

14-1401. Criminal trespass; public property; essential elements.

For you to find the defendant guilty of criminal trespass [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 entered _____ (*identify lands or structure entered*); [the least intrusion constitutes an entry;]²

2. This property was not open to the public at that time;

3. The defendant knew [~~or should have known~~] that [~~he~~] the defendant did not have permission to enter;

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 bracketed phrase if entry is in issue.

[Adopted, effective April 27, 1983; as amended by Supreme Court Order No. 22-8300-037, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. — [~~UJI 14-1401 is limited to criminal trespass of public property.~~

~~UJI 14-1402 and UJI 14-1403 apply to criminal trespass of private or state or local government property.~~

~~In *State v. Cutnose*, 87 N.M. 300, 532 P.2d 889 (Ct. App. 1975), Chief Judge Wood carefully traced the history of New Mexico's criminal trespass statutes. It is helpful to review this decision, and subsequent statutory enactments in deciding which statute is applicable to public and~~

1 ~~private property criminal trespasses. In *Cutnose*, Judge Wood concluded that former Section 40A-~~
2 ~~14-1 NMSA 1953 (now Section 30-14-1 NMSA 1978) did not apply to remaining upon public~~
3 ~~property and that since Paragraph (2) of Subsection A of Section 40A-14-5 NMSA 1953 (now~~
4 ~~Section 30-14-4 NMSA 1978) had previously been declared unconstitutional in *State v. Jaramillo*,~~
5 ~~83 N.M. 800, 498 P.2d 687 (Ct. App. 1972) there was no statute dealing with remaining on public~~
6 ~~property without consent.~~

7 ~~In 1975, presumably following Judge Wood's opinion in *State v. Cutnose*, the New Mexico~~
8 ~~legislature enacted Chapter 52, Laws 1975. Section 1 of this 1975 act enacted a new Subsection B~~
9 ~~to Section 40A-14-1 NMSA 1953 (now Subsection B of 30-14-1 NMSA 1978). As amended by~~
10 ~~the 1981 legislature, present Section 30-14-1 NMSA 1978 provides that criminal trespass also~~
11 ~~includes unlawfully entering or remaining upon lands owned by the state or any of its political~~
12 ~~subdivisions knowing that consent to enter or remain is denied or withdrawn by the custodian of~~
13 ~~the lands.~~

14 ~~In addition to adding a new Subsection B to present Section 30-14-1 NMSA 1978, Chapter~~
15 ~~52, Laws 1975 also amended former Section 40A-20-10 NMSA 1953 (now Section 30-20-13~~
16 ~~NMSA 1978) prohibiting interference with the lawful use of public property. Subsection C of~~
17 ~~present Section 30-20-13 NMSA 1978 also provides that it is criminal trespass for a person to~~
18 ~~willfully refuse or fail to leave the property of, or any building owned by, the state or its political~~
19 ~~subdivisions. This would seem to apply to the same unlawful conduct covered by Subsection B of~~
20 ~~Section 30-14-1 NMSA 1978; however, Section 30-20-13 adds a further element that the trespasser~~
21 ~~must also threaten to commit or incite others to commit any act which would disrupt the lawful~~
22 ~~mission, processes, procedures or function of the property, building or facility involved.~~

1 ~~Prior to the 1975 amendment to Section 30-20-13 NMSA 1978 this section applied only to~~
2 ~~institutions of higher education and was enacted in 1970 as a part of a bill appropriating \$1.00 to~~
3 ~~district attorneys.~~

4 ~~It is assumed that the 1975 session of the legislature was responding to the court of appeals~~
5 ~~decision in *Cutnose*, supra, when it amended both Sections 30-14-1 and 30-20-13 NMSA 1978 to~~
6 ~~make both sections of the law applicable to property owned or under the control of the state or its~~
7 ~~political subdivisions. The legislature is also presumed to have been aware that Section 30-20-13~~
8 ~~NMSA 1978 had been found to be constitutional in *State v. Silva*, 86 N.M. 543, 525 P.2d 903 (Ct.~~
9 ~~App.), cert. denied, 86 N.M. 528, 525 P.2d 888 (1974). These two sections have been construed~~
10 ~~together as creating separate offenses. See UJI 14-1401.~~

