

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL  
PROPOSAL 2021-023**

**March 17, 2020**

The Uniform Jury Instructions – Criminal Committee has recommended amendments to UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378, 14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 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 web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

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**Your comments must be received by the Clerk on or before April 16, 2021**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s web site for public viewing.

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**14-202. Felony murder; essential elements.**

For you to find the defendant \_\_\_\_\_ (*name of defendant*) guilty of felony murder, which is first degree murder, [as charged in Count \_\_\_\_]<sup>1</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_ (*name of defendant*) [committed]<sup>2</sup> [attempted to commit] the crime of \_\_\_\_\_<sup>3</sup> (*name of felony*) [under circumstances or in a manner dangerous to human life]<sup>4</sup>;
2. \_\_\_\_\_ (*name of defendant*) caused<sup>5</sup> the death of \_\_\_\_\_ (*name of deceased*) during [the commission of]<sup>2</sup> [the attempt to commit] \_\_\_\_\_ (*name of felony*);
3. \_\_\_\_\_ (*name of defendant*) intended to kill or knew that [his] [her] acts created a strong probability of death or great bodily harm;
- [4. The defendant did not act as a result of sufficient provocation;]<sup>6</sup>
5. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**USE NOTES**

1. Insert the count number if more than one count is charged.
2. Use applicable alternative or alternatives.

3. Unless the court has instructed on the essential elements of the felony or attempted felony, these elements must be given in a separate instruction[~~, generally worded as follows: “For you to find that the defendant committed or attempted to commit \_\_\_\_\_, the state must prove to your satisfaction beyond a reasonable doubt that \_\_\_\_\_” (add elements of the felony or attempt unless they are set out in another essential elements instruction)~~]. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

4. Use bracketed phrase unless the felony is a first degree felony.

5. UJI 14-251 NMRA must also be used if causation is in issue.

6. This element is to be given only when provocation is an issue. In that circumstance UJI 14-221A NMRA, voluntary manslaughter; lesser included offense of felony murder, should be given.

[As amended, effective March 15, 1995; as amended by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — Felony murder consists of a second-degree murder committed in the course of a dangerous felony. NMSA 1978, § 30-2-1(A)(2) (1994); *see State v. Montoya*, 2013-NMSC-020, ¶ 15, 306 P.3d 426, *see also State v. Nieto*, 2000-NMSC-031, ¶¶ 13-14, 129 N.M. 688, 12 P.3d 442 [~~edit~~] (citing *State v. Campos*, 1996-NMSC-043, ¶ 17, 122 N.M. 148, 921 P.2d 1266).

*See* [§] Section 30-2-1A(2). Proof of malice aforethought or deliberate intention is not required as an element of felony murder. *State v. Welch*, 1933-NMSC-084, 37 N.M. 549, 25 P.2d 211[~~-(1933)~~]. The defense of “inability to form specific intent” does not apply to the murder element of felony murder because felony murder does not include the element of deliberate intention to take the life of another. *See* UJI 14-5110 NMRA. However, the felony which forms the basis for the felony murder may include a specific intent and the defense could apply to that element. *See* UJI 14-5111 NMRA.

Before a defendant can be convicted of felony murder, he or she must be given notice of the precise felony involved in the charge. The notice may be in the indictment or information, or otherwise furnished to the defendant in sufficient time to enable [~~him~~] the defendant to prepare [~~his~~] a defense. *State v. Stephens*, 1979-NMSC-076, ¶ 10, 93 N.M. 458, 601 P.2d 428; *State v. Hicks*, 1976-NMSC-069, ¶ 8, 89 N.M. 568, [~~571,~~] 555 P.2d 689. Rule 5-303 NMRA of the Rules of Criminal Procedure for the District Courts would seem to indicate that the proper procedure may be to amend the indictment or information. The state must prove each element of the underlying felony [or attempt], otherwise it is improper to submit felony murder. *State v. DeSantos*, 1976-NMSC-034, ¶ 8, 89 N.M. 458, [~~461,~~] 553 P.2d 1265. Felony murder may be charged as part of an open count of murder by also charging the underlying felony. *Stephens*, 1979-NMSC-076, ¶ 11. However, when a jury convicts a defendant of both felony murder and the same felony upon which the felony murder conviction is predicated, the predicate felony is vacated because it is subsumed within the felony murder conviction. *State v. Torrez*, 2013-NMSC-034, ¶ 15, 305 P.3d 944.

“In New Mexico, the underlying felony must be a first degree felony, an inherently dangerous lesser degree felony, or a lesser degree felony committed under inherently dangerous circumstances.” *State v. Smith*, 2001-NMSC-004, ¶ 12, 130 N.M. 117, 19 P.3d 254 (citing *State v. Harrison*, 1977-NMSC-038, ¶ 14, 90 N.M. 439, 564 P.2d 1321). There is a presumption of inherent dangerousness “in a felony murder case where the predicate felony is a first-degree felony, but not

where the felony is of a lesser degree.” *State v. Mora*, 1997-NMSC-060, ¶ 21, 124 N.M. 346, 950 P.2d 789, *overruled on other grounds by State v. Frazier*, 2007-NMSC-032, ¶ 1, 142 N.M. 120, 164 P.3d 1. For lesser felonies, “both the nature of the felony and the circumstances surrounding its commission may be considered to determine whether it was inherently dangerous to human life.” *Smith*, 2001-NMSC-004, ¶ 12. This is a factual matter “for the jury to decide in each case, subject to review by the appellate courts.” *Id.*

In *Harrison*, the Court made it clear that New Mexico follows the general rule that the felony must be independent of or collateral to the homicide. 1977-NMSC-038, ¶ 9.

“[T]o charge felony murder for a killing in the commission of or attempt to commit a felony, the felony must be either a first degree felony (in ‘which case the [“]res gestae[”] test must be used) or the lesser degree felony must be inherently dangerous or committed under circumstances that are inherently dangerous.” *State v. Ortega*, 1991-NMSC-084, ¶ 17, 112 N.M. 554, 817 P.2d 1196, *abrogated on other grounds by Frazier*, 2007-NMSC-032, ¶ 1. “[F]or the homicide to come within the res gestae, the felony and the homicide must be part of one continuous transaction and closely connected in point of time, place and causal connection. . . . [C]ausation must be the acts of defendant leading to the homicide without an independent force intervening.” *State v. Martinez*, 1982-NMCA-053, ¶ 17, 98 N.M. 27, 644 P.2d 541 (citing *Harrison*, 1977-NMSC-038, ¶ 11). If there is sufficient evidence to raise the issue of causation, the question must be left to the jury under this instruction and the causation instruction, UJI 14-251 NMRA.

In a felony murder prosecution where the evidence supports a conviction for either second-degree murder or voluntary manslaughter, the felony murder essential elements jury instruction must include the defining requirement that the accused did not act in the heat of passion as a result of the legally adequate provocation that would reduce murder to manslaughter. *See Montoya*, 2013-NMSC-020, ¶ 3.

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

#### **14-213. Second degree murder; lesser included offense of felony murder; or voluntary manslaughter lesser included offense; essential elements.<sup>1</sup>**

For you to find the defendant guilty of second degree murder [as charged in Count \_\_\_\_\_],<sup>2</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant killed \_\_\_\_\_ (*name of victim*);
2. The defendant knew that his acts created a strong probability of death or great bodily harm<sup>4</sup> to \_\_\_\_\_ (*name of victim*) [or any other human being];<sup>3</sup>
3. The defendant did not cause the death of \_\_\_\_\_ (*name of victim*) during [the commission of]<sup>4</sup> [the attempt to commit] \_\_\_\_\_ (*name of felony*);<sup>5</sup>
4. The defendant did not act as a result of sufficient provocation;<sup>[5]6</sup>
5. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_.<sup>[5]6</sup>

#### USE NOTES

1. This instruction is to be given only when provocation is an issue.
2. Insert the count number if more than one count is charged.

3. Use this bracketed phrase when the intent was directed to someone other than the victim. UJI 14-255 NMRA must also be given following UJI 14-220 NMRA, voluntary manslaughter; lesser included offense.

4. Use applicable alternative or alternatives. The same alternative or alternatives should be used as provided in the felony murder instruction.

5. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

~~5.~~6. The following instructions must also be given after UJI 14-220 NMRA, voluntary manslaughter, lesser included offense:

UJI 14-141 NMRA, general criminal intent;

UJI 14-131 NMRA, definition of great bodily harm;

UJI 14-222 NMRA, definition of sufficient provocation; and

UJI 14-250 NMRA, jury procedure for various degrees of homicide.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_; effective \_\_\_\_\_.]

**Committee commentary.** — See *State v. O’Kelly*, 2004-NMCA-013, 135 N.M. 40, 84 P.3d 88; Committee Commentary to UJI 14-212 NMRA.

