

1 **14-5186. Self-defense against excessive force by a peace officer; deadly force by defendant.¹**

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

5 The defendant acted in self-defense if

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

8 2. There was an appearance of immediate danger of death or great bodily harm³ to the
9 defendant as a result of _____⁴; and

10 3. The defendant was in fact put in fear of immediate death or great bodily harm and
11 _____⁵ because of that fear; and

12 4. The apparent danger would have caused a reasonable person in the same
13 circumstances to act as the defendant did.

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

17 USE NOTES

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

22 2. Describe the act of the officer.

1 3. The definition of ["_great bodily harm,["_ UJI 14-131 NMRA, must be given if
2 not already given.

3 4. Describe unlawful act, felony or act which would result in death or some great
4 bodily harm as established by the evidence. Give at least enough detail to put the act in context of
5 the evidence.

6 5. Describe act of defendant, [~~e.g.~~] e.g., ["_struck [~~Richard~~] Roe,["_] ["_choked
7 [~~Richard~~] Roe.["_]

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

12 **Committee commentary.**— When asserting self-defense against a private citizen, a defendant
13 has an "unqualified right to a self-defense instruction in a criminal case when there is evidence
14 which supports the instruction." *State v. Ellis*, 2008-NMSC-032, ¶ 15, 144 N.M. 253, 186 P.3d
15 245 (quoting *State v. Kraul*, 90 N.M. 314, 318, 563 P.2d 108, 112 (Ct. App. 1977), cert. denied,
16 90 N.M. 637, 567 P.2d 486 (1977)). "By comparison, a person has only a qualified right to assert
17 self-defense against a police officer, because police officers have a duty to make arrests and a right
18 to use reasonable force when necessary." *Ellis*, 2008-NMSC-032, ¶ 15 (citing *Kraul*, 90 N.M. at
19 319, 563 P.2d at 113). The burden is on the defendant to persuade the court that reasonable minds
20 could differ on whether the officer's use of force was excessive, in order for this issue to be
21 submitted to the jury. *Ellis*, 2008-NMSC-032, ¶ 34.

22 [Adopted by Supreme Court Order No. 09-8300-028, effective September 16, 2009.]