

1 **14-7011. Explanation of [~~death penalty sentencing~~]life imprisonment without possibility of**
2 **release or parole proceeding; multiple aggravating circumstances.**¹

3 **INTRODUCTION OF STAFF:**

4 I am Judge _____ (name of Judge presiding over hearing). My bailiff, who will escort
5 you and assist in communicating with the court, is _____ . My administrative assistant
6 is _____ . If you need anything during this proceeding the bailiff or the administrative
7 assistant would be happy to help. The court [reporter][monitor] is making a record of the
8 proceeding. You must pay close attention to the testimony even though there is a
9 [reporter][monitor] making a record of the proceeding because ordinarily transcripts of the
10 witnesses testimony will not be provided to you.

11 **INTRODUCTION TO PRELIMINARY INSTRUCTIONS:**

12 As the proceeding begins, I have some instructions for you. These instructions, along with
13 those previously given, are preliminary only and may be changed during or at the end of the
14 proceeding. All of you must pay attention to the evidence. After you have heard all of the evidence
15 I will read the final instructions of law to you. You will also receive a written copy of the
16 instructions. You must follow the final instructions in reaching your verdict.

17 **SCHEDULING DURING HEARING:**

18 This proceeding is expected to last [until _____] [_____ days]. The usual
19 hours of proceeding will be from ____ (a.m.) to ____ (p.m.) with lunch and occasional rest breaks.
20 Unless a different starting time is announced, please report to the jury room by ____ (a.m.). Please
21 do not come back into the courtroom until you are called by the bailiff.

22 **NOTE TAKING PERMITTED**

1 You are allowed, but not required, to take notes during this proceeding. Note paper will be
2 provided for this purpose. Notes should not take the place of your independent memory of the
3 evidence. When taking notes, please remember the importance of paying close attention to the
4 proceeding. Listening and watching witnesses during their testimony will help you assess their
5 appearance, behavior, memory and whatever else bears on their credibility. At each recess you
6 must either leave your notes on your chair or take them with you to the jury room. At the end of
7 the day, the bailiff will store your notes and return them to you when the proceeding resumes.
8 When deliberations commence you will take your notes with you to the jury room. Ordinarily at
9 the end of the case the notes will be collected and destroyed.³

10 **ORDER OF HEARING**

11 The proceeding generally begins with the lawyers telling you what they expect the evidence
12 to show. These statements and other statements made by the lawyers during the course of the
13 proceeding can be of considerable assistance to you in understanding the evidence as it is presented
14 at the proceeding. Statements of the lawyers, however, are not themselves evidence. The evidence
15 will be the testimony of witnesses, exhibits and any stipulations or facts agreed to by the parties.
16 After you have heard all the evidence, I will give you final instructions on the law. The lawyers
17 will argue the case, and then you will retire to the jury room to arrive at a verdict.

18 It is my duty to decide what evidence you may consider. Your job is to find and determine
19 the facts in this proceeding, which you must do solely upon the evidence received in court.

20 It is the duty of a lawyer to object to questions, testimony or exhibits the lawyer believes
21 may not be proper, and you must not hold such objection against the objecting party. I will sustain
22 objections if the question or evidence sought is improper for you to consider. If I sustain an
23 objection to evidence, you must not consider such evidence nor may you consider any evidence I

1 have told you to disregard. By itself, a question is not evidence. You must not speculate about
2 what would be the answer to a question that I rule cannot be answered.

3 It is for you to decide whether the witnesses know what they are talking about and whether
4 they are being truthful. You may give the testimony of any witness whatever weight you believe
5 it merits. You may take into account, among other things, the witness's ability and opportunity to
6 observe, memory, manner, or any bias or prejudice that the witness may have and the
7 reasonableness of the testimony considered in light of all of the evidence of the case.

8 No ruling, gesture or comment I make during the course of the proceeding should influence
9 your decision in this case. At times I may ask questions of witnesses. If I do, such questions do not
10 in any way indicate my opinion about the facts or indicate the weight I feel you should give to the
11 testimony of the witness.

