

**TITLE 8            SOCIAL SERVICES**  
**CHAPTER 14    JUVENILE JUSTICE**  
**PART 7           SUPERVISED RELEASE AND DISCHARGE**

**8.14.7.1           ISSUING AGENCY:** New Mexico Children, Youth and Families Department.  
[8.14.7.1 NMAC - N, 7/16/2009]

**8.14.7.2           SCOPE:** This rule applies to clients who are committed to the custody of juvenile justice services pursuant to the Delinquency Act, staff of juvenile justice services of the children, youth and families department and the operators of facilities contracted by CYFD.  
[8.14.7.2 NMAC - N, 7/16/2009]

**8.14.7.3           STATUTORY AUTHORITY:** NMSA 1978 SECTION 9-2A-7(D) authorizes the secretary of the children, youth and families department to adopt regulations as necessary to carry out the duties of CYFD. NMSA 1978 section 32A-2-19 provides that delinquent children may be committed to the legal custody of CYFD who is then responsible for determining the appropriate placement, supervision and rehabilitation of committed children, and more generally NMSA 1978 section 32A-2-1 et seq., the Delinquency Act, contains various provisions relating to the commitment, custody, and release of adjudicated children.  
[8.14.7.3 NMAC - N, 7/16/2009]

**8.14.7.4           DURATION:** Permanent.  
[8.14.7.4 NMAC - N, 7/16/2009]

**8.14.7.5           EFFECTIVE DATE:** July 16, 2009, unless a later date is cited at the end of a section.  
[8.14.7.5 NMAC - N, 7/16/2009]

**8.14.7.6           OBJECTIVE:** To provide for the transition, release, and supervision of juvenile offenders from juvenile justice services facilities.  
[8.14.7.6 NMAC - N, 7/16/2009]

**8.14.7.7           DEFINITIONS:**

**A.           Absconder** refers to a client on probation or supervised release who leaves the jurisdiction without permission, or an escapee or runaway from a placement.

**B.           Aftercare** refers to supervised release case management provided to clients released from juvenile justice facilities and treatment programs.

**C.           Arrest warrant** refers to a warrant issued from district court ordering that a client be taken into custody.

**D.           Board** means the juvenile public safety advisory board whose members are appointed pursuant to the Juvenile Public Safety Advisory Board Act, 1978 NMSA Sections 32A-7A-1 to 32A-7A-8.

**E.           Classification officer** refers to a department employee who provides direct case management and client advocacy throughout the client's commitment. The classification officer provides assessment of the client's risk, needs and strengths by which the multi-disciplinary team will assign appropriate placement.

**F.           Client family baseline assessment** refers to a written report by a juvenile probation officer that identifies the client's delinquent history and the strengths and needs of the client and family.

**G.           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.

**H.           Department** means the children, youth, and families department.

**I.           Detention** refers to the temporary care of juveniles alleged to be delinquent who require secure custody in a facility certified for that purpose by the department (Section 32A-2-4 NMSA 1978).

**J.           Facility** refers to a facility operated by, or on behalf of, CYFD's juvenile justice services for purposes of housing and providing care for clients committed to the custody of CYFD.

**K.           Facility release panel (panel)** is the departmental secretary-designated releasing authority that considers juveniles for supervised release.

**L.           Facility transition coordinator (FTC)** means a department employee who works with the client and the client's multi-disciplinary team, juvenile probation officer, classification officer, and regional transition

coordinator to coordinate the client's care while in the facility and ensures that the required tasks of the client's supervised release or extension track are occurring in a timely manner.

**M. Final supervised release violation hearing** means a proceeding conducted by the department or its designated hearing officer, for the purpose of determining whether to revoke supervised release.

**N. Home study** means an assessment of the living environment where the juvenile offender may reside during the term of supervised release; the assessment is conducted by the department; specific strengths and weaknesses of the living environment are identified through the home study process.

**O. JJS** is juvenile justice services, a division of the children, youth and families department.

**P. JPO** is a juvenile probation officer.

**Q. Juvenile public safety advisory board (JPSAB)** will advise the department on release decisions and make recommendations regarding programs and facilities.

