

violation, underlying offense, any prior criminal record and supervision history. PPOs are reminded that, in the case of a probationer, the officer may request a hearing or a capias/bench warrant. In the case of a parolee, the PPO may request a warrant from a parole board member.

V. PROCEDURES:

- A. A PPO may arrest probationers and parolees without a warrant pursuant to RSA 504-A:4 and RSA 651:2,V(f).
- B. For the purposes of this PPD, the terms "reason to believe" and "probable cause" are synonymous. The term "probable cause" means that based on all facts and circumstances within your knowledge and for which you have reasonably trustworthy information, there is sufficient evidence to cause a reasonable and prudent person to believe that the probationer/parolee has committed, is committing, or attempting to commit, a crime or breach of a condition of probation under RSA 651:2.V.(f). A PPO may arrest offenders under supervision without a warrant pursuant to RSA 504:A when:
1. The PPO has reason to believe that the probationer/parolee has committed a new criminal offense. The PPO must establish that probable cause exists by conducting an independent inquiry about the facts and circumstances of the criminal act and cannot rely solely on a police officer's assertion that an arrest was made. The PPO can also establish probable cause if he has first hand knowledge of a criminal act or witnesses a criminal act.
 2. The probationers/parolees are conducting themselves in such a way as to be a menace to public safety contrary to the conditions of probation/parole. The particular facts must be weighed against the totality of the circumstances.
 3. There is probable cause to believe that the probationer/parolee will abscond or commit new criminal offenses if not arrested. Absconding is defined as eluding supervision or taking concrete steps to flee the jurisdiction.
 4. Arrests under RSA 651:2,V.(f) do not have to meet the above criteria. The phrase "shall be subject to immediate arrest" does not mean that arrest is mandatory. The PPO shall consider the totality of the circumstances to include the enhanced legal status.
- C. All arrests without a warrant must be reviewed by the Chief Probation/Parole Officer (CPPO) prior to the arrest, when possible, or as soon as possible after the arrest has occurred. The CPPO shall approve the arrest and shall overturn any arrest if it does not meet the above criteria. The CPPO may order a PPO to arrest an offender if the above criteria are met. The arresting officer shall, as soon as possible, complete an incident report and shall fax a copy to the Field Services Headquarters office. The report shall contain enough information that the arrest complied with this policy.
1. Upon the warrantless arrest of a probationer/parolee, a Detention Order will be completed (attachment 1). The Preliminary Hearing Notice/Waiver will be read verbatim to the offender, explained and completed. Copies will be provided to the Parole Board or Court, the detaining authority, the PPO and the offender.
 2. Any probationer/parolee who is arrested will be detained at the correctional facility closest to the location where the arrest occurred, or any other suitable confinement facility in reasonable proximity to the location where they were arrested.
 - a. They shall be detained there pending a preliminary hearing.
 - b. No Sheriff or County Correctional Administration shall refuse to accept a probationer/parolee arrested pursuant to RSA 504-A:5.
 3. Following the detention of the offender, the arresting officer must ensure that a violation report is prepared and forwarded to the supervising authority (i.e. Parole Board or Court) as soon as possible. The CPPO must ensure discretion is used to meet the various standards required by the sentencing court, i.e. telephone notification to the clerk's office, faxed violation report, use of US mail, etc.
 - a. A Parole Violation report will be accompanied by a warrant request to a Parole Board member as soon as possible. A copy of the Detention Order shall be

attached to the report.

- b. A Probation Violation report will be forwarded to the Court with the Detention Order.
 - c. Except as provided by RSA 597:1-d, a person charged with a probation violation shall be entitled to a bail hearing (attachment 4).
5. The United States Supreme Court decisions in Morrissey v. Brewer, 408 US 471 (1972) for Parolees and Gagnon v. Scarpelli, 411 US 778 (1973) for Probationers must be followed. Upon arrest and detention or as soon as is possible thereafter, notice of preliminary hearing will be provided to the offender. If the offender does not waive the hearing, the Hearings Officer must hold a preliminary hearing.
- a. To determine whether there is probable cause to believe that the arrested probationer/parolee has committed acts that would constitute a Violation of Parole/Probation conditions or acts pursuant to V(1)-(3) above;
 - b. The "inquiry" [must] be conducted at or reasonably near the place of "arrest" and held within 72 hours from the time of arrest, excluding Saturdays, Sundays and holidays;
 - c. Determination of probable cause shall be made by "someone not directly involved in the case", and "other than the one who has made or participated in the arrest or has recommended" the arrest. Examples of a neutral or detached hearings officer include other Probation/Parole Officers (PPOs) with the office or from another District Office or other reasonable party.
 - d. The probationer/parolee shall be given written notice at least 24 hours in advance of the preliminary hearing with the date and time of the hearing and the specific violation(s) charged. The offender is also advised in writing of the right to:
 1. Assistance to adequately present their cases and to have counsel appointed. In the case of indigent persons who request assistance to adequately present their case, counsel will be appointed for them.
 2. Present evidence and favorable witnesses;
 3. Disclosure of evidence;
 4. Confront adverse witnesses, unless the witnesses would be subjected to a risk of harm;
 5. Request postponement of the hearing for good cause;
 6. The hearings officer shall prepare a report that outlines the basis for the finding of probable cause. The report will be provided to the supervising authority, the PPO and the offender within 21 calendar days of the hearing.
 7. Continuances on hearings must be made in writing to the Hearings Officer specifying the reasons for the request.

