

1 **General Use Note**

2 Except for grand jury proceedings, when a uniform instruction is provided for the elements
3 of a crime, a defense, or a general explanatory instruction on evidence or trial procedure, the
4 uniform instruction should be used without substantive modification or substitution. No instruction
5 shall be given on a subject which a use note directs that no instruction be given. To avoid
6 fundamental error, it is the duty of the court to properly instruct the jury on the law. Thus, an
7 elements instruction may only be altered when the alteration is adequately supported by binding
8 precedent or the unique circumstances of a particular case, and where the alteration is necessary
9 in order to accurately convey the law to the jury. If the court determines that a uniform instruction
10 must be altered, the reasons for the alteration must be stated in the record.

11 For a crime for which no uniform instruction on essential elements is provided, an
12 appropriate instruction stating the essential elements must be drafted. However, all other
13 applicable uniform instructions must also be given. For other subject matters not covered by a
14 uniform instruction, the court may give an instruction that is brief, impartial, free from
15 hypothesized facts, and otherwise similar in style to these instructions.

16 ~~[The printed version of these instructions varies the use of pronouns in referring to the~~
17 ~~defendant, witnesses, and victims. The masculine singular has generally been used throughout~~
18 ~~these instructions. Pronouns should be changed in the instructions read to the jury as the situation~~
19 ~~requires.] In addition, these instructions use gender neutral pronouns or language when referring
20 to the individuals involved in the case. Users may change gender neutral pronouns and language
21 to any of the following personal pronouns throughout the instructions: he/him/his, she/her/hers, or
22 they/them/theirs.~~

1 Many of the instructions contain alternative provisions. When the instructions are prepared
2 for use, only the alternative or alternatives supported by the evidence in the case may be used. The
3 word “or” should be used to connect alternatives, regardless of whether the word is bracketed in
4 the printed version of the instruction.

5 [As amended by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed
6 on or after December 31, 2015; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
7 effective for all cases pending or filed on or after December 31, 2025.]

8 **Committee commentary.** — The organization of UJI Criminal attempts to follow the major
9 chapter headings of the Criminal Code.

10 Use of UJI Criminal is required for all criminal prosecutions filed in the district court on or after
11 its effective date, including prosecutions for crimes that do not yet have UJI essential elements
12 instructions. The UJI general, defense, evidence, and concluding instructions must be used even if
13 no essential elements instruction is provided. For the essential elements of crimes not contained in
14 UJI, instructions that substantially follow the language of the statute or use equivalent language
15 are normally sufficient. *See State v. Caldwell*, 2008-NMCA-049, ¶ 25, 143 N.M. 792, 182 P.3d
16 775 (citing *State v. Doe*, 1983-NMSC-096, ¶ 10, 100 N.M. 481, 672 P.2d 654); *State v.*
17 *Rushing*, 1973-NMSC-092, ¶ 20, 85 N.M. 540, 514 P.2d 297 (“Instructions . . . are sufficient if
18 they fairly and correctly state the applicable law.”).

19 Nevertheless, “[t]he trial court has a duty to instruct the jury on all questions of law essential for a
20 conviction of the crime with which the defendant is charged.” *Jackson v. State*, 1983-NMSC-098,
21 ¶ 6, 100 N.M. 487, 672 P.2d 660. Thus, even where a UJI exists, if it is inadequate to convey the
22 legal questions of the case or has been rendered obsolete by a change in the law, modification may

1 be necessary to avoid fundamental error. *See State v. Cabezuela*, 2011-NMSC-041, ¶ 36, 150 N.M.
2 654, 265 P.3d 705.

3 **Venue.** — The elements instructions in UJI Criminal do not require the jury to find that the crime
4 occurred within the county of venue. *See* Section 30-1-14 NMSA 1978. It has been a common
5 practice to instruct the jury on venue in New Mexico. *See, e.g., Nelson v. Cox*, 1960-NMSC-
6 005, 66 N.M. 397, 349 P.2d 118. However, any question of venue may be waived by proceeding
7 to trial. *State v. Shroyer*, 1945-NMSC-014, 49 N.M. 196, 160 P.2d 444. Consequently, the
8 committee believed that requiring the jury to find venue facts was not necessary to a valid
9 conviction and the prior practice was not continued.

10 The committee anticipates that in multiple defendant cases, it may be necessary to personalize the
11 essential elements instructions to maintain correct identity of defendants and defenses.

12 [As amended by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed
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14 effective for all cases pending or filed on or after December 31, 2025.]