

1 **7-409. Pretrial detention.**

2 A. **Scope.** This rule governs the procedure for the prosecutor to file a motion for
3 pretrial detention in the metropolitan and district court while a case is pending in the metropolitan
4 court. Notwithstanding the right to pretrial release under Article II, Section 13 of the New Mexico
5 Constitution and Rule 7-401 NMRA, under Article II, Section 13 and Rule 5-409 NMRA, the
6 district court may order the detention pending trial of a defendant charged with a felony offense if
7 the prosecutor files a written motion titled “Expedited Motion for Pretrial Detention” and proves
8 by clear and convincing evidence that no release conditions will reasonably protect the safety of
9 any other person or the community.

10 B. **Motion for pretrial detention.** The prosecutor may file a written expedited motion
11 for pretrial detention at any time in both the metropolitan court and in the district court. The motion
12 shall include the specific facts that warrant pretrial detention.

13 C. **Determination of probable cause.** If a motion for pretrial detention is filed in the
14 metropolitan court and a probable cause determination has not been made, the metropolitan court
15 shall determine probable cause under Rule 7-203 NMRA. If the court finds no probable cause, the
16 court shall order the immediate personal recognizance release of the defendant under Rule 7-203
17 NMRA and shall deny the motion for pretrial detention without prejudice.

18 D. **Determination of motion by district court.** If probable cause has been found, the
19 metropolitan court clerk shall promptly transmit to the district court clerk a copy of the motion for
20 pretrial detention, the criminal complaint, and all other papers filed in the case. The metropolitan
21 court’s jurisdiction [~~to set or amend conditions of release~~] shall then be terminated, and the district
22 court shall acquire exclusive jurisdiction over [~~issues of pretrial release until the case is remanded~~]

1 ~~by the district court following disposition of the detention motion under Paragraph E of this rule]~~
2 the case.

3 **E. Further proceedings in metropolitan court.** Upon completion of the hearing, if
4 the case is pending in the metropolitan court, the district court shall promptly transmit to the
5 metropolitan court [~~a copy of either the order for pretrial detention or the order setting conditions~~
6 ~~of release. The metropolitan court may modify the order setting conditions of release upon a~~
7 ~~showing of good cause, but as long as the case remains pending, the metropolitan court may not~~
8 ~~release a defendant who has been ordered detained by the district court]~~ an order closing the
9 metropolitan court case.

10 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or
11 after July 1, 2017; as amended by Supreme Court Order No. 20-8300-013, effective for all cases
12 pending or filed on or after November 23, 2020.]

13 **Committee commentary. —**

14 **Paragraph C —** Federal constitutional law requires a “prompt judicial determination of
15 probable cause” to believe the defendant committed a chargeable offense, before or within 48
16 hours after arrest, in order to continue detention or other significant restraint of liberty. *Cty. of*
17 *Riverside v. McLaughlin*, 500 U.S. 44, 47, 56 (1991).

18 **Paragraph D —** Upon the filing of a motion for pretrial detention and a finding of probable
19 cause, the metropolitan court is deprived of jurisdiction [~~to set or amend the conditions of release.~~
20 ~~The filing of the motion does not, however, stay the case in the metropolitan court. Nothing in this~~
21 ~~rule shall prevent timely preliminary examinations from proceeding while the detention motion is~~
22 ~~pending.~~

1 **Paragraph E** — ~~If the district court issues a detention order under Rule 5-409 NMRA, the~~
2 ~~metropolitan court cannot release the defendant while the case is pending. The metropolitan court~~
3 ~~should, however, issue a release order if the state files a voluntary dismissal or if the court~~
4 ~~dismisses the case under other rules, such as Rule 7-202(A)(3) or (D)(1) NMRA].~~

5 [Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or
6 after July 1, 2017; as amended by Supreme Court Order No. 20-8300-021, effective for all cases
7 pending or filed on or after November 23, 2020.]