



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

CD-053100 Collections, Disbursement of Probation & Parole Costs, Restitution, and other Fees or Costs	Issued: 2/21/94 Effective: 2/21/94	Reviewed: 3/30/20 Revised: 3/9/17
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

AUTHORITY:

NMSA 1978, Sections 31-19-1, 31-20-6, 31-21-10 (F), 31-21-7, as amended.

REFERENCE:

ACA Standard 4-APPFS-2F-02 and 4-APPFS-3D-25, *Performance Based Standards for Adult Probation and Parole Field Services*, 4th Edition

PURPOSE:

To provide a process for the collection, safeguarding and disbursement of all probation/parole costs, fines, fees and restitution assessed against a probationer by the courts and/or ordered by the Adult Parole Board and/or Interstate Compact rules and guidelines.

APPLICABILITY:

All Probation and Parole Division staff. (PPD)

FORMS:

- A. **Change in Offender Payment Plan** form (CD-053101.1)
- B. **Restitution Plan Approval** form (CD-053101.2)
- C. **Promissory Note** form (CD-053101.3)

ATTACHMENTS:

None

DEFINITIONS:

- A. Probation/Parole Costs: Costs assessed against an offender by the court at the time of sentencing by the Adult Parole Board or through an Interstate Compact Supervision transfer are not to be less than \$35.00 per month or more than \$150.00 per month.
- B. Restitution: Full or partial payment of actual damages to victim with actual damages being what a victim could recover against the defendant in a civil action arising out of the same facts and circumstances, except punitive damages and damages for pain and suffering, mental anguish and loss of consortium. Without limitation, actual damages may also include damages for wrongful death.

- C. Fines: Monetary penalties assessed by the sentencing Court per the applicable statutory penalty for that offense.
- D. Fees: Monetary costs assessed by the sentencing court per statutory authority and payable to the court, or other designated public agency (i.e., DNA fees, lab fees, etc).
- E. Community Corrections Fees: Monetary costs assessed against offenders as part of participation in specialized programs.
- F. Global Positioning System (GPS) Fees: Monetary costs assessed against offenders as part of being placed on GPS. This may also include reimbursement for lost or damaged GPS equipment.
- G. Centralized Offender Payment System (COPS): An automated system located in F-track which tracks and monitors offender payment for PPD.

POLICY:

- A. The agency places priority on services and opportunities that encourage offenders to make restitution to the victim(s) of the crime(s) and/or to the community. [4-APPFS-2F-02]
- B. When funds are collected from offenders, the agency administrator ensures the appropriate collection, safeguarding and disbursement of all monies consistent with law, policies, and directives. Staff is trained in these processes and they are reviewed annually. [4-APPFS-3D-25]
- C. Probation/Parole costs for services provided will be collected on a monthly basis as required by New Mexico statutes.
- D. Designated Division personnel are responsible for the collection and daily disbursement of all probation costs, restitution, fines and other fees and costs assessed against a probationer ordered by a court of legal jurisdiction and such other costs the court orders Division personnel to collect. Designated Division personnel are also responsible for collection of any parole costs assessed against parolee by the New Mexico Adult Parole Board.
- E. Probation and Parole Officers are responsible for assessing changes in each offender's financial status, which would affect the offender's ability to pay.

- F. NON-PAYMENT of the required costs is a violation of probation or parole, but offenders shall not be confronted with possible probation/parole violations for failure to meet financial obligations other than those that are specific conditions of probation/parole. However, offenders should be encouraged to pay their financial obligations.
- G. All payments will be made in the form of money orders or cashier's checks.
- H. Payments for probation/parole costs, Community Corrections costs, and GPS costs will be made payable to the New Mexico Corrections Department (NMCD).
- I. Payments for restitution will be made payable to the victim, unless otherwise directed by the Court.
- J. Payments for fines or fees will be made payable to the appropriate court or agency.
- K. Blank money orders/cashier's checks will not be accepted. No coin, currency or personal checks shall be accepted as payment for probation/parole costs. Amounts will be assessed on a calendar month basis.



