

1 **14-3130. Possession of controlled substance; defined.**<sup>1</sup>

2 A person is in possession [of] \_\_\_\_\_ (*name of substance*) when [~~he knows~~]  
3 they know it is on [~~his~~] their person or in [~~his~~] their presence, and [~~he exercises~~] they exercise  
4 control over it.

5 [Even if the substance is not in the person's [~~his~~] physical presence, they are [~~he is~~] in  
6 possession if [~~he knows~~] they know where it is, and [~~he exercises~~] they exercise control over it.]<sup>2</sup>

7 [Two or more people can have possession of a substance at the same time.]

8 [A [~~person's~~] person's presence in the vicinity of the substance or [~~his~~] knowledge of the  
9 existence or the location of the substance, is not, by itself, possession.]

10 USE NOTES

11 1. This instruction is designed to be used in controlled substance cases in which  
12 possession is an element and is in issue.

13 2. One or more of the following bracketed sentences may be used depending on the  
14 evidence.

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

17 **Committee commentary.** — This instruction defines the various methods by which possession  
18 of a controlled substance may occur. This instruction must be given if possession is in issue and  
19 its use replaces UJI 14-130 which should not be used in controlled substance cases.

20 Possession may be constructive. *See State v. Bowers*, 87 N.M. 74, 529 P.2d 300 (Ct. App. 1974);  
21 *State v. Bauske*, 86 N.M. 484, 525 P.2d 411 (Ct. App. 1974); *State v. Montoya*, 85 N.M. 126, 509  
22 P.2d 893 (Ct. App. 1973). *See also State v. Perry*, 10 Wash. App. 159, 516 P.2d 1104 (1973).  
23 Possession need not be exclusive. *See State v. Baca*, 87 N.M. 12, 528 P.2d 656 (Ct. App.), cert.

1 denied, 87 N.M. 5, 528 P.2d 649 (1974). The definition of "possession," if given, should include  
2 only those alternatives which are supported by the evidence.  
3 Possession need not be defined unless its definition is in issue. *Brothers v. United States*, 328 F.2d  
4 151 (9th Cir.), cert. denied, 377 U.S. 1001, 84 S. Ct. 1934, 12 L. Ed. 2d 1050 (1964); *Johnson v.*  
5 *United States*, 506 F.2d 640 (8th Cir. 1974), cert. denied, 420 U.S. 978, 95 S. Ct. 1404, 43 L. Ed.  
6 2d 659 (1975).