

**PROPOSED REVISIONS TO THE CRIMINAL FORMS
PROPOSAL 2022-011**

March 7, 2022

The Rules of Criminal Procedure for New Mexico State Courts Committee has recommended amendments to Forms 9-618 and the withdrawal of Forms 9-619 and 9-620 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Sally A. Paez, Deputy Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 6, 2022, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s web site for public viewing.

9-618. [~~Order finding no violation of probation.~~] Order on Probation Violation Hearing.

[For use with Magistrate Court Rule 6-802 NMRA
and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO
[COUNTY OF _____]
[CITY OF _____]
_____ COURT

[STATE OF NEW MEXICO]
[COUNTY OF _____]
[CITY OF _____]

v. No. _____

_____, Defendant.

~~[ORDER FINDING NO VIOLATION OF PROBATION]~~ **ORDER ON PROBATION VIOLATION HEARING**

This matter came before the court on _____ (date), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, _____ (name of counsel), or waived counsel. The prosecution was represented by _____ (name and title).

The Defendant, having [] Admitted the probation violation [] Denied the probation violation and a hearing having been held, the court FINDS that Defendant [] violated [] did not violate probation.

~~[The Court having heard the evidence, FINDS that Defendant did not violate probation.]~~
THE COURT FURTHER FINDS:

That the original sentence was [] suspended [] deferred [] conditionally discharged and the charges were sentenced [] concurrently or [] consecutively (if consecutively, each charge must be addressed).

[] The Defendant was a fugitive from justice and may have up to _____ days added as absconder time.

It is hereby ORDERED, ADJUDGED AND DECREED that: ~~[all provisions of the original Judgment and Sentence remain in effect. Defendant shall be continued on probation with probation conditions as originally imposed.]~~

[] Defendant is continued on probation as originally imposed in the Judgment and Sentence.

[] Defendant shall be released from custody for this cause;

[] Defendant shall report to Probation Services immediately upon release from custody.

[] Absconder time of _____ days shall be added to the original probation end date.

[] Defendant's probation is revoked and a new sentence is imposed as follows:

[] Defendant shall be given credit for _____ days on probation and _____ days in jail.

[] Defendant shall be sentenced to _____ days in _____ (detention facility) with _____ days suspended, leaving _____ days to serve.

[] Defendant is hereby remanded to _____ (detention facility).

[] Defendant shall report to the _____ (detention facility) on or before _____ (date) by _____ (time) to serve _____ days.

[] Work release is authorized.

[] This sentence shall be served on weekends.

[] Defendant shall be placed on _____ days of [] supervised [] unsupervised probation to begin on _____ (date).

[] All provisions of the original judgment and sentence not specifically modified herein remain in effect, with the following additional probation requirements:

[] Defendant shall report to probation services immediately upon release from custody;

[] Defendant shall complete drug/alcohol screening within _____ days and follow any recommended treatment;

- Defendant shall apply within _____ days, be screened and if accepted, enter and successfully complete Drug Court;
- Defendant shall complete a behavioral health assessment and follow any recommended treatment;
- Defendant shall participate in random urinalysis for _____ days or as recommended;
- Defendant shall enroll into Batterer’s Intervention program within _____ days;
- Defendant shall enroll into intensive, outpatient counseling program within _____ days;
- Restitution, to be determined by probation officer, to be paid in full within _____ days;
- Other _____

Defendant’s probation is revoked. Defendant is hereby remanded to _____ (detention facility) for _____ days, with _____ days of presentence confinement credit toward jail sentence with _____ days remaining to be served.

Defendant *may be furloughed* to serve jail sentence in an approved rehabilitative treatment program. If Defendant is terminated from program, or voluntarily leaves program, Defendant shall report to _____ (detention facility) immediately, but not later than twenty-four (24) hours of leaving program. If defendant fails to report to the detention facility within twenty-four (24) hours of leaving program, a bench warrant for failing to comply will be issued and defendant will go back into custody to serve remaining sentence; Defendant may also be prosecuted for an escape from jail charge.

