

5-805. Probation; violations.

A. **Violation of probation.** At any time during probation if it appears that the probationer may have violated the conditions of probation:

(1) the court may issue a warrant for the arrest of the probationer. If conditions of release are provided in the warrant, the probationer may be released on bond pending an adjudicatory hearing on the charges; or

(2) the court or the probation office may issue a notice to appear before the court to answer a charge of violation of the conditions of probation.

B. **Notice of arrest without warrant.** If the probationer is arrested by the probation office without a warrant the probation office shall provide the district attorney with a written notice within one (1) day of the arrest. The notice shall contain a brief description of each alleged probation violation. A copy of the notice shall be given to the probationer and filed with the court.

C. **Technical violation program.** A judicial district may by local rule approved by the Supreme Court in the manner provided by Rule 5-102 NMRA, establish a program for sanctions for probationers who agree to automatic sanctions for a technical violation of the conditions of probation. Under the program a probationer may agree:

(1) not to contest the alleged violation of probation;

(2) to submit to sanctions in accordance with the local rule; and

(3) to waive the provisions of Paragraphs D through L of this rule.

For purposes of this rule, a “technical violation” means any violation that does not involve new criminal charges.

D. **Conditions of release.** If a probationer is arrested and not released on conditions of release, within five (5) days of the arrest of the probationer the sentencing judge or a judge designated by the sentencing judge shall review the notice of arrest or warrant and consider conditions of release pending adjudication of the probation violation. If no conditions for release are set, the probationer may file a motion to appear before the judge to consider conditions of release.

E. **Filing of report.** If there is a recommendation that probation be revoked, within five (5) days of the arrest of probationer the probation office shall submit a written violation or a summary report to the district attorney 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.

F. **District attorney duty.** Within five (5) days of receiving the probation violation or a summary report, the district attorney shall either file a motion to revoke probation setting forth each of the alleged violations or file a notice of intent not to prosecute the alleged violations.

G. **Initial hearing.** An initial hearing on a motion to revoke probation shall be commenced within thirty (30) days after the latest of the following events:

(1) the date of the filing of a motion to revoke probation;

(2) if the proceedings have been stayed to determine the competency of the probationer, the date an order is filed finding the probationer competent to participate in the revocation proceedings;

(3) if an interlocutory or other appeal is filed, the date the mandate or order is filed in the district court disposing of the appeal;

(4) if the probationer is arrested or surrenders in another state, the date the probationer is returned to this state; or

(5) the date of arrest or surrender of a probationer in this state based on a bench warrant issued for failing to report.

H. **Adjudicatory hearing.** The adjudicatory hearing shall commence no later than sixty (60) days after the initial hearing is conducted.

I. **Discovery.** The parties shall exchange witness lists and disclose proposed exhibits no later than ten (10) days after the initial hearing.

J. **Waiver of time limits.** The probationer may waive the time limits for commencement of the adjudicatory hearing.

K. **Extensions of time.** Extensions of time for commencement of a hearing on a motion to revoke probation may be granted in the court's discretion upon the request of any party.

L. **Dismissal.** *(Suspended until further order of the Court for all cases pending in the district court on or after January 7, 2011. See compiler's note below.) If an adjudicatory hearing on the alleged probation violation is not held within the time limits prescribed by this rule, the motion to revoke probation shall be dismissed with prejudice.*

M. **Applicability.** Paragraphs E and F of this rule are not applicable to revocation of probation proceedings that are initiated by the district attorney without a prior recommendation of the probation office to revoke probation.

[Approved by Supreme Court Order 07-8300-08, effective June 1, 2007; as amended by Supreme Court Order No. 10-8300-040, effective January 31, 2011; by Supreme Court Order No. 11-8300-001, suspending Paragraph L until further order of the Court for all cases pending in the district court on or after January 7, 2011.]

Compiler's note. — Pursuant to Supreme Court Order No. 11-8300-001 Paragraph L of Rule 5-805 NMRA is suspended until further order of the Court for all cases pending in the district court on or after January 7, 2011.