

6-409. Pretrial detention.

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

B. **Motion for pretrial detention.** The prosecutor may file a ~~[written-expedited]~~ motion for an expedited pretrial detention hearing at any time in ~~[both]~~ the magistrate court ~~[and in the district court]~~. The motion shall include the specific facts that warrant pretrial detention and shall specify whether the state is requesting a preliminary examination to establish probable cause. If the state requests a preliminary examination, the motion shall also specify whether the state is requesting that an expedited pretrial detention hearing be held concurrently.

C. **Determination of probable cause.** If a motion for pretrial detention is filed in the magistrate court and a probable cause determination has not been made, the magistrate court shall determine probable cause under Rule 6-203 NMRA. If the court finds no probable cause, the court shall order the immediate personal recognizance release of the defendant under Rule 6-203 NMRA and shall deny the motion for pretrial detention without prejudice.

D. **Determination of motion by district court.** If probable cause has been found, the magistrate court ~~[clerk]~~ shall proceed to conduct the defendant’s first appearance under Rule 6-501 NMRA and thereafter promptly ~~[transmit]~~ send to the district court clerk a copy of the motion

for pretrial detention, the criminal complaint, and all other papers filed in the case. The magistrate court shall then close the case and its jurisdiction shall be terminated, and the district court shall acquire exclusive jurisdiction over the case, except as provided in Rule 5-409(I) NMRA.

~~[E. — **Further proceedings in magistrate court.** Upon completion of the hearing, if the case is pending in the magistrate court, the district court shall promptly transmit to the magistrate court an order closing the magistrate court case.]~~

[Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 20-8300-013, effective for all cases pending or filed on or after November 23, 2020; as amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or after December 31, 2022.]

Committee commentary. —

Paragraph C — Federal constitutional law requires a “prompt judicial determination of probable cause” to believe the defendant committed a chargeable offense, before or within forty-eight (48) hours after arrest, in order to continue detention or other significant restraint of liberty. ~~[Cv.]~~ Cnty. of Riverside v. McLaughlin, 500 U.S. 44, 47, 56 (1991).

Paragraph D — ~~Upon~~ On the filing of a motion for pretrial detention, ~~and~~ a finding of probable cause, and the conducting of the defendant’s first appearance, the magistrate court is deprived of jurisdiction, except as provided in Rule 5-409(I) NMRA.

[Adopted by Supreme Court Order No. 17-8300-005, effective for all cases pending or filed on or after July 1, 2017; as amended by Supreme Court Order No. 20-8300-021, effective for all cases pending or filed on or after November 23, 2020; as amended by Supreme Court Order No. 22-8300-015, effective for all cases pending or filed on or after December 31, 2022.]