

1 **14-5190. Self defense; assailed person need not retreat.**<sup>1</sup>

2 A person who is [defending against an attack]<sup>2</sup> [defending another from an attack] [or]  
3 [defending property] need not retreat. In the exercise of the right of [self defense]<sup>2</sup> [defense of  
4 another] [or] [defense of property], [a person] may stand [the person's] ground and defend  
5 [~~herself~~<sup>2</sup> ~~himself~~] [themselves]<sup>2</sup> [another] [the person's habitation] [or] [property].

6 USE NOTES

7 1. This instruction must be given when a duty to retreat is at issue in a self defense,  
8 defense of another, or defense of property case.

9 2. Choose applicable alternative or alternatives.

10 [As amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed  
11 on or after December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2025-00126,  
12 effective for all cases pending or filed on or after December 31, 2025.]

13 **Committee commentary.** — When acting in self-defense, defense of another, or defense of  
14 property, a person may use no more force than is reasonably necessary to avoid the threatened  
15 harm. *See* UJIs 14-5171, 14-5181 NMRA. A person need not, however, retreat even though the  
16 person could do so safely. *See State v. Horton*, 1953-NMSC-044, 57 N.M. 257, 258 P.2d 371  
17 (holding that it was erroneous to instruct the jury that the defendant could not kill his assailant if  
18 he could yield without being killed); *see also* LaFave & Scott, *Criminal Law* 395 (1972).

19 In *State v. Anderson*, the Court of Appeals declined to conclude that UJI 14-5190 NMRA was a  
20 mere definitional instruction. 2016-NMCA-007, ¶ 13, 364 P.3d 30. The Court explained that  
21 "[w]here the evidentiary basis for the instruction has been laid, UJI 14-5190 informs jurors of what  
22 is reasonable under the third prong of UJI 14-5190, and it is therefore critical to understanding the  
23 third element of a general self-defense instruction." *Id.* ¶ 14; *see also* UJI 14-5171. The Court

1 therefore held that omission of UJI 14-5190, after the district court determined that giving the  
2 instruction was appropriate, amounted to fundamental error because it was "akin to a missing  
3 elements instruction." *Id.* ¶¶ 15, 19.

4 [As amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed  
5 on or after December 31, 2018.]