**R. Juvenile offender** means an individual committed to the custody of the department pursuant to the Delinquency Act, 1978 NMSA Section 32A-2-1 through 32A-2-32; the term "juvenile offender" in this regulation includes those individuals who are committed as youthful offenders or up to age 21.

**S. Multi-disciplinary team (MDT)** refers to the team that meets at the facility to develop, monitor, and revise client plans for placement and services. The team includes the client and family member(s), and behavioral health, education, medical, a security representative, the juvenile probation officer and a transition coordinator if assigned.

**T. Plan of care (POC)** refers to the plan developed at the first multidisciplinary team (MDT) meeting following placement at the facility and reviewed and updated at each subsequent MDT. The plan included goals and objectives in all disciplines and is broadly available to all staff with client contact.

**U. Probation** refers to a court-ordered sanction and disposition which places an adjudicated client under the supervision and care of a juvenile probation officer.

**V. Regional transition coordinator (RTC)** means a department employee whose duties may include coordination of community and aftercare services for a client.

**W. Release agreement** means the document stating the conditions of supervised release as established by the panel. The juvenile is required to agree in writing to the agreement conditions as a prerequisite to being placed on supervised release status.

**X. Release consideration meeting** means a proceeding conducted by the panel for purposes of deciding whether to grant, deny, defer or revoke supervised release.

**Y. Retake warrant** refers to the document issued by the department, 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 secure facility.

**Z. Secretary** means the secretary of the children, youth and families department.

**AA. 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.

**BB. Supervised release plan** means the department's recommendation for the conditions the juvenile offender should be required to fulfill if released, and presents workable methods of dealing with the juvenile offender's problems and needs through community intervention.

**CC. Supervised release recommendation report** is the report prepared by the FTC/designee to inform the panel of the juvenile's progress while committed and readiness for release through summaries of all the disciplines in the juvenile's plan of care and the plan for the juvenile if he or she is granted supervised release.

**DD. Victim notification** means notification to the district attorney of each district in the state of any supervised release of juvenile offenders pursuant to Section 31-26-12 NMSA 1978.

[8.14.7.7 NMAC - N, 7/16/2009]

#### **8.14.7.8 FACILITY RELEASE PANEL**

**A.** The facility release panel will conduct release consideration meetings at a minimum of monthly intervals to consider whether to grant release to juvenile offenders who are identified on the agenda. In addition to the regularly scheduled release consideration meetings, the panel may conduct special release consideration meetings upon recommendation of a facility or as a result of any circumstances that warrant review and consideration for release. Release consideration meetings may be held at any of the department's facilities.

**B.** The facility release panel consists of the JJS director/deputy director, the superintendent/designee from each CYFD facility, a behavioral health supervisor from the client's facility, a representative from education administration, and a quorum of the JPSAB. Video or teleconferencing shall be arranged for any member of the panel who cannot attend in person. The JJS director/deputy director is the departmental representative of the panel for purposes of notifications and revocations.

(1) The JJS director/deputy director serves as the panel chairperson.

(2) Each member of the panel has one vote in release decisions, and decisions must be approved by a majority vote.

(3) The quorum of the board that participates in release consideration meetings confers on decisions and provides the panel with one vote for all of the board members.

[8.14.7.8 NMAC - N, 7/16/2009]

#### **8.14.7.9 ELIGIBILITY FOR SUPERVISED RELEASE**

**A.** A juvenile is eligible for supervised release any time after commitment to the department. A juvenile's supervised release date and placement is tentatively determined at their initial MDT meeting, based on the juvenile's client family baseline assessment and other information presented at the meeting. The MDT shall provide the juvenile with a notice of tentative release date at the conclusion of the Initial MDT. Once a tentative release date is determined, the juvenile shall be scheduled for the agenda of the release consideration meeting that coincides with that date, and agendas shall be provided to the juvenile public safety advisory board on a monthly basis. If so warranted by the juvenile's behavior or for other good cause, the release date may be moved up and the panel may consider a juvenile at an earlier release consideration meeting.

**B.** If after a release date is determined the MDT recommends that the juvenile's supervised release needs to be deferred, the MDT shall make written findings detailing the reasons for the deferral and provide those to the juvenile and the panel. The juvenile shall then be rescheduled as soon as practically possible for a release consideration meeting.

