

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL
PROPOSAL 2019-018**

March 4, 2019

The UJI-Criminal Committee has recommended amendments to UJI 14-5106, 14-5110, and 14-5111 NMRA and the withdrawal of UJI 14-5105 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:

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Your comments must be received by the Clerk on or before April 3, 2019, 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.

[WITHDRAWN]

~~**14-5105. Voluntary intoxication.**~~

~~———— Evidence has been presented that the defendant was intoxicated from use of [alcohol] [drugs]. An act committed by a person while voluntarily intoxicated is no less criminal because of his condition. If the evidence shows that the defendant was voluntarily intoxicated when allegedly he committed the crime[s] of _____, that fact is not a defense. ———~~

~~USE NOTE —~~

~~———— No instruction on this subject shall be given. (See Instructions 14-5110 and 14-5111 for special instructions for specific intent crimes.) —~~

~~[Withdrawn by Supreme Court Order _____, effective _____]~~

~~———— **Committee commentary.** — Under New Mexico law, the defense of voluntary intoxication depends upon whether the crime is characterized as a general intent crime or one characterized as a specific intent crime. If the crime is a specific intent crime, the defense is available to negate the so-called specific intent. —~~

~~———— The UJI instructions cover the defense for the specific intent crimes. UJI 14-5110 is used for a willful and deliberate first degree murder where intoxication can negate the deliberate intention to take away the life of another person. For nonhomicide crimes, UJI 14-5111 is used where intoxication can negate the element of intent to do a further act or achieve a further consequence. —~~

— Prior to the adoption of these instructions, it was a common practice to advise the jury that intoxication was not a defense to a general intent crime. The committee believed that the better practice would be to not give an instruction for those crimes. In the event that one of the crimes being considered by the jury is a specific intent crime, UJI 14-5110 or 14-5111 will limit the defense to that crime. If there is no specific intent crime, and evidence of voluntary intoxication is admitted on some issue other than intent, the committee believed the instruction would be misleading.—
[Withdrawn by Supreme Court Order _____, effective _____]

14-5106. Involuntary intoxication; defined.¹

[Evidence has been presented that] An issue you must consider in this case is whether the defendant was intoxicated [but that] and if so, whether the intoxication was involuntary.

Intoxication is involuntary if:²

[a person is forced to become intoxicated against the person’s will]

[a person becomes intoxicated by using (alcohol)³ (drugs) without knowing the intoxicating character of the (alcohol)³ (drugs) and without willingly assuming the risk of possible intoxication].

USE [NOTE] NOTES

1. If this instruction is given, add to the essential elements instruction for the offense charged:

~~[The defendant was not involuntarily intoxicated at the time the offense was committed or, if defendant was involuntarily intoxicated, then defendant nonetheless:—~~

~~_____ knew what [he] [she] was doing or understood the consequences of [his] [her] act, knew that [his] [her] act was wrong and could have prevented [himself] [herself] from committing the act.]~~

[The defendant was not involuntarily intoxicated at the time the offense was committed or, if the defendant was involuntarily intoxicated, then the defendant nonetheless [knew what (he) (she) was doing or understood the consequences of (his) (her) act]³

[or]

[knew that (his) (her) act was wrong]

[or]

[could have prevented (himself) (herself) from committing the act].

2. Use only the applicable source of the intoxication.

3. Use only the applicable alternative or alternatives.

[As amended, effective January 1, 1997; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — Involuntary intoxication may result from the mistaken use of a liquor or narcotic substance. See generally Perkins, *Criminal Law* 894 (2d ed. 1969). “[I]nvoluntary intoxication is a defense only when it negates the intent element of a crime.” *State v. Gurule*, 2011-NMCA-042, ¶ 17, 149 N.M. 599, 252 P.3d 823. Involuntary intoxication is not available as a defense to strict liability crimes, which, by definition, do not require criminal intent. *Id.* ¶ 18. Involuntary intoxication may serve as a defense “only . . . to the extent that it impairs the ability to form intent.” *Id.* (internal quotation marks and citation omitted). In *State v. Brown*, 1996-NMSC-073, ¶ 27, 122 N.M. 724, 931 P.2d 69, the Supreme Court extended the partial defense of

voluntary intoxication to depraved mind murder. Our appellate courts have not yet considered whether involuntary intoxication would also be a partial defense to depraved mind murder. *See* UJIs 14-5110, 14-5111 NMRA.

