

1 **14-3104. Controlled substance; possession with intent to distribute; essential elements.**<sup>1</sup>

2 For you to find the defendant guilty of [“]“possession with intent to distribute  
3 \_\_\_\_\_<sup>2</sup>[“]” [as charged in Count \_\_\_\_\_]<sup>3</sup>, the state must prove to your  
4 satisfaction beyond a reasonable doubt each of the following elements of the crime:

5 1. The defendant [~~had~~] possessed<sup>4</sup> a drug called \_\_\_\_\_<sup>2</sup> [~~in his~~  
6 possession<sup>4</sup>];

7 2. The defendant knew it was \_\_\_\_\_<sup>2</sup> [or believed it to be  
8 \_\_\_\_\_<sup>2</sup>]<sup>5</sup> [or believed it to be some drug or other substance the possession of which  
9 is regulated or prohibited by law];

10 3. The defendant intended to transfer it to another;

11 4. This happened in New Mexico on or about the \_\_\_\_\_ day of  
12 \_\_\_\_\_, \_\_\_\_\_.

13 USE NOTES

14 1. This instruction is not applicable to narcotic drugs in Schedules I or II of NMSA  
15 1978, Sections 30-31-6 [and 30-31-7], -7 (1972)[NMSA-1978].

16 2. Identify the substance.

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

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

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

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

1 **Committee commentary.** — *See* Section 30-31-22A NMSA 1978.

2 This instruction is for use for possession with intent to distribute of any controlled substance except  
3 a narcotic drug in Schedules I or II. An essential element of this offense is the intent to transfer.  
4 *State v. Tucker*, 86 N.M. 553, 525 P.2d 913 (Ct. App.), *cert. denied*, 86 N.M. 528, 525 P.2d 888  
5 (1974).

6 Mere possession alone is insufficient to prove an intent to distribute. *State v. Moreno*, 69 N.M.  
7 113, 364 P.2d 594 (1961). The intent to distribute may be inferred from the facts and  
8 circumstances. *State v. Ortega*, 79 N.M. 707, 448 P.2d 813 (Ct. App. 1968). For example, it may  
9 be shown by the possession of a large quantity of the substance. *State v. Bowers*, 87 N.M. 74, 529  
10 P.2d 300 (Ct. App. 1974). It may also be shown if the person in possession is not, nor ever has  
11 been, a user of the substance. *State v. Quintana*, 87 N.M. 414, 534 P.2d 1126 (Ct. App.), *cert.*  
12 *denied*, 88 N.M. 29, 536 P.2d 1084, *cert. denied*, 423 U.S. 832, 96 S. Ct. 54, 46 L. Ed. 2d 50  
13 (1975).

14 The crime of possession with intent to distribute is complete if there is possession with intent to  
15 transfer. The place of the intended transfer is not an essential element of the crime. *State v. Bowers*,  
16 *supra*. The necessary intent may be proved by intent to complete any of the types of transfer which  
17 are set forth in Section 30-31-2G NMSA 1978.

18 Although this instruction is also applicable to marijuana, it will probably be seldom used for that  
19 substance. The statute provides the same penalty for a first offense of possession with intent to  
20 distribute marijuana and the offense of possession of more than eight ounces of marijuana.

21 For a discussion of use of the word "transfer" to define "distribute," *see* commentary to UJI 14-  
22 3103.

- 1 For a discussion of exceptions and exemptions as a defense, *see* commentary to UJI 14-3101 and
- 2 14-3140.
- 3 For a discussion of the requirement of knowledge, *see* commentary to UJI 14-3101 and 14-3102.