

1 **14-3140. Exceptions and exemptions; burden of proof.**

2 If _____¹, the defendant is not guilty of _____² [as
3 charged in Count _____]³, the burden is on the state to prove beyond a reasonable doubt that
4 _____⁴.

5 USE NOTES

6 1. Describe the exemption or exception in issue: e.g., the drug was obtained pursuant
7 to a valid prescription or order of a practitioner [~~while~~] acting in the course of [his] professional
8 practice.

9 2. Insert the name of the offense or offenses to which the exception or exemption is
10 applicable.

11 3. Use this bracketed phrase and insert the count number or count numbers if more
12 than one count is charged.

13 4. Restate the exception or exemption in the negative: e.g., the drug was not obtained
14 pursuant to a valid prescription, etc.

15 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending
16 or filed on or after December 31, 2025.]

17 **Committee commentary.** — *See* Section 30-31-37 NMSA 1978.

18 This instruction is for use when an exception or exemption is at issue. Although the statute states
19 that the burden of proof is on the defendant, such burden never shifts from the state in a criminal
20 trial. The defendant has the burden of going forward with evidence sufficient to raise the issue of
21 the exception or exemption, and then the state must disprove the existence or validity of such
22 exception or exemption beyond a reasonable doubt. 28 C.J.S. Supp., Drugs & Narcotics, § 190, p.
23 278 (1974). *In accord*, *State v. Jourdain*, 225 La. 1030, 74 So.2d 203 (1954), cited with approval

1 in *State v. Everidge*, 77 N.M. 505, 424 P.2d 787, cert. denied, 386 U.S. 976, reh. denied, 386 U.S.
2 1043 (1967). Other cases cited with approval in *Everidge* are consistent with the Jourdain case.
3 Compare *State v. Bell*, 90 N.M. 134, 560 P.2d 925 (1977) (in a rape case, the defense has the
4 burden of going forward with evidence of spousal relationship, and then the burden of proof shifts
5 to the state to prove beyond a reasonable doubt that the victim was not the spouse of the defendant);
6 *Mullaney v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975) (due process requires
7 that the state prove all facts necessary to establish guilt); and *United States v. Rosenberg*, 515 F.2d
8 190 (9th Cir.), cert. denied, 423 U.S. 1031, 96 S. Ct. 562, 46 L. Ed. 2d 404 (1975) (due process
9 objection to federal statute is rejected because statute does not shift burden of proof).

10 Although the rule states that the defendant has the burden of going forward with the evidence, and
11 the statute itself states that the defendant has the burden of proof, the burden may be satisfied by
12 evidence that comes in on the government's case in chief. *United States v. Black*, 512 F.2d 864
13 (9th Cir. 1975) (construing the federal narcotic statute, 21 U.S.C.A. 885(2)(1), which imposes on
14 the defendant the burden of ". . . going forward with the evidence.")

15 For a discussion of the difference between burden of proof and burden of going forward in cases
16 involving the defense of insanity, see *State v. James*, 83 N.M. 263, 490 P.2d 1236 (Ct. App. 1971),
17 and *State v. Wilson*, 85 N.M. 552, 514 P.2d 603 (1973); and for a general discussion of the
18 difference between these burdens, see 22A C.J.S. Criminal Law, § 573, p. 317 (1961). See also
19 commentary to UJI 14-3101.