

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL
PROPOSAL 2022-019**

March 7, 2022

The Uniform Jury Instructions - Criminal Committee has recommended amendments to UJI 14-2217 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:

Sally A. Paez, Deputy Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 6, 2022, 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.

14-2217. Aggravated fleeing a law enforcement officer.

For you to find the defendant guilty of aggravated fleeing a law enforcement officer [as charged in Count _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant operated a motor vehicle;
2. The defendant drove willfully and carelessly in a manner that endangered or could have endangered the life of another person;
3. The defendant had been given a visual or audible signal to stop by a uniformed law enforcement officer in an appropriately marked law enforcement vehicle;
4. The defendant knew that a law enforcement officer had given him an audible or visual signal to stop;
5. This happened in New Mexico, on or about the _____ day of _____,
_____.

USE NOTE

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

[Adopted by Supreme Court Order No. 08-8300-060, effective February 2, 2009; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — See NMSA 1978, § 30-22-1.1 (2003).

This instruction has been modified to comport with the holding in *State v. Vest*, 2021-NMSC-020, ¶¶ 13, 19, 28, 39, 488 P.3d 626, which interprets the aggravated fleeing statute to focus on the social harm from a defendant’s conduct, rather than the particular result of the conduct. *Vest* clarifies aggravated fleeing requires “only that a defendant willfully and carelessly drove so dangerously that the defendant created a risk of harm, a risk that could have endangered someone in the community,” and “does not require that an identifiable person was actually endangered as a result of the defendant’s flight from law enforcement.” *Id.* ¶¶ 13, 19. Some language in *Vest* could be interpreted as expanding liability to causing a risk of harm to the community other than death. See *Vest*, 2021-NMSC-020, ¶ 39. The Committee believes *Vest* does not relax the statutory requirement that the risk to the community be life-threatening: “A defendant is guilty of aggravated fleeing if he or she fled by driving in a way that threatened the lives of people in the vicinity.” *Id.* ¶ 19.

Although the statute requires that the pursuit be conducted “in accordance with” the Law Enforcement Safe Pursuit Act, NMSA 1978, Sections 29-20-1 to -4 (2003), this is not an essential element of the crime. *State v. Padilla*, 2008-NMSC-006, 143 N.M. 310, 176 P.3d 299, ~~rev’g *State v. Padilla*, 2006 NMCA 107, ¶ 19.~~

[Adopted by Supreme Court Order No. 08-8300-060, effective February 2, 2009; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]



New Mexico
Courts

Amy Feagans <supajf@nmcourts.gov>

[nmsupremecourtclerk-grp] Proposed Amendments to Supreme Court Rules of Practice and Procedure

1 message

Richard Flores <RFlores@da.state.nm.us>

Wed, Apr 6, 2022 at 1:36 PM

Reply-To: rflores@da.state.nm.us

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Good afternoon. Below please find comments regarding some of the proposed amendments. Thank you.

Proposal 2022-009-Preliminary examination timing.

- We are in agreement with the proposed amendment because it is clear that the time for commencement of the preliminary hearing "starts again" for new time. This will help when State is unable to proceed on a particular day.
- It seems, though, that the issue of time on a refiled criminal complaint requiring preliminary examination in Magistrate Court has not been addressed. This omission results in the application of the default magistrate time rule 6-506.1 (D), which treats refiled felony complaints as a continuation of the original case, rather than a new case, which means that if the time ran on the 60 day rule, the case cannot be refiled in Magistrate Court.
- *Findings of court.*
 - This is great. If a case is not bound over at the Magistrate level, the State can continue the case in District Court, i.e., a second chance to present evidence before a District Court Judge.

Proposal 2022-009-Witness testimony.

- We are in agreement with the proposed amendment. Defendants do not have confrontation rights at preliminary hearings, and the burden can be oppressive for victims and witnesses, especially, in stolen vehicle cases, for example, where the victims may live far away and have been deprived of transportation. Further, it will likely help in cases involving the elderly and costs associated with out of state witnesses.

Proposal 2022-010-Evidence at Preliminary Examination.

- Very good changes. Would even like to see it go further; for example, allow written reports from medical professionals as well at preliminary hearings.

Proposal 2022-012-Redaction of witness information.

- Proposed rule is meant to protect victims and witnesses and is a step in the right direction; however, as we understand the proposal, it relies on the defense attorney to redact the protected information prior to its release to the defendant. We have doubt that said redaction will occur prior to release.

Proposal 2022-019-Aggravated fleeing a law enforcement officer.

- Definitely in favor of this amendment to the UJIs. With this amendment, no other person(s) have to be put in specific danger. Previously, "others" had to be present to prosecute. With this change, prosecution for this charge can be based on the driving and failing to stop and possible endangerment.

Thank you for your time and attention to these matters.

Sincerely,

Richard D. Flores

4th Judicial Chief Deputy District Attorney

PO Box 2025

Las Vegas, NM 87701