

TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 2 PROBATION AND AFTERCARE SERVICES

8.14.2.1 ISSUING AGENCY: New Mexico Children, Youth and Families Department.
[8.14.2.1 NMAC - Rp, 8.14.2.1 NMAC, 07/31/2009]

8.14.2.2 SCOPE: This rule applies to the youth and family services (YFS) employees of the children, youth and families department (CYFD) charged with the supervision and planning functions of probation and aftercare/ services for youth released from juvenile justice facilities. These employees are known as juvenile probation officers (JPO).
[8.14.2.2 NMAC - Rp, 8.14.2.2 NMAC, 07/31/2009]

8.14.2.3 STATUTORY AUTHORITY: Chapters 32A-1-1, et seq., 32A-2-1 et seq., 32A-3-1, et seq., 32A-3A-1 et seq., 32A-4-1 et seq., 32A-6-1 et seq., 32A-7-1 et seq., 32A-9-1 et seq., 32A-10-1 et seq., 32A-11-1 et seq., 32A-12-1 et seq., 32A-13-1 et seq., 32A-17-1 et seq., 32A-21-1 et seq. NMSA 1978 Comp., as amended. Supreme Court Rules: 10-201, 10-202,10-203,10-206, 10-207,10-208, 10-209, 10-211, 10-229, 10-231.
[8.14.2.3 NMAC - Rp, 8.14.2.3 NMAC, 07/31/2009]

8.14.2.4 DURATION: Permanent.
[8.14.2.4 NMAC - Rp, 8.14.2.4 NMAC, 07/31/2009]

8.14.2.5 EFFECTIVE DATE: July 31, 2009 unless a later date is cited at the end of a section.
[8.14.2.5 NMAC - Rp, 8.14.2.5 NMAC, 07/31/2009]

8.14.2.6 OBJECTIVE: To provide for a coordinated continuum of services for the client and family and to establish guidelines for juvenile probation and aftercare services for youth exiting a juvenile justice facility requiring supervision.
[8.14.2.6 NMAC - Rp, 8.14.2.6 NMAC, 07/31/2009]

8.14.2.7 DEFINITIONS:

- A. Absconder** refers to a client on probation or supervised release that leaves the jurisdiction without permission or an escapee or runaway from a placement.
- B. Adjudication** refers to a judicial determination that a juvenile has committed a delinquent act.
- C. Adjudicatory hearing** refers to children's court hearing to decide whether the evidence supports the allegations of a petition, i.e., whether a delinquent act has been committed.
- D. Affidavit for warrant** refers to a sworn statement submitted to the court detailing the basis for the warrant request including information regarding efforts to locate the subject of the warrant.
- E. Aftercare** refers to supervised release case management provided to clients released from juvenile justice facilities and treatment programs.
- F. Arrest warrant** refers to a warrant issued from district court ordering that a client be taken into custody.
- G. Children's court attorney (CCA)** refers to each district attorney who is the children's court attorney for the judicial district (Section 32A-1-6A NMSA 1978).
- H. Classification** refers to an assessment of the client's risk, needs and strengths to determine the level of supervision of clients receiving community supervision.
- I. Client family baseline assessment** refers to a written report by the juvenile probation officer that identifies the client's delinquent history and the strengths and needs of the client and family.
- J. Conditional release** refers to a client's release from detention under court ordered requirements related to behavior, activities or movement.
- K. Delinquent act** refers to an act committed by a juvenile that would be designated as a crime under the law if committed by an adult.
- L. Detention** refers to the temporary care of juveniles alleged to be delinquent who require secure custody in facility certified for that purpose by the department (Section 32A-2-4 NMSA 1978).
- M. Electronic monitoring (EM)** refers to the use of an electronic device to monitor the movement and location of an individual.