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

### **14-221A. Voluntary manslaughter; lesser included offense of felony murder.<sup>1</sup>**

For you to find the defendant guilty of voluntary manslaughter, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant killed \_\_\_\_\_ (*name of victim*);
2. The defendant knew that his acts created a strong probability of death or great bodily harm<sup>2</sup> to \_\_\_\_\_ (*name of victim*) [or any other human being];<sup>3</sup>
3. The defendant did not cause the death of \_\_\_\_\_ (*name of victim*) during [the commission of]<sup>4</sup> [the attempt to commit] \_\_\_\_\_ (*name of felony*);<sup>5</sup>
4. The defendant acted as a result of sufficient provocation;
5. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

The difference between second degree murder and voluntary manslaughter is sufficient provocation. In second degree murder the defendant kills without having been sufficiently provoked, that is, without sufficient provocation. In the case of voluntary manslaughter the defendant kills after having been sufficiently provoked, that is, as a result of sufficient provocation. Sufficient provocation reduces second degree murder to voluntary manslaughter.<sup>[5]6</sup>

#### USE NOTES

1. This instruction should immediately follow the second degree murder instruction as lesser included offense of felony murder.

2. UJI 14-131 NMRA, the definition of “great bodily harm,” must be given following this instruction.

3. Use the bracketed phrase when the intent was directed to someone other than the victim. UJI 14-255 NMRA must also be given following this instruction.

4. Use applicable alternative or alternatives. The same alternative or alternatives should be used as provided in the previous murder instructions.

5. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

[~~5.~~6. UJI 14-222 NMRA, the definition of sufficient provocation, must be given following this instruction.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

#### **14-308. Aggravated assault; attempted battery with intent to commit a felony; essential elements.**

For you to find the defendant guilty of aggravated assault with intent to commit \_\_\_\_\_<sup>1</sup> [as charged in Count \_\_\_\_\_]<sup>2</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>3</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>4</sup>.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

3. The defendant also intended to commit the crime of \_\_\_\_\_<sup>1</sup>;

4. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

#### USE NOTES

1. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

2. Insert the count number if more than one count is charged.

3. Use ordinary language to describe the touching or application of force.

4. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132. In addition, UJI 14-132 is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.07 NMSA 1978; UJI 14-308 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** – Although the statute uses the term “unlawfully”, that term has not been added to this instruction as it is covered by the addition of “unlawfully” when lawfulness is an issue. *See* Use Note 4.

*See* [~~Section 30-3-2(C)~~] NMSA 1978, § 30-3-2(C) (1963). The felony intended must be other than a violent felony as defined in [~~Section 30-3-3~~] NMSA 1978, § 30-3-3 (1977). *See* UJIs 14-311, 14-312 and 14-313 NMRA and commentary if the felony intended is a violent felony.

At common law, an assault with intent to commit a felony was considered merely an attempt to commit the felony. *See* Perkins, Criminal Law 133 (2d ed. 1969). Aggravated battery

and aggravated assault are lesser included offenses of the crime of attempted murder. *See State v. Meadors*, 1995-NMSC-073, 121 N.M. 38, 908 P.2d 731 (aggravated battery is a lesser included offense of attempted murder); and *State v. DeMary*, 1982-NMSC-144, ¶¶ 9-13, 99 N.M. 177, 655 P.2d 1021 (aggravated assault is a lesser included offense of aggravated battery).

Because it requires an act coupled with an intent to commit a further act, this is a specific intent crime.

**14-309. Aggravated assault; threat or menacing conduct with intent to commit a felony; essential elements.**

For you to find the defendant guilty of aggravated assault with intent to commit \_\_\_\_\_<sup>1</sup> [as charged in Count \_\_\_\_\_]<sup>2</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);
2. The defendant's conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_'s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>3</sup>;
3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;
4. The defendant intended to commit the crime of \_\_\_\_\_<sup>1</sup>;
5. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

USE NOTES

1. Insert the name of the felony. If there is more than one felony, insert the names of the felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

2. Insert the count number if more than one count is charged.

3. If the "unlawfulness" of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of "lawfulness" involves self-defense or defense of another, see UJI§ 14-5181 to [UJI] 14-5184 NMRA.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.08 NMSA 1978; UJI 14-309 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** – *See* committee commentary for UJI 14-308 NMRA.

**14-310. Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a felony; essential elements.<sup>1</sup>**

For you to find the defendant guilty of aggravated assault with intent to commit \_\_\_\_\_<sup>2</sup> [as charged in Count \_\_\_\_\_]<sup>3</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>4</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>5</sup>.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant intentionally \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);

2. The defendant's conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_'s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>5</sup>;

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;

AND

4. The defendant also intended to commit the crime of \_\_\_\_\_<sup>2</sup>;

5. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

#### USE NOTES

1. This instruction combines the essential elements in UJI 14-308 NMRA and UJI 14-309 NMRA.

2. Insert the name of the felony. If there is more than one felony, insert the names of the felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

3. Insert the count number if more than one count is charged.

4. Use ordinary language to describe the touching or application of force.

5. If the "unlawfulness" of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of "lawfulness" involves self defense or defense of another, *see* UJI 14-5181 NMRA to UJI 14-5184 NMRA.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.09 NMSA 1978; UJI 14-310 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** – *See* committee commentary for UJI 14-308 NMRA.

#### **14-311. Aggravated assault; attempted battery with intent to commit a violent felony; essential elements.**

For you to find the defendant guilty of aggravated assault with intent to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_<sup>2</sup>] [as charged in Count \_\_\_\_\_]<sup>3</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>4</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>5</sup>.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

3. The defendant also intended to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_<sup>2</sup>] on \_\_\_\_\_ (name of victim);

4. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

#### USE NOTES

1. Use only the applicable bracketed alternatives.

2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual penetration, robbery or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual penetration in the first, second or third degree, *see* UJIs 14-941 to 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

3. Insert the count number if more than one count is charged.

4. Use ordinary language to describe the touching or application of force.

5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self defense or defense of another, *see* UJIs 14-5181 to [UJI] 14-5184 NMRA.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.10 NMSA 1978; UJI 14-311 SCRA; as amended, effective September 1, 1988; January 15, 1998; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary** – *See* [~~Section 30-3-3~~] NMSA 1978, § 30-3-3 (1977). *See also* committee commentaries to UJIs 14-301 [~~NMRA~~] and [UJI] 14-304 NMRA.

[~~Instructions~~] UJIs 14-311, 14-312, and 14-313 NMRA are used only where the assault is accompanied by an intent to commit mayhem, rape, robbery or burglary. The statute provides for an assault with intent to kill or with intent to commit any murder. The courts have had problems in developing a distinction between the two types of intent. In *State v. Melendrez*, 1945-NMSC-020, 49 N.M. 181, 159 P.2d 768 [(1945)], the Court determined that an assault with intent to kill was different from an assault with intent to murder. The basis for the distinction was that an assault with intent to kill may be committed without malice, whereas an assault with intent to murder required malice aforethought. This distinction no longer is viable under the current murder statute, [~~Section 30-2-1~~] NMSA 1978, § 30-2-1 (1994), which no longer incorporates the malice concept. Assault with intent to commit murder therefore no longer is different from assault with intent to kill.

In *State v. Rogers*, 1926-NMSC-028, 31 N.M. 485, 247 P. 828 [(1926)], the court held that a depraved-mind murder, which does not require intent to kill, could not form the basis for an assault with intent to murder. *See also State v. Cowden*, 1996-NMCA-051, 121 N.M. 703, 917 P.2d 972 [(~~Ct.App. 1996~~)] (conviction of both assault with intent to commit a violent felony, murder, [~~Section 30-3-3~~] NMSA 1978, § 30-3-3 (1977), and for aggravated battery with a deadly



weapon, [~~Section 30-3-5(C)~~] NMSA 1978, § 30-3-5(C) (1969)); [~~and~~] *State v. Fuentes*, 1994-NMCA-158, 119 N.M. 104, [~~104,~~] 888 P.2d 986[, 986 (Ct.App. 1994)].

**14-312. Aggravated assault; threat or menacing conduct with intent to commit a violent felony; essential elements.**

For you to find the defendant guilty of aggravated assault with intent to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_<sup>2</sup>] [as charged in Count \_\_\_\_\_]<sup>3</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);
2. The defendant's conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_'s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>4</sup>;
3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;
4. The defendant intended to [kill] \_\_\_\_\_ (*name of victim*) ] [or]<sup>1</sup> [commit \_\_\_\_\_<sup>2</sup> on \_\_\_\_\_ (*name of victim*)];
5. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

USE NOTES

1. Use only the applicable bracketed alternatives.
2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault with intent to kill or to commit a violent felony, i.e., mayhem, criminal sexual penetration, robbery or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual penetration in the first, second or third degree, *see* UJI§ 14-941 to 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

3. Insert the count number if more than one count is charged.

4. If the "unlawfulness" of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of "lawfulness" involves self defense or defense of another, *see* UJI§ 14-5181 to [UJI] 14-5184 NMRA.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.06 NMSA 1978; UJI 14-307 SCRA; as amended, effective September 1, 1988; January 15, 1998; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary** – *See* committee commentary to UJI 14-308 NMRA and UJI 14-311 NMRA.

