14-5172. Justifiable homicide; defense of another.[1]

[~~Evidence has been presented that~~] An issue you must consider in this case is whether the defendant killed _____ (*name of victim*) while defending another.

The killing was in defense of another if:

1. There was an appearance of immediate danger of death or great bodily harm[~~4~~]2 to _____[~~2~~]3 as a result of _____[~~3~~]4; and

2. The defendant believed that _____[~~2~~]3 was in immediate danger of death or great bodily harm from _____ (*name of victim*) and killed _____ (*name of victim*) to prevent the death or great bodily harm; and

3. The apparent danger to _____[~~2~~]3 would have caused a reasonable person in the same circumstances to act as the defendant did.

The burden is on the state to prove beyond a reasonable doubt that the defendant did not act in defense of another. If you have a reasonable doubt as to whether the defendant acted in defense of another, you must find the defendant not guilty.

USE [~~NOTE~~] NOTES

1. For use when the defense theory is based [~~upon.~~]on a reasonable ground to believe a design exists to commit a felony; a reasonable ground to believe a design exists to do great bodily harm; or a defense of spouse or other member of the family, a necessary defense against any unlawful action. If this instruction is given, add to the essential elements instruction for the offense charged, "The defendant did not act in defense of another."

2. The definition of great bodily harm, UJI 14-131 NMRA, must be given if not

already given.

3. Give the name of the person in apparent danger, if known, and the relationship to defendant, if any. More than one person may be included.

[~~3.~~]4. Describe the unlawful act, felony or act which would result in death or some great bodily harm as established by the evidence. Give at least enough detail to put the act in the context of the evidence.

[~~4. The definition of great bodily harm, UJI 14-131, must be given if not already given.~~]

[As amended, effective October 1, 1985; January 1, 1997; as amended by Supreme Court Order No. 19-8300-016, effective for all cases pending or filed on or after December 31, 2019.]

Committee commentary. — This instruction is a combination of the defense of spouse or family against any unlawful action, [~~Subsection A of~~] NMSA 1978, Section 30-2-7(A) (1963), [~~NMSA 1978~~] and the defense of another against a felony or act [~~which~~] that would result in some great personal injury to the other person, [~~Subsection B of~~] Section 30-2-7(B) [~~NMSA 1978~~]. *See e.g.*, *State v. Beal*, 1951-NMSC-055, 55 N.M. 382, 234 P.2d 331[~~ (1951)~~]. For a discussion of [~~the history of these statutes and~~] the general rules [~~which~~]that apply to defense of another, see the commentary to UJI 14-5171.

[~~Under Subsection A of Section 30-2-7 NMSA 1978 the defense of another against any unlawful action is limited to defending one's wife or family. On the assumption that the equal rights amendment guarantees that a wife is also entitled to this defense, the instruction~~

~~is designed to be used for defense of any member of the family. *See generally*, Daniels, The Impact of the Equal Rights Amendment on the New Mexico Criminal Code, 3 N.M.L. Rev. 106, 109 (1973).~~

~~The prior versions of Subsection B of Section 30-2-7 NMSA 1978 specifically listed the persons who could be defended by deadly force. For example, in *State v. Brooks*, 59 N.M. 130, 279 P.2d 1048 (1955), the court held that the term "mistress," one of the persons entitled to be defended, was not a partner in an illicit relationship but was the feminine of master. By eliminating the shopping list of persons who could be defended, it would appear that the legislature clearly intended to broaden the scope of this defense. *See generally*, Perkins, Criminal Law 1019 (2d ed. 1969).~~

~~Some authorities have said that the person using deadly force in defense of another stands in the shoes of, and is bound by the intent of, the person defended. In *State v. Maestas*, 63 N.M. 67, 313 P.2d 337 (1957), the supreme court declined to decide if New Mexico would follow that authority. The supreme court held that the district court had instructed the jury that the defendant was to be judged on the basis of his own perception of the danger under the circumstances and, therefore, the defendant had no complaint. Because the statute uses the term "reasonable grounds to believe a design exists, etc.," it appears that New Mexico law does not require the person intervening to know the actual facts, but only to act as a reasonable person under the circumstances. *See generally*, Perkins, *supra*, at 1020-21. LaFave & Scott 397 (1972). The defendant in defense of another must entertain a reasonable belief that the person attacked is in danger. *Territory v. Baker*, 4 N.M. (Gild.)~~

~~236, 264-66, 13 P. 30 (1887).~~

~~The 1981 amendments to UJI 14-5172 are intended only to clarify the essential elements of justifiable homicide in the defense of another.~~]

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