

14-7023. Life imprisonment without possibility of release or parole proceeding; aggravating circumstances; murder of a witness; essential elements.¹

The state has charged the aggravating circumstance of [[murder of a witness to a crime] [or] [murder of any person likely to become a witness to a crime]]² [[for the purpose of [preventing the reporting of a crime]² [or] [preventing testimony in a criminal proceeding]] [or] [murder in retaliation for having testified in a criminal proceeding].

Before you find the aggravating circumstance of [murder of a witness to a crime] [or] [murder of any person likely to become a witness to a crime] [or] [murder in retaliation for having testified in a criminal proceeding]², you must find that the state has proved to your satisfaction beyond a reasonable doubt each of the following elements:

1. _____ (*name of victim*) [[was a witness] [or] [was likely to become a witness] to the [crime] [crimes] of _____ (*name of separate crime or crimes*)] [has testified in a criminal proceeding]²; and

2. _____ (*name of defendant*) committed the murder of _____ (*name of victim*)

[with the motive to prevent _____ (*name of victim*) from reporting _____ (*name of crime*), and _____ (*name of crime*) was a separate crime from the murder of _____ (*name of victim*);]²

[OR]

[with the motive to prevent _____ (*name of victim*) from testifying in a criminal proceeding regarding the crime of _____ (*name of crime*) and _____ (*name of crime*) was a separate crime from the murder of _____ (*name of victim*);]

[OR]

[with the motive of retaliation for _____ (*name of victim*) having testified in a criminal proceeding.]

USE NOTES

1. This instruction is to be used only in a life imprisonment without possibility of release or parole proceeding. This instruction may be used only if the motive for the murder was to prevent the victim from reporting or testifying or for having testified in any criminal proceeding. See *Clark v. Tansy*, 1994-NMSC-098, ¶ 25, 118 N.M. 486, 882 P.2d 527.

2. Use only applicable alternative or alternatives.

[As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008, effective for all cases filed or pending on or after December 31, 2021.]