Defendant to be transported by _____ (agency) to rehabilitation program;

OR

Defendant to be transported by private party _____ (party) to the rehabilitation program. Defendant may be released to _____ (party) for transport once proof of acceptance into an approved rehabilitation program is provided to the Court or Probation Services. A copy must be provided to the _____ (detention facility) prior to release.

Defendant shall receive an UNSATISFACTORY discharge from probation.

The fine of \$ _____ is imposed and shall be assessed suspended or partially suspended, with \$ _____ suspended. Defendant shall receive credit for \$ _____ already paid, leaving a balance of \$ _____ (may include a bench warrant fee) to be paid in thirty (30) or per payment plan.

Jail in lieu of fines, fees, and costs beginning _____ (date) for _____ days.

Jail in lieu of fine shall run Concurrent or Consecutive to other jail sentence herein.

Community Service in lieu of fines, fees, and costs. Defendant shall complete _____ hours by _____ (date).

IT IS ORDERED that a copy of this order and commitment be delivered to the _____ (detention facility).

FAILURE TO COMPLY

Failure to report, comply with the conditions of probation, or pay costs or fines will result in a bench warrant for Defendant’s arrest.

APPEAL

Defendant is hereby advised that this Order on Probation Violation Hearing may be appealed to the district court by filing a notice of appeal in the district court within fifteen (15) days from the date of entry of this Order. In accordance with Supreme Court Rule 6-802 NMRA, "the only issue the district court will address on appeal will be the propriety of the revocation of probation. The district court shall not modify the sentence of the magistrate court."

CONDITIONS OF RELEASE

If Defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the district court:

Release bond pending Appeal is set at \$ _____

Dated _____

_____ Judge

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

[WITHDRAWN]

~~[9-619. Order finding probation violation and continuing sentence.~~

~~[For use with Magistrate Court Rule 6-802 NMRA and Municipal Court Rule 8-802 NMRA]~~

~~STATE OF NEW MEXICO~~

~~[COUNTY OF _____]~~

~~[CITY OF _____]~~

~~_____ COURT~~

~~[STATE OF NEW MEXICO]~~

~~[COUNTY OF _____]~~

~~[CITY OF _____]~~

v. _____ No. _____

_____, Defendant.

ORDER FINDING PROBATION VIOLATION AND CONTINUING SENTENCE

_____ This matter came before the court on _____ (date), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, _____ (name of counsel). The prosecution was represented by _____ (name and title).

~~_____ [] _____ Defendant having denied the probation violation and a hearing having been held,
_____ [] _____ Defendant having admitted the probation violation,~~

~~_____ the Court **FINDS** that Defendant violated probation.~~

~~_____ **It is hereby ORDERED, ADJUDGED AND DECREED** that all provisions of the original Judgment and Sentence remain in effect. Defendant shall be continued on probation with probation conditions as originally imposed.~~

_____ Judge]

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009;
withdrawn by Supreme Court Order No. _____, effective _____.]

[WITHDRAWN]

[9-620. Probation violation, judgment, and sentence.

[For use with Magistrate Court Rule 6-802 NMRA
and Municipal Court Rule 8-802 NMRA]

STATE OF NEW MEXICO

[COUNTY OF _____]

[CITY OF _____]

_____ COURT

[STATE OF NEW MEXICO]

[COUNTY OF _____]

[CITY OF _____]

v. _____ No. _____

_____, Defendant.

PROBATION VIOLATION, JUDGMENT, AND SENTENCE

~~_____ This matter came before the court on _____ (date), on an allegation that Defendant violated probation. Defendant appeared in person and with counsel, _____ (name of counsel). The prosecution was represented by _____ (name and title).~~

~~_____ [] _____ Defendant having denied the probation violation and a hearing having been held,
_____ [] _____ Defendant having admitted the probation violation,~~

~~_____ the Court **FINDS** that Defendant violated probation.~~

~~It is hereby ORDERED, ADJUDGED AND DECREED~~ that Defendant's probation is revoked and the following sentence is imposed:

Count 1: _____ (name of count) _____ days in _____ detention center, _____ days suspended. _____ days to serve in the _____ County Detention Center. Credit for _____ days served in jail and _____ days served on probation. _____ days remaining to serve in the _____ County Detention Center to begin on _____ (date). Defendant to pay _____ in fines. _____ amount suspended. _____ days [supervised] [unsupervised] probation to begin on _____ (date).

