

**14-4509. Aggravated driving while under influence of alcohol or drugs; essential elements.<sup>1</sup>**

For you to find the defendant guilty of aggravated driving while under the influence of [intoxicating liquor] [or] [drugs] [as charged in Count \_\_\_\_\_]<sup>2</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<sup>3</sup>;
2. At that time, the defendant  
[had an alcohol concentration of sixteen one-hundredths (.16) grams or more in [one hundred milliliters of blood;]<sup>4</sup> [or] [two hundred ten liters of breath;]]<sup>4</sup>

[OR]

[was under the influence of  
[intoxicating liquor; that is, as a result of drinking liquor the defendant was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to the person and the public;]<sup>4</sup>

[or]

[drugs to such a degree that the defendant was incapable of safely driving a vehicle]

and

[caused painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of \_\_\_\_\_ (*set forth name of victim*);]

[or]

[refused to submit to chemical testing<sup>5</sup>.]

3. This happened in New Mexico, on or about the \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

**USE NOTES**

1. This instruction sets forth the elements of all three types of "aggravated driving while under the influence" in Subsection D of Section 66-8-102 NMSA 1978: (1) driving with an alcohol concentration of .16 or more; (2) causing bodily injury while driving intoxicated; and (3) refusing to submit to chemical testing when driving while intoxicated. If the evidence supports two or more of these theories of "aggravated driving while under the influence of intoxicating liquor or drugs", this instruction must be used. If the evidence supports only one theory of aggravated driving while under the influence, use instruction 14-4506, 14-4507 or 14-4508, whichever is applicable.

2. Insert count number if more than one count is charged.

3. See Section 66-1-4.11 NMSA 1978 for the definition of a motor vehicle.

4. Use applicable alternative or alternatives.

5. Instruction 14-4510, the definition of refusal to submit to chemical testing, must be given if this element is given.

[Adopted, effective May 1, 1997.]