**C.** The panel shall base a decision to grant or deny supervised release on the following, as determined by the application of the specific criteria in Subsection D and the MDT's recommendation for release, as determined at the MDT at least two months prior to the scheduled release date:

(1) the public safety of the community;

(2) the likelihood of successful reentry and reorientation to the community, based on the extent of the client's rehabilitation and the proposed supervised release plan;

(3) the best interests of the client; and

(4) the likelihood of further progress with the programs and services offered in the facility.

**D.** Specific criteria to be considered by the panel and the MDT include:

(1) the juvenile offender's preparedness and willingness to assume the obligations and responsibilities of the release agreement;

(2) the degree to which the proposed living arrangements and community are conducive to successful completion of release and reintegration into the community;

(3) the juvenile offender's progress, rehabilitation and conduct while in the facility, including as reflected through SDM information;

(4) the extent and nature of the juvenile offender's drug or other substance abuse, and his response to treatment;

(5) the juvenile offender's history of delinquency or previous commitment;

(6) the availability of community resources to assist the juvenile offender, especially those that are only available in the juvenile's community and not available in the facility;

(7) any behavioral health or medical needs that the juvenile may have that can be more appropriately addressed in the community;

(8) information supplied by victims; and

(9) the nature of the offense for which the juvenile offender is presently committed.

**E.** Any time the department modifies the release criteria, it must first confer with the juvenile public safety advisory board and consider the board's input. If criteria are changed, the board must be allowed to participate in the decision and if there are disagreements, the department and the board shall in good faith attempt to reconcile the disagreements. If the board and the department cannot reconcile, the reasons for disagreement shall be recorded and submitted to the director of facilities to make a final decision.

[8.14.7.9 NMAC - N, 7/16/2009]

#### **8.14.7.10 CONDUCT OF RELEASE CONSIDERATION MEETINGS**

**A.** Each FTC submits a proposed list of names of juveniles to be placed on the agenda to the panel at least forty days prior to the next regularly scheduled release consideration meeting dates. The FTC shall provide the release panel with the release consideration summary at least ten (10) days before the release consideration meeting.

(1) A client may appear on the panels' agenda by:

- (a) an MDT recommendation for release;
- (b) personally petitioning the panel any time sixty days after commitment or after a denial of release;

- (c) a board request to be placed on the agenda after a denial of release.

(2) The final agenda is prepared and approved by the JJS director/designee.

(3) The JJS director/designee distributes copies of the final agenda to the department's facilities sufficiently in advance so that the facilities may arrange for the juvenile offenders and the employees who will present their cases to be present.

(4) For purposes of victim notification and representation, the JJS director/designee notifies the administrative office of the district attorneys of the upcoming agenda at least ten days prior to the release consideration meeting and provides notice if there are changes made to the agenda. After the release consideration meeting, the AODA, the committing judge, and the NM public defender department are promptly notified of the juvenile offenders who were granted or denied supervised release and the reasons therefore.

(5) The JJS director/deputy director/designee provides a copy of the panel's agenda to the JPSAB at least thirty five (35) days before the release consideration meeting.

**B.** At least ten (10) days prior to a release consideration meeting, the members of the panel receive an updated supervised release recommendation report from the facility transition coordinator for each juvenile offender on the agenda. For special supervised release hearings or for juvenile offenders who are added to the agenda, the panel receives the updated supervised release recommendation report as soon as practicable. The updated supervised release recommendation report must include the following information:

(1) for the commitment period, summaries of:

- (a) behavior at the facility, including any disciplinary actions;

- (b) mental health/medical interventions;

- (c) extra-curricular activity;

- (d) academic/vocational progress;

- (e) family involvement while in commitment, including family involvement in any community services offered or recommended;

(2) home study that includes the status of the juvenile offender's siblings and juvenile/adult relatives known to law enforcement authorities and includes the JPO's assessment of the juvenile offender's home situation, including an update if the home study is more than 60 days old or circumstances have changed significantly since the completion of the home study;

(3) for the proposed supervised release period, the plan for:

