

14-5191. Self defense; limitations; aggressor.¹

Before you consider whether the defendant acted in self defense, you must first decide whether the defendant was the first aggressor. The defendant was the first aggressor if the defendant

[started the fight with _____ (*name of victim*)]²
[or]
[agreed to fight with _____ (*name of victim*)]
[or]
[intentionally provoked a fight in order to harm _____ (*name of victim*)]
[or]
[committed the act of _____ (*describe defendant's conduct that constituted the alleged crime*), in response to _____'s (*name of victim*) act of _____ (*describe conduct of victim giving rise to an appearance of immediate danger of harm to defendant*), where _____'s (*name of victim*) act was the [lawful and]³ foreseeable result of _____ (*describe defendant's alleged unlawful act that resulted in victim's conduct*)]⁴.

The burden is on the state to prove beyond a reasonable doubt that the defendant was the first aggressor. [If the defendant was the first aggressor, the defendant cannot claim self defense. If the defendant was not the first aggressor, you should proceed to decide whether the defendant acted in self defense.]⁵ [If you find that the defendant was the first aggressor, you must then decide whether _____ (*name of victim*) became the aggressor. If _____ (*name of victim*) became the aggressor, the defendant may claim self defense even though the defendant was the first aggressor.]⁶

USE NOTES

1. This instruction must be given in all self defense cases in which first aggressor is an issue.
2. Use only applicable bracketed element or elements established by the evidence.
3. If the lawfulness of the victim's conduct is at issue, e.g., may have been privileged or justified, give appropriate definition.
4. This alternative should be used when the defendant provoked the victim through an unlawful act and the victim responded in a lawful manner. See *State v. Denzel B.*, 2008-NMCA-118, 144 N.M. 746, 192 P.3d 260; see also committee commentary, *infra*.
5. Use this bracketed alternative in cases where UJI 14-5191A NMRA will not be given.
6. Use this bracketed alternative in cases where UJI 14-5191A will be given. If UJI 14-5191A will be given, it should immediately follow this instruction. [As amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019.]