



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
Alisha Tafoya Lucero

CD-052800 Probation/Parole Violations and  
Absconders, Preliminary Revocation Hearings,  
Arrest of Offenders and Arrest Orders

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Alisha Tafoya Lucero, Cabinet Secretary

*Original Signed and Kept on File*

## **AUTHORITY:**

Section 31-11-1, 31-21-7 and 31-21-14, NMSA 1978 Comp., as amended.

## **REFERENCE:**

ACA Standards 4-APPFS-2B-02 thru 4-APPFS-2B-12, 4-APPFS-2E-01, 4-APPFS-3B-06, 4-APPFS-3B-09, 4-APPFS-3B-10, and 4-APPFS-3G-03, *Performance Based Standards for Adult Probation and Parole Field Services*, 4<sup>th</sup> Edition.

## **PURPOSE:**

To provide guidelines for probation/parole supervisors to prepare written reports, reviews and actions on arrests and violations for evidentiary, and on unusual occurrences involving the offender, and to direct the activities of the Probation and Parole Division (PPD) staff when a probationer/parolee absconds.

## **APPLICABILITY:**

This policy applies to all PPD Employees.

## **FORMS: NOTE: ALL FORMS GENERATED FROM THE OFFENDER MANAGEMENT SYSTEM.**

- A. **Report of Violation Probation**
- B. **Report of Violation Parole**
- C. **Preliminary Violation Report Probation**
- D. **Preliminary Violation Report Parole**
- E. **Notice of Preliminary Parole Revocation Hearing**
- F. **Waiver Notice of Preliminary Parole Revocation Hearing**
- G. **Preliminary Parole Revocation Hearing Summary Facts, Conclusion, and Recommendation**
- H. **Arrest Order**

## **ATTACHMENTS:**

NM Parole Absconder Retake Warrant Checklist CD-052802.1

## DEFINITIONS:

- A. Absconders: Any probationer or parolee who, while under the supervision of the PPD, changes residence or leaves the jurisdiction without permission and/or ceases reporting or is otherwise not available for supervision and lacks a valid and/or legal excuse for not being available.
- B. Technical Violator: An offender who has violated a probation or parole condition(s) in the following:
1. Violations that in and of themselves do not create a threat to self or others and do not constitute a new criminal offense.
  2. Violations that constitute criminal offenses, including pending charges for law violations, absconding, or any other violations that are not deemed a threat to self or others.

## POLICY:

- A. It is the policy of the PPD that all arrests and violations of offenders supervised under probation and/or parole shall be reviewed by the PPO with the supervisor, be investigated immediately, and promptly reported to the court, Parole Board and/or hearing officer. Types of minor violations that can be resolved by field staff shall be defined in accordance with the courts or parole authority. [4-APPFS-2B-02] [4-APPFS- 2B-03]
- B. The PPD has a series of graduated responses to address compliance and non-compliance with conditions of supervision. These include proportionate incentives for compliance and sanctions for non-compliance with conditions of supervision. [4-APPFS-2E-01]
- C. The PPO's written report of an arrest or violation shall include the officer's recommendation and justification as to final action or resolution of the situation.
- D. It is the policy of the PPD that any offender who has a technical probation or parole violation shall be considered for Special Management Programs, prior to recommending revocation for prison to the appropriate authority, provided that an offender's participation of special management programs will not interfere or present a threat to public safety.
- E. Action shall be taken by PPD staff to enhance the probability of the return of an absconder to the jurisdiction of the sentencing court or Parole Board.
- F. Types of action required to locate and recover absconders during field investigations shall include, but not be limited to, the following: [4-APPFS-3B-10]
- Inquiry at the last known residence and place of employment;
  - Check with family friends, local jails, and hospitals;
  - Send tracer letters to last known address on record;
  - Law enforcement agencies should be notified and an arrest warrant issued;
  - When appropriate, all law enforcement agencies should be notified and an arrest warrant issued; and
  - Referral to STIU at the same time as arrest order during business hours. If not within

business hours complete referral within one (1) business day of absconder status.