**14-313. Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements.<sup>1</sup>**

For you to find the defendant guilty of aggravated assault with intent to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] [as charged in Count \_\_\_\_\_]<sup>4</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>5</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>6</sup>.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);

2. The defendant's conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_'s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>6</sup>;

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;

AND

4. The defendant also intended to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] on \_\_\_\_\_ (*name of victim*);

5. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

#### USE NOTES

1. This instruction combines the essential elements set forth in UJI 14-311 NMRA and UJI 14-312 NMRA, for use when the two forms of the offense are charged in the alternative.

2. Use only the applicable bracketed alternatives.

3. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault with intent to kill or to commit a violent felony; *i.e.*, mayhem, criminal sexual penetration, robbery or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual penetration in the first, second or third degree, *see* UJIs 14-941 to [UJI] 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

4. Insert the count number if more than one count is charged.

5. Use ordinary language to describe the touching or application of force.

6. If the "unlawfulness" of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of "lawfulness" involves self defense or defense of another, *see* UJIs 14-5181 to [UJI] 14-5184 NMRA.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.06 NMSA 1978; UJI 14-307 SCRA; as amended, effective September 1, 1988; January 15, 1998; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary** – This instruction combines UJI 14-311 NMRA and UJI 14-312 NMRA. *See* committee commentary for UJI 14-311 NMRA.

**14-360. Aggravated assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a felony; essential elements**

For you to find the defendant guilty of aggravated assault on a \_\_\_\_\_<sup>1</sup> with intent to commit \_\_\_\_\_<sup>2</sup> [as charged in Count \_\_\_\_]<sup>3</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>4</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>5</sup>.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);

2. The defendant's conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_'s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>5</sup>;

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;

AND

4. The defendant also intended to commit the crime of \_\_\_\_\_<sup>2</sup>;

5. At the time, \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup> and was performing the duties of a \_\_\_\_\_<sup>1,6</sup>;

6. The defendant knew \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup>;

7. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

**USE NOTES**

1. Insert type of specially protected worker - school employee or health care worker.

2. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. [*See UJI 14-140 NMRA.*] To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

3. Insert the count number if more than one count is charged.

4. Use ordinary language to describe the touching or application of force.

5. If the "unlawfulness" of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of "lawfulness" involves self-defense or defense of another, *see* UJI§ 14-5181 [~~NMRA~~] to [UJI] 14-5184 NMRA.

6. "School employee" is defined in NMSA 1978, Section 30-3-9(A). "Health care worker" is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA must be given. If there is an issue as to whether the victim was within the lawful discharge of the worker's duties, an instruction may need to be drafted.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all

cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not specifically require that the defendant be aware that the victim is a specially protected worker, the New Mexico Court of Appeals held that such knowledge is required for health care workers (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially identical to that for health care workers, the Committee believes it is a natural extension to include the knowledge requirement for all such workers.

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

**14-361. Assault on a [school employee] [health care worker]; attempted battery with intent to commit a violent felony; essential elements.**

For you to find the defendant guilty of aggravated assault on a \_\_\_\_\_<sup>1</sup> with intent to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] [as charged in Count \_\_\_\_]<sup>4</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>5</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>6</sup>.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

3. At the time \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup> and was performing the duties of a \_\_\_\_\_<sup>1,7</sup>;

4. The defendant knew \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup>;

5. The defendant also intended to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] on \_\_\_\_\_ (*name of victim*);

6. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

USE NOTES

1. Insert type of specially protected worker - school employee or health care worker.  
2. Use only the applicable bracketed alternatives.  
3. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual penetration, robbery or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual penetration in the first, second or third degree, *see* UJI 14-941 to 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

4. Insert the count number if more than one count is charged.

5. Use ordinary language to describe the touching or application of force.

6. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJIs 14-5181 [~~NMRA~~] to [UJ] 14-5184 NMRA.

7. “School employee” is defined in NMSA 1978, Section 30-3-9(A). “Health care worker” is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA must be given. If there is an issue as to whether the victim was within the lawful discharge of the worker’s duties, an instruction may need to be drafted.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not specifically require that the defendant be aware that the victim is a specially protected worker, the New Mexico Court of Appeals held that such knowledge is required for health care workers (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially identical to that for health care workers, the Committee believes it is a natural extension to include the knowledge requirement for all such workers.

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

**14-362. Assault on a [school employee] [health care worker]; threat or menacing conduct with intent to commit a violent felony; essential elements.**

For you to find the defendant guilty of aggravated assault on a \_\_\_\_\_<sup>1</sup> with intent to kill [as charged in Count \_\_\_\_\_],<sup>2</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);
2. At the time, \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup> and was performing duties of a \_\_\_\_\_<sup>1, 4</sup>;
3. The defendant knew \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_;<sup>1</sup>
4. The defendant’s conduct caused \_\_\_\_\_ (*name of victim*) to believe that the defendant was about to intrude on \_\_\_\_\_’s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>3</sup>;
5. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;
6. The defendant intended to kill \_\_\_\_\_ (*name of victim*);
7. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

USE NOTES

1. Insert type of specially protected worker - school employee, sports official, or health care worker.
2. Insert the count number if more than one count is charged.
3. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

~~[3-]~~4. “School employee” is defined in NMSA 1978, Section 30-3-9(A). “Health care worker” is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA must be given. If there is an issue as to whether the victim was within the lawful discharge of the worker’s duties, an instruction may need to be drafted.

~~[4-]~~5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJI§ 14-5181 [~~NMRA~~] to ~~[UJI]~~ 14-5184 NMRA.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not specifically require that the defendant be aware that the victim is a specially protected worker, the New Mexico Court of Appeals held that such knowledge is required for health care workers (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially identical to that for health care workers, the Committee believes it is a natural extension to include the knowledge requirement for all such workers.

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

**14-363. Assault on a [school employee] [health care worker]; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements.**

For you to find the defendant guilty of aggravated assault on a \_\_\_\_\_<sup>1</sup> with intent to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_]<sup>3</sup> [as charged in Count \_\_\_\_]<sup>4</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>5</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner<sup>6</sup>.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);
2. The defendant’s conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_’s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>6</sup>;

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;

AND

4. The defendant also intended to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] on \_\_\_\_\_ (*name of victim*);

5. At the time, \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup> and was performing the duties of a \_\_\_\_\_<sup>1,7</sup>;

6. The defendant knew \_\_\_\_\_ (*name of victim*) was a \_\_\_\_\_<sup>1</sup>;

7. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

#### USE NOTES

1. Insert type of specially protected worker - school employee or health care worker.  
2. Use only the applicable bracketed alternatives.  
3. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual penetration, robbery or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual penetration in the first, second or third degree, *see* UJI§ 14-941 to 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

4. Insert the count number if more than one count is charged.

5. Use ordinary language to describe the touching or application of force.

6. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJI§ 14-5181 [NMRA] to [UJI] 14-5184 NMRA.

7. “School employee” is defined in NMSA 1978, Section 30-3-9(A). “Health care worker” is defined in NMSA 1978, Section 30-3-9.2(A). If there is an issue as to whether or not the victim was a specially protected worker, a definition instruction similar to UJI 14-2216 NMRA must be given. If there is an issue as to whether the victim was within the lawful discharge of the worker’s duties, an instruction may need to be drafted.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — Though NMSA 1978, Sections 30-3-9, 30-3-9.1 and 30-3-9.2 do not specifically require that the defendant be aware that the victim is a specially protected worker, the New Mexico Court of Appeals held that such knowledge is required for health care workers (Section 30-3-9.2) in *State v. Valino*, 2012-NMCA-105, 287 P.3d 372. This was an extension of the same requirement for peace officers as required by *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119. As the statutes for the other specially protected workers are essentially identical to that for health care workers, the Committee believes it is a natural extension to include the knowledge requirement for all such workers.

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

**14-378. Aggravated assault; attempted battery with intent to commit a felony; “household member”; essential elements.**

For you to find the defendant guilty of aggravated assault with intent to commit \_\_\_\_\_<sup>1</sup> [as charged in Count \_\_\_\_ ]<sup>2</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>3</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent, or angry manner.<sup>4</sup>

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

3. The defendant also intended to commit the crime of \_\_\_\_\_<sup>1</sup>;

4. \_\_\_\_\_ (*name of victim*) was a household member of the defendant<sup>5</sup>;

5. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

USE NOTES

1. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

2. Insert the count number if more than one count is charged.

3. Use ordinary language to describe the touching or application of force.

4. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self defense or defense of another, *see* UJI§ 14-5181 [~~NMRA~~] to [UJI] 14-5184 NMRA.

