

1 **5-805. Probation; violations.**

2 A. **Violation of probation.** At any time during probation if it appears that the  
3 probationer may have violated the conditions of probation[?]

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

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

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

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

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

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

19 (3) to waive the provisions of Paragraphs D through L of this rule. For purposes  
20 of this rule, a “technical violation” means any violation that does not involve new criminal charges.

21 D. **Conditions of release.** If a probationer is arrested and not released on conditions  
22 of release, within five (5) days of the arrest of the probationer the sentencing judge or a judge  
23 designated by the sentencing judge shall review the notice of arrest or warrant and consider

1 conditions of release pending adjudication of the probation violation. If no conditions for release  
2 are set, the probationer may file a motion to appear before the judge to consider conditions of  
3 release.

4       E.     **Filing of report.** If there is a recommendation that probation be revoked, within  
5 five (5) days of the arrest of probationer the probation office shall submit a written violation or a  
6 summary report to the district attorney and the court describing the essential facts of each violation.  
7 A copy of the report shall be served on the probationer and the probationer's attorney of record.

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

11       G.     **Initial hearing.** If the probationer is in custody and an initial hearing is not timely  
12 commenced as required by this paragraph, [~~upon~~] on its own motion or [~~upon~~] on presentation of  
13 a release order without a hearing required, the court shall order the probationer immediately  
14 released back to probation supervision pending final adjudication. An initial hearing on a motion  
15 to revoke probation shall be commenced within thirty (30) days after the latest of the following  
16 events:

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

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

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

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

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

5 H. **Adjudicatory hearing.** If the probationer is in custody and an adjudicatory hearing  
6 is not timely commenced as required by this paragraph, ~~[upon]~~ on its own motion or ~~[upon]~~ on  
7 presentation of a release order without a hearing required, the court shall order the probationer  
8 immediately released back to probation supervision pending final adjudication. The adjudicatory  
9 hearing shall be commenced ~~[no later than]~~ within sixty (60) days after the ~~[initial hearing is~~  
10 ~~conducted.] latest of the following events:~~

11 (1) the date the initial hearing is conducted;

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

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

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

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

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

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

3           K.     **Extensions of time.** Extensions of time for commencement of a hearing on a  
4 motion to revoke probation may be granted in the court’s discretion [~~upon~~] on the request of any  
5 party.

6           L.     **Sanctions for noncompliance with time limits.** In addition to any release of the  
7 probationer that may be required by Paragraphs G or H of this rule, the court may dismiss the  
8 motion to revoke probation for violating any of the time limits in this rule.

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

12 [Approved by Supreme Court Order No. 07-8300-008, effective June 1, 2007; as amended by  
13 Supreme Court Order No. 10-8300-040, effective January 31, 2011; by Supreme Court Order No.  
14 10-8300-040, suspending Paragraph L until further order of the Court for all cases pending in the  
15 district court on or after January 7, 2011; by Supreme Court Order No. 11-8300-043, effective for  
16 all hearings held in the district court on or after November 1, 2011; as amended by Supreme Court  
17 Order No. S-1-RCR-2025-00165, effective for all cases pending or filed on December 31, 2025.]