

1 **14-1630. Burglary; essential elements.**

2 For you to find the defendant guilty of burglary [as charged in Count \_\_\_\_\_],<sup>1</sup> the state  
3 must prove to your satisfaction beyond a reasonable doubt each of the following elements of the  
4 crime:

5 1. The defendant entered a [vehicle] [watercraft] [aircraft] [dwelling]<sup>2</sup> [or] [other  
6 structure] without authorization; [the least intrusion constitutes an entry];<sup>3</sup>

7 2. The defendant entered the [vehicle] [watercraft] [aircraft] [dwelling] [or] [other  
8 structure] with the intent to commit [a theft] [or] [\_\_\_\_\_]<sup>4</sup> (*name of felony*) when  
9 inside;

10 3. This happened in New Mexico on or about the \_\_\_\_\_ day of  
11 \_\_\_\_\_, \_\_\_\_\_.

12 USE NOTES

13 1. Insert the count number if more than one count is charged.

14 2. If the charge is burglary of a dwelling house, UJI 14-1631 NMRA should be given.

15 3. Use bracketed phrase if entry is in issue.

16 4. It is not necessary to instruct on the elements of the theft. If intent to commit a  
17 felony is alleged, the essential elements of the felony must be given if not separately instructed.

18 To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

19 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 20-8300-004,

20 effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme

21 Court Order No. S-1-RCR-2024-00109, effective for all cases pending or filed on or after

22 December 31, 2024.]

1 **Committee commentary.** — *See* Section 30-16-3 NMSA 1978. The crime of burglary is  
2 complete at the time the person makes the unauthorized entry into the structure with intent to  
3 commit a theft or felony. *State v. Gutierrez*, 82 N.M. 578, 484 P.2d 1288 (Ct. App.), cert.  
4 denied, 82 N.M. 562, 484 P.2d 1272 (1971). Consequently, the intention to carry out the theft or  
5 felony is sufficient and the act itself need not be carried out. *See also State v. Ortega*, 79 N.M.  
6 707, 448 P.2d 813 (Ct. App. 1968).

7 Under the general rule, the least intrusion is sufficient to show entry. *See State v. Grubaugh*, 54  
8 N.M. 272, 221 P.2d 1055 (1950) (Sadler, J., dissenting). *See also State v. Pigques*, 310 S.W.2d  
9 942 (Mo. 1958); *People v. Massey*, 196 Cal. App. 2d 230, 16 Cal. Rptr. 402 (1961).

10 Criminal trespass, Section 30-14-1 NMSA 1978, may be a lesser included offense to burglary.  
11 Possession of burglary tools is not a necessarily included offense to burglary. *State v. Everitt*, 80  
12 N.M. 41, 450 P.2d 927 (Ct. App. 1969). *See also* commentary to UJI 14-6002 [withdrawn].

13 A single premise may be comprised of more than one structure, and entry into each structure  
14 constitutes an act of burglary. *See State v. Ortega*, 86 N.M. 350, 524 P.2d 522 (Ct. App. 1974).