- (a) living arrangements; if the supervised release plan involves independent living, a full description of the proposed living and financial arrangements, including a budget breakdown; if an out-of-state release is proposed, all information required under applicable interstate compact provisions; if RTC, foster care, or other alternative living arrangement is proposed, how the placement will be funded and the estimated length of stay;

- (b) education, including but not limited to, written confirmation from school officials or the juvenile offender's JPO as to anticipated school acceptance and grade level; any special educational programs should be outlined in the home study update;

- (c) employment, including a letter from an employer setting forth the place of work, the beginning date if known, the number of hours, work schedule and rate of pay; information about employment arrangements should be made in the home study update;

- (d) community service, including the name and location of the program and the number of hours of service recommended; the panel may consider such service as a complement or alternative to employment;

- (e) community resources to be utilized to help the juvenile offender, including but not limited to alcohol, substance, drug, individual therapy, group therapy, mental health, sex offenders and family counseling programs; the counseling information shall specify particular programs and costs when possible;

- (f) court ordered restitution or community service, which is to be arranged and coordinated through the department prior to supervised release;

- (g) information provided by the victim, if any; and

- (h) such additional information that the panel or facility may request in the particular case.

**C.** The panel interviews each juvenile offender and the juvenile's primary caregiver(s), if in attendance, at the release consideration meeting at which his or her supervised release is under consideration before making a decision to grant or deny supervised release. If the juvenile or the primary caregivers are unavailable to attend the meeting in person, vide or teleconferencing may be arranged.

**D.** Juvenile offenders are permitted to have legal counsel present at release consideration meetings.

**E.** Other than the juvenile, the juvenile's primary caregivers, and department representatives, the panel has sole discretion and authority to determine who may be present at release consideration meetings, which are not open to the public.

**F.** Official minutes of release consideration meetings are prepared by the panel.

**G.** Any decision regarding supervised release shall be approved by a majority of the panel. If the action of the panel is not unanimous, the dissenting member may have the reasons for his or her dissent set forth in the official minutes of the release consideration meeting.

**H.** The panel shall grant release when:

(1) the client has reached, or will reach before the next regularly scheduled release consideration meeting, his or her 90 day mandatory release date, as determined by the length of commitment ordered by the court;

(2) the client meets release criteria;

(3) the purpose of the commitment has been achieved; or

(4) the department is unable to adequately meet the client's needs in any of its facilities or programs, a suitable facility or program is available in the community where the juvenile has been accepted for placement, and supervised release to that placement would not pose a substantial risk to the public safety.

**I.** The panel's decision is announced to the juvenile offender, the juvenile's family, and their placement (if out of home) within forty eight (48) hours of the conclusion of the release consideration meeting.

(1) If the panel decides to grant supervised release, the juvenile offender is immediately informed of the panel's decision and of the general and special conditions of release.

(a) The juvenile offender must agree and sign a written statement of the general and special conditions of release (the release agreement) in order for release to commence. The panel provides a copy of the proposed release agreement to the juvenile at the release hearing, and mails a copy to the juvenile's parent, guardian or custodian within five (5) days, if release is granted.

(b) A certificate of supervised release is prepared, and a copy is provided to the juvenile.

(2) If the panel decides to deny supervised release, the panel provides the juvenile offender, their family, and their placement (if out of home) with a written statement of reasons for denial. A copy of the statement is mailed to the juvenile offender's parent, guardian or custodian within five (5) days after the decision is made to deny release. The panel may deny supervised release when, based on information presented at the release consideration meeting, a juvenile is not in a mandatory release period and:

(a) there is substantial risk to the public safety if he or she is released;

(b) there is a substantial likelihood the juvenile offender will not follow the conditions of supervised release;

(c) continued programming at the facility would be beneficial to the juvenile; or

(d) there exists any other reasons the panel deems sufficient and reasonable to deny supervised release.

**J.** Special release consideration meetings. Special release consideration meetings are scheduled at the discretion of the panel. Time frames applicable to the regularly scheduled release consideration meetings do not apply; however, the panel will coordinate receipt of any proposed agenda and distribution of the finalized agenda so that all interested parties and agencies receive as much notice as practicable. Notices of special release consideration meetings and agendas are provided to the AODA and the NM public defender department at least five days prior to the meeting.

