

1 **14-7027. ~~[Death penalty sentencing]~~Life imprisonment without possibility of release or**  
2 **parole proceeding; jury procedure for consideration of each aggravating circumstance.**<sup>1</sup>

3 In this case, as to the aggravating circumstance of \_\_\_\_\_ (*insert the*  
4 *aggravating circumstance*), there are three possible verdicts:

- 5 (1) finding beyond a reasonable doubt that the aggravating circumstance exists;  
6 (2) finding that the aggravating circumstance does not exist; or  
7 (3) being unable to reach an agreement.

8 You must first consider whether the aggravating circumstance charged was present in this  
9 case. In order to find the aggravating circumstance, you must agree unanimously. ~~[You may~~  
10 ~~consider the penalty to be imposed only if you have found that [the aggravating circumstance has]~~<sup>2</sup>  
11 ~~[one or more aggravating circumstances have] been proven beyond a reasonable doubt.]~~

12 A special form has been prepared for [the]<sup>[2]</sup> [each]<sup>2</sup> aggravating circumstance charged. If  
13 you unanimously find the state has proved beyond a reasonable doubt that the aggravating  
14 circumstance was present, you shall complete the form indicating your finding, and have the  
15 foreperson sign this part. [You will then consider any other aggravating circumstances.]<sup>3</sup>

16 If you unanimously find that the aggravating circumstance was not present, your finding  
17 shall be that the state has not proved beyond a reasonable doubt the aggravating circumstance. If  
18 you are unable to reach a unanimous agreement either way, the foreperson shall sign this part of  
19 the finding form.

20 [You will then consider any other aggravating circumstances until you have separately  
21 considered each aggravating circumstance. You must complete a form for each aggravating  
22 circumstance before returning to the court.]<sup>3</sup>

1           If you do not find an aggravating circumstance beyond a reasonable doubt, then return to  
2 the courtroom.

3           ~~[[If you unanimously find beyond a reasonable doubt that an aggravating circumstance was  
4 present, you shall then consider the penalty to be imposed.]]<sup>4</sup>~~

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USE NOTES

7           1.       This instruction must be given in every ~~[death penalty sentencing]~~ life  
8 imprisonment without possibility of release or parole proceeding for each aggravating  
9 circumstance to be given to the jury. It is to be given immediately prior to UJI 14-7032 NMRA  
10 ~~[and 14-7033]~~, sample ~~[forms]~~ form of findings.

11           2.       Use only applicable alternative.

12           3.       This alternative is to be given if more than one aggravating circumstance is to be  
13 given.

14           ~~[4. — This sentence is given unless the court has bifurcated the sentencing proceeding.]~~  
15 [As amended, effective August 1, 2001; as amended by Supreme Court Order No. 21-8300-008,  
16 effective for all cases pending or filed on or after December 31, 2021.]

17 **Committee commentary.** — At least one aggravating circumstance must be proved beyond a  
18 reasonable doubt to impose ~~[the death penalty. *State v. Allen*, 2000-NMSC-002, P61, 128 N.M.~~  
19 ~~482, 994 P.2d 728; *Gregg v. Georgia*, 428 U.S. 153, 96 S. Ct. 2909, 49 L. Ed. 2d 859 (1976);~~  
20 ~~Section 31-20A-3 NMSA 1978.]~~ life imprisonment without possibility of release or parole. 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         This instruction provides the procedure for finding an aggravating circumstance and for  
4 completing the form in UJI 14-7032 NMRA as to the presence of one or more aggravating  
5 circumstances.

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