

1 **14-1420. Custodian; definition.**

2 The term "custodian" means any person including a law enforcement officer who has
3 charge or control of the property, building or facility.

4 USE NOTES

5 For use with Instructions 14-1402 and 14-2001 when the authority of the person asking the
6 trespasser not to enter or to leave is an issue.

7 **Committee commentary.** — This instruction is to be used with [~~UJI 14-1402~~] UJI 14-1402
8 NMRA and [~~14-2001~~] UJI 14-2001 NMRA when the authority of the person asking the trespasser
9 not to enter or to leave is an issue. The committee was of the opinion that the term "custodian"
10 may be ambiguous and confusing to the jury, and this instruction is intended to clear up that
11 confusion.

12 [~~Sections 30-14-1B and 30-20-13C NMSA 1978~~] NMSA 1978, Sections 30-14-1(B) and 30-20-
13 13(C) refer to the individual in control of the building, facility or property as the "custodian" and
14 "lawful custodian." This term was probably chosen due to the creation, in 1901, of the capitol
15 custodian commission (§§ 5391-5399, 1915 Code). This commission had the duty of care, control
16 and custody of the capitol building and grounds. The commission was given the authority to
17 promulgate "all necessary rules and regulations for the conduct of persons in and about the
18 buildings and grounds thereof, necessary and proper for the safety, care and preservation of the
19 same." (§ 5393, 1915 Code).

20 In 1971 the capitol custodian commission was abolished, and replaced by the property control
21 division of the department of finance and administration (~~[Laws 1971]~~ 1971 N.M. Laws, ch. 285)
22 [now property control division of general services department]. The duties of the property control
23 division are exactly the same as those of the commission, with the expansion of control to all state

1 buildings (exceptions noted in [~~15-3-2A(1) NMSA 1978~~] ~~NMSA 1978, Section 15-3-2A(1)~~). In
2 neither the laws relating to the commission nor the division was there any specific mention of
3 authority to evict trespassers. In fact, it seems absurd to imagine that the governor would need to
4 call the director of the division in order to have a trespasser evicted from [~~his~~] the director's office,
5 even though the director is the lawful custodian of the capitol building. The committee is sure that
6 this was not the legislative intent in using the word custodian in [~~30-14-1B and 30-20-13C NMSA~~
7 ~~1978~~] Sections 30-14-1(B) and 30-20-13(C).

8 The New Mexico Court of Appeals and Supreme Court have never spoken to the issue of who is
9 a lawful custodian. Therefore, it was necessary for the committee to look elsewhere for a definition
10 to aid the jury in its deliberations.

11 It was decided that the standard Webster's Dictionary definition lacked sufficient detail. The
12 Black's Law Dictionary definition of "custody" provided useful wording which was adopted into
13 UJI 14-1420. In criminal trespass jury instructions from other jurisdictions, the following terms
14 were employed to define a person authorized to give permission to enter or to evict another:
15 "person in possession or [~~his~~] their duly authorized agent," "regularly employed guard or
16 authorized employee" (Maryland Crim. J. Inst. § 4.85); "person in charge, [~~his~~] their representative
17 or [~~his~~] their employee who has lawful control of the premises by ownership, tenancy, official
18 position or other legal relationship" (Oregon UJI 421.51); "owner or any person occupying the
19 land or premises and authorized to give such consent [to enter]" (Virginia Model J. Inst. Crim.;
20 Trespass Inst. 1).

21 It appears that great flexibility is needed in determining the authority of the person [~~stating he is~~]
22 stating they are a custodian. An actual, written authorization is not necessary, nor would it be
23 practical in all circumstances. Developing some relationship between the person and the property

1 ~~[he is]~~ they are attempting to control is imperative, though. After presentation of all the evidence,
2 it is up to the jury to decide whether an individual comes within the definition of "custodian."
3 The statement referring to law enforcement officers as custodians for the purposes of the
4 instruction was added because of common usage. Common law and general custom dictate that,
5 since law enforcement officers are charged with the duty of enforcing laws, they must be allowed
6 to exercise that authority. It is obvious that, upon the request of an occupant of a building or
7 facility, a law enforcement officer should be allowed to evict an individual who is in apparent
8 violation of the law.
9 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]