

1 **14-130. "Possession" defined.**

2 A person is in possession of _____ (*name of object*) when, on the occasion
3 in question, [~~he~~the person] knows what it is, [~~he~~] knows it is on [~~his~~their] person or in [~~his~~] their
4 presence and [~~he-exercises~~] they exercise control over it.

5 ²[Even if the object is not in [~~his~~the person's] physical presence, [~~he~~the person] is in
6 possession if [~~he-knows~~they know] what it is and where it is and [~~he-exercises~~they exercise] control
7 over it.]

8 [Two or more people can have possession of an object at the same time.]

9 [A person's presence in the vicinity of the object or [~~his~~their] knowledge of the existence
10 or the location of the object is not, by itself, possession.]

11 USE NOTES

12 1. This instruction is designed to be used in any case where "possession" is an element
13 of the crime and is in issue.

14 2. One or more of the following bracketed sentences may be used depending on the
15 evidence.

16 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending
17 or filed on or after December 31, 2025.]

18 **Committee commentary - Definitions in general.** — The committee worked on the premise that
19 part of the "overkill" syndrome in New Mexico jury instruction practice was the use of numerous
20 legal terms which required additional instructions to explain the terms. These uniform instructions,
21 to the extent possible, avoid using terms which have to be defined. Some terms had to be defined;
22 if the definition applies only to a specific crime or within a category of crimes, the definition is
23 found in the elements chapter. Where a term has an ordinary or common meaning, a definition

1 need not be given. *See State v. Moss*, 1971-NMCA-117, 83 N.M. 42, 487 P.2d 1347[~~(Ct. App.~~
2 ~~1971)~~]. If the jury asks for a definition and no definition is provided in UJI, a dictionary definition
3 may be given.

4 This part of Chapter One will contain the definitions of words which are used in more than one
5 category of instructions. The committee recognizes that experience under the UJI Criminal may
6 indicate that additional definitions should be included and this section will be expanded
7 accordingly.

8 **Possession defined.** — This instruction will probably be used most often in property and drug
9 cases. The basic possession definition was derived from the following New Mexico decisions:
10 *State v. Mosier*, 1971-NMCA-138, 83 N.M. 213, 490 P.2d 471[~~(Ct. App. 1971)~~]; *State v. Maes*,
11 1970-NMCA-053, 81 N.M. 550, 469 P.2d 529[~~469, P.2d 529 (Ct. App.)~~], cert. denied, 81 N.M.
12 588, 470 P.2d 309 (1970); *State v. Romero*, 1968-NMCA-078, 79 N.M. 522, 445 P.2d 587[~~(Ct.~~
13 ~~App. 1968)~~]; *State v. Favela*, 1968-NMCA-065, 79 N.M. 490, 444 P.2d 1001[~~(Ct. App. 1968)~~];
14 *State v. Giddings*, 1960-NMSC-050, 67 N.M. 87, 352 P.2d 1003[~~(1960)~~].

15 The bracketed paragraphs all deal in some way with the problem of constructive possession. The
16 definitive decision relied on by the committee for the concept of constructive possession was that
17 of *Amaya v. United States*, 373 F.2d 197 (10th Cir. 1967). *Amaya* was cited with approval in *State*
18 *v. Montoya*, 1973-NMCA-060, 85 N.M. 126, 509 P.2d 893[~~(Ct. App. 1973)~~]. *See also State v.*
19 *Wesson*, 1972-NMCA-013, 83 N.M. 480, 493 P.2d 965[~~(Ct. App. 1972)~~]. For recent compilations
20 of cases dealing with possession of narcotics where the defendant did not have exclusive
21 possession of the premises or vehicle, see Annot., 57 A.L.R.3d 1319 (1974) and Annot., 56
22 A.L.R.3d 948 (1974). *See also State v. Bauske*, 1974-NMCA-078, 86 N.M. 484, 525 P.2d 411[
23 ~~(Ct. App. 1974)~~]; *State v. Bowers*, 1974-NMCA-135, 87 N.M. 74, 529 P.2d 300[~~(Ct. App. 1974)~~];

- 1 *State v. Bidegain*, 1975-NMCA-065, 88 N.M. 384, 540 P.2d 864[~~(Ct. App.)~~], rev'd in part, 88
- 2 N.M. 466, 541 P.2d 971 (1975).
- 3 Unless the statute requires possession of a certain amount of a prohibited substance, [e.g. Section
- 4 30-31-23 B(2) & (3) NMSA 1978] possession of any amount is prohibited. *See State v. Grijalva*,
- 5 1973-NMCA-061, 85 N.M. 127, 509 P.2d 894[~~(Ct. App. 1973)~~].
- 6 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]