

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE
DISTRICT COURTS, THE RULES OF CRIMINAL PROCEDURE FOR THE
MAGISTRATE COURTS, THE RULES OF CRIMINAL PROCEDURE FOR THE
METROPOLITAN COURTS, AND THE RULES OF PROCEDURE FOR THE
MUNICIPAL COURTS**

PROPOSAL 2024-011

March 13, 2024

The Rules of Criminal Procedure for State Courts Committee has recommended amendments to Rules 5-210, 6-201, 7-201, and 8-201 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 website at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 12, 2024, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

5-210. Arrests without a warrant; arrest warrants.

A. **To whom directed.** Whenever a warrant is issued in a criminal action, including by any method authorized Rule 5-211(F) NMRA, it shall be directed to a full-time salaried state or county law enforcement officer, a municipal police officer, a campus police officer, or an Indian tribal or pueblo law enforcement officer. The warrant may limit the jurisdictions in which it may be executed. A copy of the warrant shall be docketed in the court as captioned on the warrant. The person obtaining the warrant shall cause it to be entered into a law enforcement information system. Upon arrest the defendant shall be brought before the court without unnecessary delay.

B. **Arrest.** The warrant shall be executed by the arrest of the defendant. If the arresting officer has the warrant in the officer's possession at the time of the arrest, a copy shall be served on the defendant upon arrest. If the officer does not have the warrant in the officer's possession at the time of the arrest, the officer shall then inform the defendant of the offense and of the fact that a warrant has been issued and shall serve the warrant on the defendant as soon as practicable.

C. **Return.** The arresting officer shall make a return of the warrant, or any duplicate original, to the court as captioned on the warrant and notify immediately all law enforcement

agencies, previously advised of the issuance of the warrant for arrest, that the defendant has been arrested. The return shall be docketed in the court as captioned on the warrant.

D. **Arrests without a warrant.** If the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant ~~[prior to]~~ and the local detention center at the time of transferring the defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, without just cause or sufficient reason, the complaint may be dismissed without prejudice or defendant may be released from custody. If the defendant is in custody and the court is open, the criminal complaint shall be filed immediately with the court. If the court is not open ~~[and the defendant remains in custody]~~, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court ~~[as soon as practicable]~~ within seventy-two (72) hours. If the criminal complaint is not filed within the deadlines stated above, the case shall be dismissed without prejudice.

E. **Duty to remove warrant.** If the warrant has been entered into a law enforcement information system, upon the arrest of the defendant, the person executing the warrant shall cause it to be removed from the system. If the court withdraws the warrant, the court shall cause the warrant to be removed from the warrant information system.

[As amended, effective September 1, 1990; November 1, 1991; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases filed on or after _____.]

Committee commentary.— For the rules governing execution and return of arrest warrants issued by the magistrate, metropolitan and municipal courts, *see* Rules 6-206, 7-206, and 8-205 NMRA, which are substantially identical to this rule. *See also* Rule 5-301 NMRA comm. cmt.

Although not explicit in this rule, under NMSA 1978, Section 33-3-28, detention officers have the same authority as peace officers “with respect to arrests and enforcement of laws when on the premises of a local jail[.]”

Paragraph B of this rule was derived from Rule 4(d)(3) of the Federal Rules of Criminal Procedure. *See* 62 F.R.D. 271-72 (1974). The Court of Appeals has held that “physical possession of the warrant is not essential to a lawful arrest when the validity of the arrest warrant is not involved.” *See State v. Grijalva*, 1973-NMCA-061, 85 N.M. 127, 509 P.2d 894.

Paragraph D was added in 1990 to require in warrantless arrest cases that the defendant be given a copy of the criminal complaint prior to being transferred to the custody of a detention facility. Similar language was added to Rules 6-201, 7-201, and 8-201 NMRA. The right to a copy of the criminal complaint was added to Rule 5-210(D) NMRA and its counterparts to ensure that the defendant has notice of the criminal charges. A 2020 amendment to each of the applicable rules explicitly provides alternative remedies in the form of the dismissal of the complaint without prejudice or the defendant’s release from custody where a lack of compliance with the complaint delivery requirement is shown to prejudice the defendant.

