

1 **7-403. Revocation or modification of release orders.**

2 A. **Scope.** In accordance with this rule, the court may consider revocation of the
3 defendant's pretrial release or modification of the defendant's conditions of release

4 (1) if the defendant is alleged to have violated a condition of release; or

5 (2) to prevent interference with witnesses or the proper administration of
6 justice.

7 B. ~~[Motion for revocation]~~ **Revocation or modification of conditions of release.**

8 (1) The court ~~[may]~~ shall consider revocation of the defendant's pretrial release
9 or modification of the defendant's conditions of release on motion of the prosecutor, on notice of
10 a non-technical violation of a condition of release by a court pretrial services agency, or on the
11 court's own motion.

12 (2) The defendant may file a response to the motion, but the filing of a response
13 shall not delay any hearing under Paragraph D or E of this rule.

14 C. **Issuance of summons or bench warrant; temporary detention of certain**
15 **defendants.**

16 _____ (1) ~~[If the court does not deny the motion on the pleadings,]~~ On motion or notice
17 of a non-technical violation of a condition of release by a court pretrial services agency, the court
18 shall enter an order with specific findings about why amended or revoked conditions of release are
19 unnecessary, or the court shall issue a summons and notice of hearing, unless the court finds that
20 the interests of justice may be better served by the issuance of a bench warrant. The summons or
21 bench warrant shall include notice of the reasons for the review of the pretrial release decision.

22 _____ (2) A defendant previously released by any court in this state pending any
23 felony charge or pending a charge for an enumerated misdemeanor, who is arrested and charged

1 with a new felony or new enumerated misdemeanor defined in Rule 5-403.1 NMRA alleged to
2 have occurred during the period of initial release, shall be held without conditions of release
3 pending an initial hearing pursuant to Paragraph D of this rule. The initial hearing required by
4 Paragraph D shall be conducted by the court with current jurisdiction over the defendant's initial
5 conditions of release.

6 (3) A defendant previously released by any court in this state pending any
7 felony charge or pending a charge for an enumerated misdemeanor defined in Rule 5-403.1
8 NMRA, who is charged but not arrested for a new felony or new enumerated misdemeanor alleged
9 to have occurred during the period of initial release, shall be summonsed by the court with current
10 jurisdiction over the defendant's initial conditions of release to an initial hearing required by
11 Paragraph D of this rule, unless the court finds that the interests of justice may be better served by
12 the issuance of a bench warrant. The initial hearing required by Paragraph D shall be conducted
13 by the court with current jurisdiction over the defendant's initial conditions of release.

14 **D. Initial hearing.**

15 (1) The court shall hold an initial hearing as soon as practicable~~[, but if]~~. If the
16 defendant is in custody, the hearing shall be held no later than three (3) days after the defendant is
17 detained if the defendant is being held in the local detention center, or no later than five (5) days
18 after the defendant is detained if the defendant is not being held in the local detention center. If the
19 defendant is not in custody, the hearing shall be held no later than ten (10) days after the motion
20 or notice of alleged violation is filed.

21 (2) At the initial hearing, the court may continue the existing conditions of
22 release, set different conditions of release, or ~~[propose revocation of release]~~ if the court is

1 considering revocation of release, the court shall schedule an evidentiary hearing under Paragraph
2 E of this rule, unless waived by the defendant.

3 ~~[(3) If the court proposes revocation of release, the court shall schedule an~~
4 ~~evidentiary hearing under Paragraph E of this rule, unless waived by the defendant.]~~

5 (3) If at the conclusion of the initial hearing, the court continues or amends the
6 defendant's conditions of release, then a written order continuing or amending the defendant's
7 conditions of release shall be provided to the defendant at the time of release from custody if the
8 defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.
9 If the defendant waives the evidentiary hearing under Paragraph E and the court finds that the
10 conditions of release should be revoked, an order revoking conditions of release, including written
11 findings of the individualized facts justifying revocation, shall be filed within three (3) days of the
12 initial hearing.

13 E. **Evidentiary hearing.**

14 (1) **Time.** The evidentiary hearing shall be held as soon as practicable. If the
15 defendant is in custody, the evidentiary hearing shall be held no later than seven (7) days after the
16 initial hearing. If the defendant is not in custody, the evidentiary hearing shall be held no later than
17 ten (10) days after the initial hearing.

18 (2) **Defendant's rights.** The defendant has the right to be present and to be
19 represented by counsel and, if financially unable to obtain counsel, to have counsel appointed. The
20 defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance
21 of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by
22 proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not

1 be used against the defendant at trial except for impeachment purposes or in a subsequent
2 prosecution for perjury.

