

# PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL PROPOSAL 2023-021

March 24, 2023

The Uniform Jury Instructions - Criminal Committee has recommended amendments Uniform Jury Instruction 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:

Elizabeth A. Garcia, Chief Clerk of Court  
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 24, 2023**, 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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## 14-2217. Aggravated fleeing a law enforcement officer.

For you to find the defendant guilty of aggravated fleeing a law enforcement officer [as charged in Count \_\_\_\_\_]<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 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 authorized emergency [~~appropriately marked law enforcement~~] vehicle;
4. The defendant knew that a law enforcement officer had given the defendant an audible or visual signal to stop;
5. The defendant caused injury to \_\_\_\_\_ (name of victim);<sup>2</sup>
- [5] 6. 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. Insert when a violation of Section 30-22-1.1(C) NMSA 1978, injury to another person, is charged.

[Adopted by Supreme Court Order No. 08-8300-060, effective February 2, 2009; as amended by Supreme Court Order No. 22-8300-032, effective for all cases pending or filed on or after December 31, 2022; 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)~~] (2022).

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 the holding of *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 police by driving in a way that threatened the lives of people in the community.” *Id.* ¶ 19.

In 2022, the Legislature codified the distinction between aggravated fleeing producing a generalized risk of harm to the community and aggravated fleeing actually resulting in harm to a victim, by leaving the former a fourth-degree felony and increasing the penalty for the latter to third degree. See NMSA 1978, Section 30-22-1.1(B), (C). In apparent response to *State v. Montano*, 2020-NMSC-009, 486 P.3d 838, the Legislature amended the statute to require that the pursuit be in an authorized emergency vehicle under NMSA 1978, Section 66-7-6 (1989).

Although the statute requires that the pursuit be conducted “in accordance with” the Law Enforcement Safe Pursuit Act, NMSA 1978, §§ 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.

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**New Mexico  
Courts**

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## **[rules.supremecourt-grp] Rule Proposal Comment Form, 03/24/2023, 3:07 pm**

1 message

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**web-admin@nmcourts.gov** <nmcourtswbforms@nmcourts.gov>

Fri, Mar 24, 2023 at 3:07 PM

Reply-To: nmcourtswbforms@nmcourts.gov

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Proposal Number: 2023-021

Comment: The added element 5 is missing an opening bracket. Small but important typo. Thanks!