**K.** If circumstances substantially change between a future release date and the date that release is approved by the panel, the panel may reconsider the decision to release and defer or deny release. If the panel decides to defer or deny release, it shall do so at a release consideration meeting, following all regular procedures, provided however, that supervised release may be temporarily deferred by the JJS director and the juvenile kept at the facility pending the convening of a release consideration meeting. Substantially changed circumstances include, but are not limited to:

(1) the juvenile's behavior in the period between approval and actual release is such that releasing him or her would pose a threat to his or her safety or the public safety;

(2) the placement that the juvenile is scheduled to be released to is not approved, cancelled, or otherwise modified such that releasing the juvenile would not be in his or her best interests; or

(3) any other credible information that comes to the attention of the panel that leads to a determination that the juvenile should not be released.  
[8.14.7.10 NMAC - N, 7/16/2009]

#### **8.14.7.11 GENERAL AND SPECIAL CONDITIONS OF SUPERVISED RELEASE**

**A.** The panel determines the general and special conditions of supervised release. The panel may add, delete or change any of the general or special conditions of supervised release.

**B.** The following are general conditions of supervised release to be included in all supervised release agreements.

(1) "I must maintain myself as a law-abiding citizen by following all municipal, county, state and federal laws, ordinances and orders, including laws and rules of Indian tribal councils when applicable. If I am enrolled in school, I must follow all school policies and regulations."

(2) "I must keep my JPO, my parents, custodian or guardian informed of my whereabouts at all times."

(3) "I will be required to have written permission of my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, if I wish to temporarily leave the county to which I have been released."

(4) "I will inform my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, if I am charged, arrested or detained by any law enforcement or juvenile authority, within a reasonable period of time, but no later than forty-eight (48) hours after arrest."

(5) "My JPO has the right to visit me at home, school or place of employment at any time."

(6) "I will follow curfew rules established by my JPO, as written with the cooperation of my parents, guardian or custodian."

(7) "I shall not use, possess, sell or transfer marijuana, narcotics or any other dangerous or illegal substances which have not been prescribed for me by a physician. I will participate in any examination requested by my JPO regarding possible use of such substances."

(8) "I will not possess or consume beer or any alcoholic beverage at any time while on supervised release. I will not enter any business commonly known as a bar, lounge or liquor store."

(9) "I must notify my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, before applying for a marriage license or filing for divorce or legal separation."

(10) "I must not associate with anyone with whom my JPO, in cooperation with my parents, guardian, or custodian, as appropriate, forbids me to associate. This may include anyone with a criminal or delinquent record, anyone associated with a gang and anyone that may be detrimental to my successful completion of supervised release."

(11) "I cannot own, possess, sell, use or distribute firearms or other deadly weapons."

(12) "I will not endanger the person or property of someone else."

(13) "I will abide by all reasonable instructions of my JPO."

(14) "I will report to my JPO within 24 hours of release and will remain under house restriction and direct parental supervision until such time as my JPO decides to lift the restriction".

**C.** The panel assigns special conditions of supervised release, including specific details so as to determine compliance and success, regarding:

(1) person, city, county and state into whose custody a juvenile is released;

(2) employment;

(3) school;

(4) counseling, including career counseling;

(5) volunteer community service;

(6) associations;

(7) residency;

(8) community service or restitution, if any; and

(9) any other special conditions the panel deems appropriate.

[8.14.7.11 NMAC - N, 7/16/2009]

#### **8.14.7.12 BEHAVIOR DURING THE SUPERVISED RELEASE PERIOD**

**A.** The department supervises juveniles on supervised release. The facility or regional transition coordinator /designee is responsible for providing the juvenile's juvenile probation officer with the supervised release recommendation report and any other documentation required to properly transition the juvenile to supervised release.

**B. Modification of release conditions.**

(1) Only the panel may substantially modify any of the terms of the supervised release agreement. The panel notifies the juvenile and his or her JPO of any such modifications.

(2) In an emergency situation, the JPO may temporarily approve a change of residency without prior approval from the panel. The JPO must notify the panel as soon as practicable. If the situation permits, the JPO should telephone the panel's chairperson for verbal approval prior to taking this emergency action.

