

**PROPOSED REVISIONS TO THE RULES OF CRIMINAL PROCEDURE FOR THE
MAGISTRATE COURTS AND THE RULES OF CRIMINAL PROCEDURE FOR THE
METROPOLITAN COURTS
PROPOSAL 2023-014**

March 24, 2023

The Rules of Criminal Procedure for State Courts Committee has recommended amendments to Rules 6-602, 6-603, 7-602, and 7-603 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 24, 2023, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

6-602. Jury trial.

A. **Petty misdemeanor offense.** ~~[If the offense charged is a petty misdemeanor or an offense punishable by no more than six (6) months in jail,]~~ When authorized by law, either party to the action may demand a trial by jury. The demand shall be made:

- (1) orally or in writing to the court at or before the time of entering a plea; or
- (2) in writing to the court within ten (10) days after the time of entering a plea.

If demand is not made as provided in this paragraph, trial by jury is deemed waived.

B. **Misdemeanor offense.** If the offense is a misdemeanor or other offense or combination of offenses where the potential or aggregate penalty includes imprisonment in excess of six (6) months, the case shall be tried by jury unless the defendant waives a jury trial with the approval of the court and the consent of the state.

[As amended, effective October 1, 1992; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — See NMSA 1978, § 35-8-1 (2009); N.M. Const. art. II, § 12. [Adopted by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

6-603. Trials to juries.

Juries in the magistrate court shall hear the evidence in the action which shall be delivered in public in its presence. After hearing the evidence, the members of the jury shall be kept together until they unanimously agree upon a verdict or are discharged by the magistrate. Whenever the magistrate is satisfied that there is no reasonable probability that a jury [cannot] can agree unanimously on [its] a verdict after a reasonable time, [he] the magistrate may discharge it and summon a new jury unless the parties agree that the magistrate may render judgment.

[As amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

7-602. Jury trial.

A. **Petty misdemeanor offense.** When authorized by law, either party to the action may demand a trial by jury. The demand shall be made:

- (1) orally or in writing to the court at or before the time of entering a plea; or
- (2) in writing to the court within ten (10) days after the time of entering a plea.

If demand is not made as provided in this paragraph, trial by jury is deemed waived.

B. **Misdemeanor offense.** If the offense is a misdemeanor or other offense or combination of offenses where the potential or aggregate penalty includes imprisonment in excess of six (6) months, the case shall be tried by jury unless the defendant waives a jury trial with the approval of the court and the consent of the state.

[As amended, effective October 1, 1992; as amended by Supreme Court Order No. 08-8300-051, effective January 15, 2009.]

Committee commentary. — [~~This rule is a modification on the Magistrate Court Rules to avoid the possibility of enlarging the right to a jury trial to include offenses under municipal ordinances. Although it is believed that all cases tried in the metropolitan court may be tried to a jury upon demand of either party, because of the decision in *City of Tucumcari v. Briscoe*, 58 N.M. 721, 275 P.2d 958, it was decided to limit the rule to permit jury trials in those cases authorized by law when demand is timely made.~~] See NMSA 1978, § 34-8A-5 (1981); N.M. Const. art. II, § 12. [Section 35-8-1 NMSA 1978; Art. 2, Sec. 12, New Mexico Constitution.]

[As amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

7-603. Trials to juries.

Juries in the metropolitan court shall hear the evidence in the action which shall be delivered in public in its presence. After hearing the evidence, the members of the jury shall be kept together until they unanimously agree upon a verdict or are discharged by the judge. Whenever the judge is satisfied that there is no reasonable probability that a jury can agree unanimously on a verdict after a reasonable time, [he] the judge may discharge it and summon a new jury unless the parties agree that the judge may render judgment.

[As amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

**No Comments
Received**