# CHAPTER 29
# Law Enforcement

# ARTICLE 1
# Peace Officers in General

## 29-1-1. Investigation of criminal violations; commencement of prosecution; cooperation; removal.

It is hereby declared to be the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state which are called to the attention of any such officer or of which he is aware, and it is also declared the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken, and it is also declared his duty to cooperate with and assist the attorney general, district attorney or other prosecutor, if any, in all reasonable ways. Such cooperation shall include the prompt reporting of all arrests for liquor law violations at licensed liquor establishments to the department of alcoholic beverage control. Failure to perform his duty in any material way shall subject such officer to removal from office and payment of all costs of prosecution.

**History:** Laws 1921, ch. 170, § 1; C.S. 1929, § 33-4433; 1941 Comp., § 40-101; 1953 Comp., § 31-1-1; Laws 1979, ch. 37, § 1.

**ANNOTATIONS**

**Cross references.** — For New Mexico mounted patrol, *see* 29-6-1 NMSA 1978 et seq.

For sheriffs generally, *see* 4-41-2 NMSA 1978 et seq.

For state parks and recreation areas, police powers of superintendent and state park and recreation commission employees, *see* 16-2-30 NMSA 1978.

For game laws, enforcement, *see* 17-2-19 NMSA 1978.

For trappers' and fur dealers' law, duty to enforce, *see* 17-5-8 NMSA 1978.

For disabled persons, search of person, clothing and effects for identifying device, *see* 28-8-2, 28-8-3 NMSA 1978.

For carrying of weapons by peace officers, *see* 30-7-2 NMSA 1978.

For resisting or obstructing an officer, penalty, *see* 30-22-1 NMSA 1978.

For forest fire laws, duties, *see* 30-32-3 NMSA 1978.

For uniformed guards of corrections department, peace officer powers, *see* 33-1-10 NMSA 1978.

For Detoxification Reform Act, *see* Chapter 43, Article 2 NMSA 1978.

For arrests under motor vehicle laws, *see* 66-8-122 NMSA 1978 et seq.

For livestock board, sheriffs and peace officers to execute orders of, *see* 77-3-2, 77-3-10 NMSA 1978.

**Plainclothes officer can intrude when he observes truck driven erratically.** — This section does not preclude plainclothes officer from making intrusion into pickup truck by opening a door where officer has observed truck being driven rapidly and in an erratic manner and, reaching truck after it has stopped, has observed that occupant appeared incoherent and lacked understanding of request to roll down window. Such facts warranted the officer, as person of reasonable caution, to open the pickup door. *State v. Ray*, 1977-NMCA-100, 91 N.M. 67, 570 P.2d 605, cert. denied, 91 N.M. 4, 569 P.2d 413.

**Liability for failure to take proper actions.** — A governmental entity and its law enforcement officers may be held liable, after receiving notice, for negligently failing to take adequate action to protect a citizen from imminent danger and injury because of failure to adopt proper procedures for responding to and investigating a reported criminal act. *Schear v. Board of Cnty. Comm'rs*, 1984-NMSC-079, 101 N.M. 671, 687 P.2d 728.

**Liability for failure to cooperate with prosecutors.** — The statutory obligations that officers cooperate with prosecutors and bring defendants before the courts are primarily designed to protect the public by ensuring that dangerous criminals are removed from society and brought to justice; accordingly, as with the duty to investigate crimes under this section, the duties of cooperating with prosecutors, diligently filing complaints, and bringing defendants before the courts inure to the benefit of private individuals, and the violation of these statutory duties may give rise to a cognizable claim under the Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978. *Weinstein v. City of Santa Fe ex rel. Santa Fe Police Dep't*, 1996-NMSC-021, 121 N.M. 646, 916 P.2d 1313.

**Liability for failure to detain intoxicated driver.** — Law enforcement officers may be liable if they fail to detain an intoxicated driver, who then acts with the requisite level of intent to commit a battery while driving intoxicated. *Blea v. City of Espanola*, 1994-NMCA-008, 117 N.M. 217, 870 P.2d 755, cert. denied, 117 N.M. 328, 871 P.2d 984.

**Immunity from liability for wrongful issuance of warrant.** — Police officers and assistant district attorney were immune from liability for alleged wrongful issuance and service of a search warrant which was valid on its face in which court ordered police

officers to search for child, take him into custody, keep him safely and make a return of the proceedings on the warrant. *Torres v. Glasgow*, 1969-NMCA-053, 80 N.M. 412, 456 P.2d 886.

**Class of persons to be protected by duty to investigate.** — In creating the duty to investigate, the legislature did not limit the traditional tort concept of foreseeability that would otherwise define the intended beneficiaries of the statute; all persons who are foreseeably at risk within the general population are within the class of persons to be protected by the duty to investigate. *Torres v. State*, 1995-NMSC-025, 119 N.M. 609, 894 P.2d 386.

When any person of the public, regardless of geographic location, is foreseeably at risk of injury by a party reported to be in violation of the criminal law, officers undertaking the investigation of the crime owe that person a duty to exercise the care ordinarily exercised by prudent and qualified officers. *Torres v. State*, 1995-NMSC-025, 119 N.M. 609, 894 P.2d 386.

**Foreseeability of criminal act.** — Since it is not unlikely that a murderer would flee the city in which he committed the crime and, given modern-day transportation, that this person would flee across state lines, and since the police knew or should have known that it is possible that a person who kills randomly with no motive would kill again, the harm in this case was not so removed from the conduct of the defendants that the court may say as a matter of law that the victims were unforeseeable; thus foreseeability is a question for the jury to determine by giving thought to, among other things, the time, space, and distance between the alleged failure to investigate and the deaths of the two victims. *Torres v. State*, 1995-NMSC-025, 119 N.M. 609, 894 P.2d 386.

**Sufficiency of allegations in complaint.** — Allegations in a complaint that sheriff deputies failed to apprehend a drunk driver or investigate a tavern disturbance, and that this failure proximately caused personal injury to the plaintiff's family, sufficed to state a cause of action for negligent violation of a right secured under New Mexico law for which Section 41-4-12 NMSA 1978 waives sovereign immunity. *California First Bank v. State Dep't of Alcoholic Beverage Control*, 1990-NMSC-106, 111 N.M. 64, 801 P.2d 646.

**Constables may carry firearms** because they are peace officers. 1963 Op. Att'y Gen. No. 63-117.

**Magistrate or municipal court case may not be continued where appeal filed.** — A peace officer who has prosecuted a criminal case in magistrate or municipal court may not continue to prosecute the case in district court after an appeal of the magistrate or municipal court judgment has been filed in district court. 1989 Op. Att'y Gen. No. 89-27.

**Sheriff may file complaint without consent of district attorney.** — The sheriff may file a complaint against a party for game law violation without first obtaining the consent of, or consulting, the district attorney. He should, before filing any criminal charge,

consult his district attorney, except perhaps in cases of emergency where the sheriff waives a warrant on hearing in order to arrest someone who is believed about to leave the country. 1939 Op. Att'y Gen. 39-3257.

**When district attorney has authority to appear in court.** — The district attorney as chief law enforcement officer has the authority to appear in any case filed before any justice of the peace (now magistrate court) in any county in his district when, in his opinion, the interests of the people in his district require his participation in any case filed before a justice of the peace (magistrate) in said district. 1953 Op. Att'y Gen. No. 53-5669.

**Law reviews.** — For note, "Criminal Procedure - New Mexico Denies Fifth Amendment Protection to Corporations: *John Doe and Five Unnamed Corporations