

1 **5-705. Life imprisonment without possibility of release or parole.**

2 A. **Notice of intent.** In any case in which the state seeks life imprisonment without the
3 possibility of release or parole, the state shall file a notice of intent to seek life imprisonment
4 without the possibility of release or parole within ninety (90) days after arraignment in district
5 court. The notice of intent shall specify the elements of the statutory aggravating circumstances
6 upon which the state will rely in seeking a sentence of life imprisonment without the possibility of
7 release or parole. Before the time for filing a notice of intent has expired, with good cause shown,
8 the district court may modify the time for filing a notice of intent.

9 B. **Pretrial review of state penalty proceeding evidence.** Upon the defendant's
10 motion, no later than ninety (90) days prior to trial, the court shall hold a hearing to determine
11 whether or not there is probable cause to believe that one or more aggravating circumstances exist.
12 If the court finds that there is not probable cause on one or more aggravating circumstances, the
13 court shall dismiss that aggravating circumstance.

14 C. **Bifurcated proceeding upon motion.** Upon motion and a showing of prejudice,
15 the court may bifurcate the issues of guilt of the defendant and whether one or more aggravating
16 circumstances exist under Section 31-20A-5 NMSA 1978. If the court bifurcates the proceeding,
17 it must also determine whether the same jury that decides guilt will also decide whether one or
18 more aggravating circumstances exist. A motion for bifurcated proceeding must be filed at least
19 ninety (90) days prior to trial. The court's decision on the motion shall be issued no later than ten
20 (10) days prior to trial.

21 D. **Procedures for proceeding that has not been bifurcated.** If the proceeding is not
22 bifurcated, the trial jury shall determine by a special verdict whether one or more aggravating
23 circumstances exist beyond a reasonable doubt.

1 E. **Procedures for bifurcated proceedings.** If the court bifurcates the issues of guilt
2 of the defendant and whether one or more aggravating circumstances exist, the court shall proceed
3 as follows:

4 (1) A trial jury shall be impaneled to determine whether the defendant is guilty
5 of an offense for which the sentence imposed may be life without the possibility of release or
6 parole.

7 (2) If the trial jury finds the defendant guilty of an offense that may result in a
8 sentence of life without the possibility of release or parole, the same jury or a second jury, as
9 determined by the court under Paragraph C of this rule, shall determine whether one or more
10 aggravating circumstances exist beyond a reasonable doubt. The court shall permit the state and
11 the defendant to present evidence and argument relating to the presence or absence of one or more
12 aggravating circumstances.

13 [Adopted by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or
14 after December 31, 2019.]

15 **Committee Commentary.** — This rule follows the repeal of the death penalty in 2009,
16 *see* 2009 N.M. Laws, ch. 11, §§ 5-7, and sets forth procedures for cases in which a defendant faces
17 a possible sentence of life imprisonment without the possibility of release or parole. *See* NMSA
18 1978, § 31-20A-2 (2009).

19 Under Paragraph A, the time for filing the notice of intent may be modified upon motion
20 of a party or by the district court, *sua sponte*.

21 In *State v. Chadwick-McNally*, the Supreme Court held that defendants facing a possible
22 sentence of life imprisonment without the possibility of release or parole were not entitled to the
23 heightened procedural protections that are afforded to defendants facing a possible death sentence,

1 including a hearing comparable to that provided for under Rule 5-704 (B) NMRA and bifurcated
2 proceedings on issues of guilt and aggravated circumstances as provided for under Rule 5-704 (H).
3 2018-NMSC-018, ¶¶ 16-19, 20-22, 414 P.3d 326. Given the significant liberty interest implicated
4 for a defendant facing a sentence of life imprisonment without parole—now the most serious
5 penalty a criminal defendant in New Mexico can face—this rule provides for some of the
6 heightened procedural protections contemplated by Rule 5-704.

7 Under Paragraph B, a defendant who moves for a pretrial determination on whether there
8 is probable cause to believe that one or more aggravated circumstances exist is entitled to a hearing
9 on that issue. A defendant is not entitled, as a matter of course, to bifurcated proceedings on the
10 issues of guilt and whether one or more aggravating circumstances exist; “[w]hether bifurcated
11 proceedings are appropriate must be determined by the court on a case-by-case basis.” *Chadwick-*
12 *McNally*, 2018-NMSC-018, ¶¶ 21-22.

13 Under Paragraphs (D) and (E)(2), if a jury finds beyond a reasonable doubt that one or
14 more aggravating circumstances exist, the defendant shall be sentenced to life imprisonment
15 without the possibility of release or parole. *Id.* ¶ 25. Mitigation is not permitted. *Id.* “If the jury
16 does not find that one or more aggravating circumstances exist, then the defendant shall be
17 sentenced to life imprisonment.” *Id.* (quoting § 31-20A-2).

18 [Adopted by Supreme Court Order No. 19-8300-018, effective for all cases pending or filed on or
19 after December 31, 2019.]