



Administrative Office of the Courts

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Supreme Court approves pretrial detention rule changes to enhance public safety

SANTA FE – The state Supreme Court has approved changes in New Mexico’s pretrial justice system to enhance public safety.

The Court issued orders last week to revise procedural rules governing when a person charged with a felony can be held in jail before trial. The rule amendments take effect for cases pending or filed on or after Nov. 23.

“As confirmed by independent evaluations, New Mexicans are safer today because of pretrial justice reforms implemented by the state Supreme Court in the past four years. Newly approved rule changes strengthen the reforms and further protect our communities by helping to identify potentially dangerous defendants who may warrant pretrial detention,” said Artie Pepin, director of the Administrative Office of the Courts.

The new rule changes were recommended in a 107-page report to the Supreme Court by a committee with representatives from all three branches of government, including legislators, officials in Gov. Michelle Lujan Grisham’s administration, as well as prosecutors, police, public defenders and judges.

A constitutional amendment adopted by voters in 2016 allows the pretrial detention of a defendant charged with a felony – not a misdemeanor – if a prosecutor files a written motion with the court and proves that pretrial jailing of the defendant is necessary to assure public safety.

The new rules changes will:

- Permit magistrate and metropolitan court judges to delay by 24 hours the initial pretrial release of felony defendants charged with certain violent crimes or under certain other circumstances. This can provide more time for prosecutors to determine before a defendant is released whether a defendant is so dangerous that they should request the individual be held in jail while awaiting trial. See [Rules 6-501\(F\)](#) and [7-501\(F\) NMRA](#).

- Allow district judges to schedule detention hearings for newly arrested felony defendants if a prosecutor has not yet filed a motion for detention. The provision will apply to defendants charged with certain felonies, including first-degree murder and those involving the use of a firearm or if they were flagged as potentially violent by assessment of the person’s past history. See [Rule 5-401\(G\)\(2\) NMRA](#). Under the state Constitution, judges do not have the authority to detain a defendant without the filing of a motion by the prosecutor. If the prosecutor does not file a detention motion, the issue before the judge at the scheduled hearing will be a defendant’s conditions of release rather than pretrial detention.
- Make clear that a broad range of evidence, including law enforcement records, can be introduced at pretrial detention hearings. The rule reflects Supreme Court decisions that live testimony is not required and that “proffers” – statements by the prosecutor of what a witness would say if called to testify at the hearing – as well as other credible information can be relied upon by judges. See [Rule 5-409\(F\)\(5\) NMRA](#).

In recommending rules changes, the committee said it sought to address a problem that particularly occurs in rural areas where prosecutors and defense attorneys often do not appear in magistrate courts for a defendant’s first appearance before a judge, who must determine the conditions under which the defendant will be released pending trial. In some instances, defendants could be released before prosecutors determined whether they should file a detention motion.

Under the new rules, prosecutors will now have a greater opportunity to make those assessments. The new rules allow a district court to schedule a detention hearing and a magistrate and metropolitan court judge to delay entering a defendant’s release conditions order by 24 hours. The 24-hour delay, however, does not extend the overall time that a newly arrested defendant can be kept in jail before a judge sets initial conditions of release — three days for defendants in a local detention center such as a county jail and five days for defendants in custody elsewhere.

According to a study last year by the UNM Institute of Social Research, more than 4 out of 5 defendants in Bernalillo County were not arrested for a crime while on pretrial release and 96% were not accused of a violent crime while released. Of the nearly 6,400 defendants reviewed by researchers, only 12 were arrested for a first-degree felony – a figure that is less than two-tenths of one percent of those released during the 21 months of the study.

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Click here to view the [committee’s report](#) and [supplemental report](#) to the Court.

[Supreme Court Orders No. 20-8300-013](#) and [No. 20-8300-19](#)

Other approved amendments: [Rule 5-301 NMRA](#), [Rule 6-409 NMRA](#), [Rule 7-409 NMRA](#)