

## 14-8005. Grand jury proceedings; sample instructions.<sup>1</sup>

### Burglary; essential elements.

For you to return an indictment against the accused for the crime of burglary, you must find that there is probable cause<sup>2</sup> to believe each of the following elements of the crime:

1. The accused entered \_\_\_\_\_ (*identify structure*)<sup>3</sup> without authorization or permission; [the least intrusion constitutes an entry;]<sup>4</sup>
2. When the accused entered the \_\_\_\_\_ (*name of structure*), intended to commit [a theft] [or] \_\_\_\_\_ (*name of felony*)]<sup>5</sup> inside;
3. This happened in New Mexico on or about the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

### USE NOTES

1. This instruction and any other applicable instruction shall be given. *State v. Ulibarri*, 2000-NMSC-007, 128 N.M. 686 (adopting reasoning of Court of Appeals in *State v. Ulibarri*, 1999-NMCA-142, 128 N.M. 546).

2. UJI 14-8006 NMRA, which defines probable cause, shall be given with the essential elements instruction(s). If the prosecutor gives essential elements instructions for more than one offense, the prosecutor is not required to give the probable cause instruction more than once.

3. If the charge is burglary of a dwelling house, UJI 14-1631 NMRA shall be given with this instruction. *State v. Ulibarri*, 2000-NMSC-007, 128 N.M. 686 (adopting reasoning of Court of Appeals in *State v. Ulibarri*, 1999-NMCA-142, 128 N.M. 546).

4. Use bracketed phrase if entry is an issue.

5. If this instruction is used, it is not necessary to instruct on the elements of the theft. If intent to commit a felony is alleged, the essential elements of the felony should be given with this instruction.

[As amended by Supreme Court Order No. 08-8300-008, effective March 21, 2008.]