

1 **14-701. Receipt, transportation or possession of a firearm or destructive device by a felon;**
2 **essential elements.**

3 For you to find the defendant guilty of receipt, [transportation] [or]¹ [possession] of a
4 [firearm] [or] [destructive device] by a felon [as charged in count _____]², the state must
5 prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

6 1. The defendant [received] [transported] [or]¹ [possessed] a [firearm³] [or]¹
7 [destructive device⁴]

8 2. The defendant, in the preceding ten years, was convicted and sentenced to one or
9 more years imprisonment by a court of the United States or by a court of any state [and has not
10 been pardoned of the conviction by the appropriate authority]⁵;

11 3. This happened in New Mexico on or about the _____ day of
12 _____, _____.

13 USE NOTES

14 1. Use only the applicable alternative.

15 2. Insert count number if more than one count is charged.

16 3. Give UJI 14-704 NMRA, the definition of a firearm, if applicable.

17 4. Give the [~~Section~~] NMSA 1978, Section 30-7-16(C)(1) definition of "destructive
18 device", if applicable.

19 5. Use bracketed language only if there is an issue as to whether the defendant has
20 been pardoned for the offense.

21 [Adopted, effective May 1, 1986; as amended, effective January 1, 1999; as amended by Supreme
22 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or before
23 December 31, 2025.]

1 **Committee commentary.** — The name of the prior felony conviction is not necessary. If the
2 defendant stipulates to the commission of the offense, evidence of the nature of defendant's
3 predicate felony convictions is irrelevant and prejudicial under evidence Rule 11-403 NMRA.
4 *State v. Tave*, [~~1997-NMCA-056~~] 1996-NMCA-056, 122 N.M. 29, 919 P.2d 1094; *accord*, *Old*
5 *Chief v. United States*, 117 S. Ct. 644 (1997).

6 If the defendant does not stipulate to the prior offense, the state may prove the prior offense by a
7 redacted record or other evidence which satisfies the rules of evidence. [~~See *State v. Tave*, at Para.~~
8 ~~15~~] See *Tave*, 1996-NMCA-056, ¶ 15.

9 [~~Section 30-7-16 NMSA 1978~~] NMSA 1978, Section 30-7-16 requires that the defendant have
10 been sentenced for the predicate offense to a term of more than one year. This definition would
11 include suspended sentences, which are imposed before their execution is suspended, but would
12 not include deferred sentences, which defer the imposition of sentence so long as no violation of
13 probation occurs. *Compare* [~~Section 31-20-3(B) NMSA 1978~~] NMSA 1978, § 31-20-3(B) with
14 [~~Section 31-20-3(A) NMSA 1978~~] § 31-20-3(A). "[T]he difference between suspension and
15 deferral is that suspension involves a sentence imposed while deferral does not. Suspension always
16 subjects the defendant to criminal consequences, although [~~he~~] [the defendant] may be pardoned,
17 while deferral ordinarily results in the charges being dismissed." *State v. Kenneman*, [~~98 N.M. 794,~~
18 ~~797, 653 P.2d 170 (Ct.App. 1982)~~] 1982-NMCA-145, ¶ 15, 98 N.M. 794, 653 P.2d 170.

19 Misdemeanor offenses, which by law cannot invoke sentences of more than one year on a
20 particular offense are not predicate offenses under the statute.

21 [~~Amended [November 12, 1998];~~ as amended by Supreme Court Order No. S-1-RCR-2025-
22 00126.]