

1 **14-3102. Controlled substance; possession; essential elements.**¹

2 For you to find the defendant guilty of possession of _____² [as charged
3 in Count _____]³, the state must prove to your satisfaction beyond a reasonable doubt each
4 of the following elements of the crime:

5 1. The defendant [~~had~~] possessed⁴ a drug called _____² [~~in his~~
6 possession⁴];

7 2. The defendant knew it was _____² [or believed it to be
8 _____]²⁵ [or believed it to be some drug or other substance the possession of which
9 is regulated or prohibited by law];

10 3. This happened in New Mexico on or about the _____ day of
11 _____, _____.

12 USE NOTES

13 1. This instruction is appropriate for possession cases other than possession of
14 marijuana.

15 2. Identify the substance.

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

17 4. UJI 14-3130, the definition of possession in controlled substance cases, should be
18 given if possession is in issue.

19 5. Use applicable alternative or alternatives if there is evidence that the defendant
20 believed the substance to be some controlled substance other than that charged.

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

1 **Committee commentary.** — ~~See [Sections 30-31-23B(4) and 30-31-23B(5)]~~ NMSA 1978,
2 Section 30-31-23(F)(4), (5) (1972).

3 This instruction may be used for either the crime of possession of a narcotic drug from Schedule I
4 or II or possession of any other controlled substance from Schedules I through IV. See NMSA
5 1978, §§ 30-31-6 to -9 (1972). Knowledge of the defendant is an essential element of the crime.
6 Therefore, if the evidence supports the theory that the defendant believed the substance to be other
7 than that charged, the applicable alternative must be given. Note, however, that accurate
8 knowledge of the identity of the controlled substance is not controlling; the crime is complete if
9 the defendant believed ~~[he]~~ the possessed substance was *some* controlled substance.

10 In *People v. James*~~[38 Ill. App. 3d 594]~~, 348 N.E.2d 295 (Ill. App. Ct. 1976), ~~[appeal dismissed]~~
11 *appeal dismissed*, 429 U.S. 1082~~[97 S. Ct. 1087, 51 L. Ed. 2d 528]~~ (1977), the defendant appealed
12 his conviction of selling LSD on the grounds that he believed the substance to be mescaline. The
13 court affirmed the conviction and stated ["]“If the accused knows [he is delivering] [the substance
14 delivered is] a controlled substance, [he] [the accused] commits the criminal act specified.[....”]
15 *See also People v. Garringer*~~[48 Cal. App. 3d 827]~~, 121 Cal. Rptr. 922 (Ct. App. 1975) (it is no
16 defense to the charge of possession of phenobarbital that the defendant believed he possessed
17 secobarbital); *State v. Barr*~~[237 N.W.2d 888 (N.D., S.D. 1976)]~~; *United States v. Davis*~~[501]~~
18 F.2d 1344 (9th Cir. 1974)~~[and]~~; *United States v. Jewell*~~[532 F.2d 697 (9th Cir. 1976)]~~, *cert.*
19 *denied*~~[426 U.S. 951 (96 S. Ct. 3173, 49 L. Ed. 2d 1188)]~~ (1976). [~~Compare~~] *Compare United*
20 *States v. Moser*~~[509 F.2d 1089 (7th Cir. 1975)]~~ (jury could infer that defendant knew drug was
21 LSD even though defendant told buyer defendant was selling psilocybin and mescaline)~~[but~~
22 ~~compare~~, with *State v. Pedro*~~[1971-NMCA-145, 83 N.M. 212, 490 P.2d 470 (Ct. App. 1971)]~~

1 (defendant thought the bag of anhalonium [peyote] was ["“medicine,[""]” and court found no
2 evidence of intent to possess peyote).

3 Note that this crime requires only a general criminal intent. Therefore, UJI 14-141 must be given.

4 This instruction requires the state to prove only that the defendant possessed a substance which is

5 listed in one of the controlled substances schedules. *See State v. Atencio*[~~7~~], 1973-NMCA-110, 85

6 N.M. 484, 513 P.2d 1266 [~~(Ct. App.)~~], *cert. denied*[~~7~~], 85 N.M. 483, 513 P.2d 1265 (1973). For

7 example, heroin is a narcotic drug by statutory definition and proof that the defendant possessed

8 heroin is sufficient without evidence that heroin is a narcotic drug. *See State v. Romero*[~~7~~], 1974-

9 NMCA-015, 86 N.M. 99, 519 P.2d 1180 [~~(Ct. App. 1974)~~].

10 The amount of the substance is not relevant to the charge of possession of a controlled substance.

11 *See State v. Grijalva*, 1973-NMCA-061, 85 N.M. 127, 509 P.2d 894 [~~(Ct. App. 1973)~~].

12 For additional discussion of the requirement of knowledge, and a discussion of exceptions and

13 exemptions as a defense, [~~see~~] see commentary to UJI 14-3101.

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