

1 **14-7026. [~~Death penalty sentencing~~]Life imprisonment without possibility of release or**
2 **parole proceeding; reasonable doubt; burden of proof.¹**

3 The burden is always on the state to prove beyond a reasonable doubt that [the aggravating
4 circumstance was present]^[2] [one or more of the aggravating circumstances were present]².

5 It is not required that the state prove the existence of an aggravating circumstance beyond
6 all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon
7 reason and common sense - the kind of doubt that would make a reasonable person hesitate to act
8 in the graver and more important affairs of life.

9

10 USE NOTES

11 1. This instruction must be given in all [~~death penalty sentencing~~] life imprisonment
12 without possibility of release or parole proceedings.

13 2. Use applicable alternative.

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

16 **Committee commentary.** — This instruction must be given in [~~death penalty sentencing~~] life
17 imprisonment without possibility of release or parole proceedings instead of UJI 14-5060 NMRA.

18 The aggravating circumstances are required to be proved by the state beyond a reasonable
19 doubt. [~~See Section 31-20A-3 NMSA 1978; State v. Allen, 2000-NMSC-002, P61, 128 N.M. 482,
20 994 P.2d 728; Gregg v. Georgia, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976).] NMSA
21 1978, § 31-20A-2 (2009); see State v. Fry, 2006-NMSC-001, ¶ 28, 138 N.M. 700, 126 P.3d 516
22 (“For the use of . . . felonies as an aggravating circumstance, [in a death penalty case] the~~

- 1 Legislature imposed the additional requirement of demonstrating beyond a reasonable doubt that
- 2 the defendant had an intent to kill.”).
- 3 [As amended by Supreme Court Order No. 21-8300-008, effective for all cases pending or filed
- 4 on or after December 31, 2021.]