

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 14-3103  
UJI 14-3103. CONTROLLED SUBSTANCE; DISTRIBUTION; ESSENTIAL ELEMENTS  
Currentness

For you to find the defendant guilty of “distribution of \_\_\_\_\_” [as charged in Count \_\_\_\_\_]<sup>3</sup>, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant [transferred]<sup>4</sup> [caused the transfer of] [attempted to transfer] \_\_\_\_\_<sup>2</sup> to another;
  
2. The defendant knew it was \_\_\_\_\_<sup>2</sup> [or believed it to be \_\_\_\_\_<sup>2</sup>]<sup>5</sup> [or believed it to be some drug or other substance the possession of which is regulated or prohibited by law];
  
3. 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 to be used for distribution of any controlled substance, including marijuana. Although the amount of the substance is not relevant for conviction for the crime of distribution, giving away of a “small amount” of marijuana is treated as if it were possession of more than eight ounces, Section 30-31-22C NMSA 1978, and therefore is punishable by a fine of only \$5,000 or imprisonment for 1 to 5 years or both, Section 30-31-23B(3) NMSA 1978.

The introductory paragraph of this instruction gives the crime its statutory name, “distribution.” Section 30-31-2J NMSA 1978 defines “distribute” as “deliver.” Section 30-31-2G NMSA 1978 defines “deliver” as “actual, constructive or attempted transfer.” “Transfer” is a word in common usage which will not ordinarily require further definition. If a definition is requested by the jury, a dictionary definition should be given.

Section 30-31-2G NMSA 1978 includes “attempted transfer” in the definition of “deliver.” Therefore, the crime of “attempted distribution” is included in this instruction. Apparently, UJI 14-2801 is not appropriate for an attempted

distribution because the legislature, in defining this offense, has specifically included an attempt within the definition of the substantive crime. See *State v. Vinson*, 298 So.2d 505 (Fla.App.1974) (one who attempts to make a transfer is guilty of the substantive offense).

Unlike the crime of trafficking a controlled substance, the statute prohibiting distribution of a controlled substance does not specifically include a provision for penalizing a gift of the controlled substance. However, the court of appeals has held that the definition of “distribute” and the definition of “delivery” do not require any remuneration for the transfer. See *State v. Montoya*, 86 N.M. 155, 520 P.2d 1100 (Ct.App.1974).

Possession is a necessarily included offense to the crime of distribution because one cannot commit the crime of distribution without also committing the crime of possession. See *State v. Medina*, 87 N.M. 394, 534 P.2d 486 (Ct.App.1975). See also *State v. Romero*, 86 N.M. 99, 519 P.2d 1180 (Ct.App.1974). See Rule of Criminal Procedure 5-608 and UJI 14-6002 and commentary. Distribution may be by constructive transfer, for example, by mailing the substance. *State v. McHorse*, 85 N.M. 753, 517 P.2d 75 (Ct.App.1973). Consequently, constructive possession would be sufficient for a constructive distribution. See *State v. Wesson*, 83 N.M. 480, 493 P.2d 965 (Ct.App.1972).

For a discussion of exceptions and exemptions as a defense, see commentary to UJI 14-3101 and 14-3102.

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

#### Notes of Decisions (1)

#### 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  
Use only the applicable alternatives.
- 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 14-3103, NM R CR UJI 14-3103

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

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