

Administrative Office of the Courts

Supreme Court of New Mexico

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Administrative Office of the Courts

Temporary Detention of Certain Defendants Standard Operating Procedure

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● Temporary Detention of Certain Defendants

COURT / DEPARTMENT / DIVISION

District/Magistrate/Metropolitan Courts

USER

District/Magistrate/Metropolitan Judges

District/Magistrate/Metropolitan Court Clerks

PURPOSE

To provide clarification and process related to amendments to Rules 5-403, 6-403, and 7-403 NMRA effective 8/1/2025.

INTRODUCTION

The 2024 amendments to the above Rules provide for the temporary detention of a defendant previously released pending any felony charge or new enumerated misdemeanor defined in Rule 5-403.1 NMRA when the defendant is charged with a new felony or enumerated misdemeanor alleged to have occurred during the initial period of release.

NMRA 5-403.1 enumerated misdemeanor charges:

- battery, contrary to Section 30-3-4 NMSA 1978;
- aggravated battery, contrary to Section 30-3-5(B) NMSA 1978;
- negligent use of a deadly weapon, contrary to Section 30-7-4 NMSA 1978;
- battery against a household member, contrary to Section 30-3-15 NMSA 1978;
- aggravated battery against a household member, contrary to Section 30-3-16 NMSA 1978;
- stalking, contrary to Section 30-3A-3 NMSA 1978;
- violation of an order of protection, contrary to Section 40-13-6 NMSA 1978;
- criminal sexual contact, contrary to Section 30-9-12 NMSA 1978;
- harassment, contrary to Section 30-3A-2 NMSA 1978;
- driving under the influence of intoxicating liquor or drugs, contrary to Section 66-8-102 NMSA 1978; or
- operating a motorboat while under the influence of intoxicating liquor or drugs, contrary to Section 66-13-3 NMSA 1978.

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Abbreviations:

- NC (401) Court - The court in which the new charges have been filed or new charge court.
- IC (403) Court - A court with a case where the defendant is initially charged and released on conditions of release when the new charges are filed or initial charge court (IC).
- BIR – Background Investigation Report
- COR – Conditions of Release
- OSCR – Order Setting Conditions of Release
- Qualifying charge – Felony charge or enumerated misdemeanor charge per NMRA 5-403.1

APPLICABLE DATA STANDARDS

Data standards were approved by the Supreme Court on May 20, 2020. Using the data standards will result in improved data collection and reporting; improved data quality; improved consistency in case processing; improved court efficiency; and improved ability to establish court staffing needs. Refer to the following data standards for any procedures that may or may not be specifically mentioned in this SOP:

General	Case Specific
1.4.0 Bonds	2.5.0 Pleadings
1.7.0 Forms	2.6.0 Case Management
1.8.0 Hearings	3.5.0 Pleadings
1.15.0 Scanning	3.6.0 Case Management
1.18.0 Warrants	

STEPS

1. DEFENDANTS IN CUSTODY

A) NC (401) COURT

I) Determination of probable cause.

If probable cause has not already been determined in the new charge case, a judge shall review the case charging documents to determine probable cause within 48 hours of arrest. If probable cause is not determined, the court shall order the immediate personal recognizance release of the defendant from custody in the NC (401) court case pending further proceedings. Proceed to verification of pending cases with qualifying charge.

II) Verification of pending cases with a qualifying charge

Before setting COR, the NC (401) Court Judge must verify whether the defendant is currently on COR in a case that includes a qualifying charge.

1) Courts with Pretrial Services

- a) If a current BIR is not available to the NC (401) Court, proceed to step II.

- b) If a current BIR is available to the NC (401) Court, the NC (401) Court Judge must review the BIR to determine if the defendant is on COR in case(s) that include one or more qualifying charges pending before any court. The BIR template has been updated to assist Courts in identifying cases with qualifying charges. While updates are meant to assist judges in identifying cases that require temporary detention, it is still the NC (401) Court’s responsibility to review all of the information provided in the BIR and make the determination regarding the qualifying charges for defendants on COR.

- 1) The pending qualifying case(s)/charge(s) will be listed in red-colored font.