- G. With the approval of the sentencing judge and/or the parole board, recovered absconders who commit no new crimes and who are not viewed as an undue public safety risk and/or who surrender themselves may be continued under supervision in the community. **[4-APPFS-2B-12]**
- H. Critical incident reports shall be prepared and provided to the Region Manager, in accordance to *CD-070700*.
- I. When an offender is arrested and detained on a probation or parole warrant (arrest and hold), or the warrant is lodged as a detainer on pending criminal charges, a Probable Cause Hearing (PCH) shall be held within fourteen (14) calendar days after the arrest or lodging of the detainer. The PCH is not required if there has been a conviction or finding of probable cause by a court on the new charge. **[4-APPFS-2B-05]**
- J. The PCH shall be held in or near the community where the offense is alleged to have occurred or where the offender has been taken into custody. **[4-APPFS-2B-06]**
- K. The PCH may be delayed or postponed for good cause and the offender may waive the hearing if first informed of due process rights pertaining to the hearing and the consequences of the waiver. **[4-APPFS-2B-07]**
- L. Administrative staff or a PPO may, at the request of the releasing authority, conduct the PCH and make findings as to the probable cause for revocation. **[4-APPFS-2B-09]**
- M. The offender is notified in writing of the PCH at least three (3) days in advance of the scheduled hearing. The notice includes the time and place of the hearing and the offender's rights to: **[4-APPFS-2B-08]**
- Disclosure of evidence;
  - Present evidence and favorable witnesses;
  - Confront adverse witness(es), unless the witness(es) would be subject to a risk of harm;
  - Effective assistance of counsel, or, in case of indigent persons who request assistance to adequately present their case, have counsel appointed; and,
  - Request postponement of the hearing.

The hearing officer conducting the PCH shall determine whether there is probable cause to revoke and hold the offender for final processing. When authorized by the revoking authority, the hearing officer may make the provisional revocation decision or may report the findings and make a recommendation to the releasing authority. The hearing officer issues a verbal decision or a recommendation immediately after the hearing and indicates doing so in the case note section of the offender's electronic file. The hearing officer shall provide a written notice of decision to the offender within twenty-one (21) calendar days of the hearing. **[4-APPFS-2B-10]**

- N. When violations occur, alternatives to revocation and incarceration are considered and used to the extent that public safety allows. **[4-APPFS-2B-11]**
- O. Warrants for the arrest and detention of offenders, pending a determination by the revoking authority, shall be issued only upon the affirmative approval of a revoking authority, the Director of PPD, or designee (Hearing Officer, ISC).
- P. Warrants for the arrest and detention of offenders shall be issued only upon adequate evidence of: **[4-APPFS-2B-04]**
- Serious and/or repetitive violation of conditions; or
  - Commission of a new offense, or
  - Risk to public safety posed by the offender's continued presence in the community.
- Q. Parole officers can use local detention facilities only for alleged parole violations.
- R. A pre-arrest briefing shall be conducted with all officers and other law enforcement agencies participating in the action prior to a planned arrest. **[4-APPFS-3B-09]**
- S. All officers shall be trained to implement appropriate use of force as per *CD-130600*. Training shall also address the practices and use of authorized safety equipment. **[4-APPFS-3B-06]**
- T. Before a probation/parole officer may transport an offender, the officer shall be equipped with authorized restraining and vehicle safety equipment and shall be trained in transport procedures. **[4-APPFS-3G-03]**



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
Alisha Tafoya Lucero

CD-052801 Probation/Parole Violations	Issued: 02/21/94 Effective: 02/21/94	Reviewed: 11/22/23 Revised: 05/22/23
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

## AUTHORITY:

Policy CD-052800

## PROCEDURES: [4-APPFS-2E-01]

### A. Investigation and Reports:

1. The **Report of Violation (Probation)** form and the **Report of Violation (Parole)** form shall be submitted immediately after an independent investigation is completed by the supervising probation/parole officer, not to exceed five (5) working days from the date the PPO is made aware of the violation and/or when the offender is arrested on a PPD Arrest and Hold Order. The PPO should not rely entirely on police reports, but rather use them only as a source of information.
  - a. The investigation should include interviews, record checks and other independent research in each case and a concise report should then be prepared.
  - b. Such special/critical incident reports may also be used in accordance to NMCD (CD-070700).
  - c. Violations committed by offenders under probation/parole supervision shall be reviewed by the PPO with the supervisor. [4-APPFS-2B-02]
2. The violation reports noted above, along with the **Preliminary Violation Report (Probation)** and the **Preliminary Violation Report (Parole)** should be concise but should include enough facts to enable the reporting of: (1) what happened, (2) when it happened, (3) how it happened, (4) who was involved (5) where it happened.
3. An investigative report by an officer should stand on its own merits and support all alleged violations of the conditions of probation/parole. The PPO's written report of an arrest or violation shall also include the officer's recommendation and justification as to final action or resolution of the situation.
4. Unless expressly ordered by the sentencing court or the Parole Board, a supervising PPO may choose to file a preliminary or full violation report on the following types of violations but is not required to do so. [4-APPFS-2B-03]

- Non-repetitive reporting delinquency when the offender's whereabouts are known and contact to demand his presence can be made.
- Non-repetitive failure to submit written monthly report, when offender's whereabouts are known and contact to demand his presence can be made.
- Failure to notify PPO of change in employment or residence when legitimate reason exists for failure to notify, and when offender provides notification at first opportunity. Changes of employment or residence in these situations must be of a non-repetitive nature.
- Delinquency of less than 90 days on payment of assessed fees or restitution unless the sentencing authority has ordered a more stringent reporting on delinquency.