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AUTHORITY:

Policy *CD-053000*

PROCEDURES: [4-APPFS-2F-02]

- A. Offenders will be assessed probation and/or parole costs at a rate of not less than \$35.00 or more than \$150.00 a month. Exceptions to this rate schedule will be based on circumstances verified by the Probation and Parole Officer and approved by the sentencing authority. The amount to be paid each month will be determined by the sentencing court for all probation offenders and by the Adult Parole Board for all parole offenders. Any modifications or suspensions of payments during the term of supervision will be recommended by the offender's supervising officer and approved by the court.
- B. Out-of-state parolees and probationers will be required to pay a minimum of \$35.00 or up to a maximum of \$150 per month in supervision fees. Any modification or suspension of payments requires that the Probation/Parole Officer submit his recommendation for modification to his or her immediate supervisor. All general rules, processes and procedures applied to New Mexico cases in regard to payment of supervision fees apply to out-of-state cases required to pay supervision fees.
- C. Out-of-state offenders will be required to pay a \$100.00 DNA fee. All general rules, processes, and procedures applied to NM cases in regard to payment of DNA fees apply to out-of-state cases.
- D. Offenders who are under parole supervision with probation to follow, arising out of the same conviction which led to the parole will be assessed only parole costs as ordered by the NM Parole Board. Any probation costs ordered will be collected during the period of probation supervision which follows the parole.
- E. Probation/Parole Officers (PPOs) will recommend an amount to be paid each month for each offender based on a thorough investigation of the offender's financial status.
 1. The following criteria will be used in evaluating the offender's ability to pay for services provided:
 - Is the offender employed? Will he/she be employed upon being granted probation or parole?
 - What are the offender's debts, if any?

- Will the offender encounter any anticipated debts in the near future (vehicle, housing, etc)?
 - Does the offender have dependents? If so, how many? Does the offender have an alimony and/or child support obligation?
 - What is the offender's and his/her dependents' health/mental condition? Are there medical bills to be paid?
 - What is the offender's overall financial condition?
2. An analysis of the findings will be incorporated into the pre-sentence report for probation offenders and into the parole plan for parole offenders. The PPO is responsible for verifying the information provided by offenders by contacting employers, banks, social service agencies, medical personnel and others. The officer will recommend the amount to be paid to the approving authority and should be particularly careful to relay, in clear terms, the reasons why the specific recommendation was made.
 3. Whenever possible, the PPO shall determine the total amount of restitution to be made to the victim at the time the pre-sentence report is prepared. The **Restitution Plan Approval** form (*CD-053101.2*), will be made a part of the pre-sentence report.
 4. In cases where a pre-sentence report is not ordered and the judgment does not specify, the PPO will determine the amount of restitution and payment plan with the offender. The PPO will submit the agreed-upon amount utilizing the **Restitution Plan Approval** form (*CD-053101.2*) to the sentencing authority. When a disagreement arises between the offender and the PPO over the amount of restitution and/or payment plan, the PPO will request a restitution hearing from the sentencing judge, who will make the final determination.
 5. In cases where an offender is due to be discharged from supervision and has not fully paid their assessed restitution amount, no less than 90 days from the date of discharge, the PPO will complete a **Promissory Note** form (*CD-053101.3*) with details of the offender's continued payments to the victim after their discharge date and instructions on how to submit those payments. A copy of the Promissory Note will be placed in the offender's file and sent to the victim so that both parties are aware of the terms of the note. If the offender refuses to sign the promissory note no less than 90 days prior to discharge, the PPO shall request a status hearing with the Court with a recommendation for unsatisfactory discharge.