A	DATE	CHARGES	PTS Info	Next Hearing	FTA
	03/20/20 D-307-CR-2023-00007 M-14-FR-2020-00238	1. PCS (F)	01/23/23: Released on unsecured appearance bond of \$1,000	07/08/24: Docket Call 07/26/24: Jury Trial	05/06/20

- 2) The new qualifying case(s)/charge(s) will be highlighted in yellow.

CRIMINAL HISTORY SUMMARY		NAME: Montano, Jasper G.		NEW CASE#: M-14-FR-2024-00549	
Open Cases	1	DOB: [REDACTED]	COURT: Las Cruces Magistrate		
Currently on PIS	N	SSN: XXX-XX-7282			
FTA's Within the Last 2 Years	0	Alias: Garcia, Jasper			
FTA's Older than 2 Years	1	Garcia-Montano, Jasper			
Misdemeanor Case Convictions	1	Garcia-Montano, Jasper Jr.			
Felony Case Convictions	3	XXX-XX-7280; XXX-XX-7218			
Violent Convictions	4	B			
Sentence of 14+ Days Jail or More	Y	CHARGES:			
Currently on Probation	Y	1. Receipt, Transportation or Possession of a Firearm or Destructive Device by a Felon (F)			
Misdemeanor or Felony Probation	F	2. Concealing Identity (M)			
Probation Violations	0	Date of Offense: 5/8/2024	Date of Arrest: 5/8/2024		
		Completed By: S. Nazorek	Date Completed : 5/9/2024		

- 3) Indication will be made between the new charges and the pending charge section that a Rule 5-403 (C)(2) temporary detention needs to be placed.

Requires Temporary Hold – 403(C)(2) NMRA

- c) If the defendant is not on COR in any pending cases that include a qualifying charge, the NC (401) Court may proceed with setting COR and process the case as usual.
- d) If the defendant is on COR in a case that includes a qualifying charge, the judge should set COR in the new case subject to a Temporary Detention Order, and proceed to step 1-A-III, Issuing Temporary Detention Order.

2) Courts without Pretrial Services or access to a current BIR

- a) The NC (401) Court Judge or court staff must conduct a search in Odyssey using one of the below options. The NC (401) Court Judge must then review the available information to determine if the defendant is on COR in case(s) that include one or more qualifying charges pending before any court.
- i) Utilize Odyssey to search for cases
- 1) If the case with the new charges has been entered in Odyssey, review the CMR - 403 Pretrial New Charge Report. Refer to Generating Pretrial New Charge Report for Temporary Detention per Rule 403 SOP.

OR

- 2) If the case with the new charges has not been entered in Odyssey, conduct a party search using the defendant's name along with the DOB, SSN provided on the charging documents.
 - On the Odyssey main menu, click Find, then Case
 - In the Search by Party Information section, enter the defendant's name and identifiers provided on the charging documents.
 - Alternatively, in the Search by Party Information section, enter the first 3 characters of their last name with the asterisk (*) at the end, and their first initial with the asterisk (*) at the end along with their DOB. You will obtain this information from the charging documents. For example:
Last Name: Cha* First Name: P* DOB: 01/23/76.
 - Press Enter or click Search on the bottom right-hand corner to obtain a list of parties matching the search criteria along with the cases for each party.
 - Repeat the party/case search by using the social security number from the charging documents
 - Press Enter or click Search on the bottom right-hand corner to obtain a list of parties matching the search criteria along with the cases for each party.
- b) If the defendant is not on COR in any pending cases that include a qualifying charge, the NC (401) Court may proceed with setting COR and process the case as usual.
- c) If the defendant is on COR in a case that includes a qualifying charge, the judge should set COR in the new case subject to a Temporary Detention Order and proceed to step 1-A-III, Issuing a Temporary Detention Order.
- 3) In the event that a defendant who is on COR in a pending case with a qualifying charge is inadvertently released by the NC (401) Court, the IC (403) Court should proceed to conduct the 403 hearing in accordance with Rules 5-403(C)(3), 6-403(C)(3) or 7-403(C)(3) NMRA. Proceed to step 1-B-I.

