

Exceptions to rules of evidence for preliminary examinations.

A. ~~[Admissibility]~~ Exceptions to hearsay rule. In any preliminary ~~[hearing]~~examination, the following categories of evidence are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:~~[a written report of the conduct and results of a laboratory analysis of a human specimen or a controlled substance enumerated in Section 30-31-6 through 30-31-10 NMSA 1978, for determining the presence and quantity or absence of a controlled substance and the circumstances surrounding receipt and custody of the test sample, or a written report of the conduct and results of an autopsy for determining the fact and cause of death and the circumstances surrounding receipt and custody of the decedent, is not excluded by the hearsay rule, even though the declarant is available as a witness, if:~~

(1) ~~[the report is of an analysis conducted by:]~~ a recording or transcript of a forensic interview of a minor or incompetent victim conducted at a safe house; or

~~[(a) the New Mexico State Police crime laboratory;~~

~~_____ (b) the scientific laboratory division of the Department of Health;~~

~~_____ (c) the Office of the Medical Investigator; or~~

~~_____ (d) a laboratory certified to accept human specimens for the purpose of performing laboratory examinations pursuant to the federal Clinical Laboratory Improvement Act of 1988;]~~

~~[(2) the report is regular on its face and is attached to a certification form approved by the Supreme Court; and~~

[AMENDED AND RECOMPILED FROM RULE 7-608]

(3)(2) ~~[-a legible copy of the certification form and report was mailed to the defendant or his counsel at least ten (10) days before the preliminary hearing;]~~ a written report of the conduct and results of a laboratory analysis of a human specimen or a controlled substance enumerated in Sections 30-31-6 through -10 NMSA 1978, for determining the presence and quantity or absence of a controlled substance and the circumstances surrounding receipt and custody of the test sample, or a written report of the conduct and results of an autopsy for determining the fact and cause of death and the circumstances surrounding receipt and custody of the decedent, if the report is of an analysis conducted by

(a) the New Mexico State Police crime laboratory;

(b) the scientific laboratory division of the Department of Health;

(c) the Office of the Medical Investigator; or

(d) a laboratory certified to accept human specimens for the purpose of performing laboratory examinations under the federal Clinical Laboratory Improvement Act of 1988.

B. Exception to authentication rule. In any preliminary examination, a proffer by counsel is sufficient to meet the authentication and identification requirements of Rule 11-901(A) NMRA with regard to a recording or transcript of a 911 emergency call or a transcript of the computer-aided dispatch (CAD) incident report.

C. Exception for controlled substance field tests. In any preliminary examination, the results of a field test conducted for the detection of controlled illegal substances shall not be excluded based on objections to the scientific accuracy or reliability of the field test.

D. Certification. Evidence admitted under the exceptions established by Subparagraph (A)(2) of this rule must include a certification form approved by the Supreme Court.

[AMENDED AND RECOMPILED FROM RULE 7-608]

1 E. **Copies.** A legible copy of the certification form and report must be mailed to the
2 defendant or the defendant's counsel at least four (4) days before the preliminary examination if
3 the defendant is in custody and at least ten (10) days before the preliminary hearing if the defendant
4 is not in custody.

5 ~~[B.]~~E. **Admissibility of other evidence.** Nothing in this rule shall limit the right of a party
6 to call witnesses to testify as to the matters covered in ~~[such]~~ the report, nor affect the admissibility
7 of any evidence other than this report.

8 [As amended, effective January 1, 1987; January 1, 1995; Rule 7-608 NMRA recompiled and
9 amended as Rule 7-202.1 NMRA by Supreme Court Order No. 22-8300-023, effective for all cases
10 pending or filed on or after December 31, 2022.]

11 **Committee commentary.** — Rule 11-803(4) NMRA excepts statements made for and
12 reasonably pertinent to medical diagnosis or treatment from the rule against hearsay, regardless of
13 whether the declarant is available as a witness. This exception includes statements made to a
14 Sexual Assault Nurse Examiner (SANE) for medical diagnosis or treatment. The committee did
15 not include statements made to a SANE or other medical professional in the exceptions established
16 by this rule because those statements are already addressed by Rule 11-803(4) NMRA.

17 Additionally, Rule 11-803(2) NMRA excepts statements considered excited utterances
18 from the rule against hearsay, regardless of whether the declarant is available as a witness. The
19 committee did not include those statements in the exceptions established by this rule because those
20 statements are already addressed by Rule 11-803(2) NMRA. The exception in Paragraph B of this
21 rule allows for authentication of the 911 recording or CAD transcript without calling a dispatcher
22 or other police employee to testify to lay that foundation.

- 1 [Adopted by Supreme Court Order No. 22-8300-023, effective for all cases pending or filed on or
- 2 after December 31, 2022.]