

1 **14-140. [~~Underlying felony offense; sample instruction.~~¹**

2 ~~In New Mexico, the elements of the crime of _____ are as follows:~~
3 ~~_____ (*summarize elements of offense*)².~~

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USE NOTES

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~~1. For use in any case in which an underlying felony offense is not charged, but is an element of an offense charged. For example, see UJI 14 202, 14 308, 14 309, 14 310, 14 311, 14 312, 14 313, 14 601, 14 954, 14 971, 14 1630, 14 1632, 14 1697, 14 2204, 14 2205, 14 2206, 14 2801, 14 2820, 14 2821, 14 2822, and 14 7015.~~

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~~2. Summarize the essential elements instruction, omitting venue and date.]~~

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Elements of uncharged crimes.

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In addition to the other elements of _____ (*identify charged crime or crimes*), you must consider whether the defendant’s acts related to the commission of _____ (*identify uncharged crime*). The defendant is not charged with _____ (*identify uncharged crime*). However, the law declares that to be a crime when:

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1. [insert elements replacing references to “the defendant” with “a person” or “that person” as needed for clarity]

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USE NOTES

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This instruction must be used with every crime that incorporates another crime by reference—either by requiring the “intent to commit” another crime or by describing an act done with the purpose of committing another crime—unless the referenced crime is separately charged and instructed. This instruction may omit the element specifying jurisdiction and date of offense

1 or any other elements not relevant to consideration of the charged offense and whose inclusion
2 would cause juror confusion. The phrasing of this instruction may be adapted to account for the
3 particular context in which it is used.

4 [As amended by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed
5 on or after December 31, 2020.]

6 **Committee commentary.** -- This instruction provides a template for instructing on the
7 elements of an uncharged offense in a manner that informs the jury of the elements without giving
8 the impression that the jury must find the defendant committed the uncharged offense. It is to be
9 used any time the legal definition of an uncharged offense is necessary to determining the elements
10 of a charged offense. See, e.g., *State v. Catt*, 2019-NMCA-013, ¶¶ 13-14, 435 P.3d 1255 (“[I]t is
11 necessary that the jury is instructed on the essential elements of the alleged predicate acts upon
12 which racketeering is based. . . . Because the instructions permitted the jury to convict Defendant
13 for racketeering based on predicate offenses for which the jury had no elements, the instructions
14 were erroneous.”); *State v. Segura*, 2002-NMCA-044, ¶ 16, 132 N.M. 114, 45 P.3d 54 (reversal
15 was “required because the district court and the State did not set out the initiatory crime of attempt
16 in the jury instructions in a manner to insure all elements of the underlying crime were properly
17 placed within the context of the initiatory crime of attempt”); *State v. Armijo*, 1999-NMCA-087,
18 ¶¶ 3-4, 127 N.M. 594, 985 P.2d 764 (finding fundamental error where “[t]he district court
19 instructed the jury on the elements of aggravated assault with intent to commit felony aggravated
20 battery, but failed to instruct the jury on the essential elements of felony aggravated battery”); *State*
21 *v. Gardner*, 1991-NMCA-058, ¶ 17, 112 N.M. 280, 814 P.2d 458 (in a prosecution for conspiracy
22 to harbor a felon, “where defendant contests the charge and asserts that a felony has in fact not

1 been committed . . . the defendant is entitled to have the jury instructed on the elements of the
2 predicate felony or felonies the state alleges were committed”).
3 [Adopted by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed on or
4 after December 31, 2020.]