

1 **14-4515. Leaving the scene of an accident involving damage to vehicle; essential elements.¹**

2 For you to find the defendant guilty of leaving the scene of an accident involving only
3 damage to a vehicle [as charged in Count ____]², the state must prove to your satisfaction beyond
4 a reasonable doubt each of the following elements of the crime:

- 5 1. The defendant drove a vehicle involved in an accident;
- 6 2. The defendant knew that there was an accident;
- 7 3. The accident resulted in damage to a vehicle driven or attended by another person;
- 8 4. The defendant [failed to immediately stop at the scene or stop as close to the scene
9 as possible without obstructing traffic more than necessary]

10 [or]

11 [failed to remain at the scene until defendant had:

12 (a) given defendant's name, address, and registration number to [the person
13 struck] [the driver or occupant of the vehicle collided with] [or] [the person attending any vehicle
14 collided with]³; and

15 (b) displayed, upon request, defendant's license to [the person struck] [the
16 driver or occupant of the vehicle collided with] [or] [the person attending any vehicle collided
17 with]];³

18 5. This happened in New Mexico on or about the ____ day of _____, _____.

19 USE NOTES

20 1. For use when the defendant is charged with leaving the scene of an accident
21 involving only damage to another vehicle driven or attended by someone else under Section 66-7-
22 202 NMSA 1978. If the defendant is charged with the misdemeanor or [~~fourth-degree~~] fourth-
23 degree felony of leaving the scene of an accident involving personal injury or death under

1 Subsections (B) or (D) of Section 66-7-201 NMSA 1978, use UJI 14-4513 NMRA. If the defendant
2 is charged with the [~~third-degree~~] third-degree felony of knowingly leaving the scene of an accident
3 involving great bodily harm or death under Subsection (C) of Section 66-7-201, use UJI 14-4514
4 NMRA. If the defendant is charged with failing to give information or render aid following an
5 accident involving personal injury or death or damage to a vehicle driven or attended by another
6 person under Section 66-7-203 NMSA 1978, use UJI 14-4516 NMRA.

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

8 3. Use only the applicable bracketed alternative or alternatives established by the
9 evidence.

10 [Adopted by Supreme Court Order No. S-1-RCR-2023-00029, effective for all cases pending or
11 filed on or after December 31, 2023; as amended by Supreme Court Order No. S-1-RCR-2025-
12 00126, effective for all cases pending or filed on or after December 31, 2025.]

13 **Committee commentary.** — *See* NMSA 1978, § 66-7-202 (1978); *see also* NMSA 1978, § 66-7-
14 201 (1989) (Accidents involving death or personal injury); NMSA 1978, § 66-7-203 (1978) (Duty
15 to give information and render aid); UJI 14-4513 [~~NMRA~~] (Leaving the scene of an accident
16 involving death or personal injury); UJI 14-4514 [~~NMRA~~] (Knowingly leaving the scene of an
17 accident involving great bodily harm or death); UJI 14-4516 [~~NMRA~~] (Failing to give information
18 and render aid).

19 New Mexico courts have not squarely decided whether, for purposes of Subsections (B) and (D)
20 of Section 66-7-201, the defendant must have knowledge of an accident or of injury to another or
21 whether some lesser awareness may suffice. *See State v. Hertzog*, 2020-NMCA-031, ¶ 9 n.2, 464
22 P.3d 1090 (questioning whether knowledge of the accident was a required element of the offense
23 under Subsection (B) of 66-7-201 but deeming it unnecessary to decide based on the issues raised

1 on appeal); *State v. Kuchan*, 1943-NMSC-025, ¶¶ 6-7, 47 N.M. 209, 139 P.2d 592 (declining to
2 decide if, under a prior version of the statute, knowledge of the accident or knowledge that a person
3 was struck or injured are elements of the crime).