5. Definition of a household member should be given, *see* UJI 14-370 NMRA.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**14-379. Aggravated assault; threat or menacing conduct with intent to commit a felony; “household member”; essential elements.**

For you to find the defendant guilty of aggravated assault with intent to commit \_\_\_\_\_<sup>1</sup> [as charged in Count \_\_\_\_\_],<sup>2</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat, or menacing conduct*)<sup>3</sup>;

2. The defendant’s conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_’s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent, or angry manner<sup>4</sup>;



3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;
4. The defendant intended to commit the crime of \_\_\_\_\_<sup>1</sup>;
5. \_\_\_\_\_ (*name of victim*) was a household member of the defendant<sup>5</sup>;
6. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

#### USE NOTES

1. Insert the name of the felony or felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

2. Insert the count number if more than one count is charged.

3. Use ordinary language to describe the touching or application of force.

4. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, *see* UJI§ 14-5181 [NMRA] to [UJI] 14-5184 NMRA.

5. Definition of a household member should be given, *see* UJI 14-370 NMRA.

[Adopted by Supreme Court Order No. 14-8300-005, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

#### **14-380. Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a felony; “household member”, essential elements.<sup>1</sup>**

For you to find the defendant guilty of aggravated assault with intent to commit \_\_\_\_\_<sup>2</sup> [as charged in Count \_\_\_ ]<sup>3</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>4</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent, or angry manner.<sup>5</sup>

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant intentionally \_\_\_\_\_ (*describe unlawful act, threat or menacing conduct*);

2. The defendant’s conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_’s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent or angry manner<sup>5</sup>;

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;

AND

4. The defendant also intended to commit the crime of \_\_\_\_\_<sup>2</sup>;

5. \_\_\_\_\_ (*name of victim*) was a household member of the defendant<sup>6</sup>;

6. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

#### USE NOTES

1. This instruction combines the essential elements in UJI 14-378 NMRA and UJI 14-379 NMRA.

2. Insert the name of the felony. If there is more than one felony, insert the names of the felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

3. Insert the count number if more than one count is charged.

4. Use ordinary language to describe the touching or application of force.

5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self defense or defense of another, *see* UJI§ 14-5181 [NMRA] to [UJI] 14-5184 NMRA.

6. Definition of a household member should be given, *see* UJI 14-370 NMRA. [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

#### **14-381. Assault; attempted battery with intent to commit a violent felony; “household member”; essential elements.**

For you to find the defendant guilty of assault with intent to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_]<sup>2</sup> [as charged in Count \_\_\_\_]<sup>3</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>4</sup>;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner.<sup>5</sup>

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

3. The defendant also intended to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_]<sup>2</sup> on \_\_\_\_\_ (*name of victim*);

4. \_\_\_\_\_ (*name of victim*) was a household member of the defendant<sup>6</sup>;

5. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

#### USE NOTES

1. Use only the applicable bracketed alternatives.

2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault against a household member with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual penetration, robbery, or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA.

For criminal sexual penetration in the first, second, or third degree, *see* UJI§ 14-941 [NMRA] to [UJI] 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

3. Insert the count number if more than one count is charged.  
4. Use ordinary language to describe the touching or application of force.  
5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self defense or defense of another, *see* UJI§ 14-5181 [NMRA] to [UJI] 14-5184 NMRA.

6. Definition of a household member should be given, *see* UJI 14-370 NMRA. [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**14-382. Assault; threat or menacing conduct with intent to commit a violent felony; “household member”; essential elements.**

For you to find the defendant guilty of assault with intent to [kill] [or]<sup>1</sup> [commit \_\_\_\_\_ ]<sup>2</sup> [as charged in Count \_\_\_\_\_ ],<sup>3</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat, or menacing conduct*);
2. The defendant’s conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_’s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent, or angry manner<sup>4</sup>;
3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;
4. The defendant intended to [kill] \_\_\_\_\_ (*name of victim*) [or]<sup>1</sup> [commit \_\_\_\_\_ ]<sup>2</sup> on \_\_\_\_\_ (*name of victim*);
5. \_\_\_\_\_ (*name of victim*) was a household member of the defendant<sup>5</sup>;
6. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

USE NOTES

1. Use only the applicable bracketed alternatives.
2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault against a household member with intent to kill or to commit a violent felony, i.e., mayhem, criminal sexual penetration, robbery, or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual penetration in the first, second, or third degree, *see* UJI§ 14-941 [NMRA] to [UJI] 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

3. Insert the count number if more than one count is charged.

4. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self defense or defense of another, *see* UJI§ 14-5181 [~~NMRA~~] to [~~UJI~~] 14-5184 NMRA.

5. Definition of a household member should be given, *see* UJI 14-370 NMRA. [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**14-383. Assault; attempted battery; threat or menacing conduct with intent to commit a violent felony; “household member”; essential elements.<sup>1</sup>**

For you to find the defendant guilty of assault with intent to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_]<sup>3</sup> [as charged in Count \_\_\_\_]<sup>4</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat, or menacing conduct*); \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_<sup>5</sup>;

3. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant \_\_\_\_\_ (*describe unlawful act, threat, or menacing conduct*);  
2. The defendant’s conduct caused \_\_\_\_\_ (*name of victim*) to believe the defendant was about to intrude on \_\_\_\_\_’s (*name of victim*) bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude, insolent, or angry manner<sup>6</sup>;

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of victim*) would have had the same belief;

AND

4. The defendant also intended to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_]<sup>3</sup> on \_\_\_\_\_ (*name of victim*);

5. \_\_\_\_\_ (*name of victim*) was a household member of the defendant<sup>7</sup>;

6. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**USE NOTES**

1. This instruction combines the essential elements set forth in UJI 14-381 NMRA and UJI 14-382 NMRA, for use when the two forms of the offense are charged in the alternative.

2. Use only the applicable bracketed alternatives.

3. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault against a household member with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual penetration, robbery, or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, *see* UJI 14-314 NMRA. For criminal sexual penetration in the first, second, or third degree, *see* UJI§ 14-941 [~~NMRA~~] to [~~UJI~~] 14-961 NMRA. For robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA.

4. Insert the count number if more than one count is charged.

5. Use ordinary language to describe the touching or application of force.

6. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self defense or defense of another, *see* UJIs 14-5181 [~~NMRA~~] to [UJ] 14-5184 NMRA.

7. Definition of a household member should be given, *see* UJI 14-370 NMRA. [Adopted by Supreme Court Order No. 14-8300-005, effective for all cases pending or filed on or after December 31, 2014; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**14-403. Kidnapping; first degree; essential elements.**

For you to find the defendant guilty of [first degree]<sup>1</sup> kidnapping [as charged in Count \_\_\_\_\_]<sup>2</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [took]<sup>3</sup> [or] [restrained] [or] [confined] [or] [transported] \_\_\_\_\_ (*name of victim*) by [force]<sup>3</sup> [or] [intimidation] [or] [deception] [by \_\_\_\_\_ (*describe conduct*)]<sup>4</sup>;

[2. The defendant’s act was unlawful;]<sup>5</sup>

3. The defendant intended:

[to hold \_\_\_\_\_ (*name of victim*) for ransom<sup>6</sup>]<sup>3</sup>

[OR]

[to hold \_\_\_\_\_ (*name of victim*) as a [hostage]<sup>3</sup> [or] [shield] against \_\_\_\_\_’s (*name of victim*) will

[OR]

[to inflict [death]<sup>3</sup> [or] [physical injury] [or] [a sexual offense] on \_\_\_\_\_ (*name of victim*)]

[OR]

[to [make \_\_\_\_\_ (*name of victim*) \_\_\_\_\_ (*name specific act*)]<sup>3</sup> [or] [keep \_\_\_\_\_ (*name of victim*) from \_\_\_\_\_ (*name specific act*)]<sup>3</sup> against \_\_\_\_\_’s (*name of victim*) will, for the purpose of \_\_\_\_\_ (*identify benefit to defendant*)]<sup>7</sup>;

4. The [taking]<sup>3</sup> [or] [restraint] [or] [confinement] [or] [transportation] of \_\_\_\_\_ (*name of victim*) was not slight, inconsequential, or merely incidental to the commission of another crime (*or name of offense*);]<sup>8</sup>

5. [The defendant did not voluntarily free \_\_\_\_\_ (*name of victim*) in a safe place;]<sup>3</sup>

[OR]

[The defendant inflicted physical injury upon \_\_\_\_\_ (*name of victim*) during the course of the kidnapping;]

[OR]

[The defendant inflicted a sexual offense upon \_\_\_\_\_ (*name of victim*) during the course of the kidnapping;]

6. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

1. Only identify the degree if second-degree kidnapping is being instructed as a lesser-included offense. UJI 14-6002 NMRA, “Necessarily included offense,” along with UJI 14-403A NMRA, “Kidnapping second degree,” should be given.

