

1 **14-2217. Aggravated fleeing a law enforcement officer.**

2 For you to find the defendant guilty of aggravated fleeing a law enforcement officer [as  
3 charged in Count \_\_\_\_\_]<sup>1</sup>, the state must prove to your satisfaction beyond a reasonable doubt  
4 each of the following elements of the crime:

5 1. The defendant operated a motor vehicle;

6 2. The defendant drove willfully and carelessly in a manner that endangered or could  
7 have endangered the life of another person;

8 3. The defendant had been given a visual or audible signal to stop by a uniformed law  
9 enforcement officer in an authorized emergency vehicle;

10 4. The defendant knew that a law enforcement officer had given the defendant an  
11 audible or visual signal to stop;

12 [5. The defendant caused injury to \_\_\_\_\_ (*name of victim*)];<sup>2</sup>

13 6. This happened in New Mexico, on or about the \_\_\_\_\_ day of \_\_\_\_\_,  
14 \_\_\_\_\_.

15 USE NOTES

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

17 2. Insert when a violation of Section 30-22-1.1(C) NMSA 1978, injury to another  
18 person, is charged.

19 [Adopted by Supreme Court Order No. 08-8300-060, effective February 2, 2009; as amended by  
20 Supreme Court Order No. 22-8300-032, effective for all cases pending or filed on or after  
21 December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2023-00031, effective  
22 for all cases pending or filed on or after December 31, 2023.]

23 **Committee commentary.** — *See* NMSA 1978, § 30-22-1.1 (2022).

1 This instruction has been modified to comport with the holding in *State v. Vest*, 2021-NMSC-020,  
2 ¶¶ 13, 19, 28, 39, 488 P.3d 626, which interprets the aggravated fleeing statute to focus on the  
3 social harm from a defendant’s conduct, rather than the particular result of the conduct. *Vest*  
4 clarifies aggravated fleeing requires “only that a defendant willfully and carelessly drove so  
5 dangerously that the defendant created a risk of harm, a risk that could have endangered someone  
6 in the community,” and “does not require that an identifiable person was actually endangered as a  
7 result of the defendant’s flight from law enforcement.” *Id.* ¶¶ 13, 19.

8 Some language in *Vest* could be interpreted as expanding liability to causing a risk of harm to the  
9 community other than death. *See Vest*, 2021-NMSC-020, ¶ 39. The Committee believes the  
10 holding of *Vest* does not relax the statutory requirement that the risk to the community be life-  
11 threatening: “A defendant is guilty of aggravated fleeing if [~~he or she~~][they] fled police by driving  
12 in a way that threatened the lives of people in the community.” *Id.* ¶ 19.

13 In 2022, the Legislature codified the distinction between aggravated fleeing producing a  
14 generalized risk of harm to the community and aggravated fleeing actually resulting in harm to a  
15 victim, by leaving the former a fourth-degree felony and increasing the penalty for the latter to  
16 third degree. *See* NMSA 1978, Section 30-22-1.1(B), (C). In apparent response to *State v.*  
17 *Montano*, 2020-NMSC-009, 486 P.3d 838, the Legislature amended the statute to require that the  
18 pursuit be in an authorized emergency vehicle under NMSA 1978, Section 66-7-6 (1989).

19 Although the statute requires that the pursuit be conducted “in accordance with” the Law  
20 Enforcement Safe Pursuit Act, NMSA 1978, §§ 29-20-1 to -4 (2003), this is not an essential  
21 element of the crime. *State v. Padilla*, 2008-NMSC-006, 143 N.M. 310, 176 P.3d 299.

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- 1 ~~December 31, 2022~~; as amended by Supreme Court Order No. S-1-RCR-2023-00031[~~, effective~~
- 2 ~~for all cases pending or filed on or after December 31, 2023~~]; as amended by Supreme Court Order
- 3 No. S-1-RCR-2025-00126.]