~~[The committee found no reported New Mexico decisions involving the defense of involuntary intoxication. Some commentators have suggested that the defense is nonexistent. However, intoxication can result from the mistaken use of a liquor or narcotic substance. *See generally* Perkins, *Criminal Law* 894 (2d ed. 1969). In that instance, it is as if the defendant was rendered mentally ill by an act over which he had no control. Consequently, this instruction includes the elements of mental illness, the test of insanity similar to that in UJI 14-5101 NMRA. *See* Perkins, *supra*, at 898.]~~

[Commentary amended by Supreme Court Order No. _____, effective _____.]

14-5110. Inability to form a deliberate intention to take away the life of another or to know conduct was greatly dangerous to life.¹

~~[Evidence has been presented that]~~ An issue you must consider in this case is whether the defendant was [intoxicated from use of (alcohol) (drugs)]² [or] [suffering from a mental disease or disorder]. You must determine whether or not the defendant was _____³ and if so, what effect this had on the defendant's [ability to form the deliberate intention to take away the life of another]² [or] [subjective knowledge that the defendant's conduct was greatly dangerous to the lives of others].

The burden is on the state to prove beyond a reasonable doubt that the defendant was capable of [forming a deliberate intention to take the life of another]² [or] [knowing that the defendant's conduct was greatly dangerous to the lives of others]. If you have a reasonable doubt as to whether the defendant was capable of [forming ~~such an~~ a deliberate intention intent to take away the life of another]² [or] [knowing the dangerousness of the defendant's conduct], you must find the defendant not guilty of a first-degree murder by [deliberate killing]² [or] [an act greatly dangerous to life].

USE [NOTE] NOTES

1. This instruction may be given only for a willful and deliberate murder or a depraved mind murder and should immediately follow UJI 14-201 NMRA when the defendant has relied on the defense of "diminished responsibility" or "inability to form specific intent." If, in a "mental disease or disorder" case, the defendant has also relied on the complete defense of insanity, this instruction should follow UJI 14-5101 NMRA. If this instruction is given, add to the essential elements instruction for the offense charged, "The defendant was not [intoxicated from use of (alcohol) (drugs)]² [or] [suffering from a mental disease or disorder] at the time the offense was committed to the extent of being incapable of [forming an intent to take away the life of another]² [or] [knowing the dangerousness of the defendant's conduct]."

2. Use only the applicable bracketed phrase. If intoxication is in issue, use only the applicable source of intoxication.

3. Repeat bracketed and parenthetical words used in the first sentence.

[As amended, effective January 1, 1997; as amended by Supreme Court Order No. _____, effective _____.]

Committee commentary. — ~~[The willful and deliberate first-degree murder is the only~~

homicide requiring a so-called “specific intent” under New Mexico law. *State v. Tapia*, 81 N.M. 274, 276, 466 P.2d 551, 553 (1970); *State v. Chambers*, 84 N.M. 309, 502 P.2d 999 (1972). The intent required is “express malice,” i.e., the deliberate intention unlawfully to take away the life of a fellow creature. *State v. Smith*, 26 N.M. 482, 488, 194 P. 869 (1921).]

