

1 **14-5110. Inability to form a deliberate intention to take away the life of another or to**
2 **know conduct was greatly dangerous to life.**¹

3 ~~[Evidence has been presented that]~~ An issue you must consider in this case is whether
4 the defendant was [intoxicated from use of (alcohol) (drugs)]² [or] [suffering from a mental
5 disease or disorder]. You must determine whether or not the defendant was
6 _____³ and if so, what effect this had on the defendant's
7 [ability to form the deliberate intent~~ion~~] to take away the life of another]² [or] [subjective
8 knowledge that the defendant's conduct was greatly dangerous to the lives of others].

9 The burden is on the state to prove beyond a reasonable doubt that the defendant was
10 capable of [forming a deliberate intention to take the life of another]² [or] [knowing that the
11 defendant's conduct was greatly dangerous to the lives of others]. If you have a reasonable
12 doubt as to whether the defendant was capable of [forming [~~such an~~] a deliberate [intention]
13 intent to take away the life of another]² [or] [knowing the dangerousness of the defendant's
14 conduct], you must find the defendant not guilty of a first-degree murder by [deliberate
15 killing]² [or] [an act greatly dangerous to life].

16 USE [NOTE] NOTES

17 1. This instruction may be given only for a willful and deliberate murder or a
18 depraved mind murder and should immediately follow UJI 14-201 NMRA when the
19 defendant has relied on the defense of “diminished responsibility” or “inability to form
20 specific intent.” If, in a “mental disease or disorder” case, the defendant has also relied on
21 the complete defense of insanity, this instruction should follow UJI 14-5101 NMRA. If this

1 instruction is given, add to the essential elements instruction for the offense charged, “The
2 defendant was not [intoxicated from use of (alcohol) (drugs)]² [or] [suffering from a mental
3 disease or disorder] at the time the offense was committed to the extent of being incapable
4 of [forming an intent to take away the life of another]² [or] [knowing the dangerousness of
5 the defendant’s conduct].”

6 2. Use only the applicable bracketed phrase. If intoxication is in issue, use only
7 the applicable source of intoxication.

8 3. Repeat bracketed and parenthetical words used in the first sentence.
9 [As amended, effective January 1, 1997; as amended by Supreme Court Order No. 19-8300-
10 016, effective for all cases pending or filed on or after December 31, 2019.]

11 **Committee commentary.** — [~~The willful and deliberate first-degree murder is the~~
12 ~~only homicide requiring a so-called “specific intent” under New Mexico law. *State v. Tapia*,~~
13 ~~81 N.M. 274, 276, 466 P.2d 551, 553 (1970); *State v. Chambers*, 84 N.M. 309, 502 P.2d 999~~
14 ~~(1972). The intent required is “express malice,” i.e., the deliberate intention unlawfully to~~
15 ~~take away the life of a fellow creature. *State v. Smith*, 26 N.M. 482, 488, 194 P. 869 (1921).]~~

16 Willful and deliberate first-degree murder requires “a deliberate intent, which by
17 definition involves careful thought and the weighing of the consideration for and against a
18 proposed course of action, and does not describe every intentional killing.” *State v.*
19 *Balderama*, 2004-NMSC-008, ¶ 29, 135 N.M. 329, 88 P.3d 845. Voluntary alcoholic and
20 drug intoxication, *see State v. Nelson*, 1971-NMCA-152, 83 N.M. 269, 490 P.2d 1242[~~(Ct.~~
21 *App.*), *cert. denied*, 83 N.M. 259, 490 P.2d 1232 (1971)], and mental disorders, *see State v.*

1 *Padilla*, 1959-NMSC-100, 66 N.M. 289, 347 P.2d 312[, ~~78 A.L.R.2d 908 (1959)~~], may
2 negate this intent. The defense of inability to form a “specific intent” is analogous to the
3 defense of insanity. *State v. Holden*, 1973-NMCA-092, ¶ 8, 85 N.M. 397, 512 P.2d 970[~~(Ct.~~
4 ~~App.)~~, *cert. denied*, 85 N.M. 380, 512 P.2d 953 (1973).]

5 In *State v. Brown*, the Supreme Court recognized that depraved mind murder’s
6 “specific *mens rea* element of ‘subjective knowledge’” may be negated by voluntary
7 intoxication. 1996-NMSC-073, ¶ 27, 122 N.M. 724, 931 P.2d 69. Ultimately, the Supreme
8 Court held that “evidence of intoxication [is] relevant to the formation of the heightened
9 *mens rea* element of depraved mind murder.” *Id.* More recent case law has affirmed that the
10 defense of voluntary intoxication applies to specific-intent crimes such as first-degree
11 murder. *State v. Arrendondo*, 2012-NMSC-013, ¶ 42, 278 P.3d 517.

12 [~~*State v. Smith*, *supra*, states that a willful and deliberate murder requires specific~~
13 ~~intent. See commentary to UJI 14-201. The same case also indicates that if the facts~~
14 ~~conclusively show that the murder was perpetrated by means of lying in wait, torture, or~~
15 ~~poison, the means supply specific intent. In addition, both felony murder and the so-called~~
16 ~~depraved mind murder do not require a specific intent, since intent is implied as a matter of~~
17 ~~law. See commentaries to UJIs 14-202 and 14-203.~~

18 The extent of the defense in drug use situations is unclear. If limited to narcotic drugs
19 as defined in the Controlled Substances Act, the defense will have a limited application. See
20 Sections 30-31-2P and 30-31-6 & 30-31-7 NMSA 1978. For example, marijuana is no
21 longer defined as a narcotic drug under the statute, although its use and possession are still

1 prohibited.

2 Two transition problems occur with the use of this instruction. The supreme court has
3 made it clear that the]

4 The defense of voluntary intoxication is not available for felony murder, second-
5 degree murder, or general intent crimes. *See State v. Campos*, 1996-NMSC-043, ¶¶ 39, 46,
6 122 N.M. 148, 921 P.2d 1266. For clarity, UJI 14-5105 NMRA (voluntary intoxication),
7 which previously limited the applicability of the voluntary intoxication defense, was
8 withdrawn in 2019. UJI 14-5110 NMRA is used for a willful and deliberate first-degree
9 murder where intoxication can negate the deliberate intention to take away the life of another
10 person or for depraved mind murder where intoxication can negate the subjective knowledge
11 that the defendant's conduct was greatly dangerous to the lives of others. For non-homicide
12 crimes, UJI 14-5111 is used where intoxication can negate the element of intent to do a
13 further act or achieve a further consequence. [*State v. Chambers*, *supra*; *State v. Tapia*, *supra*
14 *.See also State v. Lunn*, 88 N.M. 64, 537 P.2d 672 (Ct. App.), *cert. denied*, 88 N.M. 318, 540
15 P.2d 248 (1975), *cert. denied*, 423 U.S. 1058, 96 S. Ct. 793, 46 L. Ed. 2d 648 (1976).
16 Because the committee recognized that the jury may have difficulty making the distinction
17 between a deliberate intention to take the life of another and an intent to kill or do great
18 bodily harm, the bracketed sentences are included so that the jury is told to consider other
19 homicide offenses not requiring specific intent.—

20 ——— When the defense involves a mental disease or disorder, the defendant probably will
21 have attempted to show insanity as a complete defense. *See State v. Padilla*, *supra*. The jury

1 ~~will undoubtedly have trouble with the distinction between insanity and inability to form~~
2 ~~specific intent. The use note therefore provides that the insanity instruction be given first.~~
3 ~~The insanity instruction contains an optional paragraph which must be given when the~~
4 ~~inability-to-form-specific-intent instruction follows.]~~

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