

1 **6-403. 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. **Revocation or modification of conditions of release.**

8 (1) The court shall consider revocation of the defendant's pretrial release or  
9 modification of the defendant's conditions of release on motion of the prosecutor, on notice of a  
10 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) On motion or notice of a non-technical violation of a condition of release by  
17 a court pretrial services agency, the court shall enter an order with specific findings about why  
18 amended or revoked conditions of release are unnecessary, or the court shall issue a summons and  
19 notice of hearing, unless the court finds that the interests of justice may be better served by the  
20 issuance of a bench warrant. The summons or bench warrant shall include notice of the reasons  
21 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]~~ a hearing pursuant to Paragraph D of this rule. The ~~[initial]~~ hearing required  
4 by Paragraph D shall be conducted by the court with current jurisdiction over the defendant's  
5 initial 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-  
8 403.1 NMRA, who is charged but not arrested for a new felony or new enumerated misdemeanor  
9 alleged to have occurred during the period of initial release, shall be summonsed by the court with  
10 current jurisdiction over the defendant's initial conditions of release to ~~[an initial]~~ a hearing  
11 required by Paragraph D of this rule, unless the court finds that the interests of justice may be  
12 better served by the issuance of a bench warrant. The ~~[initial]~~ hearing required by Paragraph D  
13 shall be conducted by the court with current jurisdiction over the defendant's initial conditions of  
14 release.

15 ~~[D. Initial hearing.]~~

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

22 (2) ~~At the initial hearing, the court may continue the existing conditions of~~  
23 ~~release, set different conditions of release, or if the court is considering revocation of release, the~~

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

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

11 ~~[E.]~~ D. [Evidentiary hearing.] **Hearing on alleged violation.**

12 (1) **Time.** ~~[The evidentiary]~~ A hearing shall be held as soon as practicable. If  
13 the defendant is in custody, the [evidentiary] hearing shall be held no later than [seven (7)] five (5)  
14 days after the [initial hearing] defendant is detained. If the defendant is not in custody, the  
15 [evidentiary] hearing shall be held no later than ten (10) days after the [initial hearing] motion or  
16 notice of alleged violation is filed.

17 (2) At the hearing, the court may continue the existing conditions of release, set  
18 different conditions of release, or if the court is considering revocation of release, the court shall  
19 conduct an evidentiary hearing, unless waived by the defendant.

20 ~~[(2)]~~ (3) **Defendant’s rights.** The defendant has the right to be present and to be  
21 represented by counsel and, if financially unable to obtain counsel, to have counsel appointed.  
22 ~~[The]~~ If the court is considering revocation of release and an evidentiary hearing is conducted, the  
23 defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance

1 of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by  
2 proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not  
3 be used against the defendant at trial except for impeachment purposes or in a subsequent  
4 prosecution for perjury.

5 ~~[F.]~~ E. **Order at completion of ~~[evidentiary]~~ hearing.**

6 (1) If at the conclusion of the hearing, the court continues or amends the  
7 defendant's conditions of release, then a written order continuing or amending the defendant's  
8 conditions of release shall be provided to the defendant at the time of the release from custody if  
9 the defendant is in custody, or within three (3) days of the hearing if the defendant is not in custody.

10 (2) If the defendant waives an evidentiary hearing and the court finds that the  
11 conditions of release should be revoked, an order revoking conditions of release, including written  
12 findings of the individualized facts justifying revocation, shall be filed within three (3) days of the  
13 hearing.

14 (3) If an evidentiary hearing is conducted, at ~~[A]~~ the completion of ~~[an]~~ the  
15 evidentiary hearing, the court shall determine whether the defendant has violated a condition of  
16 release or whether revocation of the defendant's release is necessary to prevent interference with  
17 witnesses or the proper administration of justice, and may:

18 ~~[(1)]~~ (a) continue the existing conditions of release;

19 ~~[(2)]~~ (b) set new or additional conditions of release in accordance with  
20 Rule 6-401 NMRA; or

21 ~~[(3)]~~ (c) revoke the defendant's release, if the court

1                    ~~[(a)]~~ (i) finds either probable cause to believe that the defendant  
2 committed a federal, state, or local crime while on release, or clear and convincing evidence that  
3 the defendant has willfully violated any other condition of release; and

4                    ~~[(i)]~~ ~~probable cause to believe that the defendant committed a~~  
5 ~~federal, state, or local crime while on release; or~~

6                    ~~(ii)~~ ~~clear and convincing evidence that the defendant has~~  
7 ~~willfully violated any other condition of release; and]~~

8                    ~~[(b)]~~ (ii) finds clear and convincing evidence that either no condition  
9 or combination of conditions will reasonably ensure the defendant's compliance with the release  
10 conditions ordered by the court, or revocation of the defendant's release is necessary to prevent  
11 interference with witnesses or the proper administration of justice.