Willful and deliberate first-degree murder requires “a deliberate intent, which by definition involves careful thought and the weighing of the consideration for and against a proposed course of action, and does not describe every intentional killing.” *State v. Balderama*, 2004-NMSC-008, ¶ 29, 135 N.M. 329, 88 P.3d 845. Voluntary alcoholic and drug intoxication, *see State v. Nelson*, 1971-NMCA-152, 83 N.M. 269, 490 P.2d 1242[(Ct. App.), *cert. denied*, 83 N.M. 259, 490 P.2d 1232 (1971)], and mental disorders, *see State v. Padilla*, 1959-NMSC-100, 66 N.M. 289, 347 P.2d 312[; 78 A.L.R.2d 908 (1959)], may negate this intent. The defense of inability to form a “specific intent” is analogous to the defense of insanity. *State v. Holden*, 1973-NMCA-092, ¶ 8, 85 N.M. 397, 512 P.2d 970[(Ct. App.), *cert. denied*, 85 N.M. 380, 512 P.2d 953 (1973)].

In *State v. Brown*, the Supreme Court recognized that depraved mind murder’s “specific mens rea element of ‘subjective knowledge’” may be negated by voluntary intoxication. 1996-NMSC-073, ¶ 27, 122 N.M. 724, 931 P.2d 69. Ultimately, the Supreme Court held that “evidence of intoxication [is] relevant to the formation of the heightened mens rea element of depraved mind murder.” *Id.* More recent case law has affirmed that the defense of voluntary intoxication applies to specific-intent crimes such as first-degree murder. *State v. Arrendondo*, 2012-NMSC-013, ¶ 42, 278 P.3d 517.

[*State v. Smith*, *supra*, states that a willful and deliberate murder requires specific intent. See commentary to UJI 14-201. The same case also indicates that if the facts conclusively show that the murder was perpetrated by means of lying in wait, torture, or poison, the means supply specific intent. In addition, both felony murder and the so-called depraved mind murder do not require a specific intent, since intent is implied as a matter of law. See commentaries to UJIs 14-202 and 14-203.]

— The extent of the defense in drug use situations is unclear. If limited to narcotic drugs as defined in the Controlled Substances Act, the defense will have a limited application. See Sections 30-31-2P and 30-31-6 & 30-31-7 NMSA 1978. For example, marijuana is no longer defined as a narcotic drug under the statute, although its use and possession are still prohibited.—

— Two transition problems occur with the use of this instruction. The supreme court has made it clear that the]

The defense of voluntary intoxication is not available for felony murder, second-degree murder, or general intent crimes. See *State v. Campos*, 1996-NMSC-043, ¶¶ 39, 46, 122 N.M. 148, 921 P.2d 1266. For clarity, UJI 14-5105 NMRA (voluntary intoxication), which previously limited the applicability of the voluntary intoxication defense, was withdrawn in 2018. UJI 14-5110 NMRA is used for a willful and deliberate first-degree murder where intoxication can negate the deliberate intention to take away the life of another person or for depraved mind murder where intoxication can negate the subjective knowledge that the defendant’s conduct was greatly dangerous to the lives of others. For non-homicide crimes, UJI 14-5111 is used where intoxication can negate the element of intent to do a further act or achieve a further consequence. [*State v. Chambers*, *supra*; *State v. Tapia*, *supra*. See also *State v. Lunn*, 88 N.M. 64, 537 P.2d 672 (Ct. App.), *cert. denied*, 88 N.M. 318, 540 P.2d 248 (1975), *cert. denied*, 423 U.S. 1058, 96 S. Ct. 793, 46 L. Ed. 2d 648 (1976). Because the committee recognized that the jury may have difficulty making the distinction between a deliberate

~~intention to take the life of another and an intent to kill or do great bodily harm, the bracketed sentences are included so that the jury is told to consider other homicide offenses not requiring specific intent.~~

~~When the defense involves a mental disease or disorder, the defendant probably will have attempted to show insanity as a complete defense. See *State v. Padilla*, supra. The jury will undoubtedly have trouble with the distinction between insanity and inability to form specific intent. The use note therefore provides that the insanity instruction be given first. The insanity instruction contains an optional paragraph which must be given when the inability-to-form-specific-intent instruction follows.]~~

[As amended by Supreme Court Order No. _____, effective _____.]