D. Academy Probationers

1. Academy probationers are subject to immediate arrest for a violation of conditions or restrictions of probation by any PPO or authorized law enforcement officer as provided by RSA 651:2V(f).
2. Academy probationers who are arrested without a warrant shall be lodged at the nearest correctional facility with a detention order.
3. The sentencing Court, Prosecutor, and Defense Attorney of record are notified of the arrest no later than the next business day via a violation of probation and supporting documentation.
4. Probationers in the Academy program have waived their right to a preliminary hearing. The provisions of Gagnon v. Scarpelli do not apply to offenders in the Academy programs.

REFERENCES:

Standards for the Administration of Correctional Agencies
Second Edition Standards

Standards for Adult Correctional Institutions
Fourth Edition Standards

Standards for Adult Community Residential Services
Fourth Edition Standards

Standards for Adult Probation and Parole Field Services
Third Edition Standards

3-3160 thru 3162; 3-3164 thru 3166

Other:

McALISTER

Attachments

CHAPTER 504-A
PROBATIONERS AND PAROLEES
Section 504-A:4

504-A:4 Violation of the Terms of Probation or Parole. –

I. Any probationer or parolee may be arrested without warrant at any time by any probation or parole officer, or any other officer authorized to arrest upon request of a probation or parole officer, when the probation or parole officer has reason to believe that the probationer or parolee has committed a new criminal offense or is conducting himself in such a way as to be a menace to public safety, or there is probable cause to believe that the probationer or parolee will abscond or commit new criminal offenses if not arrested.

II. When a parolee violates the conditions of his parole but does not meet the criteria for immediate arrest, a probation or parole officer with knowledge of the circumstances of the parole violation shall report the facts surrounding the violation to any member of the parole board who may issue a warrant for the arrest of the parolee.

Source. 1986, 156:1, eff. May 28, 1986.

TITLE LXII
CRIMINAL CODE
CHAPTER 651
SENTENCES
General Provisions
Section 651:2

651:2 Sentences and Limitations. –

I. A person convicted of a felony or a Class A misdemeanor may be sentenced to imprisonment, probation, conditional or unconditional discharge, or a fine.

II. If a sentence of imprisonment is imposed, the court shall fix the maximum thereof which is not to exceed:

(a) Fifteen years for a class A felony,

(b) Seven years for a class B felony,

(c) One year for a class A misdemeanor,

(d) Life imprisonment for murder in the second degree, and, in the case of a felony only, a minimum which is not to exceed 1/2 of the maximum, or if the maximum is life imprisonment, such minimum term as the court may order.

II-a. A person convicted of murder in the first degree shall be sentenced as provided in RSA 630:1-a.

II-b. A person convicted of a second or subsequent offense for the felonious use of a firearm, as provided in RSA 650-A:1, shall, in addition to any punishment provided for the underlying felony, be given a minimum mandatory sentence of 3 years imprisonment. Neither the whole nor any part of the additional sentence of imprisonment hereby provided shall be served concurrently with any other term nor shall the whole or any part of such additional term of imprisonment be suspended. No action brought to enforce sentencing under this section shall be continued for sentencing, nor shall the provisions of RSA 651-A relative to parole apply to any sentence of imprisonment imposed.

II-c. [Repealed.]

II-d. A person convicted of manslaughter shall be sentenced as provided in RSA 630:2, II.

