

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CRIMINAL
PROPOSAL 2022-018**

March 7, 2022

The Uniform Jury Instructions - Criminal Committee has recommended amendments to UJIs 14-5101, 14-5104, 14-6011, and 14-6014 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

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Your comments must be received by the Clerk on or before April 6, 2022, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

14-5101. Insanity; jury procedure.¹

There is an issue in this case as to the defendant's mental condition at the time the act was committed. You will be given alternative verdict forms [for each crime charged]² as follows:

[] "guilty" [of _____];
"not guilty";
"not guilty by reason of insanity".

Only one of these forms is to be completed [for each crime charged]².

You will first consider whether the defendant committed the act charged.

If you determine that the defendant committed the act charged, but you are not satisfied beyond a reasonable doubt that the defendant was sane at the time, you must find the defendant not guilty by reason of insanity.

The defendant was insane at the time of the commission of the crime if, because of a mental disease, as explained below, the defendant:

[did not know what [he] [she] was doing or understand the consequences of [his] [her] act,]
[or]³
[did not know that [his] [her] act was wrong,]
[or]
[could not prevent [himself] [herself] from committing the act].

A mental disease is a specific disorder of the mind that both substantially affects mental processes and substantially impairs behavior controls. [~~This specific disorder must also be a long-~~

~~standing disorder. It]~~ This disorder normally must extend over a considerable period of time, as distinguished from a momentary condition arising under the pressure of circumstances.

The term mental disease does not include a personality disorder or an abnormality manifested only by repeated criminal conduct or by other anti-social conduct ~~[-]~~ and does not mean developmental disability.

The burden is on the state to prove beyond a reasonable doubt that the defendant was sane at the time the offense was committed. If you have a reasonable doubt as to whether the defendant was sane at the time the offense was committed, you must find the defendant not guilty by reason of insanity.

In determining the defendant's mental condition at the time the act was committed, you may consider all of the evidence, including [testimony of medical experts]³ [testimony of lay witnesses] [acts and conduct of the defendant].

USE NOTES

1. This instruction must be modified if more than one offense is charged. If there is more than one defendant, the name of the defendant raising an insanity defense should be used. If this instruction is given, add the following essential element to the essential elements instruction for the offense charged: "The defendant was sane at the time the offense was committed".

2. Use the bracketed language when there is more than one crime charged.

3. Use only applicable bracketed alternative.

[As amended, effective January 1, 1997; January 1, 1999; as amended by Supreme Court Order No. 11-8300-015, effective April 25, 2011; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — Initially, there is a presumption that the defendant is sane. See *State v. Dorsey*, 1979-NMSC-097, ¶ 3, 93 N.M. 607, 603 P.2d 717 [(1979) and *State v. James*, 83 N.M. 263, 490 P.2d 1236 (Ct. App. 1971) (relied on in *State v. Pierce*, 109 N.M. 596, 788 P.2d 352 (1990))] (relied on in *State v. Martinez*, 2021-NMSC-012, ¶ 37, 483 P.3d 590). Once the defendant introduces some competent evidence to support the defense of insanity, the burden of proof shifts to the state to prove beyond a reasonable doubt that the defendant was sane at the time the act was committed. See *Martinez*, 2021-NMSC-012, ¶ 37; *State v. Lopez*, 1978-NMSC-060, ¶ 4, 91 N.M. 779, 581 P.2d 872 [(1978)]; *State v. Wilson*, 1973-NMSC-093, 85 N.M. 552, 514 P.2d 603 [(1973)]. However, the state is not required to present any evidence on the issue, and it may instead simply rely on the presumption. [*State v.*] *Wilson*, 1973-NMSC-093, ¶ 19; [*supra.* See] *see generally*, W.E. Shipley, Annotation, *Modern status of rules as to burden and sufficiency of proof of mental irresponsibility in criminal case*, [Annot.,] 17 A.L.R.3d 146 (1968).

[Although the instruction requires the jury to find that the defendant was insane at the time of the commission of the offense, evidence of the defendant's mental condition before and after the commission of the offense may be considered by the jury in arriving at its determination. *State v. James*, 85 N.M. 230, 511 P.2d 556 (Ct. App. 1973).

In New Mexico, the jury is not required to first determine if the defendant committed the elements of the crime and then proceed to the question of insanity. *State v. Victorian*, 84 N.M. 491, 494, 505 P.2d 436, 439 (1973). Defense counsel may want to point out in closing argument that, if the jury is not persuaded that the crime was committed, the defendant is entitled to a verdict of not guilty. A determination of not guilty by reason of insanity by the jury is a prerequisite to a determination of present sanity by the judge under Rule 5-602 of the Rules of Criminal Procedure.

