

1 **14-7012. ~~[Death penalty sentencing]~~ Life imprisonment without possibility of release or**
2 **parole proceeding; consideration of evidence.**¹

3 **LADIES AND GENTLEMEN:**

4 You have heard all of the evidence that is to be presented for this ~~[sentencing]~~ proceeding.
5 In ~~[deciding the sentence]~~ reaching your verdict you shall consider all of the evidence admitted
6 during the trial² [and all of the evidence admitted during this ~~[sentencing]~~ proceeding]³.

7 Now the lawyers will address you. What the lawyers say is not evidence. It is an
8 opportunity for the lawyers to discuss the evidence and the law as I have instructed you. The state
9 has the right to speak first; the defense may then speak; the state may then ~~[reply]~~⁴reply.

10

11 USE NOTES

12 1. This instruction must be given in every ~~[death penalty sentencing]~~ life
13 imprisonment without possibility of release or parole proceeding after all the evidence has been
14 completed. ~~[This instruction may be modified as appropriate if the judge decides to bifurcate the~~
15 ~~sentencing process by having the jury find the presence of an aggravating circumstance before~~
16 ~~proceeding further.]~~

17 2. Upon request of a party, the court may modify this instruction when evidence has
18 been admitted for a limited purpose during the trial. A separate additional instruction may be
19 necessary to explain how this evidence is to be considered during the ~~[sentencing]~~ proceeding.

20 3. Use bracketed phrase if additional evidence was admitted during the ~~[sentencing]~~
21 proceeding.

22 [4. ~~—If the sentencing proceeding has been bifurcated, this instruction must be given at~~
23 ~~each phase and may need to be modified.]~~

1 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,
2 effective December 31, 2021.]

3 **Committee commentary.** —~~[The second phase of a bifurcated proceeding involves a weighing~~
4 ~~process. Specifically, the jury is charged with balancing the aggravating and mitigating~~
5 ~~circumstances. The state does not necessarily, therefor, have the right to speak first. As a result~~
6 ~~some trial courts in New Mexico have varied the order of argument in this second phase of a~~
7 ~~bifurcated sentencing proceeding.] This instruction may only be used in a proceeding involving a~~
8 ~~potential sentence of life imprisonment without possibility of release or parole when the court~~
9 ~~adopts a bifurcated proceeding and the state has charged one or more aggravating circumstances.~~
10 Rule 5-705 NMRA allows for the bifurcation of the issues of guilt of the defendant and whether
11 one or more aggravating circumstances exist. “Whether bifurcated proceedings are appropriate
12 must be determined on a case-by-case basis, after the issue has been properly raised and argued
13 [before the district court].” *State v. Chadwick-McNally*, 2018-NMSC-018, ¶ 22, 414 P.3d 326. If
14 the court bifurcates the proceedings, the court must determine whether or not the same jury that
15 decides guilt will also determine if one or more aggravating circumstances exist. See Rule 5-
16 705(C) NMRA.

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