

**14-5101. Insanity; jury procedure.<sup>1</sup>**

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]<sup>2</sup> 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]<sup>2</sup>.

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]<sup>3</sup>

[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 the term 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]<sup>3</sup> [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. 22-8300-031, effective for all cases pending or filed on or after December 31, 2022.]

**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*,

1 83 N.M. 263, 490 P.2d 1236 (Ct. App. 1971) (relied on in *State v. Pierce*, 109 N.M. 596, 788 P.2d  
2 352 (1990)) (relied on in *State v. Martinez*, 2021-NMSC-012, ¶ 37, 483 P.3d 590). Once the  
3 defendant introduces some competent evidence to support the defense of insanity, “the burden [of  
4 proof] then shifts to the [s]tate to prove beyond a reasonable doubt that [the] defendant was sane  
5 at the time the act was committed.” [See] *Martinez*, 2021-NMSC-012, ¶ 37 (quoting *State v. Lopez*,  
6 1978-NMSC-060, ¶ 4, 91 N.M. 779, 581 P.2d 872) [(1978)]; *State v. Wilson*, 1973-NMSC-093,  
7 ¶¶ 17-19, 85 N.M. 552, 514 P.2d 603 [(1973)]. However, the state is not required to present any  
8 evidence on the issue, and it may instead simply rely on the presumption. *Martinez*, 2021-NMSC-  
9 012, ¶ 37; [*State v.*] *Wilson*, 1973-NMSC-093, ¶ 19; [*supra*. See] *see generally*, W.E. Shipley,  
10 *Annotation, Modern Status of Rules As To Burden and Sufficiency of Proof of Mental*  
11 *Irresponsibility In Criminal Case*, [Annot.,] 17 A.L.R.3d 146 § 9 (1968).

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

16 In New Mexico, the jury is not required to first determine if the defendant committed the  
17 elements of the crime and then proceed to the question of insanity. *State v. Victorian*, 84 N.M. 491,  
18 494, 505 P.2d 436, 439 (1973). Defense counsel may want to point out in closing argument that,  
19 if the jury is not persuaded that the crime was committed, the defendant is entitled to a verdict of  
20 not guilty. A determination of not guilty by reason of insanity by the jury is a prerequisite to a  
21 determination of present sanity by the judge under Rule 5-602 of the Rules of Criminal Procedure.

22 Rule 5-602A(2) of the Rules of Criminal Procedure requires the jury to return a special  
23 verdict if it finds that the defendant is not guilty by reason of insanity. However, the jury has no

1 ~~right to know the consequences of a verdict of “not guilty by reason of insanity”.~~ *State v.*  
2 *Chambers*, 84 N.M. 309, 502 P.2d 599 (1972).]

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

7 “[T]he jury should be instructed to consider first whether the defendant is guilty of the  
8 crime charged,” and if the defendant is found guilty, then the jury should “determine whether the  
9 defendant is not guilty by reason of insanity.” *State v. James*, 1971-NMCA-156, ¶ 18, 83 N.M.  
10 263, 490 P.2d 1236. However, it may not be reversible error if a jury considers the defendant’s  
11 insanity before considering the elements of the offense. *State v. Victorian*, 1973-NMSC-008, ¶ 12,  
12 84 N.M. 491, 505 P.2d 436. If the jury is not persuaded that the defendant committed the crime  
13 beyond a reasonable doubt, the defendant is entitled to a verdict of not guilty. UJI 14-5060 NMRA.

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

18 Evidence of the defendant’s mental condition may be presented by expert and lay  
19 witnesses. Since the jury is the final decision-maker on the question of insanity, it is up to [them]  
20 the jury to decide whether to afford greater weight to expert testimony. “The purpose of psychiatry  
21 is to diagnose and cure mental illnesses, but not to assess blame for acts resulting from these  
22 illnesses. The law seeks to find facts and assess accountability[---].” *Dorsey*, 1979-NMSC-097,

¶ 9. Psychiatric testimony, however, is relevant evidence in determining accountability. [~~State v.~~  
~~Dorsey~~, 93 N.M. 607, 609, 603 P.2d 717 (1979).] Id.

Rule 5-602(A)(2) NMRA 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. 22-8300-031, effective for all cases pending or filed  
on or after December 31, 2022.]