2. Insert the count number if more than one count is charged.

3. Use applicable alternative or alternatives.

4. If a secondary offense is also charged that was committed during the course of the kidnapping, use ordinary language to describe the taking, restraint, or confinement by force, intimidation, or deception. A description of precisely what conduct constituted this actus reus assists reviewing courts to distinguish crimes committed near in time. *See State v. Montoya*, 2011-NMCA-074, 150 N.M. 415, 259 P.3d 820 (finding double jeopardy violation because “[w]e are unable to determine from the record whether the jury found that the kidnaping [sic] was accomplished by the truck’s confinement of Victim’s vehicle or by Defendant’s restraint of Victim inside the vehicle. The jury instruction supported either theory of kidnaping [sic].”); *State v. Trujillo*, 2012-NMCA-112, 289 P.3d 238[~~, cert. quashed 2015-NM-CERT-003~~] (“We conclude ... that the Legislature did not intend to punish as kidnapping restraints that are merely incidental to another crime.”).

5. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is instructed, UJI 14-132 NMRA, “Unlawfulness as an element,” must be given after this instruction.

6. The definition of “ransom,” UJI 14-406 NMRA, should be given after this instruction.

7. Holding to service requires that the kidnapping’s purpose be to make the victim perform some act or forgo performing an act, to the effect of conferring an independent assistance or benefit to the perpetrator of the crime, or another. *See* Committee commentary.

8. Use the bracketed element if the evidence raises a genuine issue of incidental conduct, whether or not a secondary offense is simultaneously charged. *See Trujillo*, 2012-NMCA-112; *see also* Committee commentary. If a particular crime is identifiable, the name of the offense may be used, and unless the court has instructed on the essential elements of that offense, these elements must be given in a separate instruction immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

[As amended, effective September 1, 1994; August 1, 1997; as amended by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — *See* NMSA 1978, § 30-4-1. This instruction is for the crime of first-degree felony kidnapping. Previously, first and second-degree kidnapping relied on a single elements instruction, and the differentiating elements were instructed only through special interrogatories, leaving the court to determine the appropriate offense degree. Because this approach may lead to confusion in differentiating first and second-degree kidnapping, separate instructions were created for first and second-degree kidnapping that incorporate the distinguishing findings as essential elements. *See, e.g., State v. Dominguez*, 2014-NMCA-064, ¶¶ 13-19, 327 P.3d 1092 (noting that only second-degree kidnapping could be imposed if the interrogatories were not given, but relying on the jury’s guilty verdict for separately charged sex offense to satisfy the finding that a sex offense was inflicted during the kidnapping) (citing *State v. Gallegos*, 2009-NMCA-017, ¶ 13, 146 N.M. 88, 206 P.3d 993).

In clarifying New Mexico’s rejection of “incidental restraint” as a basis for kidnapping, the Court of Appeals evaluated and functionally applied various tests from other jurisdictions. *See State v. Trujillo*, 2012-NMCA-112, ¶¶ 31-39, 289 P.3d 238, *cert. quashed* 2015-NMCERT-003. Without adopting one specific test, the Court found the various tests informative and applied them to the facts in turn in order to evaluate whether the restraint in *Trujillo* was incidental to the crime of battery. *Id.* The Court applied a totality of the circumstances test including the following factors:

1. whether the conduct is necessary to the commission of another crime;
2. whether the conduct carried some significance independent of another crime in that it could make that crime substantially easier to commit or substantially lessen the risk of detection;
3. whether the conduct substantially increased the risk of harm to the victim, or was particularly terrifying or dangerous;
4. whether the defendant took, restrained, confined, or transported the victim for a longer period of time or to a greater degree than that which is necessary to commit another crime;
5. whether the defendant acted with a purpose or intent beyond the commission of another crime.

*Id.*; *see also State v. Tapia*, 2015-NMCA-048, ¶¶ 28-36, 347 P.3d 738 (applying *Trujillo* factors to reverse kidnapping convictions).

Element 5 provides the findings differentiating second and first-degree kidnapping. If more than one alternative for Element 5 is given, the jury need only find Element 5 satisfied and unanimity as to theory is not required to uphold the verdict. *Cf. State v. Salazar*, 1997-NMSC-044, ¶¶ 32-42, 123 N.M. 778, 945 P.2d 996 (affirming general verdict for first-degree murder without requiring unanimity as to theory of deliberate intent or depraved mind); Rule 5-611 NMRA.

In addition to the lesser-included offense of second-degree kidnapping, false imprisonment may be a lesser-included offense of kidnapping. *See State v. Fish*, 1985-NMCA-036, ¶ 17, 102 N.M. 775, 701 P.2d 374 (holding that a failure to instruct on false imprisonment as a necessarily included lesser offense of kidnapping required reversal, where there was some evidence that the defendant lacked the intent necessary for kidnapping); *State v. McGuire*, 1990-NMSC-067, ¶ 29, 110 N.M. 304, 795 P.2d 996 (noting with approval that trial court gave “an instruction on false imprisonment as a lesser included offense of kidnapping”).

While false imprisonment requires subjective knowledge that the restraint is unauthorized, kidnapping requires a specific intent to do a further act, thereby distinguishing the crime of kidnapping from the crime of false imprisonment. *See* NMSA 1978, § 30-4-4; *State v. Sotelo*, 2013-NMCA-028, ¶ 12, 296 P.3d 1232; *State v. Clark*, 1969-NMSC-078, 80 N.M. 340, 455 P.2d 844. Subsequent Court of Appeals cases have reaffirmed the “intent” distinction making false imprisonment a lesser included offense of kidnapping. *See, e.g., Fish*, 1985-NMCA-036 (holding that a failure to instruct on false imprisonment as a necessarily included lesser offense of kidnapping required reversal, where there was some evidence that the defendant lacked the intent necessary for kidnapping); *State v. Armijo*, 1977-NMCA-070, 90 N.M. 614, 566 P.2d 1152 (both offenses require confining or restraining, and the difference is whether the defendant had the specific intent to hold for service against the victim’s will).

Previous versions of the instruction did not include the optional “unlawfulness” element, despite Section 30-4-1 requiring that “taking, restraining, transporting or confining” be done unlawfully. Recognizing that parents have a natural and legal right to the custody of their children, in the context of custodial interference, *see* NMSA 1978, Section 30-4-4, *State v. Sanders*, 1981-NMCA-053, 96 N.M. 138, 628 P.2d 1134, held the mere fact that a parent had taken his infant

daughter to Texas with intent to keeping her there for a protracted period was insufficient to show that he knew that he had no legal right to do so. If unlawfulness is at issue for kidnapping purposes, Use Note 4 requires its instruction and definition.

In *State v. Vernon*, 1993-NMSC-070, 116 N.M. 737, 867 P.2d 407, the Supreme Court held “that the ‘hold to service’ element of kidnapping requires that the victim be held against his or her will to perform some act, or to forego performance of some act, for the benefit of someone or something.” *Vernon* further clarified that when a victim is moved to facilitate a murder, “no ‘service’ is performed by the victim . . . because the victim does not confer any independent assistance or benefit to the perpetrator of the crime.” *Id.* That conduct is nevertheless covered by the alternative intent theory of kidnapping “with intent . . . to inflict death.” See § 30-4-1(A)(4); *State v. Baca*, 1995-NMSC-045, 120 N.M. 383, 902 P.2d 65 (recognizing that the 1995 amendment to Section 30-4-1 added alternative of specific intent “to inflict death.”). [As amended by Supreme Court Order No. 15-8300-004, effective for all cases filed or pending on or after December 31, 2015.]

#### 14-403A. Kidnapping; second degree; essential elements.

For you to find the defendant guilty of [second degree]<sup>1</sup> kidnapping [as charged in Count \_\_\_\_\_],<sup>2</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [took]<sup>3</sup> [or] [restrained] [or] [confined] [or] [transported] \_\_\_\_\_ (*name of victim*) by [force]<sup>3</sup> [or] [intimidation] [or] [deception] [by \_\_\_\_\_ (*describe conduct*)];<sup>4</sup>

[2. The defendant’s act was unlawful];<sup>5</sup>

3. The defendant intended:

[to hold \_\_\_\_\_ (*name of victim*) for ransom<sup>6</sup>]<sup>3</sup>

[OR]

[to hold \_\_\_\_\_ (*name of victim*) as a [hostage]<sup>3</sup> [or] [shield] against \_\_\_\_\_’s (*name of victim*) will]

[OR]

[to inflict [death]<sup>3</sup> [or] [physical injury] [or] [a sexual offense] on \_\_\_\_\_ (*name of victim*)]

[OR]

[to [make \_\_\_\_\_ (*name of victim*) \_\_\_\_\_ (*name specific act*)]<sup>3</sup> [or] [keep \_\_\_\_\_ (*name of victim*) from \_\_\_\_\_ (*name specific act*)] against \_\_\_\_\_’s (*name of victim*) will for the purpose of \_\_\_\_\_ (*identify benefit to defendant*)];<sup>7</sup>

[4. The [taking]<sup>3</sup> [or] [restraint] [or] [confinement] [or] [transportation] of \_\_\_\_\_ (*name of victim*) was not slight, inconsequential, or merely incidental to the commission of another crime (*or name of offense*)];<sup>8</sup>

5. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

#### USE NOTES

1. Only identify the degree if second-degree kidnapping is being instructed as a lesser-included offense of first-degree kidnapping. UJI 14-6002 NMRA, “Necessarily included offense,” along with UJI 14-403 NMRA, “Kidnapping, first degree,” should be given.



