

1 **8-403. 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 or modification of conditions of release.**

8 (1) The court may consider revocation of the defendant's pretrial release or
9 modification of the defendant's conditions of release on motion of the prosecutor or on the court's
10 own motion.

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

13 C. **Issuance of summons or bench warrant.** If the court does not deny the motion on
14 the pleadings, the court shall issue a summons and notice of hearing, unless the court finds that the
15 interests of justice may be better served by the issuance of a bench warrant. The summons or bench
16 warrant shall include notice of the reasons for the review of the pretrial release decision.

17 [~~D. —~~ **Initial hearing.**

18 (1) ~~The court shall hold an initial hearing as soon as practicable, but if the~~
19 ~~defendant is in custody, the hearing shall be held no later than three (3) days after the defendant is~~
20 ~~detained if the defendant is being held in the local detention center, or no later than five (5) days~~
21 ~~after the defendant is detained if the defendant is not being held in the local detention center.~~

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

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

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

4 (1) **Time.** ~~[The evidentiary]~~ A hearing shall be held as soon as practicable. If
5 the defendant is in custody, the ~~[evidentiary]~~ hearing shall be held no later than ~~[seven (7)]~~ five (5)
6 days after the ~~[initial hearing]~~ defendant is detained.

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

10 ~~[(2-)]~~ (3) **Defendant's rights.** The defendant has the right to be present and to be
11 represented by counsel and, if financially unable to obtain counsel, to have counsel appointed.
12 ~~[The]~~ If the court is considering revocation of release and an evidentiary hearing is conducted, the
13 defendant shall be afforded an opportunity to testify, to present witnesses, to compel the attendance
14 of witnesses, to cross-examine witnesses who appear at the hearing, and to present information by
15 proffer or otherwise. If the defendant testifies at the hearing, the defendant's testimony shall not
16 be used against the defendant at trial except for impeachment purposes or in a subsequent
17 prosecution for perjury.

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

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

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

5 (3) If an evidentiary hearing is conducted, at [A~~t~~] the completion of [a~~n~~] the
6 evidentiary hearing, the court shall determine whether the defendant has violated a condition of
7 release or whether revocation of the defendant’s release is necessary to prevent interference with
8 witnesses or the proper administration of justice, and may:

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

10 [~~(2)~~](b) set new or additional conditions of release in accordance with
11 Rule 8-401 NMRA; or

12 [~~(3)~~](c) revoke the defendant’s release, if the court

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

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

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

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

1 ~~[F.]~~ H. **Expedited trial scheduling for defendant in custody.** The municipal court shall
2 provide expedited priority scheduling in a case in which the defendant is detained pending trial.
3 The court shall hold a status review hearing in any case in which the defendant has been held for
4 more than forty-five (45) days. The purpose of the status review hearing is to conduct a meaningful
5 review of the progress of the case. If the court determines that insufficient progress has been made,
6 then the court shall issue an appropriate scheduling order.

7 ~~[J.]~~ I. **Petition to district court for review of revocation order.** If the municipal court
8 issues an order revoking the defendant’s release, the defendant may petition the district court for
9 review under this paragraph and Rule 5-403(K) NMRA.

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

- 13 (a) file a copy of the district court petition in the municipal court;
- 14 (b) serve a copy on the prosecutor; and
- 15 (c) provide a copy to the assigned district court judge.

16 (2) ***Municipal court’s jurisdiction pending determination of the petition.*** On
17 the filing of the petition, the municipal court’s jurisdiction to set or amend conditions of release
18 shall be suspended pending determination of the petition by the district court. The municipal court
19 shall retain jurisdiction over all other aspects of the case, and the case shall proceed in the
20 municipal court while the petition is pending.

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

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

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

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

9 (4) ***District court order; transmission to municipal court.*** The district court
10 shall promptly send the order to the municipal court, and jurisdiction over the conditions of release
11 shall revert to the municipal court.

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

14 [Approved, effective July 1, 1988; as amended, effective September 1, 1990; as amended by
15 Supreme Court Order No. 08-8300-047, effective December 31, 2008; as amended by Supreme
16 Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as
17 amended by Supreme Court Order No. 18-8300-024, effective for all cases pending or filed on or
18 after February 1, 2019; as amended by Supreme Court Order No. 22-8300-015, effective for all
19 cases pending or filed on or after December 31, 2022; as amended by Supreme Court Order No.
20 S-1-RCR-2024-00068, effective for all cases pending or filed on or after May 8, 2024; as
21 provisionally amended by Supreme Court Order No. S-1-AO-2025-00013, effective for all cases
22 pending or filed on or after July 29, 2025; provisional amendments approved by Supreme Court