In 1991, the Supreme Court amended the criminal complaint form to delete the requirement that the complaint be sworn to before a notary or judicial officer before it is filed with the court. Law enforcement officers are required to swear or affirm under penalty of perjury that the facts set in the complaint are true to the best of their information and belief.

There is no absolute requirement that a copy of a criminal complaint be given to a defendant who, because of drugs, alcohol, or rage is unable to read and understand the charges. Rather, it

would be a better practice to place the complaint with other belongings of the defendant until such time as the defendant can understand the nature of the charges.

This rule does not provide a precise definition as to the point in time at which a defendant is deemed to have been transferred to the custody of a detention facility. Nothing in these rules prevents the police from briefly detaining a defendant in a detention facility pending completion of preliminary police investigatory procedures so long as the police have not transferred jurisdiction to release the defendant to the detention facility. The police, however, must be free to release the defendant if, after the preliminary investigation and screening, charges are not filed.

For purposes of Paragraph D of this rule, the court may temporarily open a file and begin background investigation and scheduling of hearings using the copy of the criminal complaint provided to the local detention center upon arrest of a defendant without a warrant while waiting for the original complaint. Due to the requirement of background investigation and validated risk assessment on some cases, the court needs time to perform these duties. In any event, the original criminal must still be filed within the deadlines provided in Paragraph D of this rule for the action to continue.

The defendant has a number of rights prior to arraignment or first appearance. These preliminary rights include

(a) The statutory right to 3 telephone calls within 20 minutes after detention; NMSA 1978, § 31-1-5 (1973);

(b) In warrantless arrest and detention cases, the right to be given a copy of the criminal complaint prior to transfer to custody of a detention facility; and

(c) In warrantless arrest and detention cases, the constitutional right to a prompt probable cause determination. *See* Rule 5-301 and comm. cmt.

The court may dismiss criminal charges for denying an accused the right to three (3) telephone calls, the right to a copy of the criminal complaint, or the right to a prompt probable cause determination if the court finds that the denial of one of these rights resulted in prejudice to the defendant or if the court finds that the law enforcement officers acted in bad faith. *See State v. Bearly*, 1991-NMCA-022, 112 N.M. 50, 811 P.2d 83; *see also State v. Gibby*, 1967-NMSC-219, 78 N.M. 414, 432 P.2d 258.

[As revised, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. _____, effective for all cases filed on or after _____.]

6-201. Commencement of action.

A. **How commenced.** A criminal action is commenced by filing one of the following with the court:

(1) a complaint consisting of a signed, sworn written statement containing the facts, the common name of the offense charged, and where applicable, a specific section number of the New Mexico Statutes Annotated, 1978 Compilation, that contains the offense. A separate complaint shall be filed for each defendant;

(2) a traffic citation issued and signed by a state or local traffic enforcement officer under Section 66-8-130 NMSA 1978;

(3) a citation issued and signed by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated, and the time and place to appear. Unless the person requests an earlier

date, the time specified in the citation shall be at least three (3) days after issuance of the citation; or

(4) an order finding a person to be in direct criminal contempt.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed with the magistrate court within seven (7) days of the issuance of the citation or, in any event, no later than one (1) day prior to the date cited for the defendant to appear. Any citation that sets an appearance date and is untimely filed may be dismissed with or without prejudice by the court on its own motion. All complaints and citations shall be signed, as defined in Rule 6-210(J) NMRA, and the magistrate court shall not accept for filing any unsigned complaint or citation. In the event that an unsigned complaint or citation commences an action, the case shall be dismissed without prejudice.

B. **Jurisdiction.** Magistrate judges have jurisdiction in all cases as may be provided by law.

C. **Where commenced.** Unless otherwise provided by law, the action must be commenced in the magistrate district where the crime is alleged to have been committed.