- N. Facility release panel (panel)** is the departmental secretary-designated releasing authority that considers juveniles for supervised release.
- O. A FINS** refers to families in need of services (Section 32A-3A-2 NMSA 1978).
- P. Family automated client tracking (FACTS)** refers to the CYFD computer database in which client information is maintained.
- Q. Informal probation** refers to a period of voluntary non-judicial supervision that does not exceed a specified duration. Conditions for successful completion of the period of informal supervision are defined in the individualized plan of care.
- R. Intake** refers to the assessment of services and supervision required for an individual referred to youth and family services and those activities associated with placing a client on probation, supervised release or receiving a client at a juvenile justice facility.
- S. Interstate compact on juveniles** refers to a voluntary agreement between the states and territories of the United States to provide for the welfare and protection of juveniles and the public with respect to supervision of delinquent juveniles on probation or supervised release, the return of delinquent juveniles who have escaped or absconded, the return of non-delinquent juveniles who have run away from home, and additional measures for the protection of juveniles and the public (Section 32A-10-1, NMSA, 1978).
- T. Juvenile probation** refers to a court-ordered sanction and disposition which places an adjudicated client under the supervision and care of a juvenile probation officer
- U. Juvenile probation officer (JPO)** refers to a department staff person whom provides court-ordered and informal supervision for clients.
- V. Supervised release** refers to the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release.
- W. Petition** refers to a legal document in which the state formally alleges the client to be a delinquent or a youthful offender due to the commission of a delinquent act(s), or of a family subject to FINS.
- X. Plan of care** refers to a plan for treatment or supervision of clients in the custody of, or under the supervision of, CYFD.
- Y. Preliminary inquiry (PI)** refers to a conference between the JPO, client, and parent or guardian to assess whether a referral to the CCA should be made to file a delinquency petition.
- Z. Probation** refers to a court-ordered sanction and disposition that places an adjudicated client under the, supervision and care of a juvenile probation officer.
- AA. Referral** refers to a report alleging delinquency or families in need of services (FINS) that comes from law enforcement, schools, department facilities, parents or citizens.
- BB. Retake warrant** refers to the document issued by youth and family services directed to law enforcement and department staff, to detain a client alleged to have violated conditions of supervised release and return the client to a detention facility.
- CC. Supervision plan** refers to the probation or supervised release agreement and the plan of care.
- DD. Triage** refers to a case staffing between the assigned JPO, JPO supervisor, and community behavioral health clinician (CBHC). The purpose of the case staffing is to review placement options and develop a treatment plan for clients that are at risk of out of home placement. The statewide entity managing behavioral health contracts (OptumHealth or its successor) are invited to attend triage meetings.
[8.14.2.7 NMAC - Rp, 8.14.2.7 NMAC, 07/31/2009]

8.14.2.8 SUPERVISION OF FIELD STAFF: The department provides court ordered conditional release, probation, and supervised release services 24 hours a day, seven days a week.
[8.14.2.8 NMAC - Rp, 8.14.2.8 NMAC, 07/31/2009]

8.14.2.9 INTAKE AND DETENTION:

- A.** Youth and family services (YFS) staff screen, assess, and recommend disposition on referrals to the appropriate authority. Supervisors review staff referral decisions.
- (1) YFS staff date stamps the referral when the office receives the referral from law enforcement.
 - (2) If the client is not detained, the (PI) shall be conducted within thirty calendar days of receipt of the referral from law enforcement. The thirty calendar day time period may be extended upon determination by the department that an extension is necessary to conduct a thorough preliminary inquiry and that the extension is not

prejudicial to the best interests of the client. Within two business days of the completion of the preliminary inquiry, probation services shall forward information therein to the children's court attorney.

(3) If the client is detained prior to conducting a (PI), the juvenile probation staff gives reasonable notice to the client's parent, guardian or custodian and/or the child's attorney and an opportunity to be present at the preliminary inquiry.

B. At the commencement of the preliminary inquiry, the juvenile probation officer shall advise the client, parent, guardian, or custodian of the client's basic rights.

(1) The client has the right to remain silent. If the client is questioned, the client has the right to refuse to answer any questions and may stop answering questions at any time.

(2) A child alleged to be a delinquent or in need of supervision has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications, either oral or written, between the child, parent, guardian or custodian and a juvenile probation officer which is made during the course of a preliminary inquiry (Rules of Evidence 11-509B NMRA).

(3) The client has the right to be represented by an attorney present at the PI and have an attorney present at all court proceedings against the client. If the client does not have an attorney for court proceedings, an attorney will be appointed.

(4) If the client is thirteen years or older, a statement made by the client can be used against the client only if their constitutional rights have been explained to the client, and the client knowingly and voluntarily waived their constitutional rights.

(5) The state is not entitled to use or introduce in court against the client a statement made out of court which is constitutionally inadmissible; evidence illegally seized or obtained or a statement or admission made out of court, unless it is corroborated by other evidence; and any confession, statements, or admissions on the allegation of the petition against a child under the age of thirteen (13) years.