1 Order No. S-1-RCR-2025-00150, effective for all cases pending or filed on or after December 31,
2 2025.]

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4 **Committee commentary.** — The 2017 amendments to this rule clarify the procedure for
5 the court to follow when considering revocation of the defendant’s pretrial release or modification
6 of the defendant’s conditions of release for violating the conditions of release. In *State v.*
7 *Segura*, 2014-NMCA-037, ¶¶ 1, 24-25, 321 P.3d 140, *overruled on other grounds by State v.*
8 *Ameer*, 2018-NMSC-030, ¶ 69, 458 P.3d 390, the Court of Appeals held that due process requires
9 courts to afford the defendant notice and an opportunity to be heard before the court may revoke
10 the defendant’s bail and remand the defendant into custody. *See also Tijerina v. Baker*, 1968-
11 NMSC-009, ¶ 9, 78 N.M. 770, 438 P.2d 514 (explaining that the right to bail is not absolute); *id.*
12 ¶ 10 (“If the court has inherent power to revoke bail of a defendant during trial and pending final
13 disposition of the criminal case in order to prevent interference with witnesses or the proper
14 administration of justice, the right to do so before trial seems to be equally apparent under a proper
15 set of facts.”); *State v. Rivera*, 2003-NMCA-059, ¶ 20, 133 N.M. 571, 66 P.3d 344 (“Conditions
16 of release are separate, coercive powers of a court, apart from the bond itself. They are enforceable
17 by immediate arrest, revocation, or modification if violated. These conditions of release are
18 intended to protect the public and keep the defendant in line.”), *rev’d on other grounds*, 2004-
19 NMSC-001, 134 N.M. 768, 82 P.3d 939.

20 [~~As used in Paragraph D, a “local detention center” is “one that is commonly used by the~~
21 ~~municipal court in the normal course of business and not necessarily within the territorial~~
22 ~~jurisdiction of the court.” Rule 8-401(A)(3) NMRA.]~~

1 Paragraph [G] F provides that the New Mexico Rules of Evidence do not apply at a
2 revocation hearing, consistent with Rule 11-1101(D)(3)(e) NMRA. As with courts in other types
3 of proceedings in which the Rules of Evidence do not apply, a court presiding over a pretrial
4 detention hearing is responsible “for assessing the reliability and accuracy” of the information
5 presented. *See United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986) (explaining that in a
6 pretrial detention hearing the judge “retains the responsibility for assessing the reliability and
7 accuracy of the government’s information, whether presented by proffer or by direct proof”); *State*
8 *v. Ingram*, 155 A.3d 597 (N.J. Super. Ct. App. Div. 2017) (holding that it is within the discretion
9 of the detention hearing court to determine whether a pretrial detention order may be supported in
10 an individual case by documentary evidence, proffer, one or more live witnesses, or other forms
11 of information the court deems sufficient); *see also United States v. Marshall*, 519 F. Supp. 751,
12 754 (E.D. Wis. 1981) (“So long as the information which the sentencing judge considers has
13 sufficient indicia of reliability to support its probable accuracy, the information may properly be
14 taken into account in passing sentence.”), *aff’d*, 719 F.2d 887 (7th Cir. 1983); *State v.*
15 *Guthrie*, 2011-NMSC-014, ¶¶ 36-39, 43, 150 N.M. 84, 257 P.3d 904 (explaining that in a
16 probation revocation hearing, the court should focus on the reliability of the evidence); *State v.*
17 *Vigil*, 1982-NMCA-058, ¶ 24, 97 N.M. 749, 643 P.2d 618 (holding in a probation revocation
18 hearing that hearsay untested for accuracy or reliability lacked probative value).

19 Paragraph [H] H requires the municipal court to prioritize the scheduling of trial and other
20 proceedings for cases in which the defendant is held in custody. *See generally United States v.*
21 *Salerno*, 481 U.S. 739, 747 (1987) (concluding that the detention provisions in the Bail Reform
22 Act, 18 U.S.C. § 3142, did not violate due process, in part because of “the stringent time limitations
23 of the Speedy Trial Act,” 18 U.S.C. § 3161); Am. Bar Ass’n, *ABA Standards for Criminal Justice:*

1 *Pretrial Release*, Standard 10-5.11 (3d ed. 2007) (“Every jurisdiction should establish, by statute
2 or court rule, accelerated time limitations within which detained defendants should be tried
3 consistent with the sound administration of justice.”). This rule does not preclude earlier or more
4 regular status review hearings. The purpose of the hearing is to determine how best to expedite a
5 trial in the case. A meaningful review of the progress of the case includes assessment of the parties’
6 compliance with applicable deadlines, satisfaction of discovery obligations, and witness
7 availability, among other matters. If the court determines that the parties have made insufficient
8 progress on these measures, then it shall issue an appropriate scheduling order.

9 ~~[Adopted by Supreme Court Order No. 17-8300-005[, effective for all cases pending or filed on~~
10 ~~or after July 1, 2017]; as amended by Supreme Court Order No. 22-8300-015[, effective for all~~
11 ~~cases pending or filed on or after December 31, 2022]; as amended by Supreme Court Order No.~~
12 ~~S-1-RCR-2023-00021[, effective for all cases pending or filed on or after December 31, 2023]; as~~
13 ~~provisionally amended by Supreme Court Order No. S-1-AO-2025-00013; provisional~~
14 ~~amendments approved by Supreme Court Order No. S-1-RCR-2025-00150.]~~