D. **Arrest without a warrant; criminal complaint.** In all criminal cases, including cases that are not within magistrate court trial jurisdiction, if the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant ~~[prior to]~~ and the local detention center at the time of transferring the defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, without just cause or sufficient reason, the complaint may be dismissed without prejudice or the defendant may be released from custody. If the defendant is in custody and the court is open, the complaint shall be filed immediately with the magistrate court. If the court is not open ~~[and the defendant remains in custody]~~, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court ~~[as soon as practicable]~~ within seventy-two (72) hours. If the criminal complaint is not filed within the deadlines stated above, the case shall be dismissed without prejudice.

E. **Name of defendant.** In every complaint or citation the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which the defendant can be identified with reasonable certainty.
[As amended, effective September 1, 1990; November 1, 1991; May 1, 1997; September 15, 1997; as amended by Supreme Court Order No. 08-8300-044, effective December 31, 2008; as amended by Supreme Court Order No. 16-8300-007, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. 21-8300-022, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases filed on or after _____.]

Committee commentary. — For purposes of Paragraph D of this rule, the court may temporarily open a file and begin background investigation and scheduling of hearings using the copy of the criminal complaint provided to the local detention center upon arrest of a defendant without a warrant while waiting for the original complaint. Due to the requirement of background investigation and validated risk assessment on some cases, the court needs time to perform these duties. In any event, the original criminal must still be filed within the deadlines provided in Paragraph D of this rule for the action to continue.

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

7-201. Commencement of action.

A. **How commenced.** A criminal action is commenced by filing one of the following with the court:

(1) a complaint consisting of a signed, sworn written statement containing the facts, the common name of the offense charged, and where applicable, a specific section number of either the New Mexico Statutes Annotated, 1978 Compilation, or the county or municipal ordinance that contains the offense. A separate complaint shall be filed for each defendant;

(2) a traffic citation issued and signed by a state or local traffic enforcement officer under Section 66-8-130 NMSA 1978;

(3) a citation issued and signed by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated, and the time and place to appear. Unless the person requests an earlier date, the time specified in the citation shall be at least three (3) days after issuance of the citation; or

(4) an order finding a person to be in direct criminal contempt.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed with the metropolitan court within seven (7) days of the issuance of the citation or, in any event, no later than one (1) day prior to the date cited for the defendant to appear. Any citation that sets an appearance date and is untimely filed may be dismissed with or without prejudice by the court on its own motion. All complaints and citations shall be signed, as defined in Rule 7-210(J) NMRA, and the metropolitan court shall not accept for filing any unsigned complaint or citation. In the event that an unsigned complaint or citation commences an action, the case shall be dismissed without prejudice.

B. **Jurisdiction.** Metropolitan judges have jurisdiction in all cases as may be provided by law.

C. **Where commenced.** Unless otherwise provided by law, the action must be commenced in the metropolitan district where the crime is alleged to have been committed.

D. **Arrest without a warrant; criminal complaint.** In all criminal cases, including cases that are not within metropolitan court trial jurisdiction, if the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant ~~[prior to]~~ and the local detention center at the time of transferring the defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, without just cause or sufficient reason, the complaint may be dismissed without prejudice or the defendant may be released from custody. If the defendant is in custody and the court is open, the complaint shall be filed immediately with the metropolitan court. If the court is not open ~~[and the defendant remains in custody]~~, the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court ~~[as soon as practicable]~~ within seventy-two (72) hours. If the criminal complaint is not filed within the deadlines stated above, the case shall be dismissed without prejudice.

E. **Name of defendant.** In every complaint or citation the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which the defendant can be identified with reasonable certainty.
[As amended, effective September 1, 1990; November 1, 1991; May 1, 1997; September 15, 1997; as amended by Supreme Court Order No. 10-8300-012, effective May 10, 2010; as amended by Supreme Court Order No. 16-8300-007, effective for all cases pending or filed on or after

December 31, 2016; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. 21-8300-022, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases filed on or after _____.]

