

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CRIMINAL
PROPOSAL 2026-026**

March 6, 2026

The Uniform Jury Instructions-Criminal Committee has recommended adoption of new Uniform Jury Instruction (UJI) 14-701A NMRA and amendments to UJI 14-701 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2026, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

14-701. Receipt, transportation or possession of a firearm or destructive device by ~~a felon~~ certain persons; essential elements.

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

1. The defendant knowingly [received] [transported] [or]¹ [possessed³] a [firearm³]⁴ [or]¹ [destructive device⁴]⁵;

2. ~~[The defendant, in the preceding ten years, was convicted and sentenced to one or more years imprisonment by a court of the United States or by a court of any state [and has not been pardoned of the conviction by the appropriate authority]⁶;] The defendant was a person prohibited from [receiving] [transporting] [or]¹ [possessing] a [firearm⁴] [or]¹ [destructive device⁵] because the defendant was~~

[a felon⁶]

OR¹

[a person subject to [an order of protection that prohibited the defendant from possessing a firearm]⁷ [a registered foreign order of protection]⁸]

OR¹

[a person convicted of [battery against a household member] [criminal damage to property of a household member] [stalking] [or]¹ [a crime listed in 18 U.S.C. 921]]⁹

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

USE NOTES

1. Use only the applicable alternative.

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

3. Give UJI 14-130 NMRA, the definition of possession, if applicable.

~~[3-]~~4. Give UJI 14-704 NMRA, the definition of a firearm, if applicable.

~~[4-]~~5. Give the NMSA 1978, Section 30-7-16(C)(1) definition of “destructive device,” if applicable.

~~[5-]~~6. [Use bracketed language only if there is an issue as to whether the defendant has been pardoned for the offense.] If the theory of the case is that the defendant is a felon, the definition of felon contained in UJI 14-701A NMRA must be provided immediately following this instruction. The definition is not necessary if the defendant stipulates to felon status.

7. This alternative applies if a person is subject to an order of protection pursuant to NMSA 1978, Section 40-13-5, and, in accordance with Subsection (A)(2), the court has determined that the person subject to the order presents “a credible threat to the physical safety of the household member after the restrained party has received notice and had an opportunity to be heard or by the stipulation of the parties, to . . . deliver any firearm in the restrained party’s possession, care, custody or control . . . [and] refrain from purchasing, receiving, or possessing or attempting to purchase, receive or possess any firearm while the order of protection is in place.”

8. This alternative applies if the order of protection is a foreign order of protection registered in accordance with NMSA 1978, Section 40-13A-5.

9. Select the appropriate prior conviction or convictions, which may include one or more of the following: battery on a household member pursuant to NMSA 1978, Section 30-3-15; criminal damage to property of a household member pursuant to NMSA 1978, Section 30-3-18; a first offense of stalking pursuant to NMSA 1978, Section 30-3A-3; or a crime listed in 18 U.S.C. 921. A deferred sentence is not a “conviction” for these purposes, nor is a conviction that has been pardoned. See *United State v. Reese*, 2014-NMSC-013, ¶¶ 36, 45, 326 P.3d 454 (“satisfying a deferred sentence has functioned as the judicial equivalent of a pardon,” and “upon completing a deferred sentence, all civil rights are automatically restored under New Mexico law”). See also NMSA 1978, § 30-7-16(E)(3) (exempting deferred sentences and pardoned convictions from the definition of “felon”).

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

Committee commentary. — See NMSA 1978, § 30-7-16. The name of the prior felony conviction is not necessary. If the defendant stipulates to the commission of the offense, evidence of the nature of defendant’s predicate felony convictions is irrelevant and prejudicial under [evidence] Rule 11-403 NMRA. *State v. Tave*, 1996-NMCA-056, 122 N.M. 29, 919 P.2d 1094; *accord Old Chief v. United States*, 519 U.S. 172 (1997).

If the defendant does not stipulate to the prior offense, the state may prove the prior offense by a redacted record or other evidence which satisfies the rules of evidence. *See Tave*, 1996-NMCA-056, ¶ 15.

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

The Criminal Uniform Jury Instruction Committee updated this instruction in 2025 to reflect changes to NMSA 1978, Section 30-7-16. The updated instruction includes the requirement that the defendant "knowingly" receive, transport, or possess the firearm or destructive device. While no *mens rea* appears in the text of NMSA 1978, Section 30-7-16, a silent statute does not necessarily indicate "that the legislature intended to enact a no-fault or strict liability crime." *Santillanes v. State*, 1993-NMSC-012, ¶ 11, 115 N.M. 215, 849 P.2d 358. The New Mexico Supreme Court has read *mens rea* elements into statutes in the past. *See State v. Nozie*, 2009-NMSC-018, ¶¶ 26-30, 146 N.M. 142, 207 P.3d 1119; *State v. Rael*, 2024-NMSC-010, ¶¶ 44-51, 548 P.3d 66.