III) Issuing Temporary Detention Order

- 1) If the defendant is currently on COR in one or more cases that include a qualifying charge, then in addition to setting COR as usual, the NC (401) Court must issue a temporary hold order in all IC (403) cases. The court shall also provide a copy to the local detention center to temporarily hold the defendant until the detention center receives an order from the IC (403) Court(s) that either authorizes the defendant's release on COR or revokes the defendant's previous COR for some or all pending cases listed on the order. Refer to the Temporary Detention Order attached to this SOP.
 - a) The Temporary Detention Order must list all of the IC (403) Court(s) and corresponding case number(s) requiring the temporary detention.
 - b) The NC (401) Court shall immediately provide a copy of the Temporary Detention Order issued to the detention center and to the IC (403) Court.

- c) Once the Temporary Detention Order is issued to the detention center and distributed to the IC (403) Court(s), the NC (401) Court may proceed with setting COR and process the case as usual.
- d) The NC (401) Court staff shall docket 4403: ORD: 403 TEMPORARY detention and attach the Temporary Detention Order to the event in the new case.

B) IC (403) COURT

I) Conducting the Hearing

- 1) When the IC (403) Court Judge and staff receive the copy of the Temporary detention Order from the NC (401) Court, the IC (403) Court must conduct the hearing within five (5) days if in custody, or no later than ten (10) days if the defendant is not in custody, in accordance with Rules 5-403, 6-403 or 7-403 NMRA. Refer to the NM Detention Center List for contact information.
The court with the earliest charge will generally conduct the 403 hearing first, however, this may change due to scheduling or other circumstances. Courts and judges should communicate with one another when multiple hearings are needed to ensure the least amount of time elapses between new charges and the 403 hearings. Copies of the resulting orders should be provided to the detention center and appropriate parties.
 - a) The IC (403) Court staff shall docket 4403: ORD: 403 TEMPORARY detention and attach the Temporary Detention Order to the event in the initial case.
 - b) The IC (403) Court staff shall calendar the hearing as a Conditions of Release Violation Hearing (CRVH).
 - c) When conducting the Rule 5-403, 6-403 or 7-403 Hearing
 - 1) If at all possible, the hearing should be held remotely by video or telephone if video is not available.
 - 2) If a remote hearing is not possible, the IC (403) Court shall issue a transport order for the defendant to be transported to the IC (403) Court's local detention center. In the event that the Temporary Detention Order lists cases in another IC (403) Court, the IC (403) Courts will have to coordinate the transport of the defendant and the setting of hearings.
 - d) The IC (403) Court shall use form Admin-1037: Order on Violation of Conditions of Release Hearing or the Order Setting Conditions of Release (OSCR), refer to the form attached to this SOP. The IC (403) Court should indicate the outcome of the hearing on the Order used; example: no change, modified, or revocation.
 - e) Copies of the resulting orders should be provided to the detention center and appropriate parties.
 - 1) If the Judge releases the defendant with no modification to the COR, the "no change" box in the OSCR or on the Order on Violation of Conditions of Release Hearing Form should be checked.

- 1) Staff shall docket the 4408 ORD: Conditions of Release – No Change and attach the document to the event.
- 2) If the Judge releases the defendant with modified conditions of release, the “modified” box in the OSCR or on the Order on Violation of Conditions of Release Hearing Form should be checked.
 - 1) The IC (403) Court staff shall enter the new/modified conditions in the conditions tab.
 - 2) Staff shall docket the 4406 ORD: Conditions of Release – Modified and attach the document to the event.
- 3) If the Judge revokes the conditions of release, the “revoked” box on the Order on Violation of Conditions of Release Hearing form should be checked.
 - 1) The IC (403) Court staff shall end the conditions in the conditions tab and enter new or modified conditions (if applicable).
 - 2) Staff shall docket the 4407 ORD: Revoking Conditions of Release/Order of Detention and attach the document to the event.