(6) If the client is under the age of thirteen (13) years and is charged or adjudicated as a delinquent child, the client may not be finger printed or photographed for identification purposes, without a court order.

(7) If the client does not have a parent, guardian or custodian appearing on the client's behalf or the client's interest are in conflict with his/her parent, guardian or custodian, the client may request appointment of a guardian by the court.

(8) If the child is taken into custody and detained, the client has a right to a judicial determination of probable cause by a judge, special master, or magistrate court within forty-eight (48) hours including Saturdays, Sundays and legal holidays.

(9) The client may introduce evidence on his/her own behalf, confront and cross-examine witnesses testifying against him, have witnesses of his/her choosing subpoenaed, and may admit or deny the charges in the petition.

C. After the completion of the preliminary inquiry on a delinquency complaint involving a misdemeanor, probation services may notify the children's court attorney and recommend an appropriate disposition for the case. If the child has been referred for three or more prior misdemeanors within two years of the instant offense, juvenile probation services shall notify the children's court attorney and recommend an appropriate disposition for the case.

D. Youth and family services shall notify the children's court attorney of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law (Section 32A-2-5, NMSA, 1978). Youth and family services shall also recommend a disposition to the children's court attorney.

E. An Indian child's tribe is notified when an Indian child is referred to the department. Staff consults and exchanges information with the tribe when preparing reports or when placement of an Indian child is contemplated or ordered.

F. Staff may provide informal probation supervision for clients.

G. The use of detention is limited to cases involving protection of the public, prevention of self injury, transfer to another jurisdiction, or the risk of the client absconding (Sections 32A-2-11 and 32A-2-12, NMSA 1978). If a child under the age of eleven poses a substantial risk to harm to themselves or others, a peace officer may transport the child for an emergency mental health evaluation and care. If the child is over the age of eleven and detained.

(1) Staff utilize the detention screening tool.

(2) Staff notifies the parents/guardians/custodians of a child's detention within 24 hours of detention and the children's court within 48 hours of detention.

(3) Staff releases a client from detention within the time frame and conditions defined in supreme court rules and state statute.

(4) If the client is detained prior to conducting a preliminary inquiry, the juvenile probation officer gives reasonable notice to the client's parent, guardian or custodian and the child's attorney and an opportunity to be present at the preliminary inquiry.

(5) Clients ordered detained are placed in department certified juvenile detention facilities.

(6) At the detention hearing, staff recommends conditional or unconditional release from detention for a client for whom the district attorney/children's court attorney has filed a petition.

(7) Staff reviews the need for continued detention of a client and makes recommendations to the children's court regarding the release of the client when detention is no longer required.

(8) JPO staff visits clients remaining in detention at least weekly. Such contacts are made in person, whenever possible, and documented.

(9) Release from detention is based on client needs, available resources and any applicable conditions.

[8.14.2.9 NMAC - Rp, 8.14.2.9 NMAC, 07/31/2009]

8.14.2.10 ELECTRONIC MONITORING: Juvenile probation staff provides supervision and assistance to a child placed on electronic monitoring by a court order /supervised released youth as ordered by the department or probation/supervised release violators that meet graduation sanctions criteria approved by the chief juvenile probation officer/designee.

[8.14.2.10 NMAC - N, 07/31/2009]

8.14.2.11 FAMILIES IN NEED OF SERVICES: Juvenile probation staff accesses available department and local resources for providing FINS services.

[8.14.2.11 NMAC - Rp, 8.14.2.10 NMAC, 07/31/2009]

8.14.2.12 PREDISPOSITION INVESTIGATION AND BASELINE ASSESSMENT:

A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations has been filed, the court may direct youth and family services or an appropriate agency designated by the court to write a predisposition study and report. Juvenile probation staff provides court ordered predisposition reports to the parties and the court five business days before the actual disposition or sentencing (Section 32A-2-17, NMSA 1978). A predisposition report contains timely and accurate data.

B. The department shall prepare a predisposition report for:

- (1) a serious youthful offender who is convicted of an offense other than first degree murder;
- (2) a youthful offender concerning the youthful offender's amenability to treatment; or
- (3) a delinquent offender when ordered by the court.

C. If the court does not order a pre-disposition report, juvenile probation may prepare a client family baseline assessment (CFBA) in circumstances outlined in procedures.

