given New Mexico's strong presumption against strict-liability offenses and the consensus on this element elsewhere, the Committee believes New Mexico's statute requires knowledge of an accident as an element of the offense.

There is less agreement as to whether knowledge of injury is also required. *See Pardo*, 160 A.3d at 1146-47 (indicating courts "are divided as to whether knowledge of the collision alone is required to hold a driver accountable, or whether the prosecution must prove both the driver's knowledge of his involvement in a collision and that he knew death or injury resulted"); 7A Am. Jur. 2d *Automobiles* § 328 (Feb. 2022 Update) ("Criminal liability under a [hit-and-run] statute … may require proof that the motorist knew of the damage or injury, or, at least, proof that the motorist reasonably should have known, from the nature of the accident, of the resulting damage or injury, or that the circumstances were such that a reasonable person would have believed that an accident had occurred resulting in death, damage, or injury to another.") Accordingly, the

Committee takes no position on whether a defendant's knowledge of injury or some lesser degree of knowledge is required and has not included such an element in the instruction at this time.

The statute does not include a definition of the term "accident" or of the phrase "involved in an accident," but the New Mexico Court of Appeals has held that the phrase "involved in an accident" has a broader meaning than "collision." *State v. Hertzog*, 2020-NMCA-031, ¶ 18, 464 P.3d 1090 (interpreting identical language in Section 66-7-201). Nonetheless, the Committee does not believe that the phrase is so broad for purposes of Section 66-7-203 as to include situations where the only vehicle involved in the accident is the defendant's vehicle. Instead, the Committee believes that the statutory scheme requires involvement of another vehicle driven or attended by someone other than the defendant. *See e.g.*, § 66-7-203 (requiring a defendant to provide information to "the driver or occupant of or person attending any vehicle collided with"). The Committee has therefore specified in element 1 of this instruction that the vehicle damaged must be "driven or attended by another person."

[Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

No Comments Received