

**14-5104. Determination of present competency.<sup>1</sup>**

~~[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.]<sup>2</sup> 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           1.       This instruction is to be given upon request of the defendant only if the evidence  
2       raises a reasonable doubt as to the defendant's competency to stand trial and this issue is submitted  
3       to the jury.

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

6       [As amended by Supreme Court Order No. 22-8300-031, effective for all cases pending or filed  
7       on or after December 31, 2022.]

8           **Committee commentary.** — ~~[Prior to 1967, a similar instruction was routinely given to~~  
9       ~~the jury if a defendant has claimed that he was not competent to stand trial. See e.g., *State v. Ortega*,~~  
10      ~~77 N.M. 7, 419 P.2d 219 (1966); *State v. Folk*, 56 N.M. 583, 247 P.2d 165 (1952). The basis for~~  
11      ~~the instruction was an 1855 statute which provided for "commitment" of a person "if upon the trial~~  
12      ~~. . . such person shall appear to the jury charged with such indictment to be a lunatic . . . ." Code~~  
13      ~~1915, § 4448. See *Territory v. Kennedy*, 15 N.M. 556, 110 P. 854 (1910).~~

14          ~~The 1855 statute was repealed in 1967 by N.M. Laws 1967, ch. 231, § 1, compiled as § 41-~~  
15      ~~13-3.1. Article II, Section 12 of the New Mexico Constitution and Rule 5-602 NMRA require the~~  
16      ~~issue of competency to stand trial be submitted to the jury if the trial judge has a reasonable doubt~~  
17      ~~regarding the issue of the defendant's competency. See *State v. Noble*, 90 N.M. 360, 563 P.2d 1153~~  
18      ~~(1977); *State v. Chavez*, 88 N.M. 451, 541 P.2d 631 (1975); and the committee commentary to~~  
19      ~~Rule 5-602 NMRA. Absent an abuse of discretion, the trial judge's determination that there is not~~  
20      ~~a reasonable doubt will not be overturned. See *State v. Noble*, supra at p. 363.~~

21          ~~The defendant has the burden of proving by a preponderance or greater weight of the~~  
22      ~~evidence that he is not competent to stand trial. *State v. Ortega*, supra, at p. 19. See also UJI 13-~~  
23      ~~304.~~

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

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

12       ~~In the federal courts and New Mexico the test of present competency to stand trial is~~  
13 ~~“whether the defendant has sufficient present ability to consult with his lawyer with a reasonable~~  
14 ~~degree of rational understanding—and whether he has a rational as well as factual understanding~~  
15 ~~of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402 (1960). It is a violation of~~  
16 ~~due process to try a person who does not have these capabilities.]~~

17       ~~See NMSA 1978, § 31-9-1 (1993).~~

18       ~~“A person is competent to stand trial when he or she has sufficient present ability to consult~~  
19 ~~with his [or her] lawyer with a reasonable degree of rational understanding, a rational as well as~~  
20 ~~factual understanding of the proceedings against him [or her], and the capacity to assist in his own~~  
21 ~~defense and to comprehend the reasons for punishment.” *State v. Linares*, 2017-NMSC-014, ¶ 34,~~  
22 ~~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 footnote 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); § 31-9-1.

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 a motion for competency evaluation is filed after the start of a trial by jury in district court, the court shall instruct the jury under UJI 14-5104 to determine the defendant’s competency to stand trial. Rule 5-602.1(I)(2) NMRA (“If the motion

1 for a competency evaluation was filed after the start of a trial by jury, the court shall submit the  
2 question to the jury at the close of evidence.”). Rules 5-602.1, 6-507.1, 7-507.1, and 8-507.1  
3 NMRA govern the procedure for resolving a question of competency.

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

9 [As amended by Supreme Court Order No. 22-8300-031, effective for all cases pending or filed  
10 on or after December 31, 2022.]