

1 **14-201. Willful and deliberate murder; essential elements.**

2 For you to find the defendant guilty of [~~first degree~~]first-degree murder by a deliberate
3 killing [as charged in Count _____],¹ the state must prove to your satisfaction beyond a
4 reasonable doubt each of the following elements of the crime:

5 1. The defendant killed _____ (*name of victim*);

6 2. The killing was with the deliberate intention to take away the life of
7 _____ (*name of victim*) [or any other human being];²

8 3. This happened in New Mexico on or about the _____ day of
9 _____, _____.

10 A deliberate intention refers to the state of mind of the defendant. A deliberate intention
11 may be inferred from all of the facts and circumstances of the killing. The word deliberate means
12 arrived at or determined upon as a result of careful thought and the weighing of the consideration
13 for and against the proposed course of action. A calculated judgment and decision may be arrived
14 at in a short period of time. A mere unconsidered and rash impulse, even though it includes an
15 intent to kill, is not a deliberate intention to kill. To constitute a deliberate killing, the slayer must
16 weigh and consider the question of killing and [his]the slayer's reasons for and against such a
17 choice.³

18 USE NOTES

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

20 2. Use the bracketed phrase if the evidence shows that the defendant had a deliberate
21 design to kill someone but not necessarily the victim.

22 3. If the jury is to be instructed on more than one degree of homicide, UJI 14-250
23 NMRA [withdrawn] must also be given.

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

3 **Committee commentary.** — See NMSA 1978, § 30-2-1(A) [~~Section 30-2-1A NMSA 1978~~].

4 In New Mexico, evidence that the person killed is the same as the person named or indicated in
5 the charge as having been killed is part of the proof of the corpus delicti. *State v. Vallo*, 1970 -
6 NMCA- 002, 81 N.M. 148, 464 P.2d 567[~~(Ct. App. 1970)~~].

7 The instruction does not use the words "malice aforethought," "deliberation" or "premeditation"
8 (previously defined as "express malice") because those concepts are included within the deliberate
9 intention to take the life of a fellow creature. In *State v. Smith*, 1921-NMSC-014, 26 N.M. 482,
10 194 P. 869[~~(1921)~~], the [~~supreme court~~]Supreme Court held that the malice required for a willful
11 and deliberate murder was something more than the ordinary, premeditated malice aforethought.

12 A willful and deliberate murder requires express malice, the deliberate intention to unlawfully take
13 away the life of a fellow creature, also known as intensified or [~~first degree~~]first-degree malice.
14 See former NMSA 1978, Section 30-2-2A[~~NMSA 1978~~]; *State v. Vigil*, 1975-NMSC-013, 87
15 N.M. 345, 533 P.2d 578[~~(1975)~~]; [~~State v.~~]Smith, 1921-NMSC-014, ¶¶ 19-21[~~supra~~, 26 N.M. at
16 491]. *Smith* also makes it clear that express malice or deliberate intention is the specific intent
17 required for [~~first degree~~]first-degree murder and is not required for common-law or [~~second~~
18 ~~degree~~]second-degree murder. *Smith*, 1921-NMSC-014, ¶¶ 21-23[~~Id.~~ at 492].

19 Former Section 30-2-2A[~~NMSA 1978~~] stated that express malice may be manifested by external
20 circumstances capable of proof. *Smith* also noted that malice is normally inferred from the facts.
21 [~~State v.~~]Smith, 1921-NMSC-014, ¶¶ 19-23[~~supra~~, 26 N.M. at 491-492]. See also, *State v. Garcia*,
22 1956-NMSC-058, 61 N.M. 291, 299 P.2d 467[~~(1956)~~]. Numerous New Mexico cases, see, e.g.,
23 *State v. Duran*, 1972-NMCA-059, 83 N.M. 700, 496 P.2d 1096[~~(Ct. App.)~~], cert. denied, 83 N.M.