Such sentence is to run _____ [] consecutively _____ [] concurrently.

Count 2: _____ (name of count) _____ days in _____ detention center, _____ days suspended. _____ days to serve in the _____ County Detention Center. Credit for _____ days served in jail and _____ days served on probation. _____ days remaining to serve in the _____ County Detention Center to begin on _____ (date). Defendant to pay _____ in fines. _____ amount suspended. _____ days [supervised] [unsupervised] probation to begin on _____ (date).

Such sentence is to run _____ [] consecutively _____ [] concurrently.

Count 3: _____ (name of count) _____ days in _____ detention center, _____ days suspended. _____ days to serve in the _____ County Detention Center. Credit for _____ days served in jail and _____ days served on probation. _____ days remaining to serve in the _____ County Detention Center to begin on _____ (date). Defendant to pay _____ in fines. _____ amount suspended. _____ days [supervised] [unsupervised] probation to begin on _____ (date).

Such sentence is to run _____ [] consecutively _____ [] concurrently.

~~It is hereby ORDERED, ADJUDGED AND DECREED~~ that

[] Defendant is to report to the _____ DETENTION CENTER at _____, _____ (location), no later than _____ (date), to serve _____ days.

[] Work release is authorized.

[] This sentence shall be served on weekends.

[] Defendant is to pay a one hundred dollar (\$100.00) bench warrant fee. Defendant is now ordered to pay _____ in fines and _____ in fees. Defendant shall receive credit for _____ already paid.

~~All provisions of the original judgment and sentence not specifically modified herein remain in effect.~~

_____ Defendant is placed on _____ days [supervised] [unsupervised] probation to begin on _____ (date), with conditions as specified in the attached **Standard Order of Probation Conditions** in effect in the _____ court, which is specifically incorporated herein, and special conditions as follows: _____

IT IS FURTHER ORDERED THAT Defendant's cash bond is to be
_____ returned to Defendant.
_____ applied to the payment of court costs, court fees, and fines.

Defendant IS HEREBY ORDERED to report to probation services as follows:
_____ _____ DWI Compliance Program, _____
(address), _____ (city), New Mexico, _____ (telephone
number) with proof of enrollment to the Court no later than
_____ (date).
_____ Adult probation service no later than _____ (date).
_____ _____ county misdemeanor compliance service no later than _____
_____ (date).

_____ **IT IS ORDERED** that a copy of this judgment and commitment be delivered to the _____ **Detention Center**, and that this copy be the order of commitment of Defendant.

FAILURE TO COMPLY

_____ FAILURE TO REPORT, COMPLY WITH CONDITIONS OF PROBATION, OR PAY COSTS OR FINES WILL RESULT IN A BENCH WARRANT FOR DEFENDANT'S ARREST.

APPEAL

_____ Defendant is hereby advised that this Order and Amended Sentence may be appealed to the district court by filing a notice of appeal in the district court within fifteen (15) days from the date of entry of this Judgment and Sentence. In accordance with Supreme Court Rule 6-802 NMRA, "the only issue the district court will address on appeal will be the propriety of the revocation of probation. The district court shall not modify the sentence of the magistrate court." Defendant is further advised that if Defendant appeals, Defendant must obtain a hearing date before the district court within six (6) months of the date of the filing of the notice of appeal. If Defendant's case is not heard by the district court within six (6) months, Defendant's appeal will be dismissed and this conviction will be affirmed.

OTHER CONDITIONS OF RELEASE

_____ If Defendant files a notice of appeal, the following additional conditions of release are hereby approved pending appeal to the District Court: _____

Appeal bond is set at \$ _____

_____ Judge]

[As adopted by Supreme Court Order No. 09-8300-037, effective November 16, 2009; withdrawn by Supreme Court Order No. _____, effective _____.]