II-e. To the minimum sentence of every person who is sentenced to imprisonment for a maximum of more than one year shall be added a disciplinary period equal to 150 days for each year of the minimum term of the sentence, to be prorated for any part of the year. The presiding justice shall certify, at the time of sentencing, the minimum term of the sentence and the additional disciplinary period required under this paragraph. This additional disciplinary period may be reduced for good conduct as provided in RSA 651-A:22. There shall be no addition to the sentence under this section for the period of pre-trial confinement for which credit against the sentence is awarded pursuant to RSA 651-A:23.

II-f. A person convicted of violating RSA 159:3-a, I shall be sentenced as provided in RSA 159:3-a, II and III.

II-g. If a person is convicted of a felony, an element of which is the possession, use or attempted use of a deadly weapon, and the deadly weapon is a firearm, such person may be sentenced to a maximum term of 20 years' imprisonment in lieu of any other sentence prescribed for the crime. The person shall be given a minimum mandatory sentence of not less than 3 years' imprisonment for a first offense and a minimum mandatory sentence of not less than 6 years'

imprisonment if such person has been previously convicted of any state or federal offense for which the maximum penalty provided was imprisonment in excess of one year, and an element of which was the possession, use or attempted use of a firearm. Neither the whole nor any part of the minimum sentence imposed under this paragraph shall be suspended or reduced.

III. A person convicted of a class B misdemeanor may be sentenced to conditional or unconditional discharge, a fine, or other sanctions, which shall not include incarceration or probation but may include monitoring by the department of corrections if deemed necessary and appropriate.

III-a. A person convicted of a violation may be sentenced to conditional or unconditional discharge, or a fine.

IV. A fine may be imposed in addition to any sentence of imprisonment, probation, or conditional discharge. The limitations on amounts of fines authorized in subparagraphs (a) and (b) shall not include the amount of any civil penalty, the imposition of which is authorized by statute or by a properly adopted local ordinance, code, or regulation. The amount of any fine imposed on:

(a) Any individual may not exceed \$4,000 for a felony, \$2,000 for a class A misdemeanor, \$1,200 for a class B misdemeanor, and \$1,000 for a violation.

(b) A corporation or unincorporated association may not exceed \$100,000 for a felony, \$20,000 for a misdemeanor and \$1,000 for a violation. A writ of execution may be issued by the court against the corporation or unincorporated association to compel payment of the fine, together with costs and interest.

(c) If a defendant has gained property through the commission of any felony, then in lieu of the amounts authorized in paragraphs (a) and (b), the fine may be an amount not to exceed double the amount of that gain.

V. (a) A person may be placed on probation if the court finds that such person is in need of the supervision and guidance that the probation service can provide under such conditions as the court may impose. The period of probation shall be for a period to be fixed by the court not to exceed 5 years for a felony and 2 years for a class A misdemeanor. Upon petition of the probation officer or the probationer, the period may be terminated sooner by the court if the conduct of the probationer warrants it.

(b) In cases of persons convicted of felonies or class A misdemeanors, or in cases of persons found to be habitual offenders within the meaning of RSA 259:39 and convicted of an offense under RSA 262:23, the sentence may include, as a condition of probation, confinement to a person's place of residence for not more than one year in case of a class A misdemeanor or more than 5 years in case of a felony. Such home confinement may be monitored by a probation officer and may be supplemented, as determined by the department of corrections or by the county department of corrections, by electronic monitoring to verify compliance.

(c) Upon recommendation by the department of corrections or by the county department of corrections, the court may, as a condition of probation, order an incarceration-bound offender placed in an intensive supervision program as an alternative to incarceration, under requirements and restrictions established by the department of corrections or by the county department of corrections.

(d) Upon recommendation by the department of corrections or by the county department of corrections, the court may sentence an incarceration-bound offender to a special alternative incarceration program involving short term confinement followed by intensive community

supervision.

(e) The department of corrections and the various county departments of corrections shall adopt rules governing eligibility for home confinement, intensive supervision and special alternative incarceration programs.

(f) Any offender placed in a home confinement, intensive supervision or special alternative incarceration program who violates the conditions or restrictions of probation shall be subject to immediate arrest by a probation officer or any authorized law enforcement officer and brought before the court for an expeditious hearing pending further disposition.

(g) The court may include, as a condition of probation, restitution to the victim as provided in RSA 651:62-67 or performance of uncompensated public service as provided in RSA 651:68-70.

(h) In cases of a person convicted of a felony or class A misdemeanor, a court may sentence such person to 7 consecutive 24-hour periods to be served at the state-operated 7-day multiple DWI offender intervention detention center program established under RSA 265-A:40, if the evidence demonstrates that alcohol was a contributing factor in the commission of the offense and provided that space is available in the program and such person pays the fees for the program in full prior to admission.

