

1 **14-5130. Duress; nonhomicide crimes.**¹

2 An issue in this case is whether the defendant was forced to _____² [under
3 threats] [or] [out of necessity]³. The burden is on the state to prove beyond a reasonable doubt that
4 the defendant did not act under reasonable fear. A defendant acted under a reasonable fear when:

5 1. The defendant feared immediate great bodily harm to [~~himself~~] themselves or
6 another person if [~~he~~] the defendant did not commit the crime;

7 [2. The defendant [~~did not find himself~~] was not in a position that compelled [~~him to~~
8 ~~violate~~] violation of the law due to [~~his~~] the defendant's own recklessness;

9 3. The defendant's illegal conduct was directly caused by the threat of harm]⁴; and

10 4. A reasonable person would have acted in the same way under the circumstances.

11 USE NOTES

12 1. For use when duress is a defense to any crime except homicide or a crime requiring
13 an intent to kill. If this instruction is given, add to the essential elements instruction for the offense
14 charged, "The defendant did not act under duress."

15 2. Describe acts of defendant constituting the offense.

16 3. Choose applicable alternative or alternatives. *See* committee commentary.

17 4. Bracketed elements apply only when duress is raised as a defense to a strict liability
18 crime.

19 [As amended by Supreme Court Order No. 17-8300-012, effective for all cases pending or filed
20 on or after December 31, 2017; 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.** — UJI 14-5130 has been amended to expand the conditions which must
23 exist to accept the defense of duress in the commission of a crime. Although the New Mexico

1 Court of Appeals stated that former UJI 14-5130 was not complete in that it failed to include the
2 requirement that the defendant must not have had a full opportunity to avoid the danger of great
3 bodily harm, the [~~supreme court~~] Supreme Court, on certiorari, stated that “the full opportunity to
4 avoid the act without danger” requirement set forth in *State v. LeMarr*, 1971-NMSC-082, 83 N.M.
5 18, 487 P.2d 1088, was covered by the requirement that the duress must be present, imminent and
6 impending “and of such nature as to induce a well-grounded apprehension of death or serious
7 bodily injury.” See *Esquibel v. State*, 1978-NMSC-024, ¶ 2, 91 N.M. 498, 576 P.2d 1129 *overruled*
8 *on other grounds by State v. Wilson*, 1994-NMSC-009, 116 N.M. 793, 867 P.2d 1175.

9 “To warrant submission to the jury of the defense of duress, a defendant must make a prima facie
10 showing that [~~he~~] [defendant] was in fear of immediate and great bodily harm to [~~himself~~]
11 [themselves] or another and that a reasonable person in [~~his~~] [that] position would have acted the
12 same way under the circumstances.” *State v. Castrillo*, 1991-NMSC-096, ¶ 4, 112 N.M. 766, 819
13 P.2d 1324 (citing *Esquibel*, 1978-NMSC-024, ¶ 9).

14 UJI 14-5130 applies to all crimes, other than homicide or a crime requiring an intent to kill.
15 *Esquibel*, 1978-NMSC-024, ¶ 8. *Esquibel* further clarified that duress is a defense to escape from
16 a penitentiary, so that if the circumstances of the case present a prima facie case of duress, the jury
17 should be instructed accordingly. *Id.* ¶¶ 2, 12. See generally[;] Rollin M. Perkins, [Criminal Law]
18 *Perkins on Criminal Law* 951 (2d ed. 1969)[~~;~~ and]; *Annotation, Duress, Necessity, or Conditions*
19 *of Confinement as Justification for Escape from Prison*, 69 A.L.R.3d 688 ([1974] 1976); L. I.
20 *Reiser, Annotation, Coercion, Compulsion, or Duress as Defense to Criminal Prosecution*, 40
21 A.L.R.2d 908 (1955) [~~and~~]; *United States v. Boomer*, 571 F.2d 543 (10th Cir.), [~~cert. denied~~] *cert.*
22 *denied*, 436 U.S. 911[; 98 S. Ct. 2250, 56 L. Ed. 2d 411] (1978).

1 In addition to affirmative threats by a third party, New Mexico recognizes a duress defense in
2 circumstances of “necessity” even absent threatening conduct by another. *See State v. Rios*, 1999-
3 NMCA-069, ¶¶ 14-15, 127 N.M. 334, 980 P.2d 1068 (collecting, with approval, authorities noting
4 the modern rejection of common law distinctions between necessity and duress). “Duress and
5 necessity are two forms of compulsion that may be raised as valid defenses in criminal law.” *Reed*
6 *v. State ex rel. Ortiz*, 1997-NMSC-055, 124 N.M. 129, 148, 947 P.2d 86, 105, [~~cert. granted,~~
7 ~~judgment rev’d sub nom.~~] rev’d, *New Mexico*[;] *ex rel. Ortiz v. Reed*, 524 U.S. 151 (1998) (per
8 curiam). The New Mexico Supreme Court recognizes that “the distinction between duress and
9 necessity has been blurred by modern case law and is no longer deemed decisive.” *Id.* (citing
10 *United States v. Bailey*, 444 U.S. 394, 410 (1980)). In *Bailey*, the United States Supreme Court
11 stated that both “defenses were designed to spare a person from punishment if [~~he~~] [the person]
12 acted ‘under threats or conditions that a person of ordinary firmness would have been unable to
13 resist,’ or [~~if he~~] ... reasonably believed that criminal action ‘was necessary to avoid a harm more
14 serious than that sought to be prevented by the statute defining the offense.’” *Bailey*, 444 U.S. at
15 410 (quoting and *reversing on other grounds*[;], *United States v. Bailey*, 585 F.2d 1087, 1097-98
16 (D.C. Cir. 1978)). The Committee Commentary uses the term “duress” to refer to this overarching
17 concept.

18 A duress defense is available for strict liability crimes, but in such cases requires additional
19 instruction on the bracketed elements outlined in UJI 14-5130 as indicated in Use Note 4. *See*
20 *Castrillo*, 1991-NMSC-096, ¶¶ 11-19; [~~see~~] id. ¶ 13 (“Application of the concept of duress to a
21 charge of felon in possession does not require us to develop special rules or alter the law of duress.
22 We merely evaluate the different elements in the context of the strict liability crime. [~~...~~] ... A
23 reasonable felon, knowing that possession of a firearm is a felony, is expected to pursue other

1 possible avenues of relief before [~~arming himself~~] [obtaining a firearm].”[~~-See~~]; see also *Rios*,
2 1999-NMCA-069, ¶ 25 (recognizing duress as a defense to driving while intoxicated); *State v.*
3 *Baca*, 1992-NMSC-055, ¶ 13, 114 N.M. 668, 845 P.2d 762 (recognizing duress as a defense to
4 possession of a deadly weapon by a prisoner). Therefore, to balance the duress defense with the
5 protective purposes of strict liability crimes, “New Mexico law establishes four elements to duress
6 in the strict liability context: (1) the defendant acted under unlawful and imminent threat of death
7 or serious bodily injury, (2) [~~he did not find himself~~] [the defendant was not] in a position that
8 compelled [~~him to violate~~] . . . violat[ion of] the law due to [~~his~~] [the defendant’s] own
9 recklessness, (3) [~~he~~] [the defendant] had no reasonable legal alternative, and (4) [~~his~~] [the
10 defendant’s] illegal conduct was directly caused by the threat of harm.” [~~Id.~~] *Rios*, 1999-NMCA-
11 069, ¶ 25 (citing *Baca*, 1992-NMSC-055, ¶ 19).
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