Such violations must be discussed with the offender. All information will be noted in the case notes.

5. The sentencing court, Parole Board or district supervisors overseeing the program shall be advised of all other probation/parole violations either by preliminary or final reports within five (5) working days of the PPO becoming aware of the violation.
6. PPOs may not take it upon themselves to select what violations to report, but rather, shall report all violations other than those specifically listed above. Violation reports should not be made contingent on what the District Attorney (DA) or other authority may do, but shall be based on the indications that an offender has technically violated the conditions of their probation or parole.
7. Dates on Probation Parole Violation Report (PVR) should be accurate. If an offender absconds from supervision, the PPO should use the date that he or she first knew that the offender moved from their residence without permission as the absconding date.
8. Probation Parole Officers who are supervising an offender from another district are responsible for preparation and submission of reports of violations to the originating district office for distribution.
9. **Filing of Report.** If there is a recommendation that probation be revoked, within five (5) working days of the arrest of the probationer, the probation office shall submit a written violation or a summary report to the DA and the court describing the essential facts of each violation. A copy of the report shall be served on the probationer and the probationer's attorney of record.

#### **B. Technical Violators:**

1. When making any recommendation in a violation report, public safety shall be the main consideration.
2. If the offender has a pending charge that is minor in nature, an approval for referral to a special program must be authorized by the district supervisor.



# NEW MEXICO CORRECTIONS DEPARTMENT

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CD-052802 Probation/Parole Absconders	Issued: 02/21/94 Effective: 02/21/94	Reviewed: 11/22/23 Revised: 05/22/23
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

## AUTHORITY:

Policy *CD-052800*

## PROCEDURES: [4-APPFS-3B-10]

### A. Probation Absconders:

1. When an offender has failed to report, or when he has changed residence without permission, or has otherwise made himself unavailable without legal excuse, the PPO shall immediately conduct an investigation to determine if the offender is an absconder. If at the conclusion of the investigation, it is determined that the offender has absconded, the PPO shall prepare a Probation Violation Report (PVR) and request the issuance of a bench warrant by the sentencing court.

The PPO shall search for the offender at last known reported address and shall contact last known employer and family, local detention facility and hospital known to have had contact with the absconder. Tracer letters shall be sent to last known address. At least one (1) home visit must be made or attempted prior to preparation of the PVR. Special circumstances must be staffed with the supervisor. All checks, letters and other attempts to contact the offender shall be documented in the offender case notes in the Offender Management System by the Probation/Parole Officer (PPO). Legal status and mapping shall be updated within one (1) business day after declaring absconder status. Notification shall be made in writing to STIU (Request for Assistance) of absconder status at the same time as arrest order is issued if during normal business hours or within one (1) business day if arrest order is issued after hours.

2. Warrants for the arrest and detention of offenders shall be issued only upon adequate evidence of: **[4-APPFS-2B-04]**
3. Warrants for the arrest and detention of offenders, pending a determination by the revoking authority, shall be issued only upon the affirmative approval of a revoking authority.
4. Upon issuance of the bench warrant by the Courts, the PPO and STIU will make reasonable attempts to execute the warrant on the offender with law enforcement in order to declare the probationer as an absconder. All attempts to execute the warrant must be documented in the Offender Management System by the PPO and/or STIU.
5. If the PPO subsequently receives information related to the whereabouts of the

absconder, the PPO shall notify law enforcement and/or STIU staff for assistance in the service of the warrant.

6. At any time that the PPD Central Office becomes aware that an absconder has been located, the supervising district office shall be notified immediately.
7. In the event a PPD “Arrest and Hold” order is issued, the supervising officer must prepare the PVR within five (5) working days of determining that the offender violated the conditions.

#### **B. Parolee Absconders:**

1. When an offender has failed to report, changed residence without permission, or has otherwise made themselves unavailable, the PPO shall conduct an investigation within 5 days and declare an absconder and complete investigation and PVR.
2. When the PPO determines that the offender has absconded, a violation report shall be prepared by the supervising PPO and a copy forwarded to the Parole Board.
3. A completed Absconder Notification Form, copy of the pertinent PVR, an admission summary (if available), a copy of the Pre or Post-Sentence Report (if available), an FBI rap sheet or FBI number, a photo (if available), a copy of the Judgment and Sentence, Escape Flyer, a clear copy of the fingerprint card (both sides) and a copy of the signed parole certificate shall be sent to the supervisor of the Interstate Compact Services at the PPD, Central Office, along with a request that a Retake Warrant be issued for the absconder.
4. Upon receipt of a memorandum advising of issuance of a retake warrant, the supervising PPO will then change the offender to non-reporting status and cancel the Arrest and Hold.
5. The file will be maintained at the District Office level until the offender is apprehended or is no longer a fugitive.

