

1 **14-6013. Special verdict; [{}use of a firearm][{}]; ~~[noncapital felony against a person sixty~~**
2 **~~years of age or older]~~.**

3 If you find the defendant guilty of _____, then you must determine if the
4 [crime was]¹ [crimes were] committed [with the use of a firearm][⁺]² [~~against a person sixty years~~
5 ~~of age or older, and that person was intentionally injured]~~ [while brandishing a firearm] [while
6 discharging a firearm] and report your determination.

7 ["Use" of a firearm means: A firearm was present at some point during the encounter.
8 _____ (name of victim) knew, or based on the defendant's words or actions, had
9 reason to know that the defendant had a firearm. The defendant intentionally used the presence of
10 the firearm to facilitate the commission of the crime.]¹

11 _____ ["Brandished" means: Displaying or making a firearm known to _____ (name
12 of victim) while the firearm is present on the person of the defendant with intent to intimidate or
13 injure another person.]

14 _____ ["Discharged" means: A firearm was present and expelled a projectile by the action of an
15 explosion.]

16 _____ You must complete the special form to indicate your finding. [With respect to any
17 crime,]<sup>[[±]]³ for you to make a finding of "yes," the state must prove to your satisfaction beyond a
18 reasonable doubt that that the crime was committed [with the use of a firearm][⁺] [while
19 brandishing a firearm] [while discharging a firearm]² [~~against a person sixty years of age or older,~~
20 ~~and that person was intentionally injured]~~].</sup>

21 USE NOTES

22 1. Use the applicable bracketed alternative.

23 2. Use the applicable bracketed alternative.

1 a. Use the first alternative, “with the use of a firearm,” for all noncapital felony
2 crimes committed on or before June 30, 2020, and for crimes committed on or after May 18, 2022,
3 if the firearm was used in the commission of a drug transaction, an aggravated burglary under
4 Section 30-16-4 NMSA 1978, or a serious violent offense under Section 33-2-34(L)(4)(a) through
5 (n) NMSA 1978.

6 b. The second alternative, “while brandishing a firearm,” may be used for all
7 noncapital felony crimes committed on or after July 1, 2020.

8 c. The third alternative, “while discharging a firearm,” may be used for all
9 noncapital felony crimes committed on or after May 18, 2022.

10 [2-] 3. Use the bracketed phrase if more than one crime was committed.

11 4. Use a separate special verdict form from UJI 14-6014 NMRA for each crime being
12 enhanced and for each applicable alternative.

13 [As amended by Supreme Court Order No. S-1-RCR-2024-00105, effective for all cases pending
14 or filed on or after December 31, 2024.]

15 **Committee commentary.** — NMSA 1978, § 31-18-16 (2022). This instruction, together
16 with the special interrogatory, UJI 14-6014 NMRA, is required by NMSA 1978, Section 31-18-
17 16 (2020, 2022).~~[NMSA-1978]~~. Special sentencing provisions apply if the jury finds that a firearm
18 was used in the commission of any felony, other than a capital felony. *State v. Wilkins*~~[7]~~, 1975-
19 NMCA-069, 88 N.M. 116, 537 P.2d 1012 [~~(Ct. App.)~~, cert. denied, 88 N.M. 319, 540 P.2d 249
20 ~~(1975)~~]. *See also*, *State v. Ellis*, 88 N.M. 90, 537 P.2d 207 (Ct. App. 1975) and *State v.*
21 *Gabaldon*, 92 N.M. 230, 585 P.2d 1352 (Ct. App.), cert. denied, 92 N.M. 230, 585 P.2d
22 1352 (1978); *State v. Espinosa*, 1988-NMSC-050, ¶¶ 12-13, 107 N.M. 293, 756 P.2d 573
23 (clarifying that the firearm enhancement statute applies to each applicable crime that is committed

