

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL  
PROPOSAL 2021-024**

**March 17, 2020**

The Uniform Jury Instructions – Criminal Committee has recommended amendments to UJI 14-331 and 14-333 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:

Joey D. Moya, Clerk  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
[nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)  
505-827-4837 (fax)

**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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**14-331. Stalking; essential elements.**

For you to find the defendant guilty of stalking [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 maliciously pursued a pattern of conduct that would cause a reasonable person to feel frightened, intimidated or threatened on more than one occasion by:~~<sup>2</sup>

~~\_\_\_\_\_ [(a) following \_\_\_\_\_ (name of victim) in a place other than the residence of the defendant;]~~

~~\_\_\_\_\_ [(b) placing \_\_\_\_\_ (name of victim) under surveillance by being present outside \_\_\_\_\_’s (name of victim) [school][residence][workplace][vehicle] or [\_\_\_\_\_, a place frequented by \_\_\_\_\_ (name of victim)][other than the defendant’s residence]<sup>3</sup>; [or]~~

~~\_\_\_\_\_ [(c) harassing \_\_\_\_\_ (name of victim);]<sup>4</sup>~~

~~2. The defendant intended \_\_\_\_\_ [to place \_\_\_\_\_ (name of victim) in reasonable apprehension of [death] [bodily harm] [sexual assault] [confinement or restraint]<sup>3</sup>;~~

~~\_\_\_\_\_ [or] \_\_\_\_\_ [to cause a reasonable person to fear for the person’s safety or the safety of a household member<sup>5</sup>;~~

~~3. This happened in New Mexico on or about the \_\_\_\_\_ day of~~

\_\_\_\_\_, \_\_\_\_\_.]

1. The defendant knowingly pursued a pattern of conduct by, on more than one occasion, engaging in any of the following acts:

[ (a) following \_\_\_\_\_ (name of person)<sup>2</sup> ]  
 [ (b) monitoring \_\_\_\_\_ (name of person)<sup>2</sup> ]  
 [ (c) placing \_\_\_\_\_ (name of person)<sup>2</sup> under surveillance ]  
 [ (d) threatening \_\_\_\_\_ (name of person)<sup>2</sup> ]  
 [ (e) communicating [to] [or] [about] \_\_\_\_\_ (name of person)<sup>2,3</sup>; ]

2. In pursuing a pattern of conduct, the defendant used any action, method, device or means, directly or indirectly [[and] [or] [used third parties]<sup>3,4</sup>];

3. In pursuing the pattern of conduct the defendant was not acting within the scope of [lawful employment] [or] [constitutionally protected activity,]<sup>3,5</sup>

4. [Although some of the acts constituting the pattern of conduct were directed at other people, the] [The] overall pattern of conduct was directed at \_\_\_\_\_ (name of victim)<sup>3</sup>;

5. The defendant intended

[to place \_\_\_\_\_ (name of victim) in reasonable apprehension of [death] [bodily harm] [sexual assault] [confinement or restraint]]  
 [or]  
 [to cause \_\_\_\_\_ (name of victim) to reasonably fear the [death] [bodily harm] [sexual assault] [confinement or restraint] of \_\_\_\_\_ (name(s) of other individual(s))<sup>3,6</sup>].<sup>6</sup>

6. This happened in New Mexico [between] [on or about] the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [and the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_].<sup>3,7</sup>

#### USE NOTES

1. Insert the count number if more than one count is charged.
2. The person(s) subjected to the pattern of conduct may be either the victim or other individual(s).
- ~~2-3.~~ Use only the applicable bracketed alternatives.
- ~~4.~~ If this alternative is used, instruction UJI 14-330 NMRA must also be given.
- ~~5.~~ If this alternative is given, UJI 14-332 NMRA must be given immediately after this instruction.]
4. Use when the evidence establishes that one or more third parties committed the acts constituting the pattern of conduct.
5. Insert when there is any evidence the defendant acted with lawful authority, as defined in Section 30-3A-3B (1) NMSA 1978.
6. The victim may be afraid for themselves, other individuals, or both.
7. The pattern of conduct must involve more than one occasion, but may or may not occur on more than one date.

[Adopted, effective February 1, 1995; as amended, effective July 1, 1998; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** See NMSA 1978, § 30-3A-3 (2009) (changing essential elements of stalking and defining “lawful authority”); NMSA 1978, § 30-3A-4 (1997) (providing specific exemptions to the provisions of the Harassment and Stalking Act for picketing and public

demonstrations arising out of labor disputes and for peace officers in performance of their duties). These exemptions were not repealed or changed when the 2009 amendments added the more general definitions of lawful authority.

The Committee believes that UJI 14-132 NMRA (Unlawfulness as an element) is a general instruction not directly applicable to the stalking statute, which has a specific definition of “lawful authority” as “within the scope of lawful employment or constitutionally protected activity.” Section 30-3A-3(B) (1). The original 1997 exceptions to the stalking statute are specific, affirmative, categorical exceptions to what otherwise is unlawful conduct. By inserting “without lawful authority” into the 2009 revision of Section 30-3A-3, the Legislature appears to have both expanded the range of conduct and made proof of acting without lawful authority an essential element of the offense—not an affirmative defense to be raised by the defendant. *See also State v. Osborne*, 1991-NMSC-032, ¶ 18, 111 N.M. 654, 808 P.2d 624 (“The language of the [criminal sexual contact of a minor] statute itself therefore suggests that the legislature intended to make unlawfulness an element of the crime rather than lawfulness a defense.”).

