

1 **14-5111. Inability to form intent to do a further act or achieve a further consequence.**¹

2 ~~[Evidence has been presented that]~~ An issue you must consider in this case is whether
3 the defendant was [intoxicated from the use of (alcohol) (drugs)]² [suffering from a mental
4 disease or disorder]. You must determine whether or not the defendant was
5 _____³ and, if so, what effect this had on the defendant's ability to form the
6 intent to [_____]⁴.

7 ~~[[Intent to _____⁴ is not an element of the crime of~~
8 ~~_____⁵. If you find the defendant not guilty of~~
9 ~~_____⁶, you must proceed to determine whether or not the defendant~~
10 ~~is guilty of the crime of _____⁵.]~~

11 [Intent to _____⁴ is not an element of the crime of
12 _____⁵. If you find the defendant not guilty of _____⁶, you
13 must proceed to determine whether or not the defendant is guilty of the crime of
14 _____⁵.]

15 The burden is on the state to prove beyond a reasonable doubt that the defendant was
16 capable of forming an intention to _____⁴. If you have a reasonable doubt
17 as to whether the defendant was capable of forming such an intention, you must find the
18 defendant not guilty of _____⁵.

19 USE [NOTE] NOTES

20 1. This instruction is used for the intoxication or mental disease defense for a
21 crime that includes an element of intent to do a further act or achieve a further consequence.

1 It may not be used for a homicide crime. *See* UJI 14-5110 NMRA. When the defense is
2 based on a “mental disease or disorder” and the defendant has also relied on the complete
3 defense of insanity, this instruction should follow UJI [~~14-5110~~] 14-5101 NMRA.
4 Otherwise, the instruction should follow the elements instruction for the crime or crimes
5 with the intent element. If this instruction is given, add to the essential elements instruction
6 for the offense charged, “The defendant was not [intoxicated from use of (alcohol) (drugs)]²
7 [suffering from a mental disease or disorder] at the time the offense was committed to the
8 extent of being incapable of forming an intention to _____⁴.”

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

11 3. Repeat the bracketed and parenthetical words used in the first sentence.

12 4. Repeat the applicable specific intent to do a further act or achieve a further
13 consequence from the essential elements instruction of the crime.

14 5. Name any other offenses or lesser included offense which does not have an
15 intent to do a further act or achieve a further consequence and for which an instruction is
16 being given to the jury.

17 6. Name the crime charged which requires specific intent.

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

20 **Committee Commentary.** – This instruction embodies the defense of intoxication
21 (involuntary or voluntary) or mental disease short of “complete insanity,” which will negate

1 a specific intent in a nonhomicide crime. *See, e.g., State v. Ortega*, 1968-NMCA-092, ¶ 9,
2 79 N.M. 707, 448 P.2d 813 (“[S]pecific intent to commit a felony or theft is an essential
3 element of the state’s case to be proved beyond a reasonable doubt.”). This instruction may
4 be used only for nonhomicide crimes containing an element of intent to do a further act or
5 achieve a further consequence. [~~See also the reporter's addendum to commentary to UJI~~
6 ~~14-141, "The Lazy Lawyer's Guide to Criminal Intent in New Mexico," following these~~
7 ~~instructions.~~]

8 For clarity, UJI 14-5105 NMRA (voluntary intoxication) has been withdrawn. *See*
9 committee commentary to UJI 14-5110 NMRA. “Voluntary intoxication provides a defense
10 to specific-intent crimes ‘where the intoxication is to such a degree as would negate the
11 possibility of the necessary intent.’” *State v. Hernandez*, 2003-NMCA-131, ¶ 20, 134 N.M.
12 510, 79 P.3d 1118 (internal quotation marks and citation omitted) (holding that the defendant
13 was not entitled to a voluntary intoxication instruction for robbery where no evidence was
14 presented that the defendant was intoxicated, much less to the point that he would be unable
15 to form the mental state necessary to commit a specific-intent crime).

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