

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT COURT

Case No. \_\_\_\_\_

STATE OF NEW MEXICO,

Plaintiff,

v.

\_\_\_\_\_,

Defendant.

**DEFENDANT’S MOTION FOR DISCHARGE FROM PROBATION  
OR FOR PROBATION REVIEW HEARING PURSUANT TO NMSA § 31-20-5.2(B)**

COMES NOW the above-noted Defendant, Pro Se, and respectfully requests this Honorable Court enter an Order Setting a review hearing pursuant to New Mexico Statute Section 31-20-5.2(B). Further, Defendant requests that in the event the State is unable to meet its burden of proof to a reasonable certainty, that he should remain on probation for public safety reasons, that he be discharged from any further probation supervision in this case.

This motion is based upon § 31-20-5.2(B) NMSA, and Defendant’s due process rights under Article II, Sections 14 and 18 of the New Mexico Constitution, and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

This motion is also based on the Statement of Facts, the Memorandum of Applicable Law, the records and files of this case, and any further evidence which may be presented at a hearing on this Motion.

**STATEMENT OF FACTS**

1. Defendant began his initial five-year term of probation in this case on:

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2. The initial five years of probation supervision expired/expires on:

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3. Defendant completed five years of probation on this matter without any review hearing being held pursuant to § 31-20-5.2(B) 1978 NMSA.

4. Defendant has successfully completed the following programs while on probation: \_\_\_\_\_

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5. Defendant asserts that the State cannot meet its burden of proving the defendant should remain on probation for greater than the initial five years. The State must prove to a reasonable certainty that Defendant should remain on probation. Given the purpose of the enhance probation under § 31-20-5.2, this proof should be specific and establish that Defendant remains a danger to the public unless continued on probation supervision.

6. It is the government's burden to act in a timely manner if the government wishes to extend the time of an indeterminate term of probation. Neither the probation office nor the assigned prosecuting attorney in this case timely requested a review hearing being held pursuant to § 31-20-5.2(B) 1978 NMSA.

7. Because of the government's failure to request and hold a hearing pursuant to § 31-20-5.2(B) 1978 NMSA, Defendant's term of probation expired as a matter of law and he should be discharged from any further probation supervision in this case.

## GOVERNING LAW AND ARGUMENT

### **A. The State has violated § 31-20-5.2(B) NMSA.**

The sole statute permitting extension of a probation term for a convicted sex offender is Section 31-20-5.2. The statute reads in pertinent part:

A district court shall review the terms and conditions of a sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, the district court shall also review the duration of the sex offender's supervised probation at two and one-half year intervals. **When a sex offender has served the initial five years of supervised probation, at each review hearing the state shall bear the burden of proving to a reasonable certainty that the sex offender should remain on probation.**

NMSA 1978 § 31-20-5.2(B)(emphasis added).

As set up by the legislature, the shortest period of probation for a convicted sex offender is five years. Only upon action by the State, does the minimal period of probation get extended. The action required to extend probation beyond the initial five years is for the State to request a review hearing and to prove to a court to a reasonable certainty that the sex offender's probation should be extended.

### **B. Defendant's Probation Term Expired Under § 31-20-5.2**

As established under other New Mexico probation statutes, if a term of probation expires without action or violation during the applicable term of probation, the probation term expires as a matter of law.

Pursuant to NMSA Section 31-20-8, a defendant is relieved of any court-imposed obligations and has satisfied his criminal liability for the crime "[w]henver the period of suspension expires without revocation of the order." *State v. Lara* 129 N.M. 391, 393, 9 P.3d 74, 76 (N.M.App.,2000). In construing probation terms and jurisdiction, the appellate court has held that: "[T]he district court's authority to impose a deferred, suspended, or to revoke probation is terminated by statute upon the expiration of the deferment, suspension, or probation term." *State v. Davis*, 2007-NMCA-

022, ¶ 9, 141 N.M. 205, 152 P.3d. 848. “Consequently, the district court lacks jurisdiction to revoke probation or enhance a sentence after the defendant has completed probation. *Id.*

Furthermore, our New Mexico appellate courts have construed identical language in NMSA 1978, Section 31-20-9 (Repl.Pamp.1981), relating to deferred sentences, as terminating the court's authority to revoke probation beyond the expiration of the probation term.” *State v. Apache*, 104 N.M. 290, 291-92, 720 P.2d 709, 710-11 (Ct.App.1986) (citing *State v. Travarez*, 99 N.M. 309, 657 P.2d 636 (Ct.App.1983)).

