

1 **5-210. Arrests without a warrant; arrest warrants.**

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

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

15 C. **Return.** The arresting officer shall make a return of the warrant, or any duplicate  
16 original, to the court as captioned on the warrant and notify immediately all law enforcement  
17 agencies, previously advised of the issuance of the warrant for arrest, that the defendant has been  
18 arrested. The return shall be docketed in the court as captioned on the warrant.

19 D. **Arrests without a warrant.** If the defendant is arrested without a warrant, a  
20 criminal complaint shall be prepared and a copy given to the defendant [~~prior to~~] and the local  
21 detention center at the time of transferring the defendant to the custody of the detention facility. If  
22 the defendant is not provided a copy of the criminal complaint upon transfer to a detention facility,  
23 without just cause or sufficient reason, the complaint may be dismissed without prejudice or

1 defendant may be released from custody. If the defendant is in custody and the court is open, the  
2 criminal complaint shall be filed immediately with the court. If the court is not open [~~and the~~  
3 ~~defendant remains in custody~~], the complaint shall be filed the next business day of the court. If  
4 the defendant is not in custody, the complaint shall be filed with the court [~~as soon as practicable~~]  
5 within seventy-two (72) hours. If the criminal complaint is not filed within the deadlines stated  
6 above, the case shall be dismissed without prejudice.

7       E.     **Duty to remove warrant.** If the warrant has been entered into a law enforcement  
8 information system, upon the arrest of the defendant, the person executing the warrant shall cause  
9 it to be removed from the system. If the court withdraws the warrant, the court shall cause the  
10 warrant to be removed from the warrant information system.  
11 [As amended, effective September 1, 1990; November 1, 1991; as amended by Supreme Court  
12 Order No. 20-8300-008, effective for all cases pending or filed on or after December 31, 2020; as  
13 amended by Supreme Court Order No. S-1-RCR-2023-00003, effective for all cases filed on or  
14 after December 31, 2024.]

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

20       Although not explicit in this rule, under NMSA 1978, Section 33-3-28 (1985), detention  
21 officers have the same authority as peace officers “with respect to arrests and enforcement of laws  
22 when on the premises of a local jail[.]”

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

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

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

17 There is no absolute requirement that a copy of a criminal complaint be given to a defendant  
18 who, because of drugs, alcohol, or rage is unable to read and understand the charges. Rather, it  
19 would be a better practice to place the complaint with other belongings of the defendant until such  
20 time as the defendant can understand the nature of the charges.

21 This rule does not provide a precise definition [~~as to~~] for the point in time at which a  
22 defendant is deemed to have been transferred to the custody of a detention facility. Nothing in  
23 these rules prevents the police from briefly detaining a defendant in a detention facility pending

1 completion of preliminary police investigatory procedures so long as the police have not  
2 transferred jurisdiction to release the defendant to the detention facility. The police, however, must  
3 be free to release the defendant if, after the preliminary investigation and screening, charges are  
4 not filed.

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

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

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

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

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

20 The court may dismiss criminal charges for denying an accused the right to three (3)  
21 telephone calls, the right to a copy of the criminal complaint, or the right to a prompt probable  
22 cause determination if the court finds that the denial of one of these rights resulted in prejudice to  
23 the defendant or if the court finds that the law enforcement officers acted in bad faith. *See State v.*

1 *Bearly*, 1991-NMCA-022, 112 N.M. 50, 811 P.2d 83; *see also State v. Gibby*, 1967-NMSC-  
2 219, 78 N.M. 414, 432 P.2d 258.

3 [As revised, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-008,  
4 effective for all cases pending or filed on or after December 31, 2020; as amended by Supreme  
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6 2024.]