11 ~~Section 30-14-4 NMSA 1978 also governs unlawfully entering a public building. The~~
12 ~~provisions of this section, which were not ruled unconstitutional in *Cutnose*, supra, are deemed by~~
13 ~~the committee to have been superseded by Sections 30-14-1 and 30-20-13 NMSA 1978 insofar as~~
14 ~~they relate to buildings owned or under the control of governmental entities. Section 30-14-4~~
15 ~~NMSA 1978 is thought to be the applicable law for “wrongful use” of property owned or controlled~~
16 ~~by private educational institutions, religious organizations, charitable organizations and~~
17 ~~recreational associations, even though the elements of the crime are identical to Section 30-14-1~~
18 ~~NMSA 1978.~~

19 ~~Section 30-14-6 governs trespass cases when the property is not owned or controlled by~~
20 ~~the state or a political subdivision, but is posted or fenced.~~

21 ~~“Lands” as used in Section 30-14-1 NMSA 1978 includes buildings and fixtures. *State v.*~~
22 ~~*Ruiz*, 94 N.M. 771, 617 P.2d 160 (Ct. App. 1980).~~

1 ~~A criminal trespass is a lesser included offense of the crime of burglary. See *State v. Ruiz*,~~
2 ~~*supra*.~~]

3 See NMSA 1978, § 30-14-1 (1995); NMSA 1978, § 30-20-13 (1981). UJI 14-1401 NMRA
4 is limited to criminal trespass of lands or buildings owned or controlled by a state agency or
5 political subdivision of the state when the person has been denied permission to enter the premises
6 or where previous permission has been withdrawn. UJI 14-2001 NMRA should be used instead of
7 UJI 14-1401 NMRA if there is sufficient evidence that the failure or refusal to leave a state or local
8 government building is accompanied by the impairment or interference with or obstruction of the
9 lawful processes, procedures, or functions of the property.

10 In 1975, the Legislature amended NMSA 1978, Sections 30-14-1 and 30-20-13 to make
11 both sections applicable to property owned or under the control of the state or its political
12 subdivisions. These two sections create separate offenses, with NMSA 1978, Section 30-20-13
13 requiring an additional element of willfully impeding or interfering. See NMSA 1978, § 30-20-13
14 (B)-(D).

15 Whether the property is owned or controlled by the state or any of its political subdivisions
16 is a question of law. NMSA 1978, Section 12-6-2 (2009) defines “political subdivisions.” “State”
17 generally includes all three branches of government. See *id.*

18 “Lands” as used in NMSA 1978, Section 30-14-1 includes buildings and fixtures. See *State*
19 *v. Ruiz*, 1980-NMCA-123, ¶ 45, 94 N.M. 771, 617 P.2d 160. A criminal trespass may be a lesser-
20 included offense of the crime of burglary of a dwelling house. See *id.* ¶ 50; see also *State v.*
21 *Romero*, 1998-NMCA-057, ¶¶ 18, 21, 125 N.M. 161, 958 P.2d 119 (concluding that criminal
22 trespass could be a lesser included offense of aggravated burglary where the facts supported a
23 trespass based solely on unlawful entry and not on unlawfully remaining without permission).

1 The mens rea required for criminal trespass is actual, subjective knowledge that permission
2 to enter or remain had been denied or withdrawn. See *State v. Ancira*, 2022-NMCA-053, ¶¶ 18-
3 20, ___ P.3d ___ (holding the plain language of NMSA 1978, Section 30-14-1(B) requires proof
4 of not what a reasonable person would have understood, but actual knowledge that permission to
5 enter had been denied).

6 [As amended by Supreme Court Order No. 22-8300-037, effective for all cases pending or filed
7 on or after December 31, 2022.]