

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CRIMINAL  
PROPOSAL 2026-029**

**March 6, 2026**

The Uniform Jury Instructions-Criminal Committee has recommended amendments to Uniform Jury Instruction 14-5191 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  
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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.

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**14-5191. Self-defense; limitations; aggressor.<sup>1</sup>**

Before you consider whether the defendant acted in self-defense, you must first decide whether the defendant was the first aggressor. The defendant was the first aggressor if the defendant

- [started the fight with \_\_\_\_\_ (*name of victim*)]<sup>2</sup>
- [or]
- [agreed to fight with \_\_\_\_\_ (*name of victim*)]
- [or]
- [intentionally provoked a fight in order to harm \_\_\_\_\_ (*name of victim*)]
- [or]
- [committed ~~[the act of]~~ \_\_\_\_\_ (~~[describe defendant’s conduct that constituted the alleged crime]~~insert the crime charged and the corresponding count), and defendant committed this act in response to \_\_\_\_\_’s (*name of victim*) act of \_\_\_\_\_ (*describe conduct of victim giving rise to an appearance of immediate danger of harm to defendant*), where \_\_\_\_\_’s (*name of victim*) act was the [lawful and]<sup>3</sup> foreseeable result of \_\_\_\_\_ (~~[describe defendant’s alleged unlawful act that resulted in victim’s conduct]~~describe defendant’s initial unlawful act or, if charged, the corresponding count number, that caused victim’s conduct)]<sup>4</sup>.

The burden is on the state to prove beyond a reasonable doubt that the defendant was the first aggressor. [If the defendant was the first aggressor, the defendant cannot claim self-defense.

If the defendant was not the first aggressor, you should proceed to decide whether the defendant acted in self-defense.]<sup>5</sup> [If you find that the defendant was the first aggressor, you must then decide whether \_\_\_\_\_ (name of victim) became the aggressor. If \_\_\_\_\_ (name of victim) became the aggressor, the defendant may claim self-defense even though the defendant was the first aggressor.]<sup>6</sup>

#### USE NOTES

1. This instruction must be given in all self-defense cases in which first aggressor is an issue.
2. Use only applicable bracketed element or elements established by the evidence.
3. If the lawfulness of the victim's conduct is at issue, e.g., may have been privileged or justified, give appropriate definition.
4. Use this bracketed alternative when the defendant provoked the victim through an unlawful act and the victim responded in a lawful manner. *See State v. Denzel B.*, 2008-NMCA-118, 114 N.M. 746, 192 P.3d 260; *see also* committee commentary, *infra*.
5. Use this bracketed alternative in cases where UJI 14-5191A NMRA will not be given.
6. Use this bracketed alternative in cases where UJI 14-5191A will be given. If UJI 14-5191A will be given, it should immediately follow this instruction. [As amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — In 2025, the Criminal Uniform Jury Committee revised the fourth bracketed alternative to clarify the sequence of events. The first crime listed in this alternative is the final act taken by the defendant, the conduct of the victim is to be listed as the second act in the instruction, and the defendant's initial act or crime is listed as the last act in the final portion of this alternative. The UJI Committee suggests that when using this alternative, think of the sequence of events in reverse chronological order and list them accordingly.

A defendant's "claim of self defense may fail if the defendant was the aggressor or instigator of the conflict." *State v. Lucero*, 1998-NMSC-044, ¶ 7, 126 N.M. 552, 972 P.2d 1143 (internal quotation marks and citation omitted). In *State v. Chavez*, 1983-NMSC-037, 99 N.M. 609, 661 P.2d 887, the defendant was a first aggressor when they entered a convenience store with a knife intending to rob the store and subsequently stabbed and killed a patron who tried to stop the robbery. *Id.* ¶ 6. The Supreme Court held that it is "well established in this jurisdiction that a defendant who provokes an encounter, as a result of which [the defendant] finds it necessary to use deadly force to defend [themselves], is guilty of an unlawful homicide and cannot avail [themselves] of the claim that [they were] acting in self-defense." *Id.* *Lucero* then clarified that if the defendant was an aggressor or instigator of the conflict, self-defense is still available if the "defendant was using force which would not ordinarily create a substantial risk of death or great bodily harm; and [the] . . . victim responded with force which would ordinarily create a substantial risk of death or great bodily harm." 1998-NMSC-044, ¶ 7 (internal quotation marks and citation omitted). Thus, the right of self-defense can be reinstated if the victim responds by escalating the conflict or pursues the conflict after the defendant attempts to disengage. *See* 2 Wayne R. LaFave, *Substantive Criminal Law* § 10.4(e) (3d ed. Oct. 2017 update); *see also Territory v. Clarke*, 1909-NMSC-005, ¶ 8, 15 N.M. 35, 99 P. 697 (upholding conviction where jury was

instructed that defendant could claim self-defense if “defendant in reality and in good faith endeavored to decline any further struggle before the fatal shot was fired”).

The state bears the burden of proving that the defendant was the first aggressor beyond a reasonable doubt. *See State v. Pruett*, 1918-NMSC-062, ¶ 9, 24 N.M. 68, 172 P. 1044.

The bracketed “lawful” term in this instruction should be used and defined if there is an issue about whether the victim’s use of force may have been a lawful response to the defendant’s conduct. *See* Use Note 3. For example, *State v. Southworth* held that the self-defense instruction was improper because it did not require the jury to determine whether the victim acted reasonably in defense of her home when she used potentially deadly force against the trespassing defendant. *See* 2002-NMCA-091, ¶¶ 18-19, 132 N.M. 615, 52 P.3d 987 (“The trial court should instruct the jury that [the defendant] had the right to stand his ground and did not need to retreat unless he was threatened with lawful force. In order to determine whether the force used by [the victim] was lawful, the jury must conclude that [the victim] acted reasonably in defending her home against the perceived threat of the commission of a felony (similar to the elements of defense of habitation set forth in UJI 14-5170).”)

Similarly, *State v. Denzel B.* held that the self-defense instruction was improper because it failed to instruct the jury that the victim’s conduct, grabbing the defendant by the shirt after the defendant pushed him, may have been protected by the parental privilege. *See* 2008-NMCA-118, ¶¶ 3-4, 17, 144 N.M. 746, 192 P.3d 260 (“We therefore hold that when a child asserts self-defense as justification for battery against [a] parent, the jury must first determine whether the parent’s use of physical discipline was reasonable under the circumstances.”). In both *Southworth* and *Denzel B.*, the Court held that the jury must be instructed that the state must prove that the defendant did not act in self-defense, taking into account whether the victim’s response to the defendant’s conduct was lawful under the particular circumstances of the case. *Accord State v. Lara*, 1989-NMCA-098, ¶¶ 7-9, 109 N.M. 294, 784 P.2d 1037, *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110 (explaining the defendant had no right to defend against store employees who had a lawful right to seize defendant for shoplifting).

[As amended by Supreme Court Order No. 19-8300-016; as amended by Supreme Court Order No. S-1-RCR-2025-00126; as amended by Supreme Court Order No. \_\_\_\_\_.]