#### **C. Walk-Away from Residential Programming**

In the event that an offender, while on probation or parole supervision, walks away from a residential/treatment program without notice or approval by PPD staff, or in the event that an offender, while on probation or parole supervision, fails to return to the program as instructed, the supervising officer shall take the following actions:

1. Immediately notify PPD Chain of Command.
2. Immediately document creation and delivery of the Arrest Order in the Offender Management System.



3. Prepare Arrest and Hold and deliver it to the local authority that can enter it into the National Crime Information Center (NCIC) if available.
4. Notify local law enforcement and STIU of the walk-away. Local Law Enforcement may include the local office of the State Police, the local county sheriff, and the local police department. Notification can occur in the form of an Escape Flyer from the Offender Management System.
5. Immediately document in the Offender Management System case notes that all local law enforcement has been contacted or, if law enforcement could not be contacted, document the attempts made and the reasons why contact was unsuccessful.
6. Prepare PVRs and submit them no later than five (5) working days to the courts and/or Parole Board.
7. Prepare any necessary information for Absconder Packets and submit as appropriate through NMCD channels.

#### **D. Request for Assistance to and by STIU (Assignments and Contact Criteria)**

Upon receipt of a request for assistance (RFA) from the Probation/Parole Division, the STIU Criminal Analyst, PPD STIU Supervisor, PPD STJU Manager, or PPD Region Manager shall immediately determine the priority level (I, II, or III) of the Absconder and promptly assign to a PPD STIU Fugitive Investigator if the Absconder is determined to be a Priority I or II. Whether or not a Priority III Absconder should be assigned to a PPD STIU Fugitive Investigator will be at the discretion of the STIU Criminal Analyst, PPD STIU Supervisor, PPD STIU Manager, or PPD Region Manager.

Upon assignment of an Absconder, the assigned PPD STIU Fugitive Investigator shall perform the following tasks within 48 hours of assignment, regardless of priority determination:

1. Acknowledge receipt and acceptance of the assigned case by entering a case note into the offender management system.
2. Generate an investigative file (Absconder packet) and document creation of this file in the offender management system. At a minimum, the investigative file shall consist of a copy of the warrant(s), Request for Assistance form, one (1) contact sheet, one (1) escape flyer, and photograph of the Absconder.
3. Verify warrant status by use of NCIC query, NM court records query, or other means. Warrant verification conducted by the assigned Investigator shall be documented in the Offender Management System.

Absconder investigation responsibilities based on the following prioritized investigative standards:

## 1. Priority I Absconder

- a. A Priority I Absconder is defined as:
  - i. Absconder with a current and/or past sex offense
  - ii. Absconder with a current and/or past offense for 1st or 2nd degree murder
  - iii. Absconder with a new violent charge
  - iv. Absconder with a new gun possession charge or suspected to be in current possession of a firearm
  - v. Absconder who removed a NMCD applied GPS device
  - vi. Absconder who has or is likely to generate media exposure
- b. A Priority I Absconder shall be accepted by PPD STIU and assigned to a PPD STIU Fugitive Investigator.
- c. A Priority I Absconder shall have the following investigation requirements:
  - i. A minimum of one (1) reasonable investigative attempt per week that is thoroughly and promptly documented in the offender management system. A reasonable investigative attempt consists of, but is not limited to, field contact, knock and talk, interview of family/associates, surveillance of suspected locations, canvassing areas known to be frequented by Absconder, etc.
  - ii. A minimum of one (1) warrant verification (NCIC query) per week that is thoroughly and promptly documented in the offender management system. Should no warrant be entered into NCIC, the assigned PPD STIU Fugitive Investigator will immediately investigate to see if the Absconder has been arrested or if the warrant has been cancelled/quashed.
  - iii. A minimum of one (1) bi-weekly collateral investigative activity that is thoroughly and promptly documented in the offender management system. A collateral investigative activity consists of, but is not limited to, law enforcement database query, NM court records query, NM motor vehicle division query, social media account query, etc.
- d. Should the assigned Investigator receive credible and reliable information the Priority I Absconder is in another country, sovereign nation, or in a State from which the warrant is not extraditable, this information should be thoroughly documented in the offender management system.
- e. A Priority I Absconder shall remain assigned to a PPD STIU Fugitive

Investigator for a minimum of one (1) year, However, the assigned Investigator may petition the STIU Criminal Analyst, PPD STIU Supervisor, and/or PPD Region Manager to move a Priority I Absconder into a lower category. The decision to move a Priority I Absconder into a lower priority will be at the discretion of the STIU Criminal Analyst, PPD STIU Supervisor, and/or PPD Region Manager. Should the Priority I Absconder be moved into a lower priority, this priority change will be documented in the offender management system and on the master STIU RFA log.

