

MISDEMEANOR COMPLIANCE PROGRAM GUIDELINES

ISSUING AGENCY: Administrative Office of the Courts

STATUTORY AUTHORITY: Section 31-20-5.1 NMSA 1978

DURATION: Permanent

EFFECTIVE DATE: July 16, 2003

1. PURPOSE

The purpose of these guidelines is to ensure, through standards and limitations of powers, the safe and consistent handling of misdemeanor defendants who may be monitored or supervised by county-operated misdemeanor compliance programs.

Section 31-20-5.1 NMSA 1978 states that *A county may create a "misdemeanor compliance program" to monitor defendants' compliance with the conditions of probation imposed by a district or magistrate court . . . A county's program shall comply with guidelines established by the administrative office of the courts.*

2. LIMITATIONS

The program created under Sections 31-20-5.1 NMSA 1978 shall be *limited to participation by persons who have been convicted of a misdemeanor criminal offense specified in the Criminal Code, convicted of driving while under the influence of intoxicating liquor or drugs, or convicted of driving while the person's driver's license is suspended or revoked pursuant to the Motor Vehicle Code.*

3. PROGRAMS SHALL BE COUNTY OPERATED

Programs existing or formed pursuant to this statute shall be county run and are subject to these guidelines. Counties may hire compliance officers, or may contract with individuals or with public, private, or not-for-profit organizations to carry out the purpose of this program.

4. PROGRAM NAME

Programs shall be called “_____ County Misdemeanor Compliance Program” (hereinafter referred to as MCP).

5. COMPLIANCE OFFICER TITLE

Officers hired by counties shall be called “Court Compliance Officers” (hereinafter referred to as CCO) to avoid the appearance of overlap with NM Department of Adult Probation and Parole probation officers.

6. CCO POWERS and DUTIES

A. A CCO shall have the power to:

- i. Determine the extent to which referred defendants are in compliance with their sentences for attending and completing court-ordered programs and treatments, through interaction with magistrate and district courts, law enforcement agencies, community service agencies, and other community services.
- ii. Through telephone calls and office visits, encourage and motivate referred defendants to comply fully with sentences from the courts, including but not limited to payment of fines, fees, and restitution.
- iii. Provide periodic defendant compliance and non-compliance reports to the courts, district attorney’s office, and defense attorneys.
- iv. Receive and receipt compliance program costs from defendant.
- v. Set up and maintain a community service program within the county.
- vi. Track defendants sentenced to the probation program.

B. The CCO may have the following powers and duties, but only if such powers and duties are specifically given the CCO in the order, signed by both the judge and defendant, setting conditions of probation:

1. Make random visits to bars and clubs.
2. Require periodic and/or random testing of the defendants for alcohol and /or drug compliance.
3. Monitor defendant’s compliance with an electronic monitoring program.
4. Monitor defendant’s use of an ignition interlock device.

5. Conduct home visits if:

- a. the CCO has satisfactorily completed a training course in self defense, search and seizure law offered by the Department of Corrections; or
- b. the Department of Corrections affirms in writing that the CCO was formerly a certified probation and parole officer and left the employment of the Department of Corrections in good standing.

7. CCO LIMITATIONS

A. CCOs shall not have arrest powers and must observe and respect all due process rights of all defendants. Any arrest shall be made only by a law enforcement officer and only upon the issuance of a warrant as set forth in NMRA 6-802.

B. CCOs shall not carry firearms.

8. CCO QUALIFICATIONS

Associate degree and one year experience in the judiciary, in a criminal justice position or in counseling. Relevant education may substitute for experience and relevant experience may substitute for education at a rate of 30 semester hours equating to one year full-time work experience.

Knowledge of approved principles and practices of law enforcement and applicable laws and ordinances.

Knowledge of investigative techniques and practices.

Must be able to pass a rigid background investigation including work history, character, honesty, integrity, criminal record, driving record, etc.

Ability to work independently; to analyze and evaluate investigative materials; to communicate and interview effectively both orally and in writing; to prioritize workload; to work in a stressful environment; operate a computer; be persuasive, assertive and empathetic to people from various populations; and maintain confidentiality. Ability to communicate in a second language is desirable but not required.

