

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL
PROPOSAL 2022-022**

March 7, 2022

The Uniform Jury Instructions - Criminal Committee has recommended amendments to UJI 14-2229 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.

14-2229. Failure to appear; bail.

For you to find the defendant guilty of failure to appear as required by conditions of release [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. _____ (*name of defendant*) was released pending [trial] [an appeal] [a probation revocation proceeding]² in a criminal action related to a [misdemeanor or petty misdemeanor] [felony]² offense on the condition that _____ (*name of defendant*) appear as required by the court;
2. _____ (*name of defendant*) failed to appear as required by the court;
3. The defendant's failure to appear was willful, without sufficient justification or excuse;
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. Use applicable alternative.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.29 NMSA 1978; UJI 14-2229 SCRA; as amended, effective January 1, 1999; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — See [~~Section 31-3-9~~]NMSA 1978, § 31-3-9 (1973, as amended 1999).

[~~Section 31-3-9 NMSA 1978~~]NMSA 1978, § 31-3-9 (1999), *supra*, provides that the defendant must willfully fail to appear. The third element of this instruction was added in 1998 to comply with *State v. Rosaire*, 1997-NMSC-034, 123 N.M. 701, 945 P.2d 66.

The pending charge or conviction on which the defendant was released controls the statutory punishment for failure to appear. See § 31-3-9(A) (fourth degree felony); § 31-3-9(B) (petty misdemeanor). Whether the defendant was released in connection with a felony proceeding, or a misdemeanor or petty misdemeanor proceeding, is an element for the jury to determine. See *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (“Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”); see also *State v. Radosevich*, 2018-NMSC-028, ¶¶ 29-30, 419 P.3d 176 (instructing the district court to sentence for tampering with evidence of an indeterminate offense at the lowest penalty level for tampering with evidence prescribed by the statute); *State v. Sanchez*, 2019-NMCA-006, ¶ 10, 458 P.3d 428 (“For a defendant to be found guilty of felony escape from CCP the state must show that a felony charge led to the defendant’s commitment to the program.”).

The jury does not need to know the specific charge or conviction connected to the defendant’s failure to appear. See *State v. Tave*, 1996-NMCA-056, ¶ 14, 122 N.M. 29, 919 P.2d 1094 (concluding that there was error in admission of the name and details of the prior felony as proof of the charge of felon in possession of a firearm), *overruled on other grounds by State v. Tollardo*, 2012-NMSC-008, 275 P.3d 110; *State v. Rackley*, 2000-NMCA-027, ¶ 19, 128 N.M. 761, 998 P.2d 1212 (“In an apparent effort to reduce the potential impact . . . of his prior felonies [in a felon in possession of a firearm trial], Defendant stipulated to the fact of a prior, unidentified felony conviction.”).

[Amended November 12, 1998; 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>

Rule Proposal Comment Form, 04/06/2022, 2:21 pm

web-admin@nmcourts.gov <nmcourtswebforms@nmcourts.gov>

Wed, Apr 6, 2022 at 2:21 PM

Reply-To: "coajrb@nmcourts.gov" <coajrb@nmcourts.gov>

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Proposal Number: 2022-022

Comment: I wanted to raise a concern with amending this UJI to possibly inform the jury that the defendant is facing a separate felony criminaal charge. This seems both prejudicial and unnecessary. The current language of the UJI stating that it involves a "criminal action" seems sufficient. I know that the reason given for amending the UJI is to conform to the language of Section 31-3-9, but the inclusion of that language in the statute appears to me to be a sentencing issue and not an element of the offense.