D. Baseline assessments, or any other reports used for compiling and reporting predisposition information, are not initiated until the client has been adjudicated delinquent, unless the client, with the advice of counsel, consents to the investigation prior to adjudication. Information from the report is not disclosed to the court before the adjudicatory hearing.

E. Documents not available in FACTS are delivered promptly to department when a client is committed. Whenever possible, staff accesses FACTS to obtain the most recent client information. Follow-up information such as home studies or updates is submitted to the facility at the earliest possible time after request.

F. Assessments, evaluations and other reports are confidential and released only as allowed for by law (Section 32A-2-32, NMSA 1978).

G. Staff other than juvenile probation staff may be used to collect information in the preparation of the predisposition report.

[8.14.2.12 NMAC - Rp, 8.14.2.11 NMAC, 07/31/2009]

8.14.2.13 SUPERVISION OF PROBATION AND SUPERVISED RELEASE CLIENTS:

A. The juvenile probation officer supervises and provides assistance to a child placed on probation by a court order or on supervised release as ordered by the department.

B. Classification of clients:

- (1) Classification determines the level of supervision.
- (2) Cases are reviewed at regular intervals and reclassified as warranted.

(3) In cases in which probation is a primary or alternative recommendation for disposition, staff identifies any special conditions needed to provide a rehabilitative supervision plan for the client and family, and recommends that the conditions be included along with the generally imposed conditions of probation.

C. Supervision plan:

(1) Supervision plans are developed by staff and include the input of the client and the parents/guardians/ custodians, and are considered part of the baseline assessment.

(2) The conditions of probation are furnished in writing to the client and his/her parent/guardian/custodian, and are acknowledged in writing.

(3) Clients are supervised by field staff according to the court order, probation /supervised release agreement, the classification tool, and the plan of care. The plan of care is developed by staff, together with the client and his/her family, when possible.

(4) Supervisors review cases and document the review.

(5) The client's parent/guardian/custodian is notified in advance of a decision to institute a major change to the plan of care, unless emergency conditions necessitate immediate implementation of the changes.

(6) Reasonable efforts are made to utilize local services prior to recommending institutionalization to the court.

(7) Staff provides information to law enforcement agencies in apprehending juveniles known or suspected of being involved in delinquent or criminal activity.

D. Community placement programs:

(1) Staff refers clients to appropriate community programs for services identified in the plan of care, determine the availability of the treatment services and inform the court or department when services are unavailable.

(2) Juvenile probation officers meet regularly with treatment providers to review client progress.

E. Out of home placements:

(1) Staff recommends out-of-home placements to the court after efforts have been made to maintain or return the client to his home, or if required, to protect the community. Every reasonable effort is made to involve the client and the parent/guardian/custodian in any discussion regarding out-of-home placement.

(2) The department facilitates transition to the home.

(3) Staff continues face-to-face contact with clients who are in out-of-home placement, as long as necessary.

F. Termination of client supervision:

(1) Recommendations for early release or termination of supervision of a client under supervision are reviewed and approved by the chief juvenile probation officer or designee with notice to the courts or the department. Early termination of supervision may be recommended in the following cases:

(a) when progress toward rehabilitation is made and the goals as set forth in the plan of care are completed;

(b) when probation or supervised release is unsuccessful and because of age or status, commitment to a department facility is of no benefit to the client; or

(c) when public safety is not expected to be compromised by the termination or early release from supervision.

(2) Staff summarizes in writing client performance during the period of supervision and provides the report to the court or department.

(3) As a part of the plan of care, the juvenile probation officer develops, in collaboration with the client and service providers, a discharge plan. Juvenile probation staff invites the parent/guardian/custodian to participate. The discharge plan is prepared prior to the client's termination from supervision.

[8.14.2.13 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

8.14.2.14 SEARCHES:

A. Authorized department personnel are allowed to conduct searches of a client's person and of property used by the client or under the client's control as provided for in orders of the court or department and as further provided for in procedures, where not inconsistent with orders of the court, the department, or federal or state law.

B. JPO staff conducting client searches must be the same gender as that of the client.

C. In accordance with procedures, all contraband that is prohibited material by an order of the court or department that is discovered during searches is confiscated, inventoried, and stored until it is no longer needed as evidence.

(1) The chief juvenile probation officer designates an evidence custodian to maintain contraband or prohibited material in accordance with procedures.

(2) Final disposition or destruction of contraband or prohibited material is performed in accordance with procedures.

