

1 **14-6019. Special verdict; tampering with evidence.¹**

2 Do you unanimously find beyond a reasonable doubt that _____ (*name*
3 *of defendant*) committed tampering with evidence related to [_____
4 (*identify [crime] underlying crime(s)*)] [or] [_____
5 (*identify underlying*
crime(s) for which defendant was on probation or parole)]²?

6 _____ (Yes or No)

7 _____
8 FOREPERSON

9 USE ~~NOTE~~ NOTES

10 1. ~~[Insert the name of the offense or offenses that fit within one category of~~
11 ~~crimes as defined in Section 30-22-5(B) NMSA 1978. A form]~~ Give these instructions after
12 UJI 14-2241 NMRA. Forms of verdict must be separately submitted to the jury for each
13 category (penalty level) of crime for which tampering with evidence is alleged to have been
14 committed [in order] for the sentencing court to determine the permissible range of
15 punishment under NMSA 1978, Section 30-22-5(B)[NMSA 1978].

16 2. Do not leave blank for the jury to complete. Insert the name of the offense (or
17 multiple offenses within a penalty category under Section 30-22-5(B)). ~~[Do not leave blank~~
18 ~~for the jury to complete.]~~ If a violation for probation or parole is at issue, the instruction must
19 identify the underlying offense(s) for which the defendant was serving probation or parole.
20 See State v. Radosevich, 2018-NMSC-028, ¶ 31, 419 P. 3d 176. Accord UJI 14-2241 NMRA.
21 Use Note 4. This may include submitting a form of verdict to the jury that states “a crime or

1 violation which cannot be determined.” See *Radosevich*, 2018-NMSC-028, ¶ 29
2 (“[I]ndeterminate tampering” must be limited to the penalties “prescribed in the statute for
3 the lowest level of tampering, which are currently the petty misdemeanor penalties of
4 Section 30-22-5(B)(3).”). [~~If a violation for probation or parole is at issue, the instruction~~
5 ~~must identify the underlying offense for which the defendant was serving probation or~~
6 ~~parole. See *State v. Jackson*, 2010-NMSC-032, 148 N.M. 452, 237 P.3d 754 (upholding~~
7 ~~tampering with evidence conviction for tampering with urine specimen required under terms~~
8 ~~of defendant’s probation):]~~
9 [Adopted by Supreme Court Order No. 13-8300-043, effective for all cases pending or filed
10 on or after December 31, 2013; as amended by Supreme Court Order No. 19-8300-016,
11 effective for all cases pending or filed on or after December 31, 2019.]

12 **Committee Commentary.** — See NMSA 1978, § 30-22-5(B) (2003). Because the
13 permissible punishment range under Section 30-22-5 depends on the highest crime for which
14 tampering with evidence is committed, the jury must clearly identify the crime for which
15 tampering with evidence is alleged to have been committed. See *Apprendi v. New Jersey*,
16 530 U.S. 466 (2000) (holding that any fact that increases the permissible penalty range for
17 a crime must be submitted to a jury and proved beyond reasonable doubt). In *State v.*
18 *Radosevich*, 2018-NMSC-028, ¶ 29, 419 P.3d 176, the Court limited the provisions of
19 Section 30-22-5(B)(4), which permit a defendant to be convicted of a crime where the
20 underlying crime is indeterminate, and held that the only constitutionally permissible

- 1 punishment where the jury does not find the level of the underlying offense is limited to the
- 2 petty misdemeanor penalties of Section 30-22-5(B)(3).
- 3 [Adopted by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed
- 4 on or after December 31, 2019.]