~~Rule 5-602A(2) of the Rules of Criminal Procedure requires the jury to return a special verdict if it finds that the defendant is not guilty by reason of insanity. However, the jury has no right to know the consequences of a verdict of “not guilty by reason of insanity”. *State v. Chambers*, 84 N.M. 309, 502 P.2d 599 (1972).]~~

The trial court must determine, as a matter of law, whether a reasonable doubt exists as to the accused’s sanity. *State v. Chavez*, 1975-NMCA-119, ¶ 18, 88 N.M. 451, 541 P.2d 631. If the trial court determines the evidence is sufficient to raise an issue as to the defendant’s sanity, it must instruct the jury on the issue of sanity. *Id.*

The jury should be instructed to consider first whether the defendant is guilty of the crime charged, and, if the defendant is found guilty, then whether the defendant is not guilty by reason of insanity. *State v. James*, 1971-NMCA-156, ¶ 18, 83 N.M. 263, 490 P.2d 1236. However, a jury’s consideration of insanity before elements of offense is not reversible error. *State v. Victorian*, 1973-NMSC-008, ¶ 12, 84 N.M. 491, 505 P.2d 436. If the jury is not persuaded that the crime was committed, the defendant is entitled to a verdict of not guilty.

Although the instruction requires the jury to find that the defendant was insane at the time of the commission of the offense, evidence of the defendant’s mental condition before and after the commission of the offense may be considered by the jury in arriving at its determination. *See James*, 1971-NMCA-156, ¶¶ 10-11.

Evidence of the defendant’s mental condition may be presented by expert and lay witnesses. Since the jury is the final decision-maker on the question of insanity, it is up to them to decide whether to afford greater weight to expert testimony. “The purpose of psychiatry is to diagnose and cure mental illnesses, not to assess blame for acts resulting from these illnesses. The law seeks to find facts and assess accountability” Psychiatric testimony, however, is relevant evidence in determining accountability. [~~*State v.* *Dorsey*, [93 N.M. 607, 609, 603 P.2d 717 (1979).] 1979-NMSC-097, ¶ 9.~~

Rule 5-602(A)(2) NMRA of the Rules of Criminal Procedure for the District Courts requires the jury to return a special verdict if it finds that the defendant is not guilty by reason of insanity. However, the jury has no right to know the consequences of a verdict of not guilty by reason of insanity because the consequences are not relevant to the jury’s consideration. *State v. Neely*, 1991-NMSC-087, ¶ 29, 112 N.M. 702, 819 P.2d 249; *see also* UJI 14-6007 NMRA. [As amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

14-5104. Determination of present competency.¹

~~[Evidence has been presented concerning]~~ An issue in this case is the defendant’s competency to stand trial. The defendant has the burden of proving by the greater weight of the evidence that [he] the defendant is mentally incompetent to be tried.

[Before considering whether the defendant committed the crime charged, you must make a determination of [his]the defendant’s competency to stand trial.]² A person is competent to stand trial if [he] that person has:

- ~~1. — understands the nature and significance of the criminal proceedings against him~~
- ~~2. — has a factual understanding of the criminal charges; and~~
- ~~3. — is able to assist his attorney in his defense]~~

1. a sufficient present ability to consult with the person’s lawyer with a reasonable degree of rational understanding;

2. a rational as well as factual understanding of the proceedings against the person;

3. the capacity to assist in the person's own defense; and
4. the capacity to comprehend the reasons for punishment.

As to this issue only, your verdict need not be unanimous. When as many as ten of you have agreed as to whether the defendant is competent to stand trial, your [~~foreman~~] foreperson must sign the proper form. If your verdict is that the defendant is incompetent, you will immediately return to open court without proceeding further. If your verdict is that the defendant is competent, you should proceed to consider the defendant's guilt or innocence.

USE NOTES

1. This instruction is to be given upon request of the defendant only if the evidence raises a reasonable doubt as to the defendant's competency to stand trial and this issue is submitted to the jury.

2. Delete bracketed material if this determination of competency is to be made by a jury other than the jury deliberating the guilt or innocence of the defendant.

