

1 **14-2816. Withdrawal from conspiracy; termination of complicity.**

2 Evidence has been admitted concerning a [conspiracy] [partnership in crime] and
3 withdrawal by the defendant from any such [conspiracy] [partnership].

4 A person may withdraw from a [conspiracy] [partnership in crime]. If a member of a
5 [conspiracy] [partnership in crime] has withdrawn, he is not liable for any act of the other
6 [conspirators] [partners] after the withdrawal.

7 In order to withdraw, a person must

8 [in good faith notify the others [~~he~~] the person knows are involved that [~~he~~] the person is
9 no longer in the (conspiracy) (partnership) and urge them to give it up.]

10 [make proper efforts to prevent the carrying out of the (conspiracy) (partnership in crime)
11 and end [~~his~~]their participation in such a way as to remove the effect of [~~his~~]their assistance.]

12 The burden is on the state to prove beyond a reasonable doubt that the defendant did not
13 withdraw from any such [conspiracy] [partnership].

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

16 USE NOTES

17 No instruction on this subject shall be given.

18 **Committee commentary.** — No instruction on this subject is necessary because the theory of
19 liability as a co-conspirator for the acts of others is not expressly submitted to the jury. UJI 14-
20 2811 NMRA, liability as a co-conspirator, is not to be given. The theory of liability is covered in
21 the instructions on aiding or abetting (*see* commentary to UJI 14-2822 NMRA) and the concept of
22 withdrawal as a defense is covered in those instructions. If the defendant has effectively

1 withdrawn, then [~~he~~] the defendant has not helped, encouraged, or caused the commission of the
2 offense, and [~~he~~] the defendant is not guilty.

3 Withdrawal may commence the running of the statute of limitations as to the conspirator who
4 withdraws. *Eldredge v. United States*, 62 F.2d 449 (10th Cir. 1932). However, under state law,
5 that problem is too remote to warrant a UJI instruction. If withdrawal in relation to limitations
6 becomes an issue, an instruction on the issue will need to be drafted by the court. *See Eldredge v.*
7 *United States, supra.*

8 Withdrawal may affect the admissibility of acts and declarations of co-conspirators. However, the
9 jury will not be instructed on the admissibility issue (UJI 14-2815 NMRA, conditional
10 admissibility, is not to be given), and therefore no instruction is necessary on withdrawal as it
11 pertains to admissibility.

12 Withdrawal may constitute a defense to the charge of conspiracy in some jurisdictions, but the
13 defense is not available in jurisdictions in which conspiracy is complete as soon as the agreement
14 is reached, and without an overt act. *See* the commentary to Section 5.03(b), Model Penal Code
15 (tentative draft No. 10). UJI 14-2810 NMRA, the essential elements of conspiracy, does not require
16 an overt act, and therefore no instruction is necessary on withdrawal as a defense to the charge of
17 conspiracy.

18 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]