The Criminal Uniform Jury Instruction Committee concluded that a knowledge requirement was appropriate here for several reasons. A knowledge element already appears in the definition of "possession" in UJI 14-130 NMRA. *See State v. Haddenham*, 1990-NMCA-048, ¶ 31, 110 N.M. 149, 793 P.2d 279 ("The knowledge requirement is added by the definition of possession."). A defendant cannot transport or receive a firearm without possessing it, so the *mens rea* that attaches to possession should also apply to transportation and receipt. *See State v. Medina*, 1975-NMCA-033, ¶ 5, 87 N.M. 394, 534 P.2d 486 ("[O]ne cannot commit the crime of distribution without also committing the crime of possession."); UJI 14-1650 NMRA (charging the crime of receiving stolen property as "acquir[ing] possession of" stolen property). The addition of "knowingly" to the elements of UJI 14-701 ensures that the same *mens rea* applies to the offense regardless of whether the defendant is charged with possession, transportation, or receipt. Additionally, the committee did not believe that the legislature intended to require a *mens rea* of knowledge for possession while treating transport and receipt as strict liability offenses.

Under the equivalent federal statute, 18 U.S.C. § 922(g), the government must also prove knowledge of the status that made it illegal for the defendant to possess a firearm (for example, that the defendant was a felon). *Rehaif v. United States*, 588 U.S. 225, 227 (2019). New Mexico courts have not addressed this issue, and it is not clear whether knowledge of status is an element of NMSA 1978, Section 30-7-16.

The distinction between "felon" as defined in NMSA 1978, Section 30-7-16(B) and "serious violent felon" as defined in Section 30-7-16(C) is a sentencing issue, not a question for the jury.

[Amended; as amended by Supreme Court Order No. S-1-RCR-2025-00126; as amended by Supreme Court Order No. _____.]

[NEW MATERIAL]

14-701A. “Felon” defined.¹

A person is a “felon” if:

1. The person has been convicted of a felony offense by a court of the United States or any state. A crime is a felony if it is punishable by a sentence of death or imprisonment for one year or more;
2. It has been less than ten years since the end of the person’s sentence, including any period of probation;
3. The person has not been pardoned for the felony conviction by the proper authority; and
4. The person did not receive a deferred sentence.

USE NOTES

1. This instruction should be given with UJI 14-701 NMRA if the theory of the case is that the defendant is a felon. It may be omitted if the defendant stipulates to felon status. [Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* NMSA 1978, § 30-7-16(E)(3). The definition of “felony” is adapted from NMSA 1978, Section 30-1-6(A) (“A crime is a felony if it is so designated by law or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized.”). NMSA 1978, Section 30-7-16(E)(3) specifies that a person is a “felon” if “less than ten years have passed since the person completed serving a sentence or period of probation for the felony conviction,” but does not mention parole terms. *Compare* NMSA 1978, § 31-18-17(D)(1) (for purposes of habitual offender enhancements, a “prior felony conviction” means “a conviction, when less than ten years have passed prior to the instant felony conviction since the person completed serving his sentence or period of probation or parole for the prior felony”).

[Adopted by Supreme Court Order No. _____.]



New Mexico
Courts

Kateri Eisenberg <supkhe@nmcourts.gov>

[rules.supremecourt-grp] Comments for Proposal 2026-026 – (Receipt, Transportation, or Possession of a Firearm or Destructive Device)

1 message

'Weiner, Travis' via Supreme Court Rules <rules.supremecourt-grp@nmcourts.gov>

Fri, Mar 20, 2026 at 9:22 AM

Reply-To: travis.weiner@lopdm.us

To: "rules.supremecourt@nmcourts.gov" <rules.supremecourt@nmcourts.gov>

Good Morning,

My comment on this proposal is as follows:

1. "3. Insert count number if more than one count is charged. Give UJI 14-130 NMRA, the definition of possession, if applicable."
 - a. My comment is that this language should instead read "if the evidence establishes that possession is at issue – to include but not be limited to non-exclusive possession – the definition of possession set forth in UJI 14-130 must be given," or something to that effect. I think language like that would more-accurately reflect the state of the law/case law, as "if applicable" does not adequately explain when, or why, this additional UJI would in fact be applicable.

Thank you,

Travis Weiner

Assistant Public Defender

New Mexico Law Offices of the Public Defender (LOPD) - Taos County

105 Sipapu St.

Taos, NM 87571

(Direct Number) 575-613-1474

(Main Office Number) 575-613-1364, ext. 11208

(Fax) 575-613-1499

Email: travis.weiner@lopdm.us



CONFIDENTIALITY NOTICE: This email may confidential and/or privileged information and thus is intended only for the individual named. If you are not the intended recipient, you should not read, disseminate, distribute, or copy this email. In such case, please notify the sender immediately if you received this email by mistake, and immediately delete this email from your system.

“To be an effective criminal defense counsel, an attorney must be prepared to be demanding, outrageous, irreverent, blasphemous, a rogue, a renegade, and a hated, isolated, and lonely person - few love a spokesman for the despised and the damned” - *Clarence Darrow*