4 However, the Committee believes that New Mexico would follow the “vast majority of courts
5 construing these statutes” and require knowledge of the accident even in the absence of any explicit
6 statutory language. *Pardo v. State*, 160 A.3d 1136, 1146-47 (Del. 2017); *State v. Sidway*, 431 A.2d
7 1237, 1239 (Vt. 1981) (“A majority of the states . . . have hit and run statutes, and many of these
8 statutes, like ours, contain no express requirement of knowledge on the part of the driver of the car
9 [~~that he was involved~~] . . . [of involvement] in an accident. Most courts, however, in interpreting
10 the legislative intent behind these statutes, have taken the view that actual knowledge of the
11 collision is an essential element of the offense.”).

12 New Mexico law has long recognized that “[w]hen a criminal statute is silent about whether a
13 *mens rea* element is required, we do not assume that the [L]egislature intended to enact a no-fault
14 or strict liability crime. Rather, we presume criminal intent as an essential element of the crime
15 unless it is clear from the statute that the [L]egislature intended to omit the *mens rea* element.”
16 *State v. Ramos*, 2013-NMSC-031, ¶ 16, 305 P.3d 921 (alterations in original) (internal quotation
17 marks and citations omitted). Hence, New Mexico courts have repeatedly determined that
18 knowledge of particular circumstances giving rise to or increasing criminal penalties is required
19 even when the statutes are otherwise silent on the required mental state. *See id.* ¶ 26 (requiring a
20 knowing violation of a protection order); *State v. Nozie*, 2009-NMSC-018, ¶ 30, 146 N.M. 142,
21 207 P.3d 1119 (deeming knowledge that the victim is a peace officer an element of battery on a
22 peace officer); *see also State v. Valino*, 2012-NMCA-105, ¶¶ 15, 17, 287 P.3d 372 (holding that

1 knowledge that a victim is a health care worker is an essential element of the crime of battery on
2 a health care worker).

3 In addition, the majority of other jurisdictions require knowledge of an accident or collision. *See*
4 Marjorie A. Caner, Annotation, *Necessity and Sufficiency of Showing, in Criminal Prosecution*
5 *under “Hit-And-Run” Statute, [~~Accused’s~~] Accused’s Knowledge of Accident, Injury, or Damage,*
6 26 A.L.R. 5th 1 (1995) (“Under most ‘hit-and-run’ statutes, knowledge of the occurrence of the
7 collision, injury, or damage is a prerequisite to a conviction under the statute.”); *accord* 1 Charles
8 E. Torcia, [~~Wharton’s Criminal Law~~] Wharton’s Criminal Law § 27 (15th ed.) [~~(August)~~] Aug.
9 2020 Update][~~;-but~~]. But see *People v. Manzo*, 144 P.3d 551, 556, 558-59 (Colo. 2006) (noting
10 that imposing strict liability for leaving the scene of an accident with injury was constitutional
11 despite the resulting felony conviction because the statute constitutes a public welfare offense and
12 the penalties, including up to eight years imprisonment, “are small in comparison to many common
13 law crimes”); *see also* *People v. Hernandez*, 250 P.3d 568, 573 (Colo. 2011) ([~~en banc~~] en banc)
14 (describing the Colorado hit-and-run statute as a “strict liability offense” (citing *Manzo*, 144 P.3d
15 at 555, 558)).

16 States requiring knowledge of an accident or collision include jurisdictions with “hit-and-run
17 statutes nearly identical to New Mexico’s [statutes].” *Hertzog*, 2020-NMCA-031, ¶¶ 16-17
18 (deeming authority from Alaska, Arizona, and Texas persuasive because of similar statutory
19 language); *see, e.g.* [7], *Kimoktoak v. State*, 584 P.2d 25, 29-33 (Alaska 1978) (requiring knowledge
20 of an accident and knowledge of injury or “that the accident was of such a nature that one would
21 reasonably anticipate that it resulted in injury to a person”); *State v. Porrás*, 610 P.2d 1051, 1053-
22 54 (Ariz. Ct. App. 1980) (requiring knowledge of an accident and knowledge of injury or “that the
23 accident was of such a nature that one would reasonably anticipate that it resulted in injury to a

1 person”); *Mayer v. State*, 494 S.W.3d 844, 848-50 (Tex. Crim. App. 2016) (requiring knowledge
2 of an accident). Given New Mexico’s strong presumption against strict-liability offenses and the
3 consensus on this element elsewhere, the Committee believes New Mexico’s statute requires
4 knowledge of an accident as an element of the offense.