3 F. **Order at completion of evidentiary hearing.** At the completion of an evidentiary
4 hearing, the court shall determine whether the defendant has violated a condition of release or
5 whether revocation of the defendant's release is necessary to prevent interference with witnesses
6 or the proper administration of justice~~[-The court]~~, and may:

7 (1) continue the existing conditions of release;

8 (2) set new or additional conditions of release in accordance with Rule 7-
9 401 NMRA; or

10 (3) revoke the defendant's release, if the court

11 (a) finds either

12 (i) probable cause to believe that the defendant committed a
13 federal, state, or local crime while on release; or

14 (ii) clear and convincing evidence that the defendant has
15 willfully violated any other condition of release; and

16 (b) finds clear and convincing evidence that either

17 (i) no condition or combination of conditions will reasonably
18 ensure the defendant's compliance with the release conditions ordered by the court; or

19 (ii) revocation of the defendant's release is necessary to prevent
20 interference with witnesses or the proper administration of justice.

21 An order revoking release shall include written findings of the individualized facts
22 justifying revocation and shall be filed within three (3) days of the evidentiary hearing. If the court
23 continues or amends the defendant's conditions of release, then a written order continuing or

1 amending the defendant’s conditions of release shall be provided to the defendant at the time of
2 release from custody if the defendant is in custody, or within three (3) days of the hearing if the
3 defendant is not in custody.

4 G. **Evidence.** The New Mexico Rules of Evidence shall not apply to the presentation
5 and consideration of information at any hearing under this rule.

6 H. **Review of conditions.** If the metropolitan court enters an order setting new or
7 additional conditions of release and the defendant is detained or continues to be detained because
8 of a failure to meet a condition imposed, or is subject to a requirement to return to custody after
9 specified hours, the defendant may petition the district court for review in accordance with Rule 7-
10 401(J) NMRA. The defendant may petition the district court immediately on the issuance of the
11 metropolitan court order and shall not be required to first seek review or reconsideration by the
12 metropolitan court. If, on disposition of the petition by the district court, the defendant is detained
13 or continues to be detained because of a failure to meet a condition imposed, or is subject to a
14 requirement to return to custody after specified hours, the defendant may appeal in accordance
15 with Rule 5-405 NMRA and Rule 12-204 NMRA.

16 I. **Expedited trial scheduling for defendant in custody.** The metropolitan court
17 shall provide expedited priority scheduling in a case in which the defendant is detained pending
18 trial. The court shall hold a status review hearing in any case in which the defendant has been held
19 for more than sixty (60) days. The purpose of the status review hearing is to conduct a meaningful
20 review of the progress of the case. If the court determines that insufficient progress has been made,
21 then the court shall issue an appropriate scheduling order.

1 J. **Petition to district court for review of revocation order.** If the metropolitan court
2 issues an order revoking the defendant’s release, the defendant may petition the district court for
3 review under this paragraph and Rule 5-403(K) NMRA.

4 (1) ***Petition; requirements.*** The petition shall include the specific facts that
5 warrant review by the district court and may include a request for a hearing. The petitioner shall
6 promptly

- 7 (a) file a copy of the district court petition in the metropolitan court;
- 8 (b) serve a copy on the district attorney; and
- 9 (c) provide a copy to the assigned district court judge.

10 (2) ***Metropolitan court’s jurisdiction pending determination of the***
11 ***petition.*** On the filing of the petition, the metropolitan court’s jurisdiction to set or amend
12 conditions of release shall be suspended pending determination of the petition by the district court.
13 The metropolitan court shall retain jurisdiction over all other aspects of the case, and the case shall
14 proceed in the metropolitan court while the petition is pending.

15 (3) ***District court review.*** The district court shall rule on the petition in an
16 expedited manner.

17 (a) Within three (3) days after the petition is filed, the district court shall
18 take one of the following actions:

- 19 (i) issue an order affirming the revocation order; or
- 20 (ii) set a hearing to be held within ten (10) days after the filing
- 21 of the petition and promptly send a copy of the notice to the metropolitan court.

1 (b) If the district court holds a hearing on the petition, at the conclusion
2 of the hearing the court shall issue either an order affirming the revocation order or an order setting
3 conditions of release under Rule 5-401 NMRA.

4 (4) ***District court order; transmission to metropolitan court.*** The district court
5 shall promptly send the order to the metropolitan court, and jurisdiction over the conditions of
6 release shall revert to the metropolitan court.

