

1 **14-3111. Controlled substance; trafficking by possession with intent to distribute; narcotic**
2 **drug; essential elements.¹**

3 For you to find the defendant guilty of [“]“trafficking a controlled substance by possession
4 with intent to distribute[”]” [as charged in Count _____]², the state must prove to your
5 satisfaction beyond a reasonable doubt each of the following elements of the crime:

6 1. The defendant [~~had~~] possessed⁴ a drug called _____ ³ [~~in his~~
7 ~~possession⁴~~];

8 2. The defendant knew it was _____ ³ [or believed it to be
9 _____ ³]⁵ [or believed it to be some drug or other substance the possession of which
10 is regulated or prohibited by law];

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

12 4. This happened in New Mexico on or about the _____ day of
13 _____, _____.

14 USE NOTES

15 1. This instruction is applicable only to narcotic drugs in Schedules I or II of NMSA
16 1978, Sections 30-31-6, -7 [~~and 30-31-7 NMSA 1978~~] (1972).

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

18 3. Identify the substance.

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

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

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

3 **Committee commentary.** — *See* Section 30-31-20A(3) NMSA 1978. *See also* commentary to
4 UJI 14-3104.

5 This instruction is for use for the crime of "trafficking" by possession with intent to distribute a
6 narcotic drug in Schedule I or II.

7 Trafficking by possession with intent to distribute requires proof of a specific intent to transfer.
8 *State v. Gonzales*, 86 N.M 556, 525 P.2d 916 (Ct. App. 1974).

9 There is authority that it is no defense to this charge that the defendant believed the substance to
10 be a controlled substance other than a Schedule I or II narcotic. *See People v. James*, 38 Ill. App.
11 3d 594, 348 N.E.2d 295 (1976), appeal dismissed, 429 U.S. 1082, 17 S. Ct. 1087, 51 L. Ed. 2d 528
12 (1977). *See also* commentary to UJI 14-3101 and 14-3102. *But compare Mullaney v. Wilbur*, 421
13 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975) (due process requires that prosecution prove
14 every fact necessary to constitute the crime charged).

15 For a discussion of exceptions and exemptions as a defense, *see* commentary to UJI 14-3101 and
16 14-3140.

17 For a discussion of the requirement of knowledge, *see* commentary to UJI 14-3101 and 14-3102.

18 For a discussion of the use of the word transfer, *see* commentary to UJI 14-3103.

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