

West's New Mexico Statutes Annotated
State Court Rules
14. Uniform Jury Instructions--Criminal
Chapter 31. Controlled Substances
Part A. Possession, Distribution and Possession with Intent to Distribute

NMRA, Crim. UJI 14-3104
UJI 14-3104. CONTROLLED SUBSTANCE; POSSESSION WITH INTENT TO DISTRIBUTE; ESSENTIAL
ELEMENTS ¹
Currentness

For you to find the defendant guilty of “possession with intent to distribute _____” [as charged in Count _____]³, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant had _____² in his possession⁴;

2. The defendant knew it was _____² [or believed it to be _____²]⁵ [or believed it to be some drug or other substance the possession of which is regulated or prohibited by law];

3. The defendant intended to transfer it to another;

4. This happened in New Mexico on or about the ___ day of _____, _____.

USE NOTES

Editors' Notes

COMMITTEE COMMENTARY

See Section 30-31-22A NMSA 1978.

This instruction is for use for possession with intent to distribute of any controlled substance except a narcotic drug in Schedules I or II. An essential element of this offense is the intent to transfer. *State v. Tucker*, 86 N.M. 553, 525 P.2d 913 (Ct.App.1974), cert. denied, 86 N.M. 528, 525 P.2d 888 (1974).

Mere possession alone is insufficient to prove an intent to distribute. *State v. Moreno*, 69 N.M. 113, 364 P.2d 594 (1961). The intent to distribute may be inferred from the facts and circumstances. *State v. Ortega*, 79 N.M. 707, 448 P.2d 813 (Ct.App.1968). For example, it may be shown by the possession of a large quantity of the substance. *State v. Bowers*, 87 N.M. 74, 529 P.2d 300 (Ct.App.1974). It may also be shown if the person in possession is not, nor ever has been, a user of

the substance. *State v. Quintana*, 87 N.M. 414, 534 P.2d 1126 (Ct.App.1975), cert. denied, 88 N.M. 29, 536 P.2d 1084, cert. denied, 423 U.S. 832, 96 S.Ct. 54, 46 L.Ed.2d 50 (1975).

The crime of possession with intent to distribute is complete if there is possession with intent to transfer. The place of the intended transfer is not an essential element of the crime. *State v. Bowers*, supra. The necessary intent may be proved by intent to complete any of the types of transfer which are set forth in Section 35-31-2G NMSA 1978.

Although this instruction is also applicable to marijuana, it will probably be seldom used for that substance. The statute provides the same penalty for a first offense of possession with intent to distribute marijuana and the offense of possession of more than eight ounces of marijuana.

For a discussion of use of the word “transfer” to define “distribute,” see commentary to UJI 14-3103.

For a discussion of exceptions and exemptions as a defense, see commentary to UJI 14-3101 and 14-3132.

For a discussion of the requirement of knowledge, see commentary to UJI 14-3101 and 14-3102.

Footnotes

- 1
This instruction is not applicable to narcotic drugs in Schedules I or II of 30-31-6 and 30-31-7 NMSA 1978.
- 2
Identify the substance.
- 3
Insert the count number if more than one count is charged.
- 4
UJI 14-3130, the definition of possession in controlled substance cases, should be given if possession is in issue.
- 5
Use applicable alternative or alternatives if there is evidence that the defendant believed the substance to be some controlled substance other than that charged.

NMRA, Crim. UJI 14-3104, NM R CR UJI 14-3104

State court rules are current with amendments received through August 1, 2017.