2. Insert the count number if more than one count is charged.

3. Use applicable alternative or alternatives.

4. If a secondary offense is also charged that was committed during the course of the kidnapping, use ordinary language to describe the taking, restraint, or confinement by force, intimidation, or deception. A description of precisely what conduct constituted this actus reus assists reviewing courts to distinguish crimes committed near in time. *See State v. Montoya*, 2011-NMCA-074, 150 N.M. 415, 259 P.3d 820 (finding double jeopardy violation because “[w]e are unable to determine from the record whether the jury found that the kidnapping [sic] was accomplished by the truck’s confinement of Victim’s vehicle or by Defendant’s restraint of Victim inside the vehicle. The jury instruction supported either theory of kidnapping [sic].”); *State v. Trujillo*, 2012-NMCA-112, 289 P.3d 238[~~cert. quashed 2015-NMCERT-003~~] (“We conclude ... that the Legislature did not intend to punish as kidnapping restraints that are merely incidental to another crime.”).

5. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant’s actions. If this element is instructed, UJI 14-132 NMRA, “Unlawfulness as an element,” must be given after this instruction.

6. The definition of “ransom,” UJI 14-406 NMRA, should be given after this instruction.

7. Holding to service requires that the kidnapping’s purpose be to make the victim perform some act or forgo performing an act, to the effect of conferring an independent assistance or benefit to the perpetrator of the crime, or another.

8. Use the bracketed element if the evidence raises a genuine issue of incidental conduct, whether or not a secondary offense is simultaneously charged. *See Trujillo*, 2012-NMCA-112; *see also* Committee commentary to UJI 14-403 NMRA. If a particular crime is identifiable, the name of the offense may be used, and unless the court has instructed on the essential elements of that offense, these elements must be given in a separate instruction immediately following this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

[Adopted by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — *See* Committee commentary to UJI 14-403 NMRA.

[Adopted by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015.]

**14-601. Contributing to delinquency of minor; essential elements.**

For you to find the defendant guilty of contributing to the delinquency of a minor [as charged in Count \_\_\_\_\_] <sup>1</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant \_\_\_\_\_; <sup>2</sup>
2. This [caused] <sup>3</sup> [encouraged] \_\_\_\_\_ (*name of child*) to: <sup>3</sup> [commit the offense of \_\_\_\_\_] <sup>4</sup> <sup>3</sup>

[OR]

[refuse to obey the reasonable and lawful commands or directions of (his) <sup>3</sup> (her) (parent)<sup>3</sup> (parents) (guardian) (custodian) (teacher) (a person who had lawful authority over \_\_\_\_\_) (*name of child*)] <sup>3</sup>

[OR]  
[conduct (himself)<sup>3</sup> (herself) in a manner injurious to (his)<sup>3</sup> (her) (the) (morals)<sup>3</sup> (health) (welfare) (of \_\_\_\_\_ (name of child)<sup>5</sup>)]<sup>3</sup>;

3. \_\_\_\_\_ (name of child) was under the age of 18;

4. This happened in New Mexico on or about the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

#### USE NOTES

1. Insert the count number if more than one count is charged.
2. Describe act or omission of the defendant.
3. Use only the applicable alternative or alternatives.
4. Identify the offense and give the essential elements. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.
5. Name of other person whose morals, health or welfare were injured or endangered by the delinquent child as a result of the defendant's acts or omissions.

**Committee commentary.** — In *State v. McKinley*, 53 N.M. 106, 202 P.2d 964 (1949), the supreme court of New Mexico held that the offense of contributing to the delinquency of a minor (Laws 1943, Chapter 36, Section 1) was not unconstitutionally vague, as a juvenile delinquent was defined by Laws 1943, Chapter 40, Section 1 for purposes of juvenile court jurisdiction. *State v. McKinley* was followed in *State v. Leyba*, 80 N.M. 190, 453 P.2d 211 (Ct.App.1969), cert. denied, 80 N.M. 198, 453 P.2d 219 (1969) and *State v. Favela*, 91 N.M. 476, 576 P.2d 282 (1978).

In *State v. Leyba*, the court of appeals looked to Laws 1955, Chapter 205, Section 8 for the definition of juvenile delinquent for purposes of juvenile court jurisdiction. In *State v. Favela*, supra, the New Mexico Supreme Court held that “although the Children’s Code in 1972 narrowed the definition of a delinquent act committed by a child that definition did not extend, amend, change or become incorporated into Section 40A-6-3, supra (Section 30-6-3 NMSA 1978).”

It is assumed that the legislature in enacting the Criminal Code in 1963 intended that the definition of juvenile delinquent for purposes of juvenile court jurisdiction be used in interpreting Section 30-6-3 NMSA 1978. Laws 1955, Chapter 205, Section 8(a) granted jurisdiction to the juvenile court over juveniles as follows:

Section 8. The juvenile court shall have exclusive original jurisdiction in proceedings:

a. concerning any juvenile under the age of eighteen years living or found within the county:

(1) who has violated any law of the state, or any ordinance or regulation of a political subdivision thereof;

(2) or, who by reason of habitually refusing to obey the reasonable and lawful commands or directions of his or her parent, parents, guardian, custodian, teacher or any person of lawful authority, is deemed to be habitually uncontrolled, habitually disobedient or habitually wayward;

(3) or, who is habitually truant from school or home;

(4) or, who habitually departs himself as to injure or endanger the morals, health or welfare of himself or others.

Intent is not an element of the crime of contributing to the delinquency of a minor. *State v. Gunter*, 87 N.M. 71, 529 P.2d 297 (Ct.App.1974), cert. denied, 87 N.M. 48, 529 P.2d 274 (1974), cert. denied, 421 U.S. 951, 95 S.Ct. 1686, 44 L.Ed.2d 106 (1975). Therefore, UJI 14-141 need not be given.

For an adult to be guilty of the criminal offense of contributing to the delinquency of a minor, it is not necessary for the juvenile to be a delinquent. It is only necessary that the actions of the defendant cause or tend to cause or encourage the delinquency of the juvenile. *See* Section 30-6-3 NMSA 1978. Mere presence of the defendant at the time a juvenile is engaged in a delinquent act is insufficient. *State v. Grove*, 82 N.M. 679, 486 P.2d 615 (Ct.App.1971). But *see People v. Miller*, 145 Cal.App.2d 473, 302 P.2d 603 (1956) (presence of minor during fornication held sufficient to sustain conviction; child need not be a participant).

**14-954. Criminal sexual penetration in the second degree; commission of a felony; essential elements.**

For you to find the defendant guilty of criminal sexual penetration while committing another felony [as charged in Count \_\_\_\_\_],<sup>1</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant<sup>2</sup>

[caused \_\_\_\_\_ (name of victim) to engage in \_\_\_\_\_;<sup>3</sup>]

[OR]

[caused the insertion, to any extent, of a[n] \_\_\_\_\_<sup>4</sup> into the \_\_\_\_\_<sup>5</sup> of \_\_\_\_\_ (name of victim);]

[2. The defendant's act was unlawful;]<sup>6</sup>

3. The defendant committed the act during the commission of \_\_\_\_\_<sup>7</sup>;

4. The commission of \_\_\_\_\_<sup>7</sup> was against \_\_\_\_\_ (name of victim);

5. The commission of \_\_\_\_\_<sup>7</sup> assisted the defendant in

[causing \_\_\_\_\_ (name of victim) to engage in \_\_\_\_\_<sup>3</sup>];

[OR]

[causing the insertion, to any extent, of a[n] \_\_\_\_\_<sup>4</sup> into the \_\_\_\_\_<sup>5</sup> of \_\_\_\_\_ (name of victim);] and

6. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_.

USE NOTES

1. Insert the count number if more than one count is charged.
2. Use only the applicable alternatives.
3. Name the sexual act or acts: i.e., “sexual intercourse”, “anal intercourse”, “cunnilingus”, or “fellatio”. The applicable definition or definitions from [Instruction] UJI 14-982 NMRA must be given after this instruction.
4. Identify the object used.
5. Name the part or parts of the body: i.e., “vagina”, “penis”, or “anus”. The applicable definition or definitions from [Instruction] UJI 14-981 NMRA must be given after this instruction.
6. Use the bracketed element if the evidence raises a genuine issue of the unlawfulness of the defendant's actions. If this element is given, UJI 14-132 NMRA, “unlawful defined,” must be given after this instruction.
7. Identify the felony, and give the essential elements unless they are covered in an essential element instruction for the substantive offense. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.

