

**14-5174. Justifiable homicide; aiding public official.<sup>1</sup>**

An issue you must consider in this case is whether the killing of \_\_\_\_\_ (*name of victim*) was justifiable homicide by a person aiding a public officer or public employee if:

1. At the time of the killing, \_\_\_\_\_ (*name of defendant*) was acting at the command and in the aid or assistance of a public officer or employee;

2. The killing was committed while<sup>2</sup>

[overcoming the actual resistance of \_\_\_\_\_ (*victim*) to the execution of \_\_\_\_\_]<sup>3</sup>

[overcoming the actual resistance of \_\_\_\_\_ (*victim*) to the discharge of \_\_\_\_\_]<sup>4</sup>

[retaking [\_\_\_\_\_ (*name of victim*)] [a person], who committed \_\_\_\_\_<sup>6</sup> and who had [been rescued]<sup>5</sup> [escaped]]

[arresting [\_\_\_\_\_ (*name of victim*)] [a person] who committed \_\_\_\_\_<sup>6</sup> and was fleeing from justice]

[attempting to prevent the escape from \_\_\_\_\_<sup>7</sup> of [\_\_\_\_\_ (*name of victim*)] [a person], who committed \_\_\_\_\_]<sup>6</sup> and

3. A reasonable person in the same circumstances as \_\_\_\_\_ (*name of defendant*) would have reasonably believed that \_\_\_\_\_ (*name of victim*) posed a threat of death or great bodily harm to \_\_\_\_\_ (*name of public officer or public employee*) or another person.

The burden is on the state to prove beyond a reasonable doubt that the killing was not justifiable. If you have a reasonable doubt as to whether the killing was justifiable, you must find the defendant not guilty.

**USE NOTES**

1. For use when the defense is based on Section 30-2-6 NMSA 1978. If this instruction is given, add to the essential elements instruction for the offense charged, "The killing was not justifiable homicide by a person aiding a public officer or employee."

2. Use only the applicable bracketed phrase.

3. Insert description of legal process being executed.

4. Insert description of legal duty.

5. Use only applicable parenthetical alternative.

6. Insert name of felony. The essential elements of the felony must also be given. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be

used. However, in this context, substitute the name of the victim in place of the words “the defendant” in UJI 14-140 NMRA.

7. Describe circumstances and place of lawful custody or confinement.  
[As amended, effective October 1, 1985; January 1, 1997; April 15, 2003; as amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019; as amended by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed on or after December 31, 2020.]