

**TITLE 6: CRIMES AND CRIMINAL PROCEDURE**  
**DIVISION 4: DISPOSITION OF OFFENDERS**

**§ 4113. Alternative Sentence: Probation and Suspension of Imposition of Sentence.**

(a) Except as restricted by a specific provision of a section of this Title, upon entering a judgment of conviction of any offense under this title not punishable by life imprisonment, the court, when satisfied that the ends of justice and the best interests of the public as well as the probationer will be served, may suspend the imposition of sentence upon the terms and conditions which the court determines and may direct that the suspension continue for a period of time, not to exceed:

(1) Three years from the date suspended imposition is granted, or the probationer is released from any period of incarceration imposed as a special condition of probation, whichever is greater, upon conviction for any misdemeanor; and

(2) Ten years from the date suspended imposition is granted, or the probationer is released from any period of incarceration imposed as a special condition of probation, whichever is greater, upon conviction for any felony.

The court shall place the person on probation, under the charge and supervision of the Office of Adult Probation during the suspension.

(b) Upon the filing of a petition to revoke probation, or an affidavit, or the presentation of sworn testimony, from a Probation Officer or a representative of the Attorney General's Office setting forth probable cause to believe the probationer has violated any term of his probation, the court shall issue a summons for the probationer to appear before the court, or a warrant for the arrest of the probationer if the court finds a summons may be ineffective in securing the appearance of the probationer or that the probationer may pose a danger to the public.

(c) Upon the filing of a petition to revoke probation, an affidavit or the presentation of sworn testimony setting forth probable cause to establish a violation of any term of probation, the period of probation shall be tolled until final disposition of the alleged violation. Probation revocation proceedings are civil in nature, not criminal.

(d) A probationer accused of violating any term of probation shall be entitled to reasonable notice of the alleged violation, and the right to be represented by counsel. A suspended imposition of sentence may not be revoked, and sentence imposed, except for good cause shown.

(e) At the probationer's initial appearance after the commencement of probation revocation proceedings described in subsection (b), the probationer shall be advised of his rights by the court, including the right to court-appointed counsel if he is indigent. If the probationer asks for court-appointed counsel, the court shall examine the probationer as to his financial resources in order to determine if he is an indigent person, and if the court finds the probationer to be indigent, shall appoint counsel for the probationer.

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(f) The court shall call upon the probationer to enter either a denial or an admission to the alleged violation. If the probationer admits the violation, the court shall find the probationer has violated his probation, and may immediately impose any sentence which could have been lawfully imposed when suspended imposition was granted. In lieu of immediate revocation, the court may schedule a separate disposition hearing, in order to allow evidence to be presented by either party in support of a recommended sentence. If the probationer denies the violation, the court shall schedule an adjudication hearing before any judge of the Superior court. The probationer is entitled to reasonable bail pending adjudication of the petition to the same extent as a criminal defendant under Title 6, Chapter 4 of the criminal code.

(g) At the adjudication hearing, the government must prove the alleged violation by a preponderance of the evidence, and the probationer may be heard. The Rules of Evidence do not apply to probation revocation proceedings. If the court finds the probationer has violated any term or condition of probation, a conviction of record shall enter. The court may immediately proceed to sentencing, or the court may schedule a separate sentencing hearing.

(h) A judgment of conviction on a new criminal charge based on conduct which occurred during the period of probation shall be conclusive proof that a violation of the probation has occurred. Some portion of any sentence imposed on the conviction for which the probationer was originally granted suspended imposition shall be consecutive to any sentence imposed for the subsequent conviction.

(i) If the court finds a violation of probation based on the probationer's failure to perform any special condition of probation, pay restitution, fees or fines, participate in counseling, or perform community work service, a conviction of record shall enter, and the court may impose sentence as described in § 4113(e), and may, in addition, extend the period of probation up to the maximum period allowable by law for the crime for which the probationer was granted suspended imposition, in order to ensure compliance with the conditions originally imposed. Before finding a violation of probation based on the failure to pay restitution, fees, or fines, the Court must find by a preponderance of the evidence that the probationer has made no efforts to pay and has the ability to do so.