8. Age of the victim is not an essential element of the *offense*. However, where the state has not charged a violation of Section 30-9-11(E)(1), NMSA 1978, and is seeking the mandatory three-year minimum sentence because the victim is 13 to 18, the victim's age is an essential sentencing fact that must be determined by the jury beyond a reasonable doubt, using UJI 14-6019A NMRA. *See State v. Stevens*, 2014-NMSC-011, ¶ 40, 323 P.3d 901.

[As amended, effective January 20, 2005; as amended by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — This instruction contains the essential elements of criminal sexual penetration perpetrated in the commission of any other felony. Note that the essential elements of the accompanying felony must be given, unless they are covered in another instruction.

To avoid double jeopardy, the felony must be other than a violation of NMSA 1978, Sections 30-9-11 through 30-9-14. It also might have to be other than an aggravated assault or battery on the victim. *Cf.* the commentary to UJI 14-202 NMRA, felony murder.

Note the language that the felony must be “in the commission of any other felony”. The felony must *both* be committed against the victim of the unlawful sexual penetration *and* assist in the accomplishment of the unlawful sexual penetration. *See State v. Stevens*, 2014-NMSC-011, ¶ 39, 323 P.3d 901. It is not enough that otherwise lawful sexual activity simply occurs at the same time or has been facilitated or caused by the commission of a felony not committed against the victim; the jury must find both. *Id.* ¶ 37.

*See also* the commentary to UJI 14-941 NMRA.

[As amended by Supreme Court Order No. 15-8300-004, effective for all cases pending or filed on or after December 31, 2015.]

#### **14-971. Enticement of a child; essential elements.** <sup>1</sup>

For you to find the defendant guilty of enticement of a child [as charged in Count \_\_\_\_\_] <sup>2</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant <sup>3</sup>  
[ (enticed) <sup>3</sup> (persuaded) (attempted to persuade) \_\_\_\_\_ (*name of child*) to enter a \_\_\_\_\_ <sup>4</sup>];  
[OR]  
[had possession of \_\_\_\_\_ (*name of child*) in a \_\_\_\_\_ <sup>4</sup>];
2. The defendant intended to commit the crime or crimes of \_\_\_\_\_ <sup>5</sup>;
3. \_\_\_\_\_ (*name of child*) was less than 16 years old;
4. This happened in New Mexico on or about the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

#### USE NOTES

1. This instruction sets forth, in the alternative, the two types of enticement of a child set forth in Section 30-9-1 NMSA 1978.
2. Insert the count number if more than one count is charged.
3. Use only the applicable alternatives.
4. Use applicable term or terms: vehicle; building; room; secluded place.

5. Identify the crime or crimes the defendant intended to commit and give the essential elements, unless they are covered in an essential elements instruction for the substantive offense. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.  
[As amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — See Section 30-9-1 NMSA 1978; misdemeanor.

This instruction sets forth the two ways in which the offense of enticement of a child may be committed. It should be noted that the defendant must intend the substantive sexual offense underlying the enticement.



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## Rule Proposal Comment Form, 04/06/2021, 10:37 am

1 message

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**Supreme Court** <mailservices@sks.com>

Tue, Apr 6, 2021 at 10:37 AM

Reply-To: "jonathanl.ibarra@lopdm.us" <jonathanl.ibarra@lopdm.us>

To: supjdm@nmcourts.gov, suptls@nmcourts.gov, supjls@nmcourts.gov

Your  
Name: Jonathan Ibarra  
Phone  
Number: 505-363-7338  
Email: [jonathanl.ibarra@lopdm.us](mailto:jonathanl.ibarra@lopdm.us)  
Proposal  
Number: 2021-023

Comment: I appreciate that the Committee caught up on more of these, including almost all of the ones I mentioned last year. However 14-358 and 14-359 should have been updated the same way as 14-360 is.

Not that it's up to me, obviously, but the change is minimal enough that I don't know that putting those out for comment would be necessary presuming these proposed ones are approved as they should be.

JLI



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## [nmsupremecourtclerk-grp] Comments to 2021 Proposed Rule Amendments

1 message

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**Chief Judge Jennifer DeLaney** <demdjed@nmcourts.gov>

Fri, Apr 16, 2021 at 10:04 AM

Reply-To: demdjed@nmcourts.gov

To: nmsupremecourtclerk@nmcourts.gov

Cc: "Hofacket, Jarod" <demdjkh@nmcourts.gov>, Tom Stewart <sildtfs@nmcourts.gov>, Jim Foy <sildjbf@nmcourts.gov>

Mr. Moya,

Attached are the comments from the District Judges of the Sixth Judicial District concerning the 2021 proposed rule amendments. Please let me know if I need to submit each one separately or if the attached document is sufficient to distribute to each of the rule committees. Thank you,

Chief Judge DeLaney

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Jennifer E. DeLaney

Chief Judge, Division II

Sixth Judicial District Court

[855 S. Platinum Avenue](#)

[Deming, New Mexico 88030](#)

(575) 543-1546

(575) 543-1606 facsimile



**2021 Proposed Rule Amendment Comments.docx**  
21K

## ***Code of Professional Conduct Committee***

### *Proposal 2021-006 – Lawyer communications and solicitation of clients*

[Rules 16-701, 16-702, and 16-703 NMRA; and Withdrawn Rules 16-704 and 16-705 NMRA]

The Code of Professional Conduct Committee proposes to amend Rules 16-701, 16-702, and 16-703 NMRA to incorporate certain of the 2018 amendments to the ABA Model Rules of Professional Conduct. Because the proposed amendments to Rules 16-701, 16-702, and 16-703 also incorporate some provisions and commentary from Rules 16-704 and 16-705 NMRA, the Committee proposes to withdraw Rules 16-704 and 16-705.

**No issues regarding this proposed change.**

## ***Rules of Civil Procedure for State Courts Committee***

### *Proposal 2021-007 – Production of documents and things*

[Rule 1-034 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1-034 NMRA to: (1) clarify that in answering a request for production, the responding party shall permit inspection in its entirety unless the responding party files a proper objection; (2) require the responding party to state the specific reasons for an objection to a request for production; (3) require the responding party to state whether the response includes all responsive materials; and (4) if the responding party withholds any responsive materials based on an objection, the objection must clearly describe with reasonable particularity the materials withheld for each objection. The Committee also added committee commentary to further explain the amendments.

**No issues regarding this proposed change.**

### *Proposal 2021-008 – Electronic filing and service fees as recoverable costs*

[Rules 1-054, 2-701, and 3-701 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rules 1-054, 2-701, and 3-701 NMRA to clarify that electronic filing and service fees are recoverable costs.

**This rule change helps to clarify what is included in fees and that is helpful to the Court.**

### *Proposal 2021-009 – Court trust account requirements*

[Rule 1-102 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1-102 NMRA to clarify that district courts must deposit litigant funds within two (2) business days of receipt in a bank that is a member of the Federal Deposit Insurance Corporation and in an account that is distinct from the court's accounts for general funds. The Committee additionally proposes to amend Rule 1-102 NMRA to specify that funds deposited in a court trust fund checking account



must be invested and maintained in a financial institution located within the court’s judicial district and in accordance with governing statutes and any regulation prescribed by the Director of the Administrative Office of the Courts. The Committee also replaced the references to “social security number” and “employer identification number” with the more-inclusive term “taxpayer identification number,” and also cited Form W-9 (Request for Taxpayer Identification Number and Certification) by name.

No comment.

[Proposal 2021-010](#) – *Tribal court personal representative*  
[Rule 1B-102 NMRA; and Forms 4B-801 and 4B-802 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rule 1B-102 NMRA, and Forms 4B-801 and 4B-802 NMRA, to clarify that a domiciliary foreign personal representative includes a tribal court appointee designated by a tribal court or the Bureau of Indian Affairs. The Committee further proposes to amend Forms 4B-801 and 4B-802 NMRA to recognize tribal court appointments. Finally, the Committee proposes to amend Form 4B-801 NMRA to allow “equivalent indicia of authority from a tribal court or the Bureau of Indian Affairs” to serve as a substitute for Letters of Administration or Letters Testamentary, recognizing that tribal courts may title documents differently than probate courts.

No comment.

[Proposal 2021-011](#) – *Summons and order for free process*  
[Rules 2-202 and 3-202 NMRA; and Forms 4-204 and 4-223 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Rules 2-202 and 3-202 NMRA by replacing “incapacitated” with “incompetent” for consistency with Rules 1-004(I) and 1-017(D) NMRA applicable to the district courts.

The Committee also proposes to amend Rules 2-202 and 3-202 NMRA, as well as Form 4-204 NMRA, to permit *pro se* parties to serve a summons by mail.

Finally, the Committee proposes to amend Form 4-223 NMRA to specify the methods of service a person seeking free service of process must first attempt in the district, magistrate, and metropolitan courts.

The revisions are helpful in making the rule more clear.

[Proposal 2021-012](#) – *Title page of transcript of civil proceedings*  
[Form 4-708 NMRA]

The Rules of Civil Procedure for State Courts Committee proposes to amend Form 4-708 NMRA for consistency with the comparable criminal form, Form 9-608 NMRA, to reflect that the court clerk, rather than the judge, issues the title page of a transcript of civil proceedings.