Committee commentary. — [~~Prior to 1967, a similar instruction was routinely given to the jury if a defendant has claimed that he was not competent to stand trial. See e.g., *State v. Ortega*, 77 N.M. 7, 419 P.2d 219 (1966); *State v. Folk*, 56 N.M. 583, 247 P.2d 165 (1952). The basis for the instruction was an 1855 statute which provided for "commitment" of a person "if upon the trial . . . such person shall appear to the jury charged with such indictment to be a lunatic" Code 1915, § 4448. See *Territory v. Kennedy*, 15 N.M. 556, 110 P. 854 (1910).~~

~~The 1855 statute was repealed in 1967 by N.M. Laws 1967, ch. 231, § 1, compiled as § 41-13-3.1. Article II, Section 12 of the New Mexico Constitution and Rule 5-602 NMRA require the issue of competency to stand trial be submitted to the jury if the trial judge has a reasonable doubt regarding the issue of the defendant's competency. See *State v. Noble*, 90 N.M. 360, 563 P.2d 1153 (1977); *State v. Chavez*, 88 N.M. 451, 541 P.2d 631 (1975); and the committee commentary to Rule 5-602 NMRA. Absent an abuse of discretion, the trial judge's determination that there is not a reasonable doubt will not be overturned. See *State v. Noble*, *supra* at p. 363.~~

~~The defendant has the burden of proving by a preponderance or greater weight of the evidence that he is not competent to stand trial. *State v. Ortega*, *supra*, at p. 19. See also UJI 13-304.~~

~~It is only necessary for ten members of the jury to decide the issue of competency, as proceedings to ascertain the competency to stand trial are civil proceedings. Article II, Section 12 of the New Mexico Constitution provides that the legislature may provide that verdicts in civil cases may be rendered by less than an unanimous vote of the jury. Section 38-5-17 NMSA 1978 provides for verdicts of ten in civil cases.~~

~~Although the New Mexico appellate decisions on competency to stand trial have all involved incompetency because of some mental illness or disease, UJI 14-5104 is not limited to incompetency by reason of mental illness. It is clear that a [mentally retarded (]developmentally disabled[)] deaf mute who can neither read nor write and who is unable to communicate with his attorney may be incompetent to stand trial even though not suffering from any mental disease. See *Jackson v. Indiana*, 406 U.S. 715 (1972).]~~

~~In the federal courts and New Mexico the test of present competency to stand trial is "whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding~~

of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402 (1960). It is a violation of due process to try a person who does not have these capabilities.]

See NMSA 1978, § 31-9-1 (1993).

“A person is competent to stand trial when he or she has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, a rational as well as factual understanding of the proceedings against him, and the capacity to assist in his own defense and to comprehend the reasons for punishment.” *State v. Linares*, 2017-NMSC-014, ¶ 34, 393 P.3d 691 (quoting *State v. Rotherham*, 1996-NMSC-048, ¶ 13, 122 N.M. 246, 923 P.2d 1131 (brackets, internal quotation marks, and citations omitted). This jury instruction was updated in 2022 to reflect the controlling standard for competency set forth in *Linares*.

“The law has long recognized that it is a violation of due process to prosecute a defendant who is incompetent to stand trial.” *Rotherham*, 1996-NMSC-048, ¶ 13; *Drope v. Missouri*, 420 U.S. 162, 171 (1975) (“It has long been accepted that a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial.”). All participants in a criminal proceeding—including the court acting sua sponte—have a shared duty to inquire into the defendant’s competency whenever circumstances suggest that the defendant, “though physically present in the courtroom, is in reality afforded no opportunity to defend himself.” *Drope*, 420 U.S. at 171 (internal quotation marks and citation omitted).

Although the New Mexico appellate decisions on competency to stand trial have all involved incompetency because of some mental illness or disease, UJI 14-5104 NMRA is not limited to incompetency by reason of mental illness. See *Jackson v. Indiana*, 406 U.S. 715 (1972) (recognizing where a developmentally disabled, deaf, non-verbal person who can neither read nor write and who is unable to communicate with the person's attorney may be incompetent to stand trial even though not suffering from any mental disease).

The issue of a defendant’s competency to stand trial may be raised at any time during a criminal proceeding. See § 31-9-1 (“Whenever it appears that there is a question as to the defendant’s competency to proceed in a criminal case, any further proceeding in the cause shall be suspended until the issue is determined.”). If the motion for competency evaluation is filed after the start of a trial by jury, the court shall instruct the jury under UJI 14-5104 NRMA to determine the defendant’s competency to stand trial. Rule 5-602.1(I)(2) NMRA (“If the motion for a competency evaluation was filed after the start of a trial by jury, the court shall submit the question to the jury at the close of evidence.”).