- f. When any PPD staff member learns of the arrest of a Priority I Absconder, the following shall be immediately notified:
  - i. PPD STIU Criminal Analyst
  - ii. PPD STIU Supervisor
  - iii. PPD STIU Manager
  - iv. PPD STIU assigned Investigator
  - v. PPD Region Manager
  - vi. Probation/Parole Supervisor
  - vii. Probation/Parole Officer
  - viii. Interstate Compact Office (if Parole Absconder)

## 2. Priority II Absconder

- a. A Priority II Absconder is defined as:
  - i. Absconder with a current conviction for a violent offense
  - ii. Absconder with violent history not meeting the definition of a Priority I Absconder.
- b. A Priority II Absconder shall be accepted by PPD STIU and assigned to a PPD STIU Fugitive Investigator.
- c. A Priority II Absconder shall have the following investigation requirements:
  - i. A minimum of one (1) reasonable investigative attempt per month that is thoroughly and promptly documented in the offender management system. A reasonable investigative attempt consists of, but is not limited to, field contact, knock and talk, interview of family/associates, surveillance of suspected locations, canvassing areas known to be frequented by Absconder, etc.
  - ii. A minimum of one (1) warrant verification (NCIC query) per month that is thoroughly and promptly documented in the offender management system. Should no warrant be entered into NCIC, the assigned PPD STIU Fugitive Investigator will immediately investigate to see if the Absconder has been arrested or if the warrant has been cancelled/quashed.

- iii. A minimum of one (1) bi-monthly collateral investigative activity that is thoroughly and promptly documented in the offender management system, A collateral investigative activity consists of, but is not limited to, law enforcement database query, NM court records query, NM motor vehicle division query, social media account query, etc.
- d. Should the assigned Investigator receive credible and reliable information the Priority II Absconder is in another country, sovereign nation, or in a State from which the warrant is not extraditable, this information should be thoroughly documented in the offender management system.
- e. The assigned Investigator may petition the STIU Criminal Analyst, PPD STIU Supervisor, and/or PPD Region Manager to move a Priority II Absconder into a lower category. The decision to move a Priority II Absconder into a lower priority will be at the discretion of the STIU Criminal Analyst, PPD STIU Supervisor, and/or PPD Region Manager. Should the Priority II Absconder be moved into a lower priority, this priority change will be documented in the offender management system and on the master STIU RFA log.
- f. A Priority II Absconder may be immediately moved up to a Priority I if the Absconder's recent activity fits the criteria of a Priority I. Should the Priority II Absconder be moved into a higher priority, this priority change will be documented in the offender management system and on the master STIU RFA log.
- g. When any PPD staff member learns of the arrest of a Priority II Absconder, the following shall be immediately notified:
  - i. PPD STIU Criminal Analyst
  - ii. PPD STIU Supervisor
  - iii. STIU Manager
  - iv. PPD STIU assigned Investigator
  - v. PPD Region Manager
  - vi. Probation/Parole Supervisor
  - vii. Probation/Parole Officer
  - viii. Interstate Compact Office (if Parole Absconder)

### 3. Priority III Absconder

- a. A Priority III Absconder is defined as:
  - i. Absconder with no history of violent arrests, charges, or convictions.
- b. A Priority III Absconder may be accepted by PPD STIU and assigned to a PPD STIU Fugitive Investigator, at the discretion of the STIU Criminal Analyst, PPD STIU Supervisor, or PPD Region Manager.
- c. A Priority III Absconder will generally remain assigned to their current PPO, who will be responsible for conducting the investigation and making regular

attempts to locate/apprehend the Absconder.

- d. A Priority III Absconder shall have the following investigation requirements:
  - i. A minimum of one (1) reasonable investigative attempt every ninety (90) days that is thoroughly and promptly documented in the offender management system. A reasonable investigative attempt consists of, but is not limited to, field contact, knock and talk, interview of family/associates, surveillance of suspected locations, canvassing areas known to be frequented by Absconder, etc.
  - ii. A minimum of one (1) warrant verification (NCIC query) per month that is thoroughly and promptly documented in the offender management system. Should no warrant be entered into NCIC, the assigned PPD STIU Fugitive Investigator will immediately investigate to see if the Absconder has been arrested or if the warrant has been cancelled/quashed.
  - iii. A minimum of one (1) collateral investigative activity every ninety (90) days that is thoroughly and promptly documented in the offender management system. A collateral investigative activity consists of, but is not limited to, law enforcement database query, NM court records query, NM motor vehicle division query, social media account query, etc.
- e. Should the assigned Investigator and/or Probation/Parole Officer receive credible and reliable information the Priority III Absconder is in another country, sovereign nation, or in a State from which the warrant is not extraditable, this information should be thoroughly documented in the offender management system.
- f. A Priority III Absconder may be immediately moved up to a Priority I or Priority II if the Absconder's recent activity fits the criteria of a Priority I or Priority II. Should the Priority III Absconder be moved into a higher priority, this priority change will be documented in the offender management system and on the master STIU RFA log.
- g. When any PPD staff member learns of the arrest of a Priority III Absconder, the following shall be immediately notified:
  - i. PPD STIU Criminal Analyst
  - ii. PPD STIU Supervisor
  - iii. PPD STIU Manager
  - iv. PPD STIU assigned Investigator
  - v. PPD Region Manager
  - vi. Probation/Parole Supervisor
  - vii. Probation/Parole Officer
  - viii. Interstate Compact Office (if Parole Absconder)

