



Administrative Office of the Courts

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Supreme Court revises pretrial rules to promote public safety

SANTA FE – Supreme Court Chief Justice David K. Thomson today announced revisions to pretrial rules to promote public safety and require courts to reconsider the release conditions of defendants arrested for a new crime while awaiting trial.

The Supreme Court issued an [order approving the new rules](#), which become effective immediately for pending cases and those filed starting today (May 8). Revisions to pretrial rules have been under consideration since last summer, and the Court published proposed amendments in February for public comment.

“If a defendant is arrested on a new charge, the rule revisions require a judge to hold the person in custody until after the court handling the original criminal case decides whether to modify or revoke the previous conditions of release,” said Artie Pepin, director of the Administrative Office of the Courts (AOC).

Among the revisions to pretrial procedure:

- People released to await trial on any felony or some misdemeanor charges will be held in jail if rearrested on a felony or certain misdemeanors. That automatic detention will last until a court decides whether to modify the conditions under which a defendant was originally released. Misdemeanor charges subject to the new detention provision include driving while intoxicated (DWI), negligent use of a firearm, aggravated battery, stalking, and domestic violence charges such as battery against a household member. A court must hold an evidentiary hearing if it considers revoking release conditions to hold the defendant in jail pending trial. The defendant can waive such a hearing, however.
- Judges must consider whether to modify the restrictions under which a defendant was released from custody if the individual is alleged to have violated those pretrial conditions, such as breaking a house confinement curfew. If a court determines no changes are necessary, it must issue an order explaining the decision. Under previous rules, such a review of pretrial conditions was discretionary.

“The new rules will help protect our communities while honoring the constitutional rights of people accused of a crime who are presumed innocent under the law,” said AOC Deputy Director Karl Reifsteck.

The pretrial portion of a criminal case begins when a person is charged with an offense and continues until the resolution of the case, such as the dismissal of charges, a conviction or acquittal at trial.

The American justice system presumes that people charged with a crime are innocent until proven guilty and that most individuals should be released from custody before trial to uphold the right to personal liberty.

Courts impose release conditions on defendants to protect public safety and assure that an individual returns to court for future proceedings. A standard condition is that defendants not violate the law. Other restrictions may include a curfew, home confinement, avoiding contact with a witness or victim, no possession of firearms, and periodic check-ins with a court’s pretrial services program.

Rules of criminal procedure have allowed and continue to permit prosecutors to ask a court to revoke or change a defendant’s release conditions if the individual violates those restrictions. Under previous rules, however, it was discretionary whether courts conducted a hearing on such a request or when notified by a court-operated pretrial services program of a defendant’s alleged violation. There also was no previous requirement to temporarily detain defendants rearrested while awaiting trial in another case.

“The revised rules ensure that courts across the state follow the same procedures when a defendant on pretrial release is arrested on a new charge,” said Pepin. “The rules set short deadlines for hearings and issuing orders after courts consider whether to revoke or change the conditions under which a defendant was initially released to await trial.”

Another rule revision makes clear that district courts cannot use results from a risk assessment instrument to decide whether a defendant is released or detained pending trial. The purpose of a risk assessment, such as the Public Safety Assessment (PSA), is to help judges set the level of supervision of people placed on pretrial release. The PSA measures the likelihood of re-arrest and failure to appear in court if someone is released. The assessment considers factors such as the defendant’s prior convictions and history of court appearances.

New Mexico voters adopted a constitutional amendment in 2016 to move the state away from a money-based system that allowed people to secure their pretrial release if they could afford a bail bond, regardless of the danger they posed. The law was amended to allow the pretrial detention of a person when the government proves that is necessary for public safety. The law also protects people from being held in jail pretrial solely because they cannot afford a money bond.

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[Click here](#) for the revised rules of criminal procedure on pretrial release. For district courts, [Rule 5-401](#) governs the setting of conditions of release, [Rule 5-403](#) governs the revocation or modification of release orders , and [Rule 5-409](#) governs pretrial detention. Rules of procedure for the Bernalillo County Metropolitan Court, magistrate and municipal courts also are available online at the [New Mexico Compilation Commission's website](#).