(3) If staff confiscates or discovers a weapon or illegal drug, staff immediately informs the chief juvenile probation /supervised release officer and contacts law enforcement with jurisdiction. For weapons and illegal drugs that are seized by law enforcement, the staff member confiscating or discovering the contraband documents the item on the department approved chain of custody form and retains a copy of the chain of custody form.

(4) Juvenile probation shall not assist with searches by law enforcement officers of persons or their property who are not JPO clients. Juvenile probation officers may assist with searches by law enforcement of probation clients, their residences or their property only when such searches are specifically and directly related to the order of the court or department relating to the juvenile client.

(5) Each chief juvenile probation officer superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.2.14 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

8.14.2.15 TRANSFER:

A. Transfer of client supervision between counties can occur as defined in procedure PR8.14.2.13.8.

B. Client transfers to and from out of state jurisdictions occur; transfers are done according to the interstate compact on juveniles.

[8.14.2.15 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

8.14.2.16 PROBATION OR SUPERVISED RELEASE REVOCATION:

A. Clients alleged to have violated the conditions of supervision may be placed in detention, provided the detention screening tool so indicates and the criteria for detention in state statute are met.

B. Staff investigates arrests, complaints, and alleged violations of conditions of supervision.

C. Staff make and document recommendations to the district attorney/children's court attorney, department, and the court to revoke the client's probation or supervised release when the client has failed to comply with any part of the probation or supervised release agreement and it is in the best interest of the client's rehabilitation and the public safety to do so.

D. Staff utilize community resources and intervention measures before recommending out of home placements.

E. Staff aid in the location and recovery of absconders by initiating arrest or retake warrants, and notifying law enforcement authorities of the possible locations of absconders.

F. A recovered absconder who has not committed a new delinquent act, and who is not viewed as a danger to the community may be restored to active supervision.

G. When a client violates supervised release conditions, a preliminary supervised release revocation hearing is conducted by YFS, unless the client waives his/her right to the hearing. The hearing officer records and prepares a written summary of the major issues, findings and decisions of that hearing. The summary is provided to clients and the facility release panel.

H. Prior to initiating a preliminary hearing based upon alleged violations of supervised release conditions which are a manifestation of the juvenile's disability, the JPO makes a written finding that mental health services in the community that are available and appropriate to deal with the juvenile's mental disabilities were ineffective.

[8.14.2.16 NMAC - Rp, 8.14.2.12 NMAC, 07/31/2009]

8.14.2.17 SUPERVISED RELEASE: Juvenile probation services provides supervision and services to supervised released youth and provides client information to the department in a timely manner.

[8.14.2.17 NMAC - Rp, 8.14.2.13 NMAC, 07/31/2009]

HISTORY OF 8.14.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMYA/CSD 89-I-5, Juvenile Probation Services, filed 12/28/89.

NMYA/CSD 89-I-9, Illegal Aliens, filed 12/28/89.
NMYA/CSD 89-I-6, Juvenile Parole Services, filed 12/28/89.
NMYA/CSD 89-I-11, Taking into Custody, filed 12/28/89.
NMYA/CSD 89-I-12, Search and Seizure, filed 12/28/89.
NMYA/CSD 89-I-14, Use of Clients as Informants, filed 12/28/89.
NMYA/CSD 89-III-1, Intake, Preliminary Inquiry, Predisposition Report/Preadjudicatory Report, JPO Role in Final Court Disposition, CHINS Process, Traffic Law Violations, filed 12/28/89.
NMYA/CSD 89-IV-6, Restitution, filed 12/28/89.
NMYA/CSD 89-IV-10, Probation Revocation, filed 12/28/89.
NMYA/CSD 89-IV-11, Probation Warrants, filed 12/28/89.
NMYA/CSD 89-IV-18, Substance Abuse Screening (Probation and Parole), filed 12/28/89.
NMYA/CSD 89-IV-19, Pre-Parole Planning, Home Study, Parole Intake, filed 12/28/89.
NMYA/CSD 89-IV-21, Parole Warrants and Parole Detention, filed 12/28/89.
NMYA/CSD 89-IV-22, Parole Revocation, filed 12/28/89.
NMYA/CSD 89-IV-23, Parole Termination, filed 12/28/89.

History of Repealed Material:

8 NMAC 14.2, Probation and Aftercare, filed 11/2/98 - Repealed effective 12/30/2005.
8 NMAC 14.2, Probation and Aftercare, filed - Repealed effective 7/31/2009.