

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

2 A. **To whom directed.** Whenever 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
5 ~~[security]~~ police officer, or an Indian tribal or pueblo law enforcement officer. The warrant
6 may limit the jurisdictions in which it may be executed. A copy of the warrant shall be
7 docketed in the court as captioned on the warrant. The person obtaining the warrant shall
8 cause it to be entered into a law enforcement information system. Upon arrest the defendant
9 shall be brought before the court without unnecessary delay.

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

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

1 D. **Arrests without a warrant.** If the defendant is arrested without a warrant,
2 a criminal complaint shall be prepared and a copy given to the defendant prior to transferring
3 the defendant to the custody of the detention facility. If the defendant is not provided a copy
4 of the criminal complaint upon transfer to a detention facility, without just cause or sufficient
5 reason, the complaint may be dismissed without prejudice or defendant may be released from
6 custody. If the defendant is in custody and the court is open, the criminal complaint shall be
7 filed immediately with the court. If the court is not open and the defendant remains in
8 custody, the complaint shall be filed the next business day of the court. If the defendant is
9 not in custody, the complaint shall be filed with the court as soon as practicable.

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

14 [As amended, effective September 1, 1990; November 1, 1991; as amended by Supreme
15 Court Order No. 20-8300-008, effective for all cases pending or filed on or after December
16 31, 2020.]

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

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

4 Paragraph B of this rule was derived from Rule 4(d)(3) of the Federal Rules of
5 Criminal Procedure. *See* 62 F.R.D. 271-72 (1974). [~~In a case decided without reference to~~
6 ~~Paragraph B of this rule, the court of appeals has upheld that physical possession of the~~
7 ~~warrant by the officer at the time of the arrest is not essential to the validity of the arrest,~~
8 ~~assuming that the warrant is otherwise valid.] The Court of Appeals has held that “physical
9 possession of the warrant is not essential to a lawful arrest when the validity of the arrest
10 warrant is not involved.” *See State v. Grijalva*, 1973-NMCA-061, 85 N.M. 127, 509 P.2d
11 894 [(~~Ct. App. 1974~~)].~~

12 Paragraph D was added in 1990 to require in warrantless arrest cases that the defendant
13 be given a copy of the criminal complaint prior to being transferred to the custody of a
14 detention facility. Similar language was added to Rules 6-201, 7-201, and 8-201 NMRA. The
15 right to a copy of the criminal complaint was added to Rule 5-210(D) NMRA and its
16 counterparts to ensure that the defendant has notice of the criminal charges. A 2020
17 amendment to each of the applicable rules explicitly provides alternative remedies in the form
18 of the dismissal of the complaint without prejudice or the defendant’s release from custody
19 where a lack of compliance with the complaint delivery requirement is shown to prejudice the
20 defendant. [~~The right to a copy of the criminal charges is no greater than the right of a person~~

1 ~~accused of a motor vehicle violation to a copy of the citation. See NMSA 1978, § Section~~
2 ~~66-8-123 NMSA 1978 (2013), which provides that a copy of a traffic citation be given to the~~
3 ~~defendant. A traffic citation is a criminal complaint even though it is not verified. (See~~
4 ~~Sections 29-5-1.1 and 66-8-131 NMSA 1978) See NMSA 1978, § 66-8-131 (1990); see also~~
5 ~~NMSA 1978, § 29-5-1.1 (1989). If the defendant remains in custody, the complaint must be~~
6 ~~filed with the court at the time it is given to the defendant or if the court is closed, the next~~
7 ~~business day. The right to a copy of the criminal complaint was added to this rule so that the~~
8 ~~defendant has notice of the criminal charges.]~~

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

13 There is no absolute requirement that a copy of a criminal complaint be given to a
14 defendant who, because of drugs, alcohol, or rage is unable to read and understand the charges.
15 Rather, it would be a better practice to place the complaint with other belongings of the
16 defendant until such time as the defendant can understand the nature of the charges. ~~[It is noted~~
17 ~~that under Section 43-2-22 NMSA 1978 of the Detoxification Act, an intoxicated person may~~
18 ~~be detained in jail in protective custody for a 12 hour period without criminal charges. This~~
19 ~~time may be extended by a medical professional. Section 43-2-22 NMSA 1978. In this~~

1 ~~situation no criminal complaint need be served on the defendant who is being held for~~
2 ~~protective custody.]~~

3 [Rule 5-210 NMRA] This rule does not provide a precise definition as to the point in
4 time at which a defendant is deemed to have been transferred to the custody of a detention
5 facility. Nothing in these rules prevents the police from briefly detaining a defendant in a
6 detention facility pending completion of preliminary police investigatory procedures so long
7 as the police have not transferred jurisdiction to release the defendant to the detention facility.
8 The police, however, must be free to release the defendant if, after ~~[such]~~ the preliminary
9 investigation and screening, charges are not filed.

10 The defendant has a number of rights prior to arraignment or first appearance. These
11 preliminary rights include[:]

12 (a) The statutory right to 3 telephone calls within 20 minutes after detention; [~~Section~~
13 ~~31-1-5 NMSA 1978~~] NMSA 1978, § 31-1-5 (1973);

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

16 (c) In warrantless arrest and detention cases, the constitutional right to a prompt
17 probable cause determination. *See* [~~Commentary~~], Rule 5-301 [~~NMRA~~] & comm. cmt.

18 [~~Unlike the 6-month trial rules, this rule does not contain a provision requiring~~
19 ~~dismissal of the complaint for failure to provide the defendant in a warrantless arrest case with~~
20 ~~a copy of the complaint prior to transfer to a detention facility.] The court may dismiss~~

**DISTRICT COURT CRIMINAL
RULE 5-210**

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1 criminal charges for denying an accused the right to three (3) telephone calls, the right to a
2 copy of the criminal complaint, or the right to a prompt probable cause determination if the
3 court finds that the denial of one of these rights resulted in prejudice to the defendant or if the
4 court finds that the law enforcement officers acted in bad faith. *See State v. Bearly*, 1991-
5 NMCA-022, 112 N.M. 50, 811 P.2d 83 [~~Ct. App. 1991~~. *See*] ; *see also State v. Gibby*, 1967-
6 NMSC-219, 78 N.M. 414, [~~418~~,] 432 P.2d 258 [~~(1967)~~].
7 [As revised, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-
8 008, effective for all cases pending or filed on or after December 31, 2020.]