No objections to the new forms as proposed.

***Rules of Criminal Procedure for State Courts Committee***

*Proposal 2021-013 – Order of trial*

[Rule 5-607 NMRA; and New Rules 6-603.1 and 7-603.1 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rule 5-607 NMRA to clarify and make housekeeping changes to its text and committee commentary, and to adopt new Rules 6-603.1 and 7-603.1 NMRA that import Rule 5-607's sequence of trial events into jury trial practice in the magistrate and metropolitan courts.

No objections to the new rules as proposed.

*Proposal 2021-014 – Time limits for filing citations*

[Rules 6-201, 7-201, and 8-201 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rules 6-201, 7-201, and 8-201 NMRA to incorporate an express time limitation for the filing of a citation and an explicit remedy—the potential dismissal of the citation with prejudice—for a late-filed citation.

This is a necessary amendment to each of the above listed rules.

*Proposal 2021-015 – Interview subpoenas*

[Rule 6-606 NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rule 6-606 NMRA to provide that a judge-issued subpoena in magistrate court will lie “only after good faith efforts to secure an interview . . . have been unsuccessful[,]” the same criterion that governs the issuance of interview subpoenas in metropolitan court under Rule 7-606 NMRA

The changes help to clarify and will reduce the procedure where litigants come straight to the court to obtain an interview subpoena.

*Proposal 2021-016 – Time limits for probation violation hearings*

[Rules 6-802, 7-802, and 8-802 NMRA]

6-802 (C)(2), 7-802 (C)(2), and 8-802(C)(2) With our current use of technology, there is no reason that a hearing should take two days longer to set if the person is in custody in an out of district detention center. It should be 3 days regardless if the defendant is in detention.

8-802 (D). Municipal ordinances are generally very low-level offenses and allowing someone to remain in custody for 18 days (3 before initial hearing and 15 from that date) seems extremely severe. There should be limited reasons why this kind of case could not be adjudicated with seven days from the initial appearance. The time should be reduced.

The Rules of Criminal Procedure for State Courts Committee proposes to amend Rules 6-802, 7-802, and 8-802 NMRA to provide explicit time limits for the holding of a probation violation hearing in the limited jurisdiction criminal courts.

[Proposal 2021-017](#) – *Waiver of counsel and other public defender forms*  
[Forms 9-401, 9-403, 9-403A, and 9-403B NMRA; and Withdrawn Form 9-401A NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Forms 9-401, 9-403, 9-403A, and 9-403B NMRA, and to withdraw Form 9-401A NMRA, to adopt a single, detailed “Waiver of Counsel Advisement” for use in all courts of criminal jurisdiction, align the form provisions governing the appointment of defense counsel with the current policies of the Law Offices of the Public Defender, and clarify the form provisions governing appeals of indigency determinations.

In the Waiver of Counsel form, the language is definitely much clearer than the previous form; however, there is still a lot of legalese especially in paragraphs six and seven. Additionally, there should be added language that the prosecutor has not duty to assist a self-represented criminal defendant and has no duty of loyalty to him/her.

[Proposal 2021-018](#) – *Dismissal of criminal charges on completion of deferred sentence*  
[Form 9-603A NMRA]

The Rules of Criminal Procedure for State Courts Committee proposes to amend Form 9-603A NMRA to make clear the mandatory nature of the dismissal remedy available to a defendant upon the defendant’s completion of the terms of a deferred sentence without revocation.

No comment.

### ***UJI-Civil Committee***

[Proposal 2021-019](#) – *Insurance has no bearing*  
[UJI 13-208 NMRA]

The UJI-Civil Committee proposes to amend UJI 13-208 NMRA to align the instruction with jurors’ current understanding of the role played by insurance and to provide for possible use of the instruction prior to the commencement of a trial.

The amendments appear to clarify the UJI, which is helpful.

[Proposal 2021-020](#) – *Request for admission*  
[New UJI 13-215 NMRA]

The UJI-Civil Committee proposes to adopt new UJI 13-215 NMRA to address the introduction of admitted facts at trial. The proposed instruction provides jurors with the definition of a request for admission and informs them of the effect of an admitted fact at trial.

**These amendments help to streamline the UJI and increase clarity.**

*Proposal 2021-021 – Unfair Practices Act claims*

[New UJI 13-25 Introduction NMRA; New UJI 13-2501, 13-2502, 13-2503, 13-2504, 13-2505, and 13-2506 NMRA; and New UJI 13-25 Appendix NMRA]

The UJI-Civil Committee proposes to adopt a new Chapter 25 to the Civil Uniform Jury Instructions to use with Unfair Practices Act (UPA) claims. Proposed Chapter 25 includes new UJI 13-25 Introduction NMRA; new UJI 13-2501, 13-2502, 13-2503, 13-2504, 13-2505, and 13-2506 NMRA; and new UJI 13-25 Appendix NMRA. The proposed Introduction orients practitioners and judges to Chapter 25 and explains how the instructions in the chapter may be used with other UJI chapters. Proposed UJI 13-2501 sets out the elements that a plaintiff alleging a UPA violation must prove and is intended for use in all cases alleging a UPA violation. Proposed UJI 13-2502 instructs the jury on the proof required to establish that a defendant engaged in an unconscionable trade practice under the UPA. Proposed UJI 13-2503, -2504, and -2505 are definitional instructions to be used as appropriate in a given case. Proposed UJI 13-2506 provides a damages framework for UPA claims. The proposed Appendix provides a sample set of jury instructions for a hypothetical case containing UPA violations.

**The new UJI will help to give the parties a better framework for proceeding in these cases and assisting jurors in their role as fact finders.**

***UJI-Criminal Committee***

*Proposal 2021-022 – Explanation of trial procedure*

[UJI 14-101 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-101 NMRA to simplify instructions on outside communications and internet use and to clarify that jurors ordinarily will not receive transcripts of witness testimony.

**This seems like an excellent rule change. This has always been a challenging part of the jury script.**

*Proposal 2021-023 – Procedure for instructing on uncharged offenses*

[UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378, 14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA]

The UJI-Criminal Committee proposes to amend the Use Notes to UJI 14-202, 14-213, 14-221A, 14-308, 14-309, 14-310, 14-311, 14-312, 14-313, 14-360, 14-361, 14-362, 14-363, 14-378,

14-379, 14-380, 14-381, 14-382, 14-383, 14-403, 14-403A, 14-601, 14-954, and 14-971 NMRA to reference the procedure for instruction on uncharged offenses outlined in UJI 14-140 NMRA.

This seems like a helpful correction to make the use of 14-140 mandatory instead of referencing it. I think the old rule was adequate. This is more clear.

*Proposal 2021-024 – Stalking and aggravated stalking*  
[UJI 14-331 and 14-333 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-331 and 14-333 NMRA to conform more closely to the language of NMSA 1978, Section 30-3A-3 (2009), defining the crime of stalking, and NMSA 1978, Section 30-3A-3.1 (1997), defining the crime of aggravated stalking.

I think this change is a reach. The statute changed in 2009. No case has interpreted the statute the way the committee is attempting to, namely that proving that the Defendant was acting without lawful authority is an element for the State to prove. I do not believe the rules committee should be making this fundamental change to the law so long after the statute they are referencing changed.

*Proposal 2021-025 - Reliance in fraud*  
[UJI 14-1640 NMRA]

The UJI-Criminal Committee proposes to amend the committee commentary to UJI 14-1640 NMRA to reference the definition of reliance provided in *State v. Garcia*, 2016-NMSC-034, 384 P.3d 1076, and to remove outdated citations.

No problem with this change. Nice update.

*Proposal 2021-026 – Securities offenses*  
[UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA]

The UJI-Criminal Committee proposes to amend UJI 14-4301, 14-4302, 14-4310, 14-4311, 14-4312, 14-4320, and 14-4321 NMRA to update statutory references and style conventions.

No problem with this change. Nice update.

*Proposal 2021-027 – Life without possibility of release or parole*  
[UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7029, 14-7030, 14-7030A, 14-7031, 14-7032, 14-7033, and 14-7034 NMRA]

Good clarity to provide the Court and practitioners guidance on these cases. No issues.

The UJI-Criminal Committee proposes to amend UJI 14-7010, 14-7011, 14-7012, 14-7014, 14-7015, 14-7016, 14-7017, 14-7018, 14-7019, 14-7022, 14-7023, 14-7026, 14-7027, 14-7029,

14-7030, 14-7030A, 14-7031, 14-7032, 14-7033, and 14-7034 NMRA to provide instructions for sentencing proceedings for life imprisonment without possibility of release or parole in response to the repeal of the death penalty and in conformity with *State v. Chadwick-McNally*, 2018-NMSC-018, 414 P.3d 326, Rule 5-705 NMRA, and proposed changes to Rule 14-101 NMRA.