

1 **14-5185. Self-defense against excessive force by a peace officer; nondeadly force by**
2 **defendant.¹**

3 An issue in this case is whether the defendant acted in self-defense. A defendant has the
4 right to defend [~~himself or herself~~] against an officer only if the officer used excessive force.

5 Excessive force means greater force than reasonably necessary.

6 The defendant acted in self-defense if

7 1. The officer used greater force than reasonable and necessary by
8 _____²; and

9 2. There was an appearance of immediate danger of bodily harm to the defendant as
10 a result of _____³; and

11 3. The defendant was in fact put in fear of immediate bodily harm and
12 _____⁴ because of that fear; and

13 4. The defendant used an amount of force that the defendant believed was reasonable
14 and necessary to prevent the bodily harm; and

15 [5. The force used by defendant ordinarily would not create a substantial risk of death
16 or great bodily harm; and]⁵

17 6. The apparent danger would have caused a reasonable person in the same
18 circumstances to act as the defendant did.

19 The burden is on the state to prove beyond a reasonable doubt that the defendant did not
20 act in self-defense. If you have a reasonable doubt as to whether the defendant acted in self-
21 defense, you must find the defendant not guilty.

22 USE NOTES

1 1. For use in nonhomicide cases when the self-defense theory is based on the limited
2 right of self-defense against excessive force by a peace officer. If this instruction is given, add to
3 the essential elements instruction for the offense charged, [“]“The defendant did not act in self-
4 defense.[”]”

5 2. Describe the act of the officer.

6 3. Describe unlawful act which would result in some bodily harm as established by
7 the evidence. Give at least enough detail to put the act in the context of the evidence.

8 4. Describe the act of defendant, [~~e.g.~~] e.g., [“]“struck [~~Richard~~] Roe,[”] [“]“choked
9 [~~Richard~~] Roe.[”]”

10 5. Use bracketed material only if the [~~defendant's~~] defendant's action resulted in death
11 or great bodily harm. If bracketed material is used, the definition of great bodily harm, UJI 14-131
12 NMRA, must be given if not already given.

13 [Adopted by Supreme Court Order No. 09-8300-028, effective September 16, 2009; as amended
14 by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or after
15 December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective
16 for all cases pending or filed on or after December 31, 2025.]

17 **Committee commentary.** — When asserting self-defense against a private citizen, a defendant
18 has an “unqualified right to a self-defense instruction in a criminal case when there is evidence
19 which supports the instruction.” *State v. Ellis*, 2008-NMSC-032, ¶ 15, 144 N.M. 253, 186 P.3d
20 245 (quoting *State v. Kraul*, 1977-NMCA-032, ¶ 24, 90 N.M. 314, [~~318,~~] 563 P.2d 108, [~~112 (Ct.~~
21 ~~App. 1977), cert. denied~~] cert. denied, 90 N.M. 637, 567 P.2d 486 (1977)). “By comparison, a
22 person has only a qualified right to assert self-defense against a police officer, because police
23 officers have a duty to make arrests and a right to use reasonable force when necessary.” [~~*Ellis*,~~

1 ~~2008-NMSC-032,~~ Id. ¶ 15 (citing *Kraul*, ~~[90 N.M. at 319, 563 P.2d at 113]~~ 1977-NMCA-032, ¶
2 29). The burden is on the defendant to persuade the court that reasonable minds could differ on
3 whether the officer's use of force was excessive, in order for this issue to be submitted to the jury.
4 [~~*Ellis*, 2008-NMSC-032,~~] Id. ¶ 34.
5 Element 5 is bracketed and is to be used only if there is evidence that the defendant used a force
6 which ordinarily would not cause death or great bodily harm but which resulted in death or great
7 bodily harm. A person is not guilty of homicide if [~~he or she~~] the person unintentionally kills a
8 third person in self-defense. *State v. Sherwood*, 1935-NMSC-082, 39 N.M. 518, 50 P.2d 968
9 [~~(1953)~~]. See generally [~~, Annot.~~] Ferdinand S. Tinio, Annotation, Unintentional Killing of or
10 Injury to Thirds Person During Attempted Self-Defense, 55 A.L.R.3d 620 (1974).
11 [Adopted by Supreme Court Order No. 09-8300-028 [~~, effective September 16, 2009~~]; as amended
12 by Supreme Court Order No. S-1-RCR-2025-00126.]