**E. Time limit for the Retention of a Probation Absconder Case on Semi-Active Status:**

The District Supervisor may seek the advice and opinion of the local district court regarding the discharge of long-term probation absconders.

**F. Recommendations for Continued Supervision:**

Recovered absconders who commit no new crimes, and who are not viewed as an undue risk to the public, may be recommended for continued community supervision, but a Probation and PVR must be submitted, and the final decision regarding continued supervision must be made by the sentencing court or Parole Board. **[4-APPFS-2B-12]**



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
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CD-052803 Preliminary Hearings Following Detention of Offenders on Arrest and Hold	Issued: 02/21/94 Effective: 02/21/94	Reviewed: 11/22/23 Revised: 05/22/23
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## AUTHORITY:

Policy *CD-052800*

## PROCEDURES:

### A. Preliminary/Probable Cause Hearings:

1. A probable cause hearing shall be conducted within fourteen (14) calendar days after an offender is taken into custody so that evidence and sources are readily available. The purpose of the hearing is to determine whether probable cause exists, or parole conditions have been violated. **[4-APPFS-2B-05]**
2. The hearing shall be held in or near the community where the violation is alleged to have occurred or where the offender has been taken into custody. **[4-APPFS-2B-06]**
  - a. The offender shall be given a reasonable opportunity to prepare for and present their case at the hearing, including, witnesses, on their behalf, various forms of evidence, and legal consultation with their attorney.
  - b. The on-site hearing shall be consistent with applicable laws and shall contribute to a fair hearing that more likely will give full airing to alleged violations and provide a strong basis for the findings of the hearing officer.
3. The probable cause hearing may be delayed or postponed for good cause and the probationer/parolee may waive the hearing if first informed of their rights pertaining to the hearing and the consequences of waiving the hearing. **[4-APPFS-2B-07]**
  - a. Due process requires that any waiver of rights by the parolee be done so knowingly and voluntarily.
  - b. The revoking authority shall ensure that no form of coercion is used to induce a waiver of the hearing and that the parolee understands the nature and consequences of the hearing before waiving it.

4. When request by the revoking authority, a member of the administrative staff or a PPO shall conduct a probable cause hearing and make a finding as to probable cause for revocation **[4-APPFS-2B-09]**
  5. The hearing officer need not be a judicial officer, but may be a probation parole staff member as long as that staff member is impartial.
  6. The hearing shall be conducted by an administrative staff member or officer who has not been previously involved with the offender.
- B.** The offender is notified in writing of the probable cause hearing at least three (3) days in advance. The notice includes the time and place of the hearing and the offender's right to: **[4-APPFS-2B-08]**
- Disclosure of evidence;
  - Present evidence and favorable witnesses;
  - Confront adverse witness(es), unless the witness(es) would be subject to a risk of harm;
  - Have counsel of choice present or, in case of indigent persons who request assistance to adequately present their case, have counsel appointed; with approval of Hearing Officer;
  - Request postponement of the hearing.
- C.** The hearing officer conducting the probable cause hearing determines whether there is probable cause to revoke and hold the offender for final processing before the revoking authority. **[4-APPFS-2B-10]**
1. The revoking authority may empower the hearing officer to make the provisional revocation decision or may report the findings and make a recommendation to the releasing authority. The hearing officer issues a verbal decision or recommendation immediately after the hearing and provides a written notice of decision to the offender within twenty-one (21) calendar days of the hearing. The hearing officer shall document the issuance of their verbal decision in the offender THE OFFENDER MANAGEMENT SYSTEM case notes immediately following the hearing.
  2. The hearing officer makes a summary of the documents presented and responses made at the preliminary hearing to determine probable cause for revocation.
  3. Although the findings need not be formal, the officer shall state the reasons for the determination and indicate the evidence used to make the determination.
- D.** The parolee shall be sentenced or returned to prison only when probable cause is found at the probable cause hearing and when it is determined, after considering the appropriateness of less severe sanctions, that the clear interest of the public requires incarceration. **[4-APPFS-2B-11]**