7 (5) ***Appeal.*** If the district court affirms the revocation order, the defendant may
8 appeal in accordance with Rule 5-405 NMRA and Rule 12-204 NMRA.

9 [As amended, effective September 1, 1990; as amended by Supreme Court Order No. 17-8300-
10 005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court
11 Order No. 18-8300-024, effective for all cases pending or filed on or after February 1, 2019; as
12 amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or
13 after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-00068,
14 effective for all cases pending or filed on or after May 8, 2024.]

15 **Committee commentary.** — The 2017 amendments to this rule clarify the procedure for
16 the court to follow when considering revocation of the defendant’s pretrial release or modification
17 of the defendant’s conditions of release for violating the conditions of release. In *State v.*
18 *Segura*, 2014-NMCA-037, ¶¶ 1, 24-25, 321 P.3d 140, *overruled on other grounds by State v.*
19 *Ameer*, 2018-NMSC-030, ¶ 69, 458 P.3d 390, the Court of Appeals held that due process requires
20 courts to afford the defendant notice and an opportunity to be heard before the court may revoke
21 the defendant’s bail and remand the defendant into custody. *See also Tijerina v. Baker*, 1968-
22 NMSC-009, ¶ 9, 78 N.M. 770, 438 P.2d 514 (explaining that the right to bail is not absolute); *id.*
23 ¶ 10 (“If the court has inherent power to revoke bail of a defendant during trial and pending final

1 disposition of the criminal case in order to prevent interference with witnesses or the proper
2 administration of justice, the right to do so before trial seems to be equally apparent under a proper
3 set of facts.”); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 (“Conditions
4 of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable
5 by immediate arrest, revocation, or modification if violated. Such conditions of release are
6 intended to protect the public and keep the defendant in line.”), *rev’d on other grounds*, 2004-
7 NMSC-001, 134 N.M. 768, 82 P.3d 939.

8 As used in Paragraph D, a “local detention center” is “one that is commonly used by the
9 metropolitan court in the normal course of business and not necessarily within the territorial
10 jurisdiction of the court.” Rule 7-401(A)(3) NMRA.

11 Paragraph G provides that the New Mexico Rules of Evidence do not apply at a revocation
12 hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. As with courts in other types of
13 proceedings in which the Rules of Evidence do not apply, a court presiding over a pretrial detention
14 hearing is responsible “for assessing the reliability and accuracy” of the information presented. *See*
15 *United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a pretrial detention
16 hearing the judge “retains the responsibility for assessing the reliability and accuracy of the
17 government’s information, whether presented by proffer or by direct proof”); *State v. Ingram*, 155
18 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion of the detention
19 hearing court to determine whether a pretrial detention order may be supported in an individual
20 case by documentary evidence, proffer, one or more live witnesses, or other forms of information
21 the court deems sufficient); *see also United States v. Marshall*, 519 F. Supp. 751, 754 (E.D. Wis.
22 1981) (“So long as the information which the sentencing judge considers has sufficient indicia of
23 reliability to support its probable accuracy, the information may properly be taken into account in

1 passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v. Guthrie*, 2011-NMSC-014, ¶¶ 36-
2 39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a probation revocation hearing, the court
3 should focus on the reliability of the evidence); *State v. Vigil*, 1982-NMCA-058, ¶ 24, 97 N.M.
4 749, 643 P.2d 618 (holding in a probation revocation hearing that hearsay untested for accuracy
5 or reliability lacked probative value).

6 Paragraph I requires the metropolitan court to prioritize the scheduling of trial and other
7 proceedings for cases in which the defendant is held in custody. *See generally United States v.*
8 *Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform
9 Act, 18 U.S.C. § 3142, did not violate due process, in part because of “the stringent time limitations
10 of the Speedy Trial Act,” 18 U.S.C. § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice:*
11 *Pretrial Release*, Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute
12 or court rule, accelerated time limitations within which detained defendants should be tried
13 consistent with the sound administration of justice.”). This rule does not preclude earlier or more
14 regular status review hearings. The purpose of the hearing is to determine how best to expedite a
15 trial in the case. A meaningful review of the progress of the case includes assessment of the parties’
16 compliance with applicable deadlines, satisfaction of discovery obligations, and witness
17 availability, among other matters. If the court determines that the parties have made insufficient
18 progress on these measures, then it shall issue an appropriate scheduling order.

19 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or
20 after July 1, 2017; as amended by Supreme Court Order No. 22-8300-015, effective for all cases
21 pending or filed on or after December 31, 2022; as amended by Supreme Court Order No. S-1-
22 RCR-2023-00021, effective for all cases pending or filed on or after December 31, 2023.]