**14-703. Negligent use of a deadly weapon.**

For you to find the defendant guilty of negligent use of a deadly weapon [as charged in Count \_\_\_\_\_\_\_\_\_\_\_\_]1, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. [The defendant discharged a firearm into a [building]2 [vehicle];]

[OR]2

[The defendant discharged a firearm knowing that he was endangering [a person]2 [property];]

[OR]

[The defendant was carrying a firearm while under the influence of [alcohol]2 [narcotics];]

[OR]

[The defendant endangered the safety of another, by handling or using a [deadly weapon3] [firearm] in a negligent4 manner;]

[OR]

[The defendant discharged a firearm within one hundred and fifty yards of a [dwelling5] [or] [building] without permission of the owner or lessee. [The state must also prove that either:

A. the weapon was discharged on non-public lands; or

B. the discharge did not occur during hunting season; or

C. that the [dwelling] [or] [building] was not an abandoned or vacated building];]6

[2. The defendant was not a peace officer7 or other public employee who is required or authorized by law to carry or use a firearm in the course of employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of such office or employment;]

3. This happened in New Mexico on or about the \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_.

USE NOTES

1. Insert the count number if more than one count is charged.

2. Use only the applicable alternative.

3. If this alternative is used, Subsection B of Section 30-1-12 NMSA 1978, the definition of "deadly weapon", is given immediately after this instruction.

4. If this alternative is used, UJI 14-133, the definition of criminal negligence, is given immediately after this instruction.

5. If this alternative is given, Instruction 14-1631, definition of "dwelling house" is given as the definition of "dwelling".

6. This alternative is to be given only if the court finds that the evidence presents issues on whether: (1) the building was an abandoned or vacated building; (2) the building was located on public lands; and (3) the defendant discharged the firearm during hunting season.

7. This alternative may be given if there is an issue as to whether the defendant was a peace officer or public employee in the lawful discharge of duty. This alternative is not to be given if the defendant is charged with carrying a firearm while under the influence of an intoxicant or narcotic.

[Adopted, effective May 1, 1986; as amended, effective January 1, 1999.]