

Draft Statute

Section 32A-2-XX. Authority of Juvenile Probation Officers; Probation Violation Procedures.

A. Purpose.

The purpose of this section is to promote accountability, rehabilitation, and community safety in juvenile justice proceedings by clarifying and expanding the authority of juvenile probation officers in a manner consistent with the New Mexico Constitution, the United States Constitution, and established case law.

B. Authority to Issue Arrest Orders.

1. A juvenile probation officer may submit a sworn statement or affidavit to the children's court alleging facts constituting probable cause to believe that a child under supervision has:

- a. violated a condition of release; or
- b. violated a condition of probation.

2. Upon such sworn submission a duly authorized juvenile probation officer may issue an arrest order or warrant.

3. Any arrest order issued by a juvenile probation officer without prior judicial approval must be promptly reviewed by a children's court judge within twenty-four (24) hours of the child being taken into custody or the next judicial business day, whichever is sooner.

C. Authority to Conduct Searches.

1. As a condition of probation, the children's court may require a child to submit to warrantless searches of their person, residence, vehicle, electronic devices, and personal belongings by a juvenile probation officer.

2. A juvenile probation officer may conduct such searches when the officer has reasonable suspicion to believe that evidence of a probation violation will be found.

3. Searches under this section shall be:

- a. conducted in a reasonable manner, not for purposes of harassment or intimidation;
- b. limited in scope to areas and items reasonably likely to contain evidence of the suspected violation;
- c. documented in a written report to the children's court within five (5) business days.

4. Evidence obtained pursuant to this subsection shall be admissible in juvenile probation violation proceedings, provided the search was conducted in substantial compliance with this section and constitutional standards.

D. Detention Hearings Following Arrest on Probation Violations.

1. A child taken into custody for an alleged probation violation shall be brought before the children's court for a detention hearing within twenty-four (24) hours, excluding weekends and legal holidays.

2. At the detention hearing, the court shall determine whether continued detention, conditional release, or return to probation supervision is appropriate.

3. In making this determination, the court shall consider, in addition to existing statutory criteria:

- a. the child's history of probation compliance or noncompliance;
- b. the seriousness and nature of the alleged violation, including whether it involved violence, weapons, controlled substances, or threats to community safety;
- c. the child's prior record of release violations or absconding;
- d. the availability of appropriate community-based alternatives;
- e. any mitigating factors, including progress in treatment, education, or other rehabilitative programs.

E. Safeguards and Oversight.

1. All actions taken by juvenile probation officers under this section shall remain subject to judicial review by the children's court.

2. The children's court shall ensure that expanded probation authority is exercised consistent with due process, equal protection, and the rehabilitative goals of the Children's Code.

3. Nothing in this section shall be construed to authorize unreasonable searches or seizures, or to diminish the constitutional rights of children except as a condition of lawful probation or release.

F. Rulemaking.

The Supreme Court of New Mexico may adopt rules to implement the provisions of this section, including procedures governing affidavits, arrest orders, search documentation, and detention hearings.