(j) The court may at any time during the period of probation modify its order of suspension of imposition of sentence. The court may at any time, when the ends of justice and the best interests of the public as well as the probationer will be served, and when the good conduct and reform of the person held on probation warrants it, terminate the period of probation and discharge the person held.

(k) If it appears the probationer has successfully completed his probation period, the Office of Adult Probation shall file a "Motion to Set Aside Conviction" with the court within thirty days of the end of the probation period. A copy must be provided to the prosecutor's office. The prosecutor shall have 20 days to object to the set-aside, setting forth the reasons for objection. The court shall then give the probationer 20 days to respond to the objection. The prosecutor shall

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have the burden of proving to the court, by a preponderance of the evidence, that the probationer has failed to satisfy one or more of the conditions of probation. If the court finds that the probationer has failed to satisfy any condition of the suspended imposition of sentence, the court may deny set-aside, and enter a conviction of record, without imposing any sentence. The court may also take judicial notice of a probationer's failure to satisfy the conditions of the suspended imposition, whether or not the prosecutor objects to the probationer's motion, if the probationer is given an opportunity to be heard. If the prosecutor does not object to the Motion to Set Aside Conviction, and it appears to the court that the motion is well taken, the court shall vacate the judgment of conviction and the probationer may not be deemed to have been convicted of the crime for any purpose.

(l) Whenever restitution, payment of a fine or fee, the performance of community work service, or other special condition of probation is ordered, the court shall place the probationer on probation. The court shall review financial compliance sufficiently prior to the termination of probation to permit an extension of supervision if necessary.

(m) Notwithstanding any other provision of this section, the court may not suspend imposition of sentence of a person who:

(1) Is convicted of a violation of murder in the first or second degree; voluntary or involuntary manslaughter; assault with a dangerous weapon; aggravated assault and battery; any sexual offense listed in 6 CMC §§ 1301-1311, 1323, 1343 or 1344; robbery; kidnapping; criminal coercion punishable under 6 CMC § 1431(c); arson and related offenses listed in 6 CMC § 1802, trafficking offenses listed in 6 CMC §§ 2141 or 2147; or escape.

(2) Is convicted of a crime involving the possession, use, attempted use or threatened use of a firearm by the probationer or any accomplice, in the commission of any offense;

(3) Is convicted of any crime involving domestic violence; or

(4) Has previously been accepted into the Adult Diversion Program or been granted a suspended imposition of sentence, whether or not diversion resulted in dismissal or the conviction was set aside.

(n) [Repealed.]

**Source:** PL 3-71, § 1 (§ 1213); section heading amended and subsection (g) added by PL 11-82, §§ 2 and 3, respectively; (h) added by PL 14-9, § 5(b), modified; repealed and reenacted by PL 15-46, § 7; (n) repealed by PL 16-42 § 3.

**Commission Comment:** See N.M.I. Const. art. I, § 11, which provides, in part, that “[r]estitution to the crime victim shall be a condition of probation and parole except upon a showing of compelling interest.”

PL 11-82 which the section heading of this section and added a new subsection (g) took effect on July 21, 1999. PL 11-82 contained severability and savings clauses as follows:

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Section 4. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 5. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability civil or criminal, which shall already be in existence on the date this Act becomes effective.

The Commission made some conforming changes to the above section pursuant to 1 CMC § 3806. PL 14-9, known as the Domestic Violence Criminal Act of 2004, became effective on May 28, 2004 and contained, among other enactments, findings, severability, and savings clause provisions. See the comment to 6 CMC § 1461 regarding PL 14-9.

PL 15-46 was enacted on January 29, 2007, and contained, among other enactments (1 CMC § 2204, 6 CMC §§ 4104, 4105, 4109, 9101(a), and 4291-4298 [Adult Diversion Program]), a short title, findings and purpose, severability, and savings clause provisions. See the comment to 6 CMC § 4104 regarding PL 15-46.

See the comment to 6 CMC § 4104 for information regarding PL 16-42, which was enacted on July 13, 2009.