12                    ~~[(i)]~~ ~~no condition or combination of conditions will reasonably~~  
13 ~~ensure the defendant's compliance with the release conditions ordered by the court; or~~

14                    ~~(ii)~~ ~~revocation of the defendant's release is necessary to prevent~~  
15 ~~interference with witnesses or the proper administration of justice.]~~

16 \_\_\_\_\_ (4)    ~~[An]~~ If the court revokes conditions of release after an evidentiary hearing,  
17 an order revoking release shall include written findings of the individualized facts justifying  
18 revocation and shall be filed within three (3) days of the evidentiary hearing.

19 \_\_\_\_\_ (5)    If the court continues or amends the defendant's conditions of release after  
20 an evidentiary hearing, then a written order continuing or amending the defendant's conditions of  
21 release shall be provided to the defendant at the time of release from custody if the defendant is in  
22 custody, or within three (3) days of the hearing if the defendant is not in custody.

1           ~~[G.]~~ F. **Evidence.** The New Mexico Rules of Evidence shall not apply to the presentation  
2 and consideration of information at ~~[any]~~ a hearing under this rule.

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

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

19           ~~[J.]~~ I. **Petition to district court for review of revocation order.** If the magistrate court  
20 issues an order revoking the defendant's release, the defendant may petition the district court for  
21 review under this paragraph and Rule 5-403(K) NMRA.

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

4                   (a)    file a copy of the district court petition in the magistrate court;

5                   (b)    serve a copy on the district attorney; and

6                   (c)    provide a copy to the assigned district court judge.

7           (2)    ***Magistrate court's jurisdiction pending determination of the petition.*** On  
8 the filing of the petition, the magistrate court's jurisdiction to set or amend conditions of release  
9 shall be suspended pending determination of the petition by the district court. The magistrate court  
10 shall retain jurisdiction over all other aspects of the case, and the case shall proceed in the  
11 magistrate court while the petition is pending.

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

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

16                           (i)    issue an order affirming the revocation order; or

17                           (ii)   set a hearing to be held within ten (10) days after the filing  
18 of the petition and promptly send a copy of the notice to the magistrate court.

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

1           (4)     ***District court order; transmission to magistrate court.*** The district court  
2 shall promptly send the order to the magistrate court, and jurisdiction over the conditions of release  
3 shall revert to the magistrate court.

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

6 [As amended, effective September 1, 1990; as amended by Supreme Court Order No. 08-8300-  
7 044, effective December 31, 2008; as amended by Supreme Court Order No. 17-8300-005,  
8 effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court  
9 Order No. 18-8300-024, effective for all cases pending or filed on or after February 1, 2019; as  
10 amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or  
11 after December 31, 2022; as amended by Supreme Court Order No. S-1-RCR-2024-00068,  
12 effective for all cases pending or filed on or after May 8, 2024; as provisionally amended by  
13 Supreme Court Order No. S-1-AO-2025-00013, effective for all cases pending or filed on or after  
14 July 29, 2025; provisional amendments approved by Supreme Court Order No. S-1-RCR-2025-  
15 00150, effective for all cases pending or filed on or after December 31, 2025.]

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

1 ¶ 10 (“If the court has inherent power to revoke bail of a defendant during trial and pending final  
2 disposition of the criminal case in order to prevent interference with witnesses or the proper  
3 administration of justice, the right to do so before trial seems to be equally apparent under a proper  
4 set of facts.”); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 (“Conditions  
5 of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable  
6 by immediate arrest, revocation, or modification if violated. Such conditions of release are  
7 intended to protect the public and keep the defendant in line.”), *rev’d on other grounds*, 2004-  
8 NMSC-001, 134 N.M. 768, 82 P.3d 939.

9 ~~[As used in Paragraph D, a “local detention center” is “one that is commonly used by the~~  
10 ~~magistrate court in the normal course of business and not necessarily within the territorial~~  
11 ~~jurisdiction of the court.” Rule 6-401(A)(3) NMRA.]~~

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

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

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

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

- 1 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013; provisional
- 2 amendments approved by Supreme Court Order No. S-1-RCR-2025-00150.]