(3) The JPO must submit a notification of supervised release change to the panel for approval of any proposed minor modifications to the written release agreement.

**C. Absconders.** When a juvenile on supervised release conceals or absents himself or herself from release supervision, the panel may declare him or her an absconder and request that a warrant be issued.

**D. After supervised release, the panel receives the following reports and information:**

(1) progress reports prepared by the JPO, assessing the progress of the juvenile; or

(2) reports of supervised release violations.

[8.14.7.12 NMAC - N, 7/16/2009]

**8.14.7.13 VIOLATIONS OF SUPERVISED RELEASE CONDITIONS:** The JPO informs the panel when a juvenile is alleged to have violated any general or special conditions of supervised release. The JPO and a designated departmental representative of the panel confer regarding the appropriate course of action in each circumstance. Supervised release shall only be revoked and the juvenile placed in detention if it is necessary to protect the public safety, prevent self-injury, facilitate transfer, or ensure the presence of the juvenile at subsequent court hearings.

**A.** After consultation, there may be a decision to allow the juvenile to continue on supervised release. The JPO's monthly report to the panel will document the justification for the decision to continue supervised release.

**B.** The panel may issue a reprimand for any supervised release violation, upon recommendation of the department or upon its own initiative when appropriate. The reprimand may be oral or written. Reprimands may be issued during a supervised release revocation proceeding if the panel has decided, after a preliminary supervised release violation inquiry or final supervised release violation hearing, not to revoke supervised release.

**C.** The panel may modify the release agreement to address less serious violations for which supervised release revocation proceedings are not immediately appropriate.

**D.** If after consulting with the panel, there is a decision to begin revocation proceedings against the juvenile, a preliminary supervised release violation report is prepared.

[8.14.7.13 NMAC - N, 7/16/2009]

**8.14.7.14 SUPERVISED RELEASE REVOCATIONS**

**A.** Preliminary supervised release violation hearing. The purpose of the hearing is to determine whether there is probable cause (through a fact-finding process) to conduct a final supervised release violation hearing. The hearing shall be before an impartial hearing examiner appointed by the department.

**B.** Prior to initiating a preliminary hearing based upon alleged violations of release conditions which are a manifestation of the juvenile's disability, there must be 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.

**C.** The department conducts the preliminary supervised release violation hearing. The juvenile's JPO provides the following information to the department's hearing examiner prior to the preliminary release violation hearing:

(1) notice of preliminary release violation hearing;

(2) release violation report; and

(3) notice of rights.

**D.** If there is a finding of probable cause at the preliminary supervised release violation hearing, a retake warrant is issued. The juvenile is returned to the facility from which he or she was released pending the final violation hearing before the panel. The hearing examiner sends the panel a copy of the supervised release violation report and the testimony, facts and conclusions, with the retake warrant, within ten days of the preliminary supervised release violation hearing. The hearing examiner may make recommendations for the panel's consideration at the final violation hearing.

**E.** If the hearing examiner does not find probable cause at the preliminary supervised release violation hearing, the juvenile is released and continues supervised release on the terms of the release agreement,

including any modifications that have been approved by the panel. A report is submitted to the panel within ten (10) working days of the preliminary supervised release violation hearing.

**F. Final supervised release violation hearing.**

(1) The final supervised release violation hearing is conducted by the panel. The panel makes the final determination whether to continue the supervised release or whether and how to modify the terms of the supervised release agreement.

(2) A final supervised release violation hearing will be held within ninety days from the date the department retakes custody of the juvenile. The panel can make reasonable exceptions to this rule for good cause.

(3) The panel requests the New Mexico public defender department to represent the juvenile, unless a private attorney is secured by the juvenile.

(4) The panel notifies the juvenile, the juvenile's parent or guardian, and the juvenile's attorney of the hearing date at least ten working days in advance.

(5) The panel may consider and grant requests for postponement or continuance from the juvenile or attorney; time limits will be adjusted accordingly.

(6) The juvenile cannot re-litigate issues determined in the preliminary supervised release violation hearing.