12 **QUESTIONS BY JURORS**

13 Ordinarily, the attorneys will develop all pertinent evidence. It is the exception rather than
14 the rule that an individual juror will have an unanswered question after all of the evidence is
15 presented. However, if you feel an important question has not been asked or answered, write the
16 question and your name it down on a piece of your note paper and give it to the bailiff before the
17 witness leaves the stand. I will decide whether or when your question will be asked. Rules of
18 evidence or other considerations apply to questions you submit and may prevent the question from
19 being asked. If the question is not asked, please do not give it any further consideration, do not
20 discuss it with the other jurors, and please do not hold it against either side that you did not get an
21 answer.

22 **CONDUCT OF JURORS**

1 There are a number of important rules governing your conduct as jurors during the
2 proceeding. You must reach your verdict based solely upon the evidence received in court. You
3 must not consider anything you may have read or heard about the proceeding outside the
4 courtroom. During the proceeding and your deliberations, you must avoid news accounts of the
5 proceeding, whether they be on radio, television, the internet, or in a newspaper or other written
6 publication. You must not visit the scene of the incident on your own. You cannot make
7 experiments with reference to the proceeding.

8 You, as jurors, must decide this proceeding based solely on the evidence presented here
9 within the four walls of this courtroom. This means that during the proceeding you must not
10 conduct any independent research about this proceeding, the matters in this proceeding and the
11 individuals or corporations involved in the proceeding. In other words, you should not consult
12 dictionaries or reference materials, search the internet, websites, blogs, or use any other electronic
13 tools to obtain information about this proceeding or to help you reach your verdict. You are
14 prohibited from attempting to find out information from any source outside the confines of this
15 courtroom.

16 After the parties have made their closing statements, you will retire to deliberate. Until
17 you retire to deliberate, you may not discuss this proceeding with anyone, even your fellow jurors.
18 After you retire to deliberate, you may begin discussing the verdict to be reached with your fellow
19 jurors, but you cannot discuss the verdict with anyone else, including your family and friends, until
20 the proceeding is at an end.

21 I know that many of you use cell phones, the internet, and other tools of technology. You
22 are not to discuss or provide any information to anyone about this proceeding through telephone
23 calls or text messages. You are also not to engage in any social media interaction, communication

1 or exchange of information about this proceeding until I have accepted your verdict and this
2 proceeding is at a close. This rule applies to all chats, comments, direct messages, instant messages,
3 posts, tweets, blogs, vlogs or any other means of communicating, sharing, or exchanging
4 information through social media.

5 It is important that you keep an open mind and not decide any part of the proceeding until
6 the entire case has been completed and submitted to you. Your special responsibility as jurors
7 demands that throughout this proceeding you exercise your judgment impartially and without
8 regard to sympathy, bias, or prejudice. Therefore, until you retire to deliberate, you must not
9 discuss this proceeding or the evidence with anyone, even with each other, because you have not
10 heard all the evidence, you have not been instructed on the law, and you have not heard the final
11 arguments of the lawyers. If an exhibit is admitted in evidence, you should examine it yourself and
12 not talk about it with other jurors until you retire to deliberate.

13 To minimize the risk of accidentally overhearing something that is not evidence, please
14 continue to wear the jurors' badges while in and around the courthouse. If someone happens to
15 discuss the case in your presence, report that fact at once to a member of the staff.

16 Although it is natural to visit with people you meet, please do not talk with any of the
17 attorneys, parties, witnesses or spectators either in or out of the courtroom. If you meet in the
18 hallways or elevators, there is nothing wrong with saying a "good morning" or "good afternoon,"
19 but your conversation should end there. If the attorneys, parties and witnesses do not greet you
20 outside of court, or avoid riding in the same elevator with you, they are not being rude. They are
21 just carefully observing this rule.