VI. (a) A person may be sentenced to a period of conditional discharge if such person is not imprisoned and the court is of the opinion that probationary supervision is unnecessary, but that the defendant's conduct should be according to conditions determined by the court. Such conditions may include:

(1) Restrictions on the defendant's travel, association, place of abode, such as will protect the victim of the crime or insure the public peace;

(2) An order requiring the defendant to attend counselling or any other mode of treatment the court deems appropriate;

(3) Restitution to the victim; and

(4) Performance of uncompensated public service as provided in RSA 651:68-70.

(b) The period of a conditional discharge shall be 3 years for a felony and one year for a misdemeanor or violation. However, if the court has required as a condition that the defendant make restitution or reparation to the victim of the defendant's offense or that the defendant perform uncompensated public service and that condition has not been satisfied, the court may, at any time prior to the termination of the above periods, extend the period for a felony by no more than 2 years and for a misdemeanor or violation by no more than one year in order to allow the defendant to satisfy the condition. During any period of conditional discharge the court may, upon its own motion or on petition of the defendant, discharge the defendant unconditionally if the conduct of the defendant warrants it. The court is not required to revoke a conditional discharge if the defendant commits an additional offense or violates a condition.

VI-a. [Repealed.]

VI-b. A person sentenced to conditional discharge under paragraph VI may apply for annulment of the criminal record under RSA 651:5.

VII. When a probation or a conditional discharge is revoked, the defendant may be fined, as authorized by paragraph IV, if a fine was not imposed in addition to the probation or conditional discharge. Otherwise the defendant shall be sentenced to imprisonment as authorized by paragraph II.

VIII. A person may be granted an unconditional discharge if the court is of the opinion that no

proper purpose would be served by imposing any condition or supervision upon the defendant's release. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

Source. 1971, 518:1. 1973, 370:2. 1974, 34:13, 14. 1977, 397:1; 403:2. 1979, 126:6; 377:8. 1981, 397:1. 1982, 36:2. 1983, 382:8. 1986, 156:4. 1988, 19:4. 1989, 295:2. 1990, 95:1. 1991, 355:102. 1992, 19:1; 269:8-10; 284:85, 86, XIII. 1994, 192:1, 2. 1995, 237:4. 1996, 93:2-9. 1998, 366:3. 1999, 158:4. 2006, 163:1, eff. Jan 1, 2007; 260:33, eff. Jan. 1, 2007.

TITLE LI

COURTS

CHAPTER 504-A

PROBATIONERS AND PAROLEES

Section 504-A:6

504-A:6 Preliminary Hearing. – The facts and circumstances surrounding the arrest and detention of any probationer or parolee shall be expeditiously reviewed at a preliminary hearing meeting the due process requirements of federal law.

Source. 1986, 156:1, eff. May 28, 1986.

CHAPTER 230
HB 252 – FINAL VERSION

09Mar2005... 0450h

06/02/05 1591s

2005 SESSION

05-0416

09/04

HOUSE BILL **252**

AN ACT requiring bail hearings for persons arrested for probation violations.

SPONSORS: Rep. Pantelakos, Rock 16

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires bail hearings for persons arrested for probation violations.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

09Mar2005... 0450h

06/02/05 1591s

05-0416

09/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Five

AN ACT requiring bail hearings for persons arrested for probation violations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

230:1 New Paragraph; Release of Person Detained for Probation Violation. Amend RSA 597:2 by inserting after paragraph I the following new paragraph:

I-a. Except as provided in RSA 597:1-d, a person charged with a probation violation shall be entitled to a bail hearing. The court shall issue an order that, pending a probation violation hearing, the person be:

- (a) Released on his or her personal recognizance or upon execution of an unsecured appearance bond, pursuant to the provisions of paragraph II;
- (b) Released on a condition or combination of conditions pursuant to the provisions of paragraph III; or
- (c) Detained.

230:2 New Section; Bail and Recognizances for Person Detained for Probation Violation. Amend RSA 597 by inserting after section 5 the following new section:

597:5-a When Requirable; Bail and Recognizances for Person Detained for Probation Violation. Upon motion duly made, a court shall schedule a bail hearing. Every court may, when a person is accused of an offense or a probation violation in which said court is authorized to receive bail, release said person on personal recognizance or require him or her to recognize, with sureties, to appear at a future time before the court or any other competent tribunal.

230:3 Effective Date. This act shall take effect January 1, 2006.

(Approved: July 11, 2005)

(Effective Date: January 1, 2006)