

1 **14-5173. Justifiable homicide; public officer or employee.¹**

2 An issue you must consider in this case is whether the killing of
3 _____ (*name of victim*) was justifiable homicide by a public officer or
4 employee.

5 The killing was justifiable homicide by a public officer or public employee if:

6 1. At the time of the killing, _____ (*name of defendant*) was a
7 public officer or employee; and

8 2. The killing was committed while _____ (*name of*
9 *defendant*) was performing the defendant's duties as a public officer or employee;

10 3. The killing was committed while
11 [overcoming the actual resistance of _____ (*name of*
12 *victim*) to the execution of _____³]
13 [overcoming the actual resistance of _____ (*name of*
14 *victim*) to the discharge of _____⁴]
15 [retaking [_____ (*name of victim*)] [a person], who
16 committed _____⁵ and who had [been rescued]⁶ [escaped]]
17 [arresting _____ (*name of victim*) [a person], who
18 committed _____⁵ and was fleeing from justice]
19 [attempting to prevent the escape from _____⁷ by
20 [_____ (*name of victim*)] [a person] who committed
21 _____⁵]; and

22 4. A reasonable person in the same circumstances as _____
23 (*name of defendant*) would have reasonably believed that _____ (*name of*

1 *victim*) posed a threat of death or great bodily harm to _____ (*name of*
2 *defendant*) or another person. The burden is on the state to prove beyond a reasonable doubt that
3 the killing was not justifiable. If you have a reasonable doubt as to whether the killing was
4 justifiable, you must find the defendant not guilty.

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USE NOTES

7 1. For use when the defense is based on Section 30-2-6 NMSA 1978. If this instruction
8 is given, add to the essential elements instruction for the offense charged, “The killing was not
9 justifiable homicide by a public officer or employee.”

10 2. Use only the applicable bracketed phrase.

11 3. Insert description of legal process being executed.

12 4. Insert description of legal duty.

13 5. Insert the name of the felony. The essential elements of the felony must also be
14 given. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.
15 However, in this context, substitute the name of the victim in place of the words “the defendant”
16 in UJI 14-140 NMRA.

17 6. Use only the applicable parenthetical alternative.

18 7. Describe circumstances and place of lawful custody or confinement.

19 [As amended, effective October 1, 1985; January 1, 1997; April 15, 2003; as amended by Supreme
20 Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31,
21 2019; as amended by Supreme Court Order No. 20-8300-004, effective for all cases pending or
22 filed on or after December 31, 2020.]

1 **Committee commentary.** — Although the Section 30-2-6 NMSA 1978 requires that the
2 defendant “necessarily committed” the killing, “necessarily” is defined as “probable cause” to
3 believe. The committee has used the definition of “probable cause,” “reasonable person in the
4 same circumstances as the defendant” in this instruction for purposes of clarity.