1 and not just to a “unified course of events”. The use of this instruction and the interrogatory is
2 based on the assumption [~~that~~] the defendant was put on notice [~~that he~~] the defendant must defend
3 against a crime committed with a firearm. *State v. Barreras*[~~]~~, 1975-NMCA-063, 88 N.M. 52, 536
4 P.2d 1108; [~~(Ct. App. 1975)~~] see also *State v. Roque*, 1977-NMCA-094, ¶ 10, 91 N.M. 7, 569 P.2d
5 417 (recognizing that, in the context of a conviction for the offense of robbery with a firearm, it is
6 irrelevant whether the defendant or a co-defendant is the one who is actually armed because the
7 statute does not limit imposition of an enhanced sentence to only those situations where the
8 defendant personally uses the firearm).

9 [~~The use of a firearm is not limited to situations where the defendant was the user of the firearm;~~
10 ~~it also applies where the defendant was only an accessory. Section 31-18-16 NMSA 1978 (former~~
11 ~~Section 31-18-4 NMSA 1978) requires only that the firearm be used in the commission of the~~
12 ~~crime. *State v. Roque*, 91 N.M. 7, 569 P.2d 417 (Ct. App.), cert. denied, 91 N.M. 4 (1977).]~~

13 Section 31-18-16 has been amended twice since June 30, 2020, to vary the penalty
14 depending on the manner in which a firearm was used in the commission of the crime. The law at
15 the time of the commission of the offense controls the applicable sentence. See *State v. Lucero*,
16 2007-NMSC-041, ¶ 14, 142 N.M. 102, 163 P.3d 489. The Committee modified Use Note 2 to
17 assist parties in selecting the appropriate alternative based on the date the crime was committed
18 and the type of offense at issue. For crimes committed on or before June 30, 2020, the first
19 alternative involving the “use” of a firearm should be used for all noncapital felony offenses. For
20 crimes committed between July 1, 2020, and May 17, 2022, the second alternative involving the
21 “brandishing” of a firearm should be used for all noncapital felony offenses. For crimes committed
22 on or after May 18, 2022, any of the three applicable alternatives—“use,” “brandishing,” or
23 “discharging”—may be used, but the “use” of a firearm alternative only applies if the firearm was

1 used “in relation to a drug transaction,” during the commission of an aggravated burglary contrary
2 to NMSA 1978, Section 30-16-4 (1963), or during the commission of a serious violent offense as
3 enumerated in NMSA 1978, Section 33-2-34(L)(4)(a) through (n) (2015). “In relation to a drug
4 transaction” is defined in the most recent version of the statute as “participating or attempting to
5 participate in the trafficking of a controlled substance pursuant to [NMSA 1978, Section 30-31-20
6 (2006)], distribution of a controlled substance to a minor pursuant to [NMSA 1978, Section 30-
7 31-21 (2021),] or distribution of a controlled or counterfeit substance” as a seller, purported seller,
8 or accomplice under NMSA 1978, Section 30-31-22 (2021).

9 The definition of “use of a firearm” in this instruction has been modified to comport with
10 the holding in *State v. Zachariah G.*, 2022-NMSC-003, 501 P.3d 451. In *Zachariah G.*, the
11 Supreme Court expanded the definition of “use of a firearm” to commit assault when a defendant
12 makes “facilitative use” of the weapon. *Id.* “Facilitative use of a deadly weapon may be found if
13 (1) a deadly weapon is present at some point during the encounter, (2) the victim knows or, based
14 on the defendant’s words or actions, has reason to know that the defendant has a deadly weapon,
15 and (3) the presence of the weapon is intentionally used by the defendant to facilitate the
16 commission of the assault.” *Id.* ¶ 3 (emphasis omitted).

17 ~~[This instruction must also be given when, under Section 31-18-16.1, the evidence shows that a~~
18 ~~person sixty years of age or older was intentionally injured during the commission of a noncapital~~
19 ~~felony.]~~

20 [As amended by Supreme Court Order No. S-1-RCR-2024-00105, effective for all cases pending
21 or filed on or after December 31, 2024].