2) DEFENDANTS NOT IN CUSTODY

A) NC (401) Court

- l) When a defendant who is not in custody appears before the NC (401) Court for arraignment or first appearance, the NC (401) Court Judge must determine whether the defendant is on COR in a pending case that includes a qualifying charge.
 - 1) The NC (401) Court Judge shall use one of the methods outlined in step 1-A-II to determine whether the defendant is on COR in a case that includes a qualifying charge.
 - a) If the defendant is on COR in a case that includes a qualifying charge, the 401 Court shall immediately notify the IC (403) Court(s) that the defendant has a new qualifying charge by sending a copy of the NTC 403 Initial Findings form. A Temporary Detention Order is not required, the IC (403) Court will decide whether to issue a summons or bench warrant for a hearing under Rule 5-403, 6-403, or 7-403 NMRA.
 - b) The NC (401) Court shall docket the Notice of 403 Initial Finding using 4405, NTC – 403 Initial Finding in the new case.
 - c) The NC (401) Court may set conditions of release and proceed with the case as usual.

B) IC (403) Court

- l) The IC (403) Court(s) shall follow the process outlined in Rules 5-403(C)(3), 6-403(C)(3), or 7-403(C)(3) NMRA by issuing a summons or bench warrant.
 - 1) If a summons is issued the hearing shall be held no later than 10 days after the motion or notice of the alleged violation is filed.
 - 2) If a bench warrant is issued, the hearing shall be held within five (5) days of arrest.

- 3) The hearing shall be calendared as a Conditions of Release Violation Hearing (CRVH).
- 2) The IC (403) Court shall docket the Notice of 403 Initial Finding using 4405, NTC – 403 Initial Finding in the initial case.
- 3) The IC (403) Court shall proceed with the hearing as outlined in section 1-B-I Conducting the Hearing above.

XXXX JUDICIAL DISTRICT COURT

COUNTY OF XXXX

STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff,

Vs.

D-NNNN-YYYY-CR-NNNN

Defendant,

Defendant

AKA:

DOB: NN/NN/XXXX SSN: XXX-XX-NNNN

TEMPORARY DETENTION ORDER

PENDING FURTHER ORDER, THE ABOVE-NAMED DEFENDANT SHALL BE HELD Without Conditions of Release pursuant to Rule 5-403, 6-403 or 7-403 NMRA pending a hearing in case(s):

THE HONORABLE

DISTRICT/MAGISTRATE/METRO COURT JUDGE

RETURN OF HOLD ORDER

[] Defendant booked on _____, 20 ____ .

_____ Date: _____

Detention Center Employee

Clerk's office docket as event code: 4403: ORD: 403 TEMPORARY detention

STATE OF NEW MEXICO
COUNTY MAGISTRATE COURT IN

STATE OF NEW MEXICO

v

, Defendant

NO. _____

ORDER ON VIOLATION OF CONDITIONS OF RELEASE HEARING

THIS MATTER, having come before the court pursuant to Rule 6-403 NMRA, and the court having conducted a hearing on _____ **FINDS:**

1. Defendant was arraigned on _____, and a personal recognizance bond was given or a(n) appearance / cash / surety bond set in the amount of \$_____.
2. Defendant was given release based on standard conditions, including _____.
3. Defendant was alleged to have violated conditions of release based on:
 Motion of prosecution; or Court's own Motion
4. The court issued a failure to comply bench warrant on _____ and the defendant was arrested on _____ or was summonsed into Court.
5. The Defendant was represented by _____ signed a Waiver of Counsel.
6. The Defendant admits denies the allegations.

The Court Hereby Orders that:

Conditions of Release shall be continued as previously ordered

Conditions of Release shall be modified according to attached Order Setting Conditions of Release

The following individualized facts justify revocation: _____

Conditions of Release shall be revoked and Defendant is remanded to custody without bond. The Defendant has willfully violated one or more conditions of release, and no condition or combination of conditions will reasonably ensure the Defendant's compliance with release conditions ordered by this court. Revocation of the Defendant's release is necessary to prevent interference with witnesses or the proper administration of justice.

This case will have expedited priority scheduling, pursuant to Rule 6-403(H) NMRA. The Defendant may petition the District Court to further review conditions of release in accordance with Rules 6-401(J) and 5-403(J) NMRA.