22 ~~[LADIES AND GENTLEMEN]~~ **HEARING PROCEDURE:**

23 I will outline the procedure for you to follow in reaching your verdict.

1 The state has charged that the following aggravating circumstances were present:

2 [at the time of the murder _____ (*name of peace officer*)

3 was a peace officer and was performing the duties of a peace officer]²;

4 [the murder of _____ (*name of victim*) was committed

5 during [the commission of] [an attempt to commit]² kidnapping];

6 [the murder of _____ (*name of victim*) was committed

7 during [the commission of] [an attempt to commit]² criminal sexual contact of a

8 minor];

9 [the murder of _____ (*name of victim*) was committed

10 during [the commission of] [an attempt to commit]² criminal sexual penetration];

11 [the murder of _____ (*name of victim*) was committed

12 while attempting to escape from a penal institution];

13 [at the time of the murder, _____ (*name of victim*) was an

14 inmate of a penal institution];

15 [at the time of the murder, _____ (*name of victim*) was

16 lawfully on the premises of a penal institution];

17 [at the time of the murder [øf], _____ (*name of victim*) was

18 an employee of the corrections department];

19 [the murder of _____ (*name of victim*) was for hire];

20 [the murder was of a witness to a crime for the purpose of preventing report of the

21 crime or testimony in any criminal proceeding];

22 [the murder was of a person likely to become a witness to a crime for the purpose

23 of preventing report of the crime or testimony in any criminal proceeding];

1 [the murder was in retaliation for a person having testified in a criminal
2 proceeding].

3 You will first consider each of the aggravating circumstances separately. You will then
4 decide whether or not each one of the aggravating circumstances is present beyond a reasonable
5 doubt. ~~[If you unanimously agree beyond a reasonable doubt that one or more of these aggravating~~
6 ~~circumstances were present, you must then weigh such aggravating circumstances against any~~
7 ~~mitigating circumstances.~~

8 ~~———— In determining whether or not an aggravating circumstance exists, you must not consider~~
9 ~~anything you may have read or heard about the case outside the courtroom.~~

10 ~~———— You may give the testimony of any witness whatever weight you believe it deserves. It is~~
11 ~~for you to decide whether the witnesses know what they are talking about and whether they are~~
12 ~~being truthful.~~

13 ~~———— [You are not permitted to take notes during the sentencing proceeding. In your~~
14 ~~deliberations you must rely on your individual memories of the evidence in the case.]³~~

15 ~~———— [You are permitted to take notes during the sentencing proceeding, and the court will~~
16 ~~provide you with note taking material if you wish to take them. However, if you choose to take~~
17 ~~notes, be sure that your note taking does not interfere with your listening to and considering all the~~
18 ~~evidence. It is difficult to take notes and at the same time pay attention to what a witness is saying.~~
19 ~~In your deliberations you should rely on your own memory of the evidence rather than on the~~
20 ~~written notes of another juror. Do not take your notes with you at the end of the day or discuss~~
21 ~~them with anyone before you begin your deliberations~~

22 ~~———— If an exhibit is admitted in evidence, you should examine it yourself and not talk about the~~
23 ~~exhibit with other jurors until you retire to deliberate.~~

1 ~~—— Ordinarily the attorneys will develop all pertinent evidence. It is the exception rather than~~
2 ~~the rule that an individual juror will find himself or herself with a question after the testimony is~~
3 ~~presented. However, should this occur, you may write out the question and ask the bailiff to hand~~
4 ~~it to me. Your name as juror should appear below the question. I must first pass upon the propriety~~
5 ~~of the question before it can be asked in open court. The question will be asked if I deem the~~
6 ~~question to be proper.~~

7 ~~—— No statement, ruling, remark or comment which I make during the course of the proceeding~~
8 ~~is intended to indicate my opinion as to how you should decide the issue or to influence you in any~~
9 ~~way. At times I may ask questions of witnesses. If I do, such questions do not in any way indicate~~
10 ~~my opinion about the facts or indicate the weight I feel you should give to the testimony of the~~
11 ~~witness.~~

12 ~~—— Until you retire to deliberate the sentence, you must not discuss this matter or the evidence~~
13 ~~with anyone, even with each other. It is important that you keep an open mind and not decide the~~
14 ~~sentence to be imposed until the entire matter has been completed and submitted to you. Your~~
15 ~~special responsibility as jurors demands that throughout this proceeding you exercise your~~
16 ~~judgment without regard to any biases or prejudices that you may have.]~~

17 The prosecuting attorney will now make an opening statement if [he] [she] desires. The
18 defendant's attorney may make an opening statement if [he] [she] desires or may wait until later
19 in the proceeding to do so.

