


NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE	CHAPTER <u>Enforcement</u> STATEMENT NUMBER <u>5.03</u>
SUBJECT: <b>ARREST WITHOUT WARRANT</b>  PROPONENT: <u>Michael McAlister, Director</u> <i>Name/Title</i> <u>Field Services</u> <u>271-5652</u> <i>Office</i> <i>Phone #</i>	EFFECTIVE DATE <u>05/08/17</u> REVIEW DATE <u>03/08/19</u> SUPERCEDES PPD# <u>5.03</u> DATED <u>02/22/10</u>
ISSUING OFFICER:   <u>William Wrem, Commissioner</u>	DIRECTOR'S INITIALS: _____ DATE: _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

I. PURPOSE:

To provide guidance to staff in executing the arrest of probationers/parolees without a warrant.

II. STATUTORY AUTHORITY:

A. RSA 504-A:4 Violation of the Terms of Probation or Parole **states, in part;**

‘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.’

B. RSA 651:2,V,(f) (attachment 3)

‘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.’

III. APPLICABILITY:

To all Division of Field Services Probation/Parole Officers

IV. POLICY:

It is the policy of the Department of Corrections that in order to promote public safety, the warrantless arrest of an offender per RSA 504-A:4 and RSA 651:2,V,(f) may be necessary. The statute clearly identifies the power of arrest as discretionary. The Probation/Parole Officer (PPO) shall consider the totality of the circumstances, including but not limited to, the nature of the

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 for the CPPO. **If there is an unusual incident such as a high profile arrest, significant contraband, use of force. etc., the Director will be notified by the CPPO or designee no later than the next business day and a copy of the Incident Report shall be faxed or emailed 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 (**attachment 2**) 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. Pursuant to RSA 597:2, a person charged with a probation violation may petition the Court for a bail hearing.
4. 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, the 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 be 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) within the same 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) To appear and speak on their behalf
    - 2) To present witnesses, testimony, and documentary evidence;
    - 3) To request the presence of adverse witnesses, subject to evaluation by the Hearings Officer (offender will be advised in advance if request is denied);
    - 4) To ask questions of adverse witnesses relative to the allegations of the violation, unless the witnesses would be subjected to a risk of harm;
    - 5) To be represented by counsel, if the offender elects to retain one.
  - e. The probationer/parolee may request postponement of the hearing for good cause. 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. Request for continuances must be made in writing to the Hearings Officer specifying the reasons for the request.

#### 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/pf

Attachments

Attachment 1



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
DIVISION OF FIELD SERVICES

DETENTION ORDER

By the authority vested in me by RSA 504-A:6 or RSA 651:2V of the New Hampshire Revised Statutes Annotated, I hereby (have arrested) or (authorized any law enforcement officer to arrest)

\_\_\_\_\_ Probationer/Parolee's Name \_\_\_\_\_ DOB and Identifying Data

For the following violations of Probation/Parole Agreement:  
Condition(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The arresting officer will deliver a copy of this detention order with the probationer/parolee, to the supervising officer of the correctional facility to which he/she is brought for detention. A copy will also be furnished to the arrested probationer/parolee.

\_\_\_\_\_ Date \_\_\_\_\_ Probation/Parole Officer

STATE OF NEW HAMPSHIRE

\_\_\_\_\_ County s.s.  
At \_\_\_\_\_, in said County on the \_\_\_\_\_ day of \_\_\_\_\_  
by virtue of this detention order, I apprehended and took into custody the body of the within named  
\_\_\_\_\_  
Probationer/Parolee

And have furnished him/her with a copy of said detention order and committed him/her to the  
\_\_\_\_\_ pending a preliminary hearing.

SIGNED: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

- DISTRIBUTION: (1) Original to Supervising Authority  
(2) Copy to Correctional Facility  
(3) Copy to File  
(4) Probationer/parolee

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
DIVISION OF FIELD SERVICES

PRELIMINARY HEARING/WAIVER NOTICE  
VIOLATION OF \_\_\_\_\_

NHSP# \_\_\_\_\_

DOCKET# \_\_\_\_\_

DATE \_\_\_\_\_

TO:

FROM:

You are hereby notified that you stand charged with the following violation(s) of the conditions of your \_\_\_\_\_:

You are entitled to a preliminary hearing under the terms of Morrissey v. Brewer/Gagnon v. Scarpelli (delete one) for the purpose of determining whether there is reason to believe the above allegations are factual. You have the following rights at said hearing:

1. To appear and speak on your own behalf.
2. To present witnesses, testimony and documentary evidence.
3. To request presence of adverse witnesses, subject to evaluation by the Hearings Officer (you will be advised in advance if the request is denied).
4. To ask questions of adverse witnesses relative to allegations of the violation.
5. To be represented by Counsel should you elect to retain one.

\_\_\_\_\_ I desire a Preliminary hearing. It will be held at \_\_\_\_\_ on \_\_\_\_\_ 20 \_\_\_\_\_ at \_\_\_\_\_ am/pm to determine if there is reasonable ground to believe that I violated the conditions of my \_\_\_\_\_ and that I am entitled to be personally present to speak in my behalf at said hearing; present witnesses and may request the presence of adverse witnesses for the purpose of confrontative and cross examination.

\_\_\_\_\_ Having been informed of my rights to a Preliminary Hearing as outlined above, I hereby waive these rights. If I am a parolee, I understand I will be transported to NH State Prison pending my appearance at a Revocation Hearing at the next regular/special meeting of the Parole Board. If I am a probationer, I understand I will be held at \_\_\_\_\_ pending an appearance before the \_\_\_\_\_ Court.

By my signature below, I acknowledge receipt of a copy of the violation stating forth the allegations against me.

\_\_\_\_\_  
Offender  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Date

FS 25 PRELIM.