F. Assessment of Offender's Ability to Pay Costs and Notification to Offender:

1. The PPO will inquire into the factors relating to offender's ability to make payment for probation/parole services and incorporate his or her findings in any required pre-sentence report or parole plan checkout. This recommendation shall include specific facts and findings justifying the officer's recommendation, and will include a recommendation for the amount to be paid monthly.
2. The sentencing court or the Adult Parole Board will determine the amount to be paid monthly and inform the offender and PPO through the Judgment and Sentence or the parole certificate.
 - a. If the court fails to specify the amount to be paid on the Judgment and Sentence, the PPO will specify an amount on the Order of Probation and will note whether the Judge accepts or modifies that recommendation.
 - b. If the Parole Board fails to specify the amount to be paid on the Parole Certificate, the PPO will send a letter to the Parole Board through the District Supervisor, requesting clarification of the Parole Board's intent for payment. The letter will include a recommendation by the PPO for an amount of payment.
3. Upon notification by the court, the PPO will review the policy and procedures for payment of probation/parole costs with the offender and discuss due dates and the offender's and officer's responsibilities.

G. Modification of Scheduled Payments:

1. Should circumstances warrant a modification in the monthly payment amount at any time during the offender's supervision, the PPO officer will make a recommendation for modification or suspension of payment on the **Change in Offender Payment Plan** form (*CD-053101.1*) and forward the form to his or her immediate supervisor. Attachment A may be modified to conform to court requests.
2. The PPO officer's supervisor will either approve or disapprove the recommendation.
 - a. If disapproved, the recommendation will be returned to the officer with the reason for disapproval and no further action will be taken.
 - b. If approved, the supervisor will notify the officer and the officer shall forward the recommendation to the appropriate authority.

3. The court will be requested to approve or disapprove the modification or termination of payments and return the form to the probation/parole district office.
4. The supervising officer will notify the offender of the action and retain the approved form in the offender's file.
5. If the court or Parole Board orders the offender to pay restitution to a victim and any or all of the loss is paid to the victim by an insurance company, the officer shall notify the court or Parole Board of the payment, and request a written order as to whether or not the offender should continue to pay that restitution in addition to the insurance payout. Restitution that was ordered beyond or separate from the amount of the insurance claim will continue to be paid as ordered.

H. Collecting, Disbursing and Recording Payments:

1. During regular meetings with the PPO the offender will be given a remittance slip and a pre-addressed envelope to the Centralized Offenders Payment System (COPS) office with a return address of the appropriate district office as set out in the example below:

Adult Probation and Parole
COPS Office
PO Box 27116
Santa Fe, New Mexico 87502-0116

The offender will return the remittance slip to the PPO for stamping and mailing or will mail directly to COPS office.

2. Once the payment is received at the COPS office, the COPS operator will enter the payment into the system, according to established guidelines, and deposit it or forward the payment to the intended recipient by the close of the next business day in accordance with state statutes.
3. Payments will be made by money order or cashier's check. Cash, personal/business checks, or blank money orders/cashier's checks shall not be accepted.
4. Offenders required to pay probation or parole fees will make the money orders/cashier's checks payable to the Corrections Department (NMCD). Offenders required to pay DNA fees will make the money orders/cashier's checks payable to the DNA Identification Fund.

- a. Each day a Deposit Slip for Probation and Parole fees and/or DNA fees and cashier's checks or money orders will be prepared and the first five (5) copies of the deposit form will be sent to the state fiscal agent bank.
- b. DNA fees will be identified and deposited into Fund 402, Agency 790, Revenue Source 2993.
- c. On DNA deposits, copies of transmittal and deposit forms will be submitted to:

Department of Public Safety Finance Bureau
P.O. Box 1628
Santa Fe, NM 87504.

5. Offenders required to pay restitution through the Probation and Parole Office must make payments in the form of a money order or cashier's check made out to the victim, unless otherwise directed by the Court.
6. NON-PAYMENT of the required costs is a violation of probation or parole; however offenders shall not be confronted with possible probation/parole violations for failure to meet financial obligations other than those that are specific conditions of probation/parole. Nonetheless, offender should always be encouraged to pay their financial obligations. In cases of non-payment, the officer will contact the court or Parole Board to advise of the violation, and request guidance as to how to proceed and address the issue, and will follow any direction given on the matter.

