

1 14-5101. Insanity; jury procedure.¹

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

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8 ["guilty" of _____];³

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10 "guilty" of _____;

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12 "not guilty";

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14 "not guilty by reason of insanity";

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16 "guilty but mentally ill"]⁴.

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

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

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

28
29 The defendant was insane at the time of the commission of
30 the crime if, because of a mental disease, as explained below,
31 the defendant:

32 [did not know what [he] [she] was doing or
33 understand the consequences of [his] [her] act,]
34 [or]⁵

35 [did not know that [his] [her] act was wrong,] [or]
36 [could not prevent [himself] [herself] from committing
37 the act].

38
39 A mental disease is a specific disorder of the mind that
40 both substantially affects mental processes and substantially
41 impairs behavior controls. This specific disorder must also
42 be a long-standing disorder. It must extend over a
43 considerable period of time, as distinguished from a momentary
44 condition arising under the pressure of circumstances.

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46 The term mental disease does not include a personality
47 disorder or an abnormality manifested only by repeated
48 criminal conduct or by other anti-social conduct.

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1 5. Use only applicable bracketed alternative.
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3 [As amended, effective January 1, 1997; January 1, 1999.]
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COMMITTEE COMMENTARY

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Initially, there is a presumption that the defendant is sane. See *State v. Dorsey*, 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)). 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 *State v. Lopez*, 91 N.M. 779, 581 P.2d 872 (1978); *State v. Wilson*, 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*, *supra*. See generally, *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, 51 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). This instruction slightly modifies the holding in *Victorian* by suggesting that the jury first find that the acts have been committed. This does not necessarily mean that they have to find the elements of the crime. 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).

Evidence of the defendant's mental condition may be

1 presented by expert and lay witnesses. Since the jury is the
2 final decision-maker on the question of insanity, it is up to
3 them to decide whether to afford greater weight to expert
4 testimony. "The purpose of psychiatry is to diagnose and cure
5 mental illnesses, not to assess blame for acts resulting from
6 these illnesses. The law seeks to find facts and assess
7 accountability" Psychiatric testimony, however, is
8 relevant evidence in determining accountability. *State v.*
9 *Dorsey*, 93 N.M. 607, 609, 603 P.2d 717 (1979).

10 DBD::DB2::st execute failed: [IBM][CLI Driver][DB2/6000]
11 SQL0530N The insert or update value of the FOREIGN KEY
12 "DBUSER.BILLDETAIL.SQL980508102800170" is not equal to any
13 value of the parent key of the parent table. SQLSTATE=23503
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