14-5111. Inability to form intent to do a further act or achieve a further consequence.¹

~~[Evidence has been presented that] An issue you must consider in this case is whether the defendant was [intoxicated from the use of (alcohol) (drugs)]² [suffering from a mental disease or disorder]. You must determine whether or not the defendant was _____³ and, if so, what effect this had on the defendant's ability to form the intent to [_____]⁴.~~

~~[[Intent to _____⁴ is not an element of the crime of _____⁵.
If you find the defendant not guilty of _____⁶, you must proceed to determine whether or not the defendant is guilty of the crime of _____⁵.]]~~

~~[Intent to _____⁴ is not an element of the crime of _____⁵.
If you find the defendant not guilty of _____⁶, you must proceed to determine whether or not the defendant is guilty of the crime of _____⁵.]~~

~~The burden is on the state to prove beyond a reasonable doubt that the defendant was capable of forming an intention to _____⁴. If you have a reasonable doubt as to whether the defendant was capable of forming such an intention, you must find the defendant not guilty of _____⁵.~~

USE [NOTE] NOTES

1. This instruction is used for the intoxication or mental disease defense for a crime which includes an element of intent to do a further act or achieve a further consequence. It may not be used for a homicide crime. See UJI 14-5110 NMRA. When the defense is based on a “mental disease or disorder” and the defendant has also relied on the complete defense of insanity, this instruction should follow UJI [~~14-5110~~] 14-5101 NMRA. Otherwise, the instruction should follow the elements instruction for the crime or crimes with the intent element. If this instruction is given, add to the essential elements instruction for the offense charged, “The defendant was not [intoxicated from use of (alcohol) (drugs)]² [suffering from a mental disease or disorder] at the time the offense was committed to the extent of being incapable of forming an intention to _____⁴.”

2. Use only the applicable bracketed phrase. If intoxication is in issue, use only the applicable source of intoxication.

3. Repeat the bracketed and parenthetical words used in the first sentence.

4. Repeat the applicable specific intent to do a further act or achieve a further consequence from the essential elements instruction of the crime.

5. Name any other offenses or lesser included offense which does not have an intent to do a further act or achieve a further consequence and for which an instruction is being given to the jury.

6. Name the crime charged which requires specific intent.

[As amended, effective January 1, 1997; amended by Supreme Court Order No. _____, effective _____.]

Committee Commentary. – This instruction embodies the defense of intoxication (involuntary or voluntary) or mental disease short of “complete insanity” which will negate a specific intent in a nonhomicide crime. *See, e.g., State v. Ortega*, 1968-NMCA-092, ¶ 9, 79 N.M. 707, 448 P.2d 813 (“[S]pecific intent to commit a felony or theft is an essential element of the state’s case to be proved beyond a reasonable doubt.”). This instruction may be used only for nonhomicide crimes containing an element of intent to do a further act or achieve a further consequence. [~~See also the reporter’s addendum to commentary to UJI 14-141, “The Lazy Lawyer’s Guide to Criminal Intent in New Mexico,” following these instructions:~~]

For clarity, UJI 14-5105 NMRA (voluntary intoxication) has been withdrawn. See committee commentary to UJI 14-5110 NMRA. “Voluntary intoxication provides a defense to specific-intent crimes ‘where the intoxication is to such a degree as would negate the possibility of the necessary intent.’” *State v. Hernandez*, 2003-NMCA-131, ¶ 20, 134 N.M. 510, 79 P.3d 1118 (internal quotation marks and citation omitted) (holding that the defendant was not entitled to a voluntary intoxication instruction for robbery where no evidence was presented that the defendant was intoxicated, much less to the point that he would be unable to form the mental state necessary to commit a specific-intent crime).

[As amended by Supreme Court Order No. _____, effective _____.]



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Rule Proposal Comment Form

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Tue, Apr 2, 2019 at 11:20 AM

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Proposal Number
2019-018

Comment
Quick comment - the commentary in 14-5110 says that 14-5105 was withdrawn in 2018, but it should be 2019.

I'll send in a comment on one of the other proposals, but I want to commend the UJI Committee for really great work on these. Excellent job.

JLI

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