I. Auditing:

1. The district supervisor will, on a quarterly basis, audit the COPS to ensure costs are being collected and the offender is not in arrears. Corrective action will be taken on audit exceptions.
2. At least 90 days prior to a case being closed out, the supervising officer will conduct an audit to ensure that all assessed fees were paid and properly recorded. Outstanding costs will be addressed with the offender.
3. The Administrative Services Division (ASD) will prepare district quarterly reports of all fees received and deposited. If any discrepancies are noted, it will be the responsibility of the district supervisor or his/her designee to ensure ASD is notified of the discrepancy and action is taken to reconcile the difference.
4. This policy, procedure and practice shall be made known to staff and reviewed annually. [4-APPFS-3D-25]

**NEW MEXICO CORRECTIONS DEPARTMENT
PROBATION AND PAROLE DIVISION
Change in Offender Payment Plan**

Offender's Name:

Offender's Case Number:

Date:

Current Monthly Payment: \$

Recommended Change: \$

Reason(s) for Modification or Suspension:

Approved

Disapproved

Probation-Parole Officer

Date

Supervisor

Date

(Below to be completed by Approving Authority, Court, or Parole Board)

Approved

Disapproved

Date

NEW MEXICO CORRECTIONS DEPARTMENT
PROBATION AND PAROLE DIVISION
Restitution Plan Approval

County of _____
State of New Mexico

Offender's Name:

Offender's Case Number:

I, _____, understand that I owe restitution in this case as follows:

Amount	\$
Amount	\$
Amount	\$
Amount	\$

agree to make payments at a minimum rate of \$ _____ per month. If restitution is not paid by the end of my probation period I will continue to make payments to the victim(s) until the balance is paid in full.

Additional terms:

I understand my obligation and agree to abide by these terms.

_____ Date

_____ Probation/Parole Officer

_____ Probation/Parole Supervisor

It is ordered that the above plan is approved and its specific terms are made conditions of probation.

_____ Honorable

**NEW MEXICO CORRECTIONS DEPARTMENT
PROBATION AND PAROLE DIVISION
Promissory Note**

I promise to pay the sum of \$ _____ including any fees, costs and other charges provided herein for this restitution. _____ (Offender Name) agrees to pay

_____ (Victim) as follows:

_____ payments of \$ _____ of principal on the _____ day of every month beginning _____, and continuing until this Note is paid in full.

This restitution is payable in full on _____. (Offender Name) must repay the outstanding principal balance of the restitution then due. The victim in the case is under no obligation to agree to any change in the terms of payment at any time.

(Offender Name) may prepay at any time, the entire indebtedness or any part thereof evidenced by this Note and such prepayments shall be applied in the manner scheduled payments are applied. Partial prepayments shall not postpone the due date of any subsequent monthly installments or change the amount of such installments and shall not postpone the due date for payment of the indebtedness evidenced by this Note.

Default: I will be in default on this Note if any one of more of the following occurs:

I fail to make a payment on time or in the amount due

I die, am declared incompetent, or become bankrupt or insolvent

I fail to keep any promise contained in this Note

I make any written statement or provide any financial information that is untrue or inaccurate

In the event of default, the outstanding balance will become immediately due and payable in full.

Attorney's Fees: If the Victim hires a lawyer (at any time or from time to time) to collect or protect his or her rights under this Note due to my failure to comply with the terms and conditions set herein, I agree to pay the Victim's attorney fees, plus any costs and other expenses incurred in enforcing the obligation herein..

Applicable law: This Note will be governed by the laws of the State of New Mexico.

Signatures: Each person who signs this agreement acknowledges receipt of a copy.

Dated this _____ day of _____

Offender's address:

Signed: _____

Witnessed: _____

Payment will be made out to
mailed to:

in the form of a money order or cashier's check and

(Per scheduled payment note herein)