20 What is said in the opening statement is not evidence. The opening statement is simply the
21 lawyer's opportunity to tell you what [he] [she] expects the evidence to show.

22

23

USE NOTES

1 1. ~~[This instruction may only be used in death penalty sentencing proceedings when~~
2 ~~the defendant has been convicted of multiple murders or when the state has charged that multiple~~
3 ~~aggravating circumstances were present during a single murder.]~~ This instruction is to be used if
4 the defendant is charged with a crime carrying a sentence of life imprisonment without possibility
5 of release or parole and the court adopts a bifurcated proceeding to determine whether aggravating
6 circumstances exist. It is to be used when the defendant has been convicted of multiple murders or
7 when the state has charged that multiple aggravating circumstances were present during a single
8 murder. (For cases where the death penalty remains an option, see UJI 14-7011 NMRA (2020),
9 available at <https://nmonesource.com> (follow “Historical New Mexico Rules Annotated”
10 hyperlink)). It is to be given at the start of the proceeding on the aggravating factors and before
11 opening statements. This instruction does not go to the jury room. There must be an independent
12 factual basis for each aggravating circumstance. See *State v. Allen*, 2000-NMSC-002, 128 N.M.
13 482, 994 P.2d 728. Aggravating circumstances to be given to the jury should be consecutively
14 numbered. [If the judge decides to bifurcate the process by having the jury find the presence of an
15 aggravating circumstance before considering any mitigating circumstances, this instruction may
16 be modified as appropriate.]

17 If the court does not adopt a bifurcated proceeding, do not use this instruction or the other
18 instructions in Chapter 70; instead give special verdict and special interrogatory instructions
19 patterned on UJIs 14-6013 and 14-6014 NMRA for each alleged murder and aggravating
20 circumstance.

21 2. Use only the applicable alternative.

22 ~~[3. — This instruction leaves it to the discretion of the judge as to whether or not jurors~~
23 ~~will be permitted to take notes during the proceeding.~~

1 ——— 4. ——— If the court permits the taking of notes, the court must instruct the bailiff to pick up
2 the notes at the conclusion of all jury deliberations. Absent a showing of good cause, the court
3 shall destroy all notes at the conclusion of all jury deliberations.]

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

6 **Committee commentary.** — This instruction is to be used only in [~~death penalty sentencing~~
7 ~~proceedings where~~] a proceeding involving a potential sentence of life imprisonment without
8 possibility of release or parole when the court adopts a bifurcated proceeding and the state has
9 charged multiple aggravating circumstances[~~are present. It is to be used instead of using UJI 14-~~
10 ~~404~~]. Rule 5-705 NMRA allows for the bifurcation of the issues of guilt of the defendant and
11 whether one or more aggravating circumstances exist. “Whether bifurcated proceedings are
12 appropriate must be determined on a case-by-case basis, after the issue has been properly raised
13 and argued [before the district court].” *State v. Chadwick-McNally*, 2018-NMSC-018, ¶ 22, 414
14 P.3d 326. If the court bifurcates the proceedings, the court must determine whether or not the same
15 jury that decides guilt will also determine if one or more aggravating circumstances exist. See Rule
16 5-705(C) NMRA.

17 [Although this procedure is not recognized in any court rule, the committee recognizes that
18 ~~some judges are bifurcating the penalty phase.~~] Although “the death penalty ha[s] been abolished
19 . . . the death penalty remains a sentencing option for a limited number of cases alleging crimes
20 committed before July 1, 2009.” *Chadwick-McNally*, 2018-NMSC-018, ¶ 12 (internal quotation
21 marks and citation omitted). In these cases, this instruction must be modified by the historical UJI
22 to ensure proper consideration of aggravating and mitigating factors.

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