

1 **14-7014. Life imprisonment without possibility of parole proceeding; aggravating**
2 **circumstances; murder of a peace officer; essential elements.**

3 The state has charged the aggravating circumstance of murder of a peace officer. Before
4 you may find the aggravating circumstance of murder of a peace officer, you must find that the
5 state has proved to your satisfaction beyond a reasonable doubt that at the time
6 _____ (*name of victim*) was murdered, _____

7 (*name of victim*):

- 8 1. was a peace officer;
- 9 2. was performing the duties of a peace officer;
- 10 3. the defendant knew or should have known that _____

11 (*name of victim*) was a peace officer; [A peace officer is a public employee whose employment
12 duties include maintaining the public order;]² and

- 13 4. the defendant intended to kill or acted with a reckless disregard for human life and
14 knew that [~~his~~ ~~her~~] defendant's acts carried a grave risk of death.

15 USE NOTES

16 1. This instruction is to be used only in a life imprisonment without possibility of
17 release or parole proceeding.

18 2. If there is an issue as to whether or not the victim was a “peace officer” the
19 bracketed definition is given.

20 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,
21 effective for all cases filed or pending on or after December 31, 2021; as amended by Supreme
22 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after
23 December 31, 2025.]

1 **Committee commentary.** — “Peace officer” is defined in NMSA 1978, § 30-1-12 (1963). The
2 question of whether or not the victim is a peace officer is normally a question of law to be decided
3 by the court. *See State v. Rhea*, 1980-NMSC-033, 94 N.M. 168, [~~608 P.2d 164~~] 608 P.2d 144.
4 The committee anticipates the defense of a peace officer not being in the lawful discharge of duty
5 being raised. As there are a number of ways and situations in which this defense may be raised, it
6 was not feasible to draft an essential elements instruction on this issue. *See State v. Doe*, 1978-
7 NMSC-072, 92 N.M. 100, 583 P.2d 464 for a discussion of “lawful discharge of duties”.
8 The requirement that the defendant intended to kill or acted with reckless disregard has been added
9 to this instruction to be consistent with *Tison v. Arizona*, 481 U.S. 137 (1987).
10 [As amended by Supreme Court Order No. 21-8300-008, effective for all cases filed or pending
11 on or after December 31, 2021; 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.]