

1 **14-6013. Special verdict; use of a firearm.**

2 If you find the defendant guilty of \_\_\_\_\_, then you must determine if the  
3 [crime was]<sup>1</sup> [crimes were] committed [with the use of a firearm]<sup>2</sup> [while brandishing a firearm]  
4 [while discharging a firearm] and report your determination.

5 [“Use” of a firearm means: A firearm was present at some point during the encounter.  
6 \_\_\_\_\_ (*name of victim*) knew, or based on the defendant’s words or actions, had  
7 reason to know that the defendant had a firearm. The defendant intentionally used the presence of  
8 the firearm to facilitate the commission of the crime.]<sup>1</sup>

9 [“Brandished” means: Displaying or making a firearm known to \_\_\_\_\_  
10 (*name of victim*) while the firearm is present on the person of the defendant with intent to intimidate  
11 or injure another person.]

12 [“Discharged” means: A firearm was present and expelled a projectile by the action of  
13 an explosion.]

14 You must complete the special form to indicate your finding. [With respect to any  
15 crime,]<sup>3</sup> for you to make a finding of “yes,” the state must prove to your satisfaction beyond a  
16 reasonable doubt that [~~that~~] the crime was committed [with the use of a firearm] [while brandishing  
17 a firearm] [while discharging a firearm]<sup>2</sup>.

18 USE NOTES

19 1. Use the applicable bracketed alternative.

20 2. Use the applicable bracketed alternative.

21 a. Use the first alternative, “with the use of a firearm,” for all noncapital felony  
22 crimes committed on or before June 30, 2020, and for crimes committed on or after May 18, 2022,  
23 if the firearm was used in the commission of a drug transaction, an aggravated burglary under

1 Section 30-16-4 NMSA 1978, or a serious violent offense under Section 33-2-34(L)(4)(a) through  
2 (n) NMSA 1978.

3           b.       The second alternative, “while brandishing a firearm,” may be used for all  
4 noncapital felony crimes committed on or after July 1, 2020.

5           c.       The third alternative, “while discharging a firearm,” may be used for all  
6 noncapital felony crimes committed on or after May 18, 2022.

7           3. Use the bracketed phrase if more than one crime was committed.

8           4. Use a separate special verdict form from UJI 14-6014 NMRA for each crime being  
9 enhanced and for each applicable alternative.

10 [As amended by Supreme Court Order No. S-1-RCR-2024-00105, effective for all cases pending  
11 or filed on or after December 31, 2024; as amended by Supreme Court Order No. S-1-RCR-2025-  
12 00173, effective for all cases pending or filed on or after December 31, 2025.]

13           **Committee commentary.** — NMSA 1978, § 31-18-16 (2022). This instruction, together  
14 with the special interrogatory, UJI 14-6014 NMRA, is required by NMSA 1978, Section 31-18-  
15 16 (2020, 2022). Special sentencing provisions apply if the jury finds that a firearm was used in  
16 the commission of any felony, other than a capital felony. *State v. Wilkins*, 1975-NMCA-069, 88  
17 N.M. 116, 537 P.2d 1012; *State v. Espinosa*, 1988-NMSC-050, ¶¶ 12-13, 107 N.M. 293, 756 P.2d  
18 573 (clarifying that the firearm enhancement statute applies to each applicable crime that is  
19 committed and not just to a “unified course of events”). The use of this instruction and the  
20 interrogatory is based on the assumption the defendant was put on notice the defendant must  
21 defend against a crime committed with a firearm. *State v. Barreras*, 1975-NMCA-063, 88 N.M.  
22 52, 536 P.2d 1108; *see also State v. Roque*, 1977-NMCA-094, ¶ 10, 91 N.M. 7, 569 P.2d  
23 417 (recognizing that, in the context of a conviction for the offense of robbery with a firearm, it is

1 irrelevant whether the defendant or a co-defendant is the one who is actually armed because the  
2 statute does not limit imposition of an enhanced sentence to only those situations where the  
3 defendant personally uses the firearm).

4       Section 31-18-16 has been amended twice since June 30, 2020, to vary the penalty  
5 depending on the manner in which a firearm was used in the commission of the crime. The law at  
6 the time of the commission of the offense controls the applicable sentence. *See State v.*  
7 *Lucero*, 2007-NMSC-041, ¶ 14, 142 N.M. 102, 163 P.3d 489. The Committee modified Use Note  
8 2 to assist parties in selecting the appropriate alternative based on the date the crime was committed  
9 and the type of offense at issue. For crimes committed on or before June 30, 2020, the first  
10 alternative involving the “use” of a firearm should be used for all noncapital felony offenses. For  
11 crimes committed between July 1, 2020, and May 17, 2022, the second alternative involving the  
12 “brandishing” of a firearm should be used for all noncapital felony offenses. For crimes committed  
13 on or after May 18, 2022, any of the three applicable alternatives—“use,” “brandishing,” or  
14 “discharging”—may be used, but the “use” of a firearm alternative only applies if the firearm was  
15 used “in relation to a drug transaction,” during the commission of an aggravated burglary contrary  
16 to NMSA 1978, Section 30-16-4 (1963), or during the commission of a serious violent offense as  
17 enumerated in NMSA 1978, Section 33-2-34(L)(4)(a) through (n) (2015). “In relation to a drug  
18 transaction” is defined in the most recent version of the statute as “participating or attempting to  
19 participate in the trafficking of a controlled substance pursuant to [NMSA 1978, Section 30-31-  
20 20 (2006)], distribution of a controlled substance to a minor pursuant to [NMSA 1978, Section 30-  
21 31-21 (2021),] or distribution of a controlled or counterfeit substance” as a seller, purported seller,  
22 or accomplice under NMSA 1978, Section 30-31-22 (2021).

1           The definition of “use of a firearm” in this instruction has been modified to comport with  
2 the holding in *State v. Zachariah G.*, 2022-NMSC-003, 501 P.3d 451. In *Zachariah G.*, the  
3 Supreme Court expanded the definition of “use of a firearm” to commit assault when a defendant  
4 makes “facilitative use” of the weapon. *Id.* “Facilitative use of a deadly weapon may be found if  
5 (1) a deadly weapon is present at some point during the encounter, (2) the victim knows or, based  
6 on the defendant’s words or actions, has reason to know that the defendant has a deadly weapon,  
7 and (3) the presence of the weapon is intentionally used by the defendant to facilitate the  
8 commission of the assault.” *Id.* ¶ 3 (emphasis omitted).  
9 [As amended by Supreme Court Order No. S-1-RCR-2024-00105, effective for all cases pending  
10 or filed on or after December 31, 2024].