

1 **14-7023. Life imprisonment without possibility of release or parole proceeding; aggravating**
2 **circumstances; murder of a witness; essential elements.¹**

3 The state has charged the aggravating circumstance of [[murder of a witness to a crime]
4 [or] [murder of any person likely to become a witness to a crime]]² [[for the purpose of [preventing
5 the reporting of a crime]² [or] [preventing testimony in a criminal proceeding]] [or] [murder in
6 retaliation for having testified in a criminal proceeding].

7 Before you find the aggravating circumstance of [murder of a witness to a crime] [or]
8 [murder of any person likely to become a witness to a crime] [or] [murder in retaliation for having
9 testified in a criminal proceeding]², you must find that the state has proved to your satisfaction
10 beyond a reasonable doubt each of the following elements:

11 1. _____ (*name of victim*) [[was a witness] [or] [was likely to
12 become a witness] to the [crime] [crimes] of _____ (*name of separate*
13 *crime or crimes*)] [has testified in a criminal proceeding]²; and

14 2. _____ (*name of defendant*) committed the murder of
15 _____ (*name of victim*)
16 [with the motive to prevent _____ (*name of victim*) from reporting
17 _____ (*name of crime*), and _____ (*name of crime*)
18 was a separate crime from the murder of _____ (*name of victim*);]²

19 [OR]

20 [with the motive to prevent _____ (*name of victim*) from testifying
21 in a criminal proceeding regarding the crime of _____ (*name of crime*) and
22 _____ (*name of crime*) was a separate crime from the murder of
23 _____ (*name of victim*);]

1 [OR]

2 [with the motive of retaliation for _____ (*name of victim*) having
3 testified in a criminal proceeding.]

4 USE NOTES

5 1. This instruction is to be used only in a life imprisonment without possibility of
6 release or parole proceeding. This instruction may be used only if the motive for the murder was
7 to prevent the victim from reporting or testifying or for having testified in any criminal proceeding.
8 *See Clark v. Tansy*, 1994-NMSC-098, ¶ 25, 118 N.M. 486, 882 P.2d 527.

9 2. Use only applicable alternative or alternatives.

10 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,
11 effective for all cases filed or pending on or after December 31, 2021.]

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13 **Committee commentary.** — NMSA 1978, § 31-20A-5(G) (1981) provides three alternatives:
14 murder of a witness to prevent the report of a crime, murder of a witness to prevent testimony in a
15 criminal proceeding, and murder of a witness in retaliation for the witness having testified in a
16 criminal proceeding. For a discussion of “a person likely to become a witness to a [~~crime~~”],
17 “crime,” [~~see~~] see *State v. Bell*, 1967-NMSC-184, 78 N.M. 317, 431 P.2d 50.

18 In those cases where the defendant intended only to intimidate and not kill the witness [~~and not to~~
19 ~~kill him~~], it will be necessary to instruct on intimidation of a witness. *See* UJI 14-2403 NMRA. If
20 the jury was instructed on this subject previously, it is not necessary to give [~~such an~~] that
21 instruction during this proceeding.

22 The touchstone of murder of a witness is evidence of the defendant’s specific intent to prevent the
23 witness from reporting another crime (or testifying or in retaliation). *See State v. Martinez*, 2006-

1 NMSC-007, ¶¶ 12-15, 139 N.M. 152, 130 P.3d 731; *State v. Allen*, 2000-NMSC-002, 128 N.M.
2 482, 994 P.2d 728; *State v. Smith*, 1997-NMSC-017, 123 N.M. 52, 933 P.2d 851; *State v. Clark*,
3 1989-NMSC-010, 108 N.M. 288, 772 P.2d 322 (Clark I); *Clark v. Tansy*, 1994-NMSC-098, 118
4 N.M. 486, 882 P.2d 527 (Clark II); *Clark v. Tansy*, 13 F.3d 1407 (10th Cir., 1993); *State v. Clark*,
5 1999-NMSC-035, 128 N.M. 119, 990 P.2d 793 (Clark III); *State v. Henderson*, 1990-NMSC-
6 030, 109 N.M. 655, 789 P.2d 603, *overruled in part by Martinez*, 2006-NMSC-007, ¶ 30 (holding
7 that, to the extent that *Henderson* can be read as upholding the murder-of-a-witness motive based
8 on only the defendant’s lack of other plausible motives and attempts to destroy evidence or conceal
9 involvement in the crimes, *Henderson* intolerably relaxes the constitutional and statutory
10 standard).

11 For an analysis of multiple of cases concerning the evidence to support the murder-of-a-witness
12 aggravator across “a broad spectrum,” [~~see~~] see *Martinez*, 2006-NMSC-007, ¶¶ 17-31.

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