

Edward L. Chávez

June 3, 2020

Chief Justice Judith K. Nakamura
c/o Joey Moya, Chief Clerk
New Mexico Supreme Court
237 Don Gaspar Avenue
Santa Fe, New Mexico 87501

**Re: Supplement to Initial Report of the Ad Hoc Committee to Review
Pretrial Release and Detention Procedures**

Dear Chief Justice Nakamura:

This letter supplements the Initial Report of the Ad Hoc Committee. The Court approved the Ad Hoc Committee's request to continue to study magistrate and metropolitan court rule changes that would permit judges to schedule a conditions of release hearing after the initial appearance under limited circumstances and without exceeding the current deadlines in which to hold such a hearing. The Court also permitted the Committee to vote by email instead of convening another meeting. A majority of the Committee recommends amending the bail subsection in Rules 6-501(F) and 7-501(F) NMRA.¹ The proposed amendments allow judges to delay entering conditions of release for twenty-four hours from the date of the initial appearance not to exceed the time limits in Rules 6-401 and 7-401 NMRA under limited circumstances.

Rule 6-501(F) if amended will read as follows:

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

¹ Fourteen members voted. Eleven members voted without qualification in favor of recommending the proposed amendments to Rule 6-501 NMRA. One member voted in favor of Rule 6-501, except subsection (F)(1)(d), and proposed language changes to subsection (F)(1)(c). Two members voted against the proposed amendments to Rule 6-501. Ten members voted in favor of recommending the amendments to Rule 7-501 NMRA. One member voted in favor of Rule 7-501 except subsection (F)(1)(d), and proposed language changes to subsection (F)(1)(c).. Three members voted against the proposed amendments to Rule 7-501.

- (1) The defendant is charged with a felony offense
- (a) involving the use of a firearm;
 - (b) involving the use of a deadly weapon resulting in great bodily harm or death;
 - (c) which authorizes a sentence of life in prison without the possibility of parole; or
 - (d) a public safety assessment instrument approved by the Supreme Court for use in the jurisdiction flags potential new violent criminal activity for the defendant.
- (2) The court shall immediately give notice to the prosecutor, the defendant and defense counsel of record, or, if defense counsel has not entered an appearance, the local law office of the public defender or, if no local office exists, the director of the contract counsel office of the public defender, of the circumstances in Subparagraph F(1) above that warrant delaying entry of conditions of release.
- (3) If the prosecutor does not file an expedited motion for pretrial detention by the date scheduled for the conditions of release hearing, the court shall issue an order setting conditions of release pursuant to Rule 6-401 NMRA.

This language is the same for Rule 7-501 except Rule 7-501 refers to Rule 7-401.

The proposed amendments address the concern that judges do not have authority to detain a defendant until the prosecutor files a pretrial detention (PTD) motion even when the judge believes the defendant could pose a danger to the community. Prosecutors and defense attorneys often do not appear at the defendant's first appearance in rural districts because of resource limitations.

Proponents of the rule believe the rule will help solve the perceived problem, particularly in rural New Mexico, because it will allow the prosecution more time to assess the merits of a PTD motion, is limited to violent offenses, and will not enlarge the time a defendant is kept in custody under current rules. Proponents also believe the proposed rule is constitutional because the prosecution must still file a PTD motion for a detention hearing to occur.

Some committee members acknowledge the problem exists in rural New Mexico but oppose the proposed amendments for several reasons. One, a defendant will be unnecessarily detained. Two, data does not support the red flag provision. Three, the rule does not define what constitutes the use of a firearm or deadly weapon. Four, the rule will result in unnecessary pretrial detention hearings. Five,

Bernalillo County does not need the rule. Six, the rule should apply to felonies in which the defendant faces a sentence of life in prison.

I have attached the proposed rules for your convenience.

Finally, I anticipate that Second Judicial District Attorney Torrez, the Second Judicial District Court and the Law Office of the Public Defender will file minority reports.

Should you have any questions please do not hesitate to contact me.

Sincerely,

Original signed

Edward L. Chávez