(7) At the final supervised release violation hearing, the juvenile is entitled to the following:

(a) right to silence;

(b) right to an attorney;

(c) right to present evidence and witnesses;

(d) right to confront and cross-examine adverse witnesses (except where the panel determines, in writing, that the witnesses are in danger of harm or there is other good cause for not allowing confrontations);

(e) right to be informed of the evidence against him;

(f) right to a neutral hearing panel; and

(g) right to a written statement by the panel of the reasons for revoking supervised release.

(8) The panel's chairperson grants permission to call witnesses not heard at the preliminary supervised release violation hearing. Such requests may be made by either the juvenile or by panel members.

(9) The panel's chairperson determines the admissibility of evidence. Judicial rules of evidence shall not apply.

(10) All materials admitted in the preliminary supervised release violation hearing are admitted at the final violation hearing.

(11) The panel may accept or reject the hearing examiner's preliminary revocation recommendations and may enter any other disposition it deems appropriate.

(12) After the hearing is concluded, the panel presents its decision to the juvenile, attorney, parents, guardians or custodians.

(13) If supervised release is revoked, the juvenile is remanded to the custody of the juvenile facility.

(14) If the violated conditions of supervised release resulted from the commission of a new delinquent offense or criminal act, the juvenile will not be re-scheduled for a supervised release hearing.

(15) If supervised release is revoked and the juvenile is re-released in the same action, the juvenile will be required to abide by all original or modified conditions of supervised release. This new release date will be determined by the panel. The institution shall conduct a re-release orientation.

(16) The final supervised release violation hearing is electronically recorded.

[8.14.7.14 NMAC - N, 7/16/2009]

#### **8.14.7.15 RELEASE AND FACILITY DISCHARGE PROCEDURES**

**A.** JPO request for discharge from supervised release: If the juvenile's JPO determines that a juvenile on supervised release has exhibited behavior that warrants early discharge, and the juvenile is not in a mandatory supervised release period, the JPO may request early discharge and prepare a supervision summary report. Any such report shall be submitted to the panel at least thirty days prior to the requested early discharge date. The report shall include a detailed supervision history setting forth the juvenile's performance on supervised release, and the reasons why the JPO is recommending early discharge.

**B.** Facility request for discharge from commitment.

(1) The facility shall request a discharge from the facility or department when the juvenile's commitment is expiring, whether the juvenile is on supervised release or in the facility. The facility submits a discharge notification to the panel at least thirty days prior to the juvenile offender's custody expiration date.

(2) Facility requests for discharge to take effect prior to the juvenile offender's custody expiration

date shall be placed on the regular or special meetings agenda.

**C.** Types of discharges. The following types of discharges may be made:

(1) Administrative discharge: The panel issues an administrative discharge on the juvenile's supervised release or commitment expiration date.

(2) Unsatisfactory discharge: The panel issues an unsatisfactory discharge when and if:

(a) an absconder is over age 18, is a non-violent offender, three months have elapsed since the original custody expiration date, and the JPO is recommending a discharge;

(b) the juvenile has been placed on adult probation;

(c) the juvenile has been sentenced to a new commitment to a juvenile facility; or

(d) the juvenile has been sentenced to a commitment to a state or federal prison.

(3) Technical discharge: The panel shall issue a technical discharge when and if:

(a) the juvenile offender dies;

(b) the juvenile offender has been recommended for residential treatment pursuant to the Children's Mental Health and Developmental Disabilities Act, 1978 NMSA Section 32A-6A-1 et. seq., and it is expected that he or she will remain so committed until his or her custody expiration date; or

(c) the juvenile's commitment to a department facility is otherwise completed or terminated through a process other than expiration of the original term or through an unsatisfactory discharge.

**D.** The panel chairperson may grant an administrative discharge, including an unsatisfactory or technical discharge, without convening a full release panel.

**E.** Once the panel determines what type of discharge to issue, a certificate of discharge is given to the juvenile and a copy inserted into the juvenile's file. All victim notifications are completed in accordance with Section 31-26-12 (D) NMSA 1978.

[8.14.7.15 NMAC - N, 7/16/2009]

**HISTORY OF 8.14.7 NMAC: [RESERVED]**