

**7-501. Arraignment; first appearance.**

A. **Explanation of rights.** ~~Upon~~ On the first appearance of the defendant in response to a summons, warrant, or arrest, the court shall determine that the defendant has been informed of the following:

(1) the offense charged;

(2) the maximum penalty and mandatory minimum penalty, if any, provided for the offense charged;

(3) the right to bail or the possibility of pretrial detention under Rule ~~[5-401(G)]~~ 7-401(G) NMRA;

(4) the right, if any, to the assistance of counsel at every stage of the proceedings;

(5) the right, if any, to representation by an attorney at state expense;

(6) the right to remain silent, and that any statement made by the defendant may be used against the defendant;

(7) the right, if any, to a jury trial;

(8) in those cases not within the court's trial jurisdiction the right to a preliminary examination;

(9) that, if the defendant pleads guilty or no contest, it may have an effect ~~[upon]~~ on the defendant's immigration or naturalization status, and if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the immigration consequences of a plea;

(10) that, if the defendant is charged with a crime of domestic violence or a felony, a plea of guilty or no contest will affect the defendant's constitutional right to bear arms,

including shipping, receiving, possessing, or owning any firearm or ammunition, all of which are crimes punishable under federal law for a person convicted of domestic violence or a felony; and

(11) that, if the defendant pleads guilty or no contest to a crime for which registration as a sex offender is or may be required, and, if the defendant is represented by counsel, the court shall determine that the defendant has been advised by counsel of the registration requirement under the Sex Offender Registration and Notification Act, Sections 29-11A-1 to -10 NMSA ~~[[29-11A-1 NMSA 1978]]~~.

The court may allow the defendant reasonable time and opportunity to make telephone calls and consult with counsel.

**B. Offense within the court’s trial jurisdiction.** If the offense charged is within the court’s trial jurisdiction, the court shall require the defendant to plead to the complaint under Rule 7-302 NMRA, and if the defendant refuses to answer, the court shall enter a plea of “not guilty” for the defendant. If, after entry of a plea of “not guilty,” the defendant remains in custody, the action shall be set for trial as soon as possible.

**C. Defense of insanity.** If the defendant raises the defense of “not guilty by reason of insanity at the time of commission of an offense,” after setting conditions of release, the action shall be transferred to the district court.

**D. Waiver of arraignment or first appearance.** With prior approval of the court, an arraignment or first appearance may be waived by the defendant filing a written waiver. A waiver of arraignment and entry of a plea of not guilty or a waiver of first appearance shall be substantially in the form approved by the Supreme Court.

**E. Felony offenses; preliminary examination.** If the offense is a felony and the defendant waives preliminary examination, the court shall bind the defendant over to the district

1 court. If the defendant does not waive preliminary examination<sup>[7]</sup> and a motion for an expedited  
2 pretrial detention hearing has not been filed, the court shall proceed to conduct ~~[such an]~~ a  
3 preliminary examination in accordance with Rule 7-202 NMRA.

4 F. **Bail.** If the defendant has not been released by the court or the court's designee,  
5 and if the offense charged is a bailable offense, the court shall enter an order prescribing conditions  
6 of release in accordance with Rule 7-401 NMRA. However, the court may delay entry of  
7 conditions of release for twenty-four (24) hours from the date of the initial appearance, not to  
8 exceed the time limits in Rule 7-401(A) NMRA, if [

9 ~~\_\_\_\_\_ (1) The~~] the defendant is charged with a felony offense

10 [~~\_\_\_\_\_ (a) (1)~~] involving the use of a firearm;

11 [~~\_\_\_\_\_ (b) (2)~~] involving the use of a deadly weapon resulting in great bodily harm

12 or death;

13 [~~\_\_\_\_\_ (c) (3)~~] which authorizes a sentence of life in prison without the possibility

14 of parole; or

15 [~~\_\_\_\_\_ (d) (4)~~] a public safety assessment instrument approved by the Supreme

16 Court for use in the jurisdiction flags potential new violent criminal activity for the defendant.

17 [~~\_\_\_\_\_ (2) \_\_\_\_\_~~]The court shall immediately give notice to the prosecutor, the defendant,  
18 and defense counsel of record, or, if defense counsel has not entered an appearance, the local law  
19 office of the public defender or, if no local office exists, the director of the contract counsel office  
20 of the public defender, of the circumstances in ~~[Subparagraph F(1)]~~ Subparagraphs (F)(1)-(4)  
21 above that warrant delaying entry of conditions of release.

1           [~~——(3)——~~] If the prosecutor does not file [~~an expedited~~] a motion for an expedited  
2   pretrial detention hearing by the date scheduled for the conditions of release hearing, the court  
3   shall issue an order setting conditions of release [~~pursuant to~~] under Rule 7-401 NMRA.

4   [As amended, effective March 1, 1987; October 1, 1987; September 1, 1990; October 1, 1996;  
5   November 1, 2000; as amended by Supreme Court Order No. 07-8300-030, effective December  
6   15, 2007; as amended by Supreme Court Order No. 18-8300-023, effective for all cases filed on  
7   or after February 1, 2019; as amended by Supreme Court Order No. 20-8300-013, effective for all  
8   cases pending or filed on or after November 23, 2020; as amended by Supreme Court Order No.  
9   22-8300-015, effective for all cases pending or filed on or after December 31, 2022.]

10           **Committee commentary.** — If it is determined by the judge that the defendant is not  
11   represented by counsel, and it further appears that the defendant may be indigent, if the judge  
12   decides that no imprisonment will be imposed if the defendant is found guilty, then the court need  
13   not advise the defendant of his or her right to assistance of counsel at every stage of the proceedings  
14   and of the defendant's right to representation by an attorney at state expense. However, if the judge  
15   decides that imprisonment will be imposed or that this decision cannot be made at this stage of the  
16   proceedings, then the judge shall advise the defendant of [~~his~~] the defendant's right to assistance  
17   of counsel at every stage of the proceedings and [~~his~~] the defendant's right to be represented by an  
18   attorney at state expense if [~~he~~] the defendant is indigent. *Argersinger v. Hamlin*, 407 U.S. 25  
19   (1972).

20           The defendant may waive counsel so long as the waiver is knowingly, voluntarily, and  
21   intelligently made and the defendant is aware of the possible disadvantages of proceeding without  
22   the assistance of counsel. *State v. Greene*, 1977-NMSC-111, 91 N.M. 207, 572 P.2d 935; *North*  
23   *Carolina v. Butler*, 441 U.S. 369 (1979).

- 1 [As amended by Supreme Court Order No. 18-8300-023, effective for all cases filed on or after
- 2 February 1, 2019; as amended for stylistic compliance by Supreme Court Order No. 22-8300-015,
- 3 effective for all cases pending or filed on or after December 31, 2022.]