An unlawfulness instruction is not required “when there is *no evidence* of lawful behavior, and hence the element omitted from the instructions was not factually in issue[.]” *State v. Peterson*, 1998-NMCA-049, ¶ 10, 125 N.M. 55, 956 P.2d 854 (internal quotation marks and citation omitted) (emphasis added). Similarly, where there is no evidence regarding the scope of the defendant’s employment or constitutionally protected activity, there is no requirement to give the bracketed third element.

The individual, enumerated acts constituting the pattern of conduct need not be directed at the victim; it is the overall pattern of conduct which must reasonably affect the victim. *See, e.g., Best v. Marino*, 2017-NMCA-073, ¶¶ 2, 3 n.2, 404 P.3d 450 (affirming district court’s determination that the respondent had committed stalking by, in relevant part, “posting of statements and photographs related to Petitioner on (1) Respondent’s own website; (2) Respondent’s own Facebook and other social media pages; and (3) third-party controlled Facebook and other social media pages”). For example, a defendant stalking his former partner might use a third party to place the victim’s children under surveillance and follow them and later indirectly communicate to the victim by having a different third party send her the following text: “Those are cute twins you have going to Sunshine Elementary. It would be a shame if a car ran over them as they were walking home along Elm Street.”

Because the essential element of a “pattern of conduct” requires two or more of the enumerated acts on more than one occasion, the acts which must be proven may occur on more than one date. The Committee believes that due process and double jeopardy require that the dates encompassing all of the acts constituting the alleged pattern should be presented to the jury. [Adopted, \_\_\_\_\_, 2020, by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

### **14-333. Aggravated stalking; essential elements.**

For you to find the defendant guilty of aggravated stalking [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. \_\_\_\_\_ (name of defendant) committed the crime of stalking<sup>2</sup>;
2. At the time of the offense:

[ \_\_\_\_\_ (*name of defendant*) knowingly violated a permanent or temporary order of protection issued by a court (and the victim did not also violate the court order);]<sup>3</sup>

[or]

[ \_\_\_\_\_ (*name of defendant*) violated a court order setting conditions of release and bond;]

[or]

[ \_\_\_\_\_ (*name of defendant*) was in possession of a [ \_\_\_\_\_ ]<sup>4</sup>

[ \_\_\_\_\_ (*name of object*) with the intent to use it as a weapon and a

\_\_\_\_\_ (*name of object*), when used as a weapon, is capable of inflicting death or great bodily harm<sup>5</sup>]<sup>6</sup>;

[or]

[the victim was less than sixteen years of age;]

3. This happened in New Mexico [between] [on or about] the \_\_\_\_\_ day of

\_\_\_\_\_, [and the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_].<sup>3</sup>

#### USE NOTES

1. Insert the count number if more than one is charged.
2. Unless the court has instructed on the essential elements of the crime of stalking, these essential elements must be given immediately after this instruction. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.
3. Use only applicable alternative.
4. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12(B) NMSA 1978. If the object used is not listed in Section 30-1-12(B) NMSA 1978 as a weapon, the second alternative is given.
5. UJI 14-131 NMRA, the definition of “great bodily harm”, must also be given.
6. Use this alternative only if the “weapon” is not one that is specifically listed in Section 30-1-12(B) NMSA 1978.

[Approved, effective July 1, 1998; as amended, effective Jan. 10, 2002; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]



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## Rule Proposal Comment Form, 04/12/2021, 12:51 pm

1 message

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

Mon, Apr 12, 2021 at 12:51 PM

Reply-To: "caitlin.smith@lopdm.us" <caitlin.smith@lopdm.us>

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

Your  
Name: Caitlin Smith  
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Email: [caitlin.smith@lopdm.us](mailto:caitlin.smith@lopdm.us)  
Proposal  
Number: 2021-024

Comment: I have some reservations about element #2 in the proposed UJI 14-331 (essential elements of stalking). The proposed element #2 says, "In pursuing a pattern of conduct, the defendant used any action, method, device or means, directly or indirectly [[and] [or] [used third parties]]." This seems potentially confusing and not necessary—it's not possible to commit the acts in element #1 without using any action, method, device, or means. As I read Section 30-3A-3, "any action, method, device or means, directly, indirectly or through third parties" isn't an independent element, but rather a statement that it is possible to commit stalking through any number of direct or indirect means.

I would omit the proposed element #2. If the committee is worried about leaving out indirect means of stalking, the committee could amend element #1 by adding a bracketed option: "The defendant knowingly pursued a pattern of conduct by, on more than one occasion, [directly or indirectly] engaging in any of the following acts."



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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

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**2021 Proposed Rule Amendment Comments.docx**

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## ***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.



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## Rule Proposal Comment Form, 04/16/2021, 3:40 pm

1 message

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

Fri, Apr 16, 2021 at 3:40 PM

Reply-To: "douglas.wilber@lopdm.us" <douglas.wilber@lopdm.us>

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

Your  
Name: Douglas Wilber

Phone  
Number: 5052192866

Email: [douglas.wilber@lopdm.us](mailto:douglas.wilber@lopdm.us)

Proposal  
Number: 2021-024

Comment: I agree with the previous commenter that the second "element" is confusing. I think the reference to indirect action of third parties would be better off in the first element, perhaps even just a sentence stating that this can include indirect actions or through a third party. Also, it seems that if the UJI is going to specifically include third party and indirect actions, a use note regarding causation might be important, as this explicitly adds a new layer to the analysis.