Here, Defendant’s initial five years of probation ended on \_\_\_\_\_.  
Therefore, Defendant’s probation term expired and the Court lacks jurisdiction to order any additional time on probation. By operation of law, Defendant’s probation term is over.

**C. Immediate Review Hearing Demanded if Probation not Discharged**

In the event, the court finds Defendant’s term of probation can be extended under governing law, Defendant requests that the court issue an Order for the State to hold review hearing immediately pursuant to NMSA 1978 § 31-20-5.2(B). Defendant specifically requests that the Court give the State a date-certain deadline for holding the review hearing.

**III. CONCLUSION**

The State has failed completely to comply with its statutory mandate under NMSA 1978 § 31-20-5.2(B). Accordingly, the Court should issue an Order discharging Defendant from further probation supervision in this case, and/or other relief the Court deems appropriate.

Respectfully Submitted and Signed,

\_\_\_\_\_

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Judge:** \_\_\_\_\_

STATE OF NEW MEXICO  
COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ JUDICIAL DISTRICT COURT

Case No. \_\_\_\_\_

STATE OF NEW MEXICO,  
Plaintiff,

v.

\_\_\_\_\_,  
Defendant.

**REQUEST FOR MOTION SETTING**

The Defendant, by and through counsel in this case moves this Honorable Court for the setting of a hearing in the above-entitled cause pursuant to Rule 5-601(E), NMRA.

1. Assigned Judge: \_\_\_\_\_

2. Specific matter(s) to be heard upon this request:

**DEFENDANT'S MOTION FOR DISCHARGE FROM PROBATION OR  
FOR PROBATION REVIEW HEARING PURSUANT TO NMSA § 31-20-5.2(B)**

3. Rule 5-601 Statement of Facts to be proven at the Hearing: **Probation Expired**

4. Estimated total time required: **One Hour**

5. Names, addresses, and telephone numbers of all parties entitled to notice:

District Attorney Office

Defendant

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. NOTICE OF HEARING shall be sent by the court to the parties listed above.

\_\_\_\_\_  
Defendant, Pro Se

## **USE NOTES:**

1. Complete all sections of the motion template and file it with the court clerk.
2. Prepare a Request for Hearing and file it separately with the court.
3. Contact the court two weeks after filing to insure that hearing date is set.
4. At the hearing be prepared to prove the date upon which your probation started and ended. Proof of the dates can include your personal testimony.
5. If your parole officer or the New Mexico parole board has failed to set up your five-year parole review, then send them a letter demanding an immediate review hearing.
6. Make a separate request in writing to your parole officer, requesting a five-year review hearing, or 2 ½ year review hearing as appropriate.
7. Document all efforts you make in filing these documents and contacting the parole board.

## **APPLICABLE NEW MEXICO STATUTES:**

### **Probation Review Hearings: NMSA 1978 Section 31-20-5.2(B)**

A district court shall review the terms and conditions of a sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, the district court shall also review the duration of the sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, at each review hearing the state shall bear the burden of proving to a reasonable certainty that the sex offender should remain on probation.

### **Parole Review Hearing: NMSA 1978 Section 31-21-10.1(C)**

When a sex offender has served the initial five years of supervised parole, and at two and one-half year intervals thereafter, the board shall review the duration of the sex offender's supervised parole. At each review hearing, the attorney general shall bear the burden of proving by clear and convincing evidence that the sex offender should remain on parole.