1. The hearing may provide an occasion to identify and reverse potentially harmful patterns of conduct or to identify gaps in the program of supervision and recommend alternatives.
2. The authority should consider not only whether a violation has been committed, but also whether a less severe sanction is appropriate.
3. Alternatives to revocation and incarceration shall be considered to the extent that public safety is not endangered and the possibility of successful community adjustment exists. Alternatives include:
  - The imposition of special conditions on future probation/parole,
  - Increasing the intensity of supervision or surveillance,
  - Placement in a community residential facility,
  - Enrollment in a local detoxification facility,
  - Transfer of the case to another district or area,
  - Involvement with a community or self-help organization.

**E. Parole:**

1. When a parolee is detained on the basis of a Probation and Parole Division Arrest Order, or when an Arrest Order is lodged as a backup to bail in conjunction with pending criminal charges, a preliminary hearing shall be conducted within fourteen (14) calendar days of their detention.
2. Preliminary parole revocation hearings will be held within a reasonable distance of where the alleged violation occurred.
3. An impartial Hearing Officer will be appointed to conduct a preliminary parole hearing. The parolee's supervising officer or an officer who has authorized the detention of the parolee shall not be appointed as the Hearing Officer.
4. At least three (3) calendar days prior to a preliminary hearing, the offender shall be personally served with a Notice of Preliminary Parole Revocation Hearings Form prepared in the Offender Management System and saved in the offender folder by a PPO. The Notice shall include the place and time of the hearing and the conditions allegedly violated. When the Notice of Preliminary Parole Revocation is served, the offender shall also be advised of their rights, in compliance with Gagnon v. Scarpelli, 411 U.S. 778, 93 S. Ct.
5. The Hearing Officer will make a determination if there is probable cause to believe that a violation of parole has occurred. The Hearing Officer shall verbally advise the offender of the hearing officer's findings at the conclusion of the hearing, and if additional deliberation is necessary, the Hearing Officer will verbally advise the parolee of the need for further deliberation and will advise them of findings as soon as possible. The hearing officer shall document the issuance of their verbal

decision in the Offender Management System case notes immediately following the hearing. The Preliminary Parole Revocation Hearing Summary Form, including the reasons for arriving at the decision and recommendation for further action, shall be presented to the offender within twenty-one (21) calendar days of the hearing.

6. After being advised of the right to the hearing and the consequences of waiving the hearing, a parolee may waive their right to a preliminary parole revocation hearing by signing a Waiver Preliminary Parole Revocation Hearing form. The hearing may be postponed at the parolee's request for good cause, or for other reasons as determined by the Hearing Officer.
7. Parolees may be returned to the institution upon a finding of probable cause. The Hearing Officer may, at their discretion, release an incarcerated offender pending final approval by the Parole board while alternatives to incarceration are being pursued.
8. Upon a finding of probable cause, or if the parolee waives the preliminary hearing, the Hearing Officer will issue a Retake Warrant and will maintain a log of all such Retake Warrants. The Retake Warrants will be numbered using the number of the Region, followed by the current calendar year, and ending with the sequential number of the Retake Warrant. As an example, the fourth Retake Warrant issued in Region II in FY02 would be numbered II-02-4.
9. It is the responsibility of the district and region offices to ensure the parole violator is not held within the county jail for no more than twenty-one (21) days after probable cause is found. If there is a problem that may result in a longer detention period, the region office will immediately notify the Deputy Director of PPD.

#### **F. Probationers:**

1. The court, having original jurisdiction for a probationer, will determine its own procedures concerning the detention of probationers and any hearings. However, if a probationer has been arrested by the probation officer without a bench warrant from the courts, then the probation officer shall provide the district attorney with a written notice within one (1) working day of the arrest. The notice shall contain a brief description of each alleged probation violation. A copy of the notice shall be served on the probationer who is provided a copy and a copy bearing the probationer's signature indicating receipt of said notice is filed with the court.
2. The PPD Arrest and Hold Order shall be cancelled immediately after a bench warrant has been issued and served.



