

1 **14-7014. [~~Death penalty sentencing~~] Life imprisonment without possibility of parole**
2 **proceeding; aggravating circumstances; murder of a peace officer; essential elements.**

3 The state has charged the aggravating circumstance of murder of a peace officer. Before
4 you may find the aggravating circumstance of murder of a peace officer, you must find that the
5 state has proved to your satisfaction beyond a reasonable doubt that at the time
6 _____ (*name of victim*) was murdered, _____

7 (*name of victim*):

8 1. was a peace officer;

9 2. was performing the duties of a peace officer;

10 3. the defendant knew or should have known that _____

11 (*name of victim*) was a peace officer; [A peace officer is a public employee whose employment
12 duties include maintaining the public order;]² and

13 4. the defendant intended to kill or acted with a reckless disregard for human life and
14 knew that [his] [her] acts carried a grave risk of death.

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USE NOTES

17 1. This instruction is to be used only in a [~~death penalty sentencing~~] life imprisonment
18 without possibility of release or parole proceeding.

19 2. If there is an issue as to whether or not the victim was a “peace officer” the
20 bracketed definition is given.

21 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,
22 effective for all cases pending or filed on or after December 31, 2021.]

1 **Committee commentary.** — “Peace officer” is defined in [~~Section 30-1-12~~] NMSA 1978, § 30-
2 1-12 (1963). The question of whether or not the victim is a peace officer is normally a question of
3 law to be decided by the court. *See State v. Rhea*, 1980-NMSC-033, 94 N.M. 168, 608 P.2d 164
4 [(1980)]. ~~The question of whether the peace officer was lawfully discharging the duties of a peace~~
5 ~~officer is also normally a question of law to be decided by the court. See committee commentary~~
6 ~~to UJI 14-2201 NMRA].~~

7 The committee anticipates the defense of a peace officer not being in the lawful discharge
8 of duty being raised. As there are a number of ways and situations in which this defense may be
9 raised, it was not feasible to draft an essential elements instruction on this issue. *See State v. Doe*,
10 1978-NMSC-072, 92 N.M. 100, 583 P.2d 464 [~~(1978)~~] for a discussion of “lawful discharge of
11 duties”.

12 The requirement that the defendant intended to kill or acted with reckless disregard has
13 been added to this instruction to be consistent with *Tison v. Arizona*, 481 U.S. [~~131, 107 S. Ct.~~
14 ~~1676, 95 L. Ed. 2d 127~~] 137 (1987).

15 [~~See also committee commentary to UJI 14-7013.~~]

16 [As amended by Supreme Court Order No. 21-8300-008, effective for all cases pending or filed
17 on or after December 31, 2021.]