

1 **14-5104. Determination of present competency.**¹

2 An issue in this case is the defendant's competency to stand trial. The defendant has the
3 burden of proving by the greater weight of the evidence that the defendant is mentally incompetent
4 to be tried.

5 [Before considering whether the defendant committed the crime charged, you must make
6 a determination of the defendant's competency to stand trial.]² A person is competent to stand trial
7 if that person has:

- 8 1. a sufficient present ability to consult with the person's lawyer with a reasonable
9 degree of rational understanding;
- 10 2. a rational as well as factual understanding of the proceedings against the person;
- 11 3. the capacity to assist in the person's own defense; and
- 12 4. the capacity to comprehend the reasons for punishment.

13 As to this issue only, your verdict need not be unanimous. When as many as ten of you
14 have agreed as to whether the defendant is competent to stand trial, your foreperson must sign the
15 proper form. If your verdict is that the defendant is incompetent, you will immediately return to
16 open court without proceeding further. If your verdict is that the defendant is competent, you
17 should proceed to consider the defendant's guilt or innocence.

18 USE NOTES

19 1. This instruction is to be given upon request of the defendant only if the evidence
20 raises a reasonable doubt as to the defendant's competency to stand trial and this issue is submitted
21 to the jury.

22 2. Delete bracketed material if this determination of competency is to be made by a
23 jury other than the jury deliberating the guilt or innocence of the defendant.

1 [As amended by Supreme Court Order No. 22-8300-031, effective for all cases pending or filed
2 on or after December 31, 2022.]

3 **Committee commentary.** — See NMSA 1978, § 31-9-1 (1993).

4 “A person is competent to stand trial when ~~[he or she]~~ [the person] has sufficient present ability to
5 consult with ~~[his or her]~~ [a] lawyer with a reasonable degree of rational understanding, a rational
6 as well as factual understanding of the proceedings ~~[against him or her]~~ . . . , and the capacity to
7 assist in ~~[his own]~~ [their] defense and to comprehend the reasons for punishment.” *State v. Linares*,
8 2017-NMSC-014, ¶ 34, 393 P.3d 691 (brackets, internal quotation marks, and footnote omitted)
9 (quoting *State v. Rotherham*, 1996-NMSC-048, ¶ 13, 122 N.M. 246, 923 P.2d 1131 ~~(brackets,~~
10 ~~internal quotation marks, and footnote omitted)~~). This jury instruction was updated in 2022 to
11 reflect the controlling standard for competency set forth in ~~[Linares]~~ *Linares*.

12 “The law has long recognized that it is a violation of due process to prosecute a defendant who is
13 incompetent to stand trial.” *Rotherham*, 1996-NMSC-048, ¶ 13; *Drope v. Missouri*, 420 U.S. 162,
14 171 (1975) (“It has long been accepted that a person whose mental condition is such that ~~[he]~~ [the
15 person] lacks the capacity to understand the nature and object of the proceedings ~~[against him]~~ . .
16 . . , to consult with counsel, and to assist in preparing ~~[his]~~ [their] defense may not be subjected to
17 a trial.”). All participants in a criminal proceeding—including the court acting sua sponte—have
18 a shared duty to inquire into the defendant’s competency whenever circumstances suggest that the
19 defendant, “though physically present in the courtroom, is in reality afforded no opportunity to
20 defend ~~[himself]~~ [themselves].” *Drope*, 420 U.S. at 171 (internal quotation marks and citation
21 omitted); § 31-9-1.

22 Although the New Mexico appellate decisions on competency to stand trial have all involved
23 incompetency because of some mental illness or disease, UJI 14-5104 ~~[NMRA]~~ is not limited to

1 incompetency by reason of mental illness. *See Jackson v. Indiana*, 406 U.S. 715 (1972)
2 (recognizing where a developmentally disabled, deaf, non-verbal person who can neither read nor
3 write and who is unable to communicate with the person’s attorney may be incompetent to stand
4 trial even though not suffering from any mental disease).

5 The issue of a defendant’s competency to stand trial may be raised at any time during a criminal
6 proceeding. *See* § 31-9-1 (“~~Whenever it appears that there is~~ When a party or the court raises a
7 question as to the defendant’s competency to ~~proceed~~ stand trial in a criminal case, ~~any further~~
8 the proceeding [in the cause] shall be suspended until the issue is determined.”). If a motion for
9 competency evaluation is filed after the start of a trial by jury in district court, the court shall
10 instruct the jury under UJI 14-5104 to determine the defendant’s competency to stand trial. Rule
11 5-602.1(I)(2) NMRA (“If the motion for a competency evaluation was filed after the start of a trial
12 by jury, the court shall submit the question to the jury at the close of evidence.”). Rules 5-602.1,
13 6-507.1, 7-507.1, and 8-507.1 NMRA govern the procedure for resolving a question of
14 competency.

15 The defendant has the burden of proving by a preponderance or greater weight of the evidence that
16 the defendant is not competent to stand trial. *State v. Santillanes*, 1978-NMCA-051, ¶ 6, 91 N.M.
17 721, 580 P.2d 489; Rule ~~[5-601.2(I)(2) NMRA]~~ 5-602.1(I)(2) (“The jury shall decide by a
18 preponderance of the evidence if the defendant is not competent to stand trial before considering
19 the defendant’s guilt or innocence beyond a reasonable doubt.”).

20 [As amended by Supreme Court Order No. 22-8300-031~~[-effective for all cases pending or filed~~
21 ~~on or after December 31, 2022]~~; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]