

1 **14-2240. Harboring a felon; essential elements.**

2 For you to find the defendant guilty of harboring a felon [as charged in Count
3 _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the
4 following elements of the crime:

5 [1. _____ (*name of defendant*) was a not a husband or wife, parent
6 or grandparent, child or grandchild, or brother or sister, by consanguinity or affinity, of
7 _____ (*name of felon*);]²

8 2. _____ (*name of felon*) committed the crime of
9 _____³;

10 3. _____ (*name of defendant*) knew that _____
11 (*name of felon*) had committed the crime of _____³;

12 4. The defendant [concealed]⁴ [gave aid to] _____ (*name of felon*),
13 with the intent that _____ (*name of felon*) [escape]⁴ [avoid arrest, trial, conviction
14 or punishment] for the crime of _____³;

15 5. This happened in New Mexico on or about the _____ day of
16 _____, _____.

17

18 USE NOTES

19 1. Insert the count number if more than one count is charged.

20 2. This bracketed element should only be given if there is a factual issue as to the
21 defendant's relationship to the felon. *See* NMSA 1978, § 30-22-4 (1963) (exempting certain
22 relatives from criminal liability for harboring or aiding a felon).

1 3. Identify the felony committed. If the jury has not already been given the instruction
2 pertaining to the felony committed, the essential elements of applicable offense must be given. To
3 instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

4 4. Use only the applicable bracketed elements established by the evidence.
5 [As amended by Supreme Court Order No. 14-8300-005, effective for all cases pending or filed
6 on or after December 31, 2014; as amended by Supreme Court Order No. 20-8300-004, effective
7 for all cases pending or filed on or after December 31, 2020.]

8 **Committee commentary.** — *See* NMSA 1978, § 30-22-4 (1963). “[Section 30-22-4]
9 requires that the state prove that a specific felony has been committed, whether or not the
10 perpetrator has been arrested, prosecuted, or tried.” *State v. Gardner*, 1991-NMCA-058, ¶ 14, 112
11 N.M. 280, 814 P.2d 458. Therefore, “in a prosecution for harboring a felon, the State may even be
12 required to conduct a trial-within-a trial in order to establish that the person harbored was a felon.”
13 *State v. Maes*, 2003-NMCA-054, ¶ 6, 133 N.M. 536, 65 P.3d 584 (citing *Gardner*, 1991-NMCA-
14 058). A conviction under this statute was upheld by the supreme court upon evidence that the
15 defendant had witnessed the crime and then allowed the perpetrator to hide in her home. *See State*
16 *v. Lucero*, 1975-NMSC-061, 88 N.M. 441, 541 P.2d 430.

17 Section 30-22-4 provides that certain relatives, either by consanguinity or affinity, may
18 harbor or aid a felon with impunity. The supreme court has held that the enumeration of certain
19 persons does not deny a person who is only “living” with another person the equal protection of
20 the law. *See Lucero*, 1975-NMSC-061, ¶ 19.

21 [As amended by Supreme Court Order No. 14-8300-005, effective for all cases pending or filed
22 on or after December 31, 2014.]