1 699, 496 P.2d 1095 (1972), have stated that malice may be "implied." It is believed that the courts
2 mean that malice is inferred and not implied. *See Perkins*, "A Reexamination of Malice
3 Aforethought," 43 Yale L.J. 537, 549 (1934); Oberer, "The Deadly Weapon Doctrine - Common
4 Law Origin," 75 Harv. L. Rev. 1565, 1575 (1962).

5 The New Mexico Supreme Court in [~~State v.~~] *Smith*, 1921-NMSC-014[~~supra~~], indicated that
6 former Section 30-2-2B[~~NMSA 1978~~] did not actually define implied malice but provided rules
7 of evidence for implying malice as a matter of law. [~~State v. Smith,~~] 1921-NMSC-014, ¶¶ 21-
8 23[~~supra, 26 N.M. at 492~~]; *see also, Perkins*, *supra*, 43 Yale L.J. at 547; LaFave and Scott,
9 *Criminal Law* 529-30 (1972). Malice may not be "implied," in the sense used in the statute, in a
10 [~~first degree~~]first-degree murder case. [~~State v.~~] *Smith*, 1921-NMSC-014, ¶¶ 21-23[~~supra, 26 N.M.~~
11 ~~at 492~~]; *State v. Ulibarri*, 1960-NMSC-102, ¶ 12, 67 N.M. 336,[~~339,~~] 355 P.2d 275[~~(1960)~~].

12 "Express malice" is adequately covered by "deliberate intention." "Implied malice" is limited to
13 [~~second degree~~]second-degree murder. It was previously defined by Section 30-2-2B[~~NMSA~~
14 ~~1978~~] to mean a "wicked and malignant heart" murder. This is now defined as [~~second~~
15 ~~degree~~]second-degree murder, acts creating a strong probability of death or great bodily harm.

16 This legislative definition of [~~second degree~~]second-degree murder is the same as a "wicked and
17 malignant heart" murder. *See Perkins*, *supra* at 769-770 and LaFave and Scott, *supra* at 529.

18 Therefore, the 1980 amendments of the legislature did not change the intent required for either
19 [~~first degree or second degree~~]first-degree or second-degree murder.

20 If the state charges the special "transferred intent" [~~first degree~~]first-degree murder under Section
21 30-2-1(A)[~~A NMSA 1978~~] and there is evidence to submit that theory to the jury, then the
22 bracketed provision explained in Use Note No. 2 should be given. It is not necessary to give any
23 other transferred intent instruction.

1 Section 30-2-1[~~NMSA 1978~~] states [~~second-degree~~]second-degree murder is a lesser included
2 offense of [~~first-degree~~]first-degree murder. In cases where the death penalty is a possibility, *Beck*
3 *v. Alabama*, 447 U.S. 625[~~, 100 S. Ct. 2382, 65 L. Ed. 2d 392~~](1980), requires that the jury be
4 instructed on all lesser included offenses. In cases where there is evidence of what was formerly
5 defined as "implied malice," UJI 14-210 NMRA must also be given. It should not be given when
6 the only evidence presented is that the killing was willful, deliberate and premeditated. *See* [~~State~~
7 ~~v.~~]*Garcia*, 1956-NMSC-058, and [~~State v.~~]*Duran*, 1972-NMCA-059, [~~supra~~], for cases involving
8 "implied" or "inferred" malice. Malice may be implied when the defendant used a gun or other
9 deadly weapon and inferred when the defendant used excessive force or extreme brutality.
10 Murders by poison, torture or lying in wait are no longer included in the definition of [~~first~~
11 ~~degree~~]first-degree murder in Section [~~30-2-1A~~]30-2-1(A)[~~NMSA 1978~~], as amended by Laws
12 1980, Chapter 21, Section 1. The instructions for these offenses have been withdrawn and are not
13 to be used for any such murders committed after May 14, 1980. It is still possible to prosecute for
14 [~~first-degree~~]first-degree murder for such murders if the malice and deliberation required to prove
15 [~~first-degree~~]first-degree murder, previously supplied by the means, is found.
16 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]