IT IS SO ORDERED.

Magistrate Court Judge

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing was served on _____
to

District Attorney [] mail [] fax/electronic transmission [] hand-delivery.

[] mail [] fax/electronic transmission [] hand-delivery.

_____, Clerk

State of New Mexico
v
_____, Defendant

DOB: SSN:

No. _____

ORDER SETTING CONDITIONS OF RELEASE

Please mark the applicable selection:

- Initial setting (*event code – 5253*)
- No change (*event code – 4408*)
- Modified (*event code – 4406*)

Release on recognizance or unsecured bond:

It is ordered that the defendant be released from custody on:

(*check and complete applicable alternatives*)

- Personal recognizance.
- Unsecured appearance bond of \$ _____.
- Third-party custody release to: _____ (individual or organization).

I/We agree to supervise the defendant; to use every effort to assure the defendant's appearance at all scheduled hearings; and to notify the court immediately if the defendant violates any conditions of release.

Signature of Custodian _____ Area Code/Telephone # _____

Address (city/zip) _____

Defendant's conditions of release:

The court **FINDS** that the following conditions of release are the least restrictive conditions necessary to reasonably assure the appearance of the defendant as required and the safety of any other person and the community. The defendant shall not violate any federal, state, or local criminal law and shall:

(*complete and check only applicable conditions before signature by defendant*)

- not possess firearms or dangerous weapons;
- not return to the location of the alleged incident;
- not consume alcohol;
- not consume cannabis, cannabis products or synthetic cannabinoids without a certification from a licensed medical practitioner;
- not buy, sell, consume, or possess illegal drugs;
- notify the court of any change of address;
- not leave the (county of _____) (State of _____) without prior permission of the court;
- maintain contact with the defendant's attorney/seek and consult with an attorney;
- avoid all contact with the alleged victim or anyone who may testify in this case;
- have an ignition interlock device installed on any vehicle the defendant may drive;
 - camera capable ignition interlock device;
- be on pretrial supervision and abide by all conditions set by the court and by pretrial services;
- reside at _____
(address) unless otherwise agreed to by the court;
- submit to drug or alcohol testing on the request of _____;
- not leave the defendant's residence between the hours of _____ p.m. and _____ a.m. without prior permission of the court;
- maintain employment, or, if unemployed, actively seek employment;
- maintain or commence an educational program;

[] (other _____ conditions)

Release on secured bond:

[] The court **FINDS** that release on non-monetary conditions will not reasonably assure the appearance of the defendant. In making this determination, the court finds the following particularized factors require imposition of a secured bond in the amount set forth below:

Secured bond of \$ _____, secured by (check only one):

- [] cash at ten percent (10 %) of total bond.
- [] real property bond executed on Form 9-304 NMRA.
- [] either one hundred percent (100%) cash or a surety bond executed on Form 9-304 NMRA.

Defendant's acceptance of conditions and promise to appear:

I understand the above conditions of release and agree to them.

I understand that the court may have me arrested at any time, without notice, to review and reconsider these conditions.

I understand that my conditions of release may be revoked and I may be charged with a separate criminal offense if I intimidate or threaten a witness, the victim, or an informant, or if I otherwise obstruct justice.

I further understand that my conditions of release may be revoked if I violate a federal, state, or local criminal law.

I agree to appear before the Roosevelt County Magistrate Court in Portales on _____, at _____ (a.m.) (p.m.) located at 1630 North Boston Portales NM 88130 and at any other times and places required in this case by any court.

I understand, that if I fail to appear as required, my bond, if any, may be forfeited, and I may be prosecuted and sent to [jail] [the penitentiary] for the separate offense of failure to appear. I agree to comply fully with each of the conditions imposed on my release and to notify the court promptly if I change the address indicated below.

Defendant's signature

Date of signature

Cell phone number

Alternate phone number

Email address

Mailing address (include city, state, and zip code)

Physical address (include city, state, and zip code)

Judicial approval of conditions:

Completed by Detention Center:

Judge's Signature

Date and Time of release

Detention Officer