

1 **14-5106. Involuntary intoxication; defined.**<sup>1</sup>

2 ~~[Evidence has been presented that]~~ An issue you must consider in this case is whether the  
3 defendant was intoxicated ~~[but that]~~ and if so, whether the intoxication was involuntary.

4 Intoxication is involuntary if:<sup>2</sup>

5 [a person is forced to become intoxicated against the person's will]

6 [a person becomes intoxicated by using (alcohol)<sup>3</sup> (drugs) without knowing the intoxicating  
7 character of the (alcohol)<sup>3</sup> (drugs) and without willingly assuming the risk of possible intoxication].

8 USE ~~[NOTE]~~ NOTES

9 1. If this instruction is given, add to the essential elements instruction for the offense  
10 charged:

11 ~~[The defendant was not involuntarily intoxicated at the time the offense was committed or,~~  
12 ~~if defendant was involuntarily intoxicated, then defendant nonetheless:~~

13 ~~\_\_\_\_\_ knew what [he] [she] was doing or understood the consequences of [his] [her]~~  
14 ~~act, knew that [his] [her] act was wrong and could have prevented [himself] [herself]~~  
15 ~~from committing the act.]~~

16 [The defendant was not involuntarily intoxicated at the time the offense was  
17 committed or, if the defendant was involuntarily intoxicated, then the defendant nonetheless [knew  
18 what (he) (she) was doing or understood the consequences of (his) (her) act]<sup>3</sup>

19 [or]

20 [knew that (his) (her) act was wrong]

21 [or]

1 [could have prevented (himself) (herself) from committing the act].

2 2. Use only the applicable source of the intoxication.

3 3. Use only the applicable alternative or alternatives.

4 [As amended, effective January 1, 1997; as amended by Supreme Court Order No. 19-8300-016,  
5 effective for all cases pending or filed on or after December 31, 2019.]

6 **Committee commentary.** — Involuntary intoxication may result from the mistaken use of  
7 a liquor or narcotic substance. See generally Perkins, *Criminal Law* 894 (2d ed. 1969).  
8 “[I]nvoluntary intoxication is a defense only when it negates the intent element of a crime.” *State*  
9 *v. Gurule*, 2011-NMCA-042, ¶ 17, 149 N.M. 599, 252 P.3d 823. Involuntary intoxication is not  
10 available as a defense to strict liability crimes, which, by definition, do not require criminal intent.  
11 *Id.* ¶ 18. Involuntary intoxication may serve as a defense “only . . . to the extent that it impairs the  
12 ability to form intent.” *Id.* (internal quotation marks and citation omitted). In *State v. Brown*, 1996-  
13 NMSC-073, ¶ 27, 122 N.M. 724, 931 P.2d 69, the Supreme Court extended the partial defense of  
14 voluntary intoxication to depraved mind murder. Our appellate courts have not yet considered  
15 whether involuntary intoxication would also be a partial defense to depraved mind murder. See UJIs  
16 14-5110, 14-5111 NMRA.

17 [~~The committee found no reported New Mexico decisions involving the defense of~~  
18 ~~involuntary intoxication. Some commentators have suggested that the defense is nonexistent.~~  
19 ~~However, intoxication can result from the mistaken use of a liquor or narcotic substance. See~~  
20 ~~generally Perkins, *Criminal Law* 894 (2d ed. 1969). In that instance, it is as if the defendant was~~  
21 ~~rendered mentally ill by an act over which he had no control. Consequently, this instruction includes~~

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- 1 ~~the elements of mental illness, the test of insanity similar to that in UJI 14-5101 NMRA. See~~
- 2 ~~Perkins, *supra*, at 898.]~~
- 3 ~~[As amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on~~
- 4 ~~or after December 31, 2019.]~~