

1 **14-3107. Drug paraphernalia; possession; essential elements.**

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

5 1. The defendant [~~had~~] possessed<sup>3</sup> a drug called \_\_\_\_\_<sup>2</sup> [~~in his or her~~  
6 ~~possession~~<sup>3</sup>];

7 2. The defendant intended to use the \_\_\_\_\_<sup>2</sup> to [plant, propagate,  
8 cultivate, grow, harvest][,] [manufacture, compound, convert, produce, process, prepare, test,  
9 analyze][,] [pack, repack, store, contain, conceal][,] [or] [inject, ingest, inhale, or otherwise  
10 introduce into the human body]<sup>4</sup> a controlled substance;

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

13 USE NOTES

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

15 2. Identify the items of alleged drug paraphernalia.

16 3. UJI 14-130 [~~NMRA~~], the definition of possession, should be given if possession is  
17 in issue.

18 4. Choose applicable alternative or alternatives.

19 [Adopted by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or  
20 after December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2025-00126,  
21 effective for all cases pending or filed on or after December 31, 2025.]

22 **Committee commentary.** — See NMSA 1978, § 30-31-25.1.

1 The Legislature did not intend to punish a defendant for possession of a controlled substance and  
2 possession of paraphernalia when the paraphernalia consists of only a container that is storing a  
3 personal supply of the charged controlled substance. Where the defendant was convicted of  
4 possession of methamphetamine and possession of drug paraphernalia based on the possession of  
5 a baggie that held the methamphetamine, the defendant's conviction of possession of drug  
6 paraphernalia violated double jeopardy. *State v. Almeida*, 2008-NMCA-068, 144 N.M. 235, 185  
7 P.3d 1085.

8 Where police officers testified that they found a glass pipe containing a white substance in the  
9 center console of the vehicle the defendant was driving and subsequent forensic testing revealed  
10 that the substance was methamphetamine, the circumstantial evidence was sufficient (1) to  
11 establish that the defendant possessed or constructively possessed the methamphetamine and the  
12 pipe, and (2) to permit the jury to infer that the defendant knew the substance was  
13 methamphetamine and that the defendant intended to use the pipe to inhale methamphetamine.  
14 *State v. Lopez*, 2009-NMCA-127, 147 N.M. 364, 223 P.3d 361.

15 Sufficient evidence supported the defendant's conviction for possession of drug paraphernalia  
16 where a reasonable jury could infer that the defendant had knowledge of and control over drug  
17 paraphernalia based on evidence that a glass pipe similar to those used to ingest methamphetamine  
18 was found in the defendant's vehicle and methamphetamine was found on the defendant's person.  
19 *State v. Howl*, 2016-NMCA-084, 381 P.3d 684.

20 In cases where drug possession is premised on the drugs contained within an item of paraphernalia,  
21 paraphernalia possession may be a lesser-included offense of drug possession. *State v. Darkis*,  
22 2000-NMCA-085, ¶¶ 12, 21, 129 N.M. 547, 10 P.3d 871 (noting the defendant "could not have

- 1 committed possession of cocaine without also committing possession of drug paraphernalia," and
- 2 the court should have instructed on a lesser offense of paraphernalia possession).
- 3 [Adopted by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or
- 4 after December 31, 2018.]