

1 **7-802. Return of the probation violator.**

2 A. **Probation.** The court shall have the power to suspend or defer a sentence and
3 impose conditions of probation during the period of suspension or deferral.

4 B. **Violation of probation.** At any time during probation if it appears that the
5 probationer may have violated the conditions of probation[;]

6 (1) the court may issue a warrant or bench warrant for the arrest of a probationer
7 for violation of any of the conditions of probation. The warrant shall order the probationer to the
8 custody of the court or to any suitable detention facility;

9 (2) the court may issue a notice to appear to answer a charge of violation.

10 C. **Initial [Hearing] hearing.**

11 (1) **Probationer not in custody.** A probationer who is not in custody shall be
12 noticed to appear not more than fifteen (15) days after the filing of a probation violation or, if no
13 violation is filed, not more than fifteen (15) days after the court has reason to believe that the
14 probationer may have violated the conditions of probation.

15 (2) **Probationer in custody.** A probationer who is in custody shall be arraigned
16 on the probation violation as soon as practicable, but in any event no later than three (3) days after
17 the probationer is detained if the probationer is being held in the local detention center, or no later
18 than five (5) days after the probationer is detained if the probationer is not being held in the local
19 detention center.

20 [~~C.~~] D. **Adjudicatory [Hearing] hearing.** On notice to the probationer, the court
21 shall hold a hearing on the violation charged. If the probationer is in custody the hearing shall be
22 held as soon as practicable, but in any event no later than ten (10) days after the initial hearing. If
23 the probationer is not in custody the hearing shall be held no later than thirty (30) days after the

1 initial hearing. If the violation is established, the court may continue the original probation, revoke
2 the probation, and either order a new probation or require the probationer to serve the balance of
3 the sentence imposed or any lesser sentence. Unless otherwise provided by law, if imposition of
4 sentence was deferred, the court may impose any sentence which might originally have been
5 imposed, but credit shall be given for time served on probation.

6 ~~[D.]~~ **E. Appeals.** The decision of the court to revoke probation may be appealed to the
7 district court as otherwise provided in these rules. The only issue the district court will address on
8 appeal will be the propriety of the revocation of probation. The district court shall not modify the
9 sentence of the metropolitan court.

10 [As amended, effective September 1, 1989; May 1, 2002; as amended by Supreme Court Order
11 No. 13-8300-006, effective for all cases pending or filed on or after May 5, 2013; as amended by
12 Supreme Court Order No. 21-8300-027, effective for all cases pending or filed on or after
13 December 31, 2021.]

14 **Committee commentary.** — Rule 7-802 NMRA was amended in 2013 to resolve a
15 conflict with the following statutes: NMSA 1978, Sections 30-3-15 (battery on household
16 member); 30-3-16 (aggravated battery on household member); and 66-8-102(T) (driving under the
17 influence).

18 [Adopted by Supreme Court Order No. 13-8300-006, effective for all cases pending or filed on or
19 after May 5, 2013]