Committee commentary. — For purposes of Paragraph D of this rule, the court may temporarily open a file and begin background investigation and scheduling of hearings using the copy of the criminal complaint provided to the local detention center upon arrest of a defendant without a warrant while waiting for the original complaint. Due to the requirement of background investigation and validated risk assessment on some cases, the court needs time to perform these duties. In any event, the original criminal must still be filed within the deadlines provided in Paragraph D of this rule for the action to continue.

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

8-201. Commencement of action.

A. **How commenced.** An action is commenced by filing one of the following with the court:

(1) a complaint consisting of a signed, sworn written statement containing the facts, the common name of the offense charged, and where applicable, a specific section number of either the municipal ordinance or the New Mexico Statutes Annotated, 1978 Compilation, that contains the offense. A separate complaint shall be filed for each defendant;

(2) a traffic citation issued and signed by a state or local traffic enforcement officer under Section 66-8-130 NMSA 1978;

(3) a citation issued and signed by an official authorized by law that contains the name and address of the cited person, the specific offense charged, a citation to the specific section of law violated, and the time and place to appear. Unless the person requests an earlier date, the time specified in the citation shall be at least three (3) days after issuance of the citation; or

(4) an order finding a person to be in direct criminal contempt.

A copy of every citation issued shall be delivered to the person cited, and the original shall be filed with the municipal court within seven (7) days of the issuance of the citation or, in any event, no later than one (1) day prior to the date cited for the defendant to appear. Any citation that sets an appearance date and is untimely filed may be dismissed with or without prejudice by the court on its own motion. All complaints and citations shall be signed, as defined in Rule 8-209(J) NMRA, and the municipal court shall not accept for filing any unsigned complaint or citation. In the event that an unsigned complaint or citation commences an action, the case shall be dismissed without prejudice.

B. **Jurisdiction.** Municipal courts have jurisdiction in all cases as may be provided by law.

C. **Where commenced.** The action shall be commenced in the municipality where the offense is alleged to have been committed.

D. **When commenced.** All prosecutions for the commission of any offense made punishable by ordinance shall be commenced within the time provided by law.

E. **Arrest without a warrant; criminal complaint.** In all municipal court cases, if the defendant is arrested without a warrant, a criminal complaint shall be prepared and a copy given to the defendant ~~[prior to]~~ and the local detention center at the time of transferring the

defendant to the custody of the detention facility. If the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility, without just cause or sufficient reason, the complaint may be dismissed without prejudice or the defendant may be released from custody. If the defendant is in custody and the court is open, the complaint shall be filed immediately with the municipal court. If the court is not open [~~and the defendant remains in custody~~], the complaint shall be filed the next business day of the court. If the defendant is not in custody, the complaint shall be filed with the court [~~as soon as practicable~~] within seventy-two (72) hours. If the criminal complaint is not filed within the deadlines stated above, the case shall be dismissed without prejudice.

F. **Name of defendant.** In every complaint or citation, the name of the defendant, if known, shall be stated. A defendant whose name is not known may be described by any name or description by which the defendant can be identified with reasonable certainty.
[As amended, effective September 1, 1990; November 1, 1991; May 1, 1997; September 15, 1997; as amended by Supreme Court Order No. 08-8300-047, effective December 31, 2008; as amended by Supreme Court Order No. 16-8300-007, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme Court Order No. 21-8300-022, effective for all cases pending or filed on or after December 31, 2021; as amended by Supreme Court Order No. _____, effective for all cases filed on or after _____.]

Committee commentary. — For purposes of Paragraph E of this rule, the court may temporarily open a file and begin background investigation and scheduling of hearings using the copy of the criminal complaint provided to the local detention center upon arrest of a defendant without a warrant while waiting for the original complaint. Due to the requirement of background investigation and validated risk assessment on some cases, the court needs time to perform these duties. In any event, the original criminal must still be filed within the deadlines provided in Paragraph E of this rule for the action to continue.

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