In determining whether a competency evaluation should be ordered, the court is required to consider only whether the movant’s subjective, good faith belief that the defendant may not be competent to stand trial is objectively reasonable. Cf. *Kestenbaum v. Pennzoil Co.*, 1988-NMSC-092, ¶ 27, 108 N.M. 20, 766 P.2d 280 (discussing the difference between a “subjective good faith belief as opposed to an objective standard of reasonable belief”). In making this determination, the court should evaluate whether the motion demonstrates that the movant’s good faith belief is supported by specific, articulable facts that would lead a reasonable person to believe that the defendant may not be competent to stand trial. Absent an abuse of discretion, the trial judge’s determination that there is not a reasonable belief will not be overturned. See *State v. Padilla*, 1994-NMCA-067, ¶ 12, 118 N.M. 189, 879 P.2d 1208.

Once a question of the defendant’s competency is raised, the court “does not possess the discretion to ignore the issue” and must make “a determination on the record” about whether the

defendant is competent to stand trial. *See State v. Montoya*, 2010-NMCA-067, ¶¶ 14, 18, 148 N.M. 495, 238 P.3d 369 (decided under Rule 5-602 NMRA (1991)). Similarly, the question, once raised, cannot be waived by the defendant. *See Pate v. Robinson*, 383 U.S. 375, 384 (1966) (“[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently ‘waive’ his right to have the court determine his capacity to stand trial.”).

The defendant has the burden of proving by a preponderance or greater weight of the evidence that the defendant is not competent to stand trial. *State v. Santillanes*, 1978-NMCA-051, ¶ 6, 91 N.M. 721, 580 P.2d 489; Rule 5-601.2(I)(2) (“The jury shall decide by a preponderance of the evidence if the defendant is not competent to stand trial before considering the defendant’s guilt or innocence beyond a reasonable doubt.”).

A competency evaluation may not be used to obtain an evaluation of other aspects of the defendant’s mental health, such as the availability of defenses under Rule 5-602 NMRA (setting forth procedures for raising the defenses of not guilty by reason of insanity at the time of the commission of the offense and incapacity to form specific intent). *See* Rule 5-602.1 NMRA, comm. cmt.

[As amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

14-6011. Use of multiple verdict forms; insanity.¹

In this case, there are [~~four~~three (3)] possible verdicts as to the defendant _____ (name of defendant)^[2] [for each crime charged]²:

- (1) not guilty;
- (2) not guilty by reason of insanity; and
- (3) guilty[~~, but mentally ill; and~~
- (4) ~~guilty~~].

Only one of the possible verdicts may be signed by you [as to any particular charge]². If you have agreed upon one verdict [as to a particular charge]², that form of verdict is the only form to be signed [as to that charge]². The other forms are to be left unsigned.

USE NOTES

1. For use with UJI 14-5101 NMRA.
2. Use this bracketed phrase if there is more than one offense charged.

[As amended, effective August 1, 2001; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — *See* committee commentary under UJI 14-6010 NMRA.

14-6014. Sample forms of verdict.¹

(style of case)
We find the defendant [_____ (name)]² GUILTY of _____³ [as charged in Count _____⁴].

FOREPERSON

(style of case)
We find the defendant [_____ (name)]² NOT GUILTY of _____³ [as charged in Count _____⁴].

FOREPERSON

(style of case)
We find the defendant [_____] ² NOT GUILTY.⁵

FOREPERSON

(style of case)
We find the defendant [_____] ² NOT GUILTY BY REASON OF
INSANITY.

FOREPERSON

(style of case)
We find the defendant [_____] ² GUILTY, BUT MENTALLY ILL.⁶

FOREPERSON]

(style of case)
Do you unanimously find beyond a reasonable doubt that a firearm was used in the commission
of _____³ [as charged in Count _____]?
_____ (Yes or No)

FOREPERSON

(style of case)
Do you unanimously find beyond a reasonable doubt that _____³ was committed
against a person sixty years of age or older, and that person was intentionally injured [as charged
in Count _____]?
_____ (Yes or No)

FOREPERSON

(style of case)
Do you find that the defendant [_____] ² is competent to stand trial?
_____ (Yes or No)

FOREPERSON

USE NOTES

1. A form of verdict must be submitted to the jury for each offense or lesser included offense, and each form must be typed on a separate page.
2. Use this provision and insert name of each defendant when there are multiple defendants.
3. Insert the name of the offense; do not leave blank for the jury to complete.
4. Insert the count number, if any; do not leave blank for the jury to complete.
5. This form is appropriate for lesser included offenses. *See* Instruction 14-6012.

~~[6. — This form may be submitted when a defendant has presented sufficient evidence of insanity or lack of capacity to form a specific intent to the jury. Instruction 14-5102 or 14-5103 must also be given if this instruction is submitted.]~~

[As amended, effective August 1, 1997; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]