5 There is less agreement as to whether knowledge of damage is also required. *See Pardo*, 160 A.3d
6 at 1146-47 (indicating courts “are divided as to whether knowledge of the collision alone is
7 required to hold a driver accountable, or whether the prosecution must prove both the driver’s
8 knowledge of [his] . . . involvement in a collision and that [he] [the driver] knew death or injury
9 resulted”); *State v. Johnson*, 630 A.2d 1059, 1064 (Conn. 1993) (concluding that knowledge of
10 the accident was required but that knowledge of damage was not); 7A Am. Jur. 2d *Automobiles &*
11 *Highway Traffic* § 328 (Feb. 2022 Update) (“Criminal liability under a [hit-and-run] statute [---] .
12 . . . may require proof that the motorist knew of the damage or injury, or, at least, proof that the
13 motorist reasonably should have known, from the nature of the accident, of the resulting damage
14 or injury, or that the circumstances were such that a reasonable person would have believed that
15 an accident had occurred resulting in death, damage, or injury to another.”). Accordingly, the
16 Committee takes no position on whether a defendant’s knowledge of damage or some lesser degree
17 of knowledge is required and has not included such an element in the instruction at this time.

18 The statute does not include a definition of the term “accident” or of the phrase “involved in an
19 accident,” but the New Mexico Court of Appeals has held that the phrase “involved in an accident”
20 has a broader meaning than “collision.” *Hertzog*, 2020-NMCA-031, ¶ 18 (interpreting identical
21 language in Section 66-7-201). Nonetheless, the Committee does not believe that the phrase is so
22 broad for purposes of Section 66-7-202 as to include situations where the only vehicle involved in
23 the accident is the defendant’s vehicle. Instead, the Committee believes that the statutory scheme

1 requires involvement of another vehicle driven or attended by someone other than the defendant.
2 *See, e.g.*, § 66-7-202 (requiring a defendant to remain until the requirements of Section 66-7-203
3 are satisfied); § 66-7-203 (requiring a defendant to provide information to “the driver or occupant
4 of or person attending any vehicle collided with”). The Committee has therefore specified in
5 element 3 of this instruction that the vehicle damaged must be “driven or attended by another
6 person.”

7 In *State v. Esparza*, 2020-NMCA-050, 475 P.3d 815, the New Mexico Court of Appeals explained
8 that a driver may be convicted under Section 66-7-201 “by failing to ‘immediately stop the vehicle
9 at the scene of the accident or as close thereto as possible’ *or* failing to ‘immediately return to’ and
10 ‘remain at the scene of the accident until ~~he has fulfilled~~ . . . fulfill[ing] the requirements of
11 Section 66-7-203.” *Id.* ¶ 17 (quoting § 66-7-201). Because Section 66-7-202 includes identical
12 language, the Committee has crafted an instruction reflecting that “[t]he failure to perform either
13 of these duties is grounds for a violation” under Section 66-7-202. *Id.*

14 To further ensure consistency with *Esparza* and the language of Section 66-7-202, the Committee
15 has included the defendant’s failure to satisfy the requirements of Section 66-7-203 before leaving
16 the scene as “an essential element when it is alleged that the driver unlawfully failed to remain at
17 the scene of the accident.” *Id.* ¶ 12. A defendant is not required to remain at the scene indefinitely.
18 Inclusion of this element thus ensures that criminal liability attaches only if the jury finds that the
19 defendant has failed “to satisfy the requirements of Section 66-7-203 before leaving the scene.”
20 *Id.* However, because Section 66-7-202 applies to accidents that involve only damage to another
21 person’s vehicle and not accidents involving physical injury, the Committee does not believe that
22 a defendant’s duty to render reasonable assistance to an injured party under Section 66-7-203 is

1 applicable. Consequently, the Committee has removed that particular requirement of Section 66-
2 7-203 from this instruction.
3 [~~Adopted by Supreme Court Order No. S-1-RCR-2023-00029~~], ~~effective for all cases pending or~~
4 ~~filed on or after December 31, 2023~~]; as amended by Supreme Court Order No. S-1-RCR-2025-
5 00126.]