Ability to establish and maintain effective working relationships with fellow employees and other agencies.

Counties shall ensure that CCOs meet the minimum qualifications, knowledge, skills, and abilities listed above.

9. FUNDING SOURCES

Section 31-20-5.1 NMSA 1978 authorizes judges to order a defendant to pay from \$15 to \$30 per month (\$.50 to \$1.00 per day) in costs to be used to operate a MCP. Judges may waive this amount in the event of indigence or for good cause. This fee shall be paid by the defendant directly to the county where the supervising MCP is located. All payments shall be in a form approved by the county treasurer's office.

The county shall be responsible for audit of the account.

10. FILES

A clerk of the court will supervise any files maintained by the court. A separate file on the individual defendants should be maintained by the CCO and any relevant documents (e.g. orders of probation, completion of probation, reports to court) shall be given to a court clerk for inclusion in the defendant's court file.

The CCO shall have access to the court files of those defendants assigned to the program in order to follow up on the defendant's personal information and other related court documents. The officer shall be allowed to copy relevant documents but may not remove any documents from the file.

Subject to the approval of the presiding judge and chief clerks and when resources allow, CCOs may be provided with a FACTS™ computer and may be given limited (data entry only) access to the FACTS™ case management system in order to assist courts in the entry of post-judgment data. CCOs shall not handle receipts or other financial-related matters, except the collection of probation fees.

11. SUPERVISION AND REPORTING

All CCOs shall be employees or Contractors of the County.

The CCO shall report to the presiding judge on all court- related issues.

An employee CCO shall report to the county manager, who shall serve as or designate a direct supervisor for the CCO.

The MCP shall operate subject to guidelines as established by the AOC Magistrate Court Division and shall also be subject to specific probation conditions and guidelines of the presiding magistrate judge and district court judge.

12. RADIOS

Counties may provide CCOs with police dispatch radios so that the CCO can contact the local law enforcement agency as necessary.

13. TRANSFERS OF DEFENDANTS TO OTHER JURISDICTIONS

Where defendant resides outside the county where sentenced by the court, the judge may order that:

- 1) the defendant shall be supervised by the sentencing county MCP. In this case, with the written approval of the supervising MCP, the defendant could participate in programs such as DWI school, community service, etc., outside the originating jurisdiction but would be required to report back to the MCP in the county in which the defendant was sentenced, or
- 2) the defendant will be referred to the NM Adult Probation and Parole Division, or
- 3) with the written consent of the MCP where the defendant resides, the defendant will be transferred to that MCP. In this instance, the \$15 - \$30 monthly compliance program cost would be payable to the county in which the defendant resides. This MCP would be required to report back to the MCP in the county in which the defendant was sentenced.

DWI defendants shall be screened and tracked in the county where sentenced. With the written approval of the MCP, the defendant may participate in programs such as DWI school, community service, etc., in defendant's county of residence.

14. CONFIDENTIALITY

Defendant files maintained by the MCP, and information contained within those files, shall remain confidential. Only those reports submitted to the court as a matter of court record will become public in accordance with the New Mexico Public Information Act.

APPENDIX

These Misdemeanor Compliance Program guidelines have been established pursuant to Section 31-20-5.1 NMSA 1978.

31-20-5.1. Misdemeanor compliance programs; counties may establish; fees.

A. A county may create a "misdemeanor compliance program" to monitor defendants' compliance with the conditions of probation imposed by a district or magistrate court. The program shall be limited to participation by persons who have been convicted of a misdemeanor criminal offense specified in the Criminal Code, convicted of driving while under the influence of intoxicating liquor or drugs or convicted of driving while the person's driver's license is suspended or revoked pursuant to the Motor Vehicle Code. A county's program shall comply with guidelines established by the administrative office of the courts.

B. As a condition of probation, the district or magistrate court may require the defendant to pay a fee of not less than fifteen dollars (\$15.00) nor more than thirty dollars (\$30.00) per month to the county for the term of his probation. Money collected by the county pursuant to this subsection shall be used only to operate the misdemeanor compliance program.

History: Laws 2000, ch. 49, § 1.