# NEW MEXICO

## CORRECTIONS DEPARTMENT

Secretary  
Alisha Tafoya Lucero

CD-052804 Arrest of Offenders and Arrest Orders	Issued: 02/21/94 Effective: 02/21/94	Reviewed: 11/22/23 Revised: 05/22/23
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

### AUTHORITY:

Policy CD-052800

### PROCEDURES:

- A. Unless an emergency exists, an arrest of an offender will be done with the assistance of a law enforcement agency officer(s). A pre-arrest briefing shall be conducted prior to a planned arrest with all officers and other law enforcement agencies participating in the action. **[4-APPFS-3B-09]**
1. Any other non-supervised third-party arrests will be handled by local law enforcement agencies.
- B. Only those Probation and Parole Officers who have received training in the methods of arrest and transportation of offenders/prisoners conducted and/or approved by the NMCD Training Academy may arrest and transport offenders (see Section C below). **[4- APPFS-3B-01]**
1. Certification that an officer has been trained in the arrest and transportation of prisoners shall be made a part of the officer's personnel file.
  2. An officer who has been authorized by the Director to arrest and transport offenders must participate in a refresher course on the subject at least annually in order to maintain this authorization.
  3. Whenever possible, at least two (2) officers should be present during the arrest and transportation of an offender.
- C. An officer, meeting the criteria in Section B above, of the Division may take an offender into custody or transport the individual when one or more of the following conditions exist:
1. The offender is an absconder from supervision and a PPD Arrest and Hold Order or Retake Warrant is in force. Officers are authorized to take an offender into custody only after positive identification is made. The individual may then be transported to the nearest city or county jail.

2. Probable cause has been found at the conclusion of a Preliminary Probation and Parole Revocation Hearing.
  3. Instances in which a serious violation of parole or probation is evident, and circumstances preclude the arrest being carried out by a law enforcement officer.
  4. The offender is an immediate threat of causing injury to himself or others.
- D.** In each instance, other than a routine handcuffing without incident, where Probation and Parole Officer physically restrains or arrests an offender, the completion of a Use of Force Report form is mandatory. The completed Use of Force Report form will be faxed within 24 hours, via chain of command, to the Director of Probation and Parole. A routine handcuffing without incident is not considered use of force.
- E.** Officers must be equipped with authorized restraining and vehicle safety equipment and be trained in transport procedures before being allowed to transport. **[4-APPFS-3G-03]**
- F. Arrest Orders:**

1. Precautions in Using Arrest Orders:

PPD Arrest Orders are for use by the PPD when it is necessary to detain an offender for serious or continued PVRs, or when investigating alleged violations. They should not be used for any other purpose except as otherwise stated in NMCD policy and/or approved by the Director.

- a. When a parolee is detained solely on the basis of a PPD Arrest and Hold Order, a preliminary hearing will be conducted within fourteen (14) calendar days of their detention.
- b. A probationer who has been arrested by the probation office on a PPD Arrest and Hold Order exclusively shall not be held in detention for more than one (1) working day without the probation officer providing the District Attorney a written notice, which contains a brief description of each alleged violation; the copy of the notice must be given to the probationer and filed with the court. Some districts that supervise magistrate cases may require an Affidavit for Arrest to be used to detain the offender when violations occur.
- c. Filing of Violation Reports: If there is a recommendation that probation be revoked, the probation office shall, within five (5) working days of the arrest of the probationer, submit a written violation report describing the essential facts of each violation to the District Attorney and the court. A copy of the report shall be served on the probationer and the probationer's attorney of record.
- d. When violation charges are based on the alleged commission of a new crime, a PPD Arrest and Hold Order is only issued when the offender's presence in the

community would present risk to public or individual safety, or there is compelling reason to believe that the offender may abscond from supervision.

2. Issuing PPD (Probation/Parole Division) Arrest Orders:

An Arrest and Hold Order will be completed in duplicate for making an arrest or for releasing an offender already under arrest or for canceling an Arrest and Hold Order. An "X" in the appropriate space will indicate the action desired. The district supervisor must indicate their approval by signature on the issuance of an Arrest and Hold Order. The original is given to the arresting authority or the jail where the offender is incarcerated. A copy is retained in the district office's offender case folder.

3. Arrest Order Notations:

- a. Reasons for arrest should be reflected briefly on the **Arrest Order** but not merely referred to by listing a parole/probation condition number. There should be no question as to the reasons for the arrest and supervisors should assure that the reasons for arrest are always reflected on the copies of the Arrest Orders.
- b. All Arrest Orders should be numbered in the space provided. Numbers will include the district office number, the calendar year, and the consecutive number of the Arrest Order. Thus, 5A-06-7 indicates that for the calendar year beginning January 1, 2006, District 5A has issued its seventh order.
- c. When an Arrest Order form is issued as a Release and/or Cancellation Order, it should be given the same number as the original Arrest Order. "Cancellation" should be checked on the form.

4. Arrest Order Log:

Each district office will maintain an Arrest Order Log listing the pertinent information and final disposition of each Arrest Order. It will be the responsibility of the District Supervisor to periodically review the arrest log to ensure cancellation(s) of arrest orders.

PPO	Offender #	Date Issued	Last Name	First Name	AO#	Reason for Arrest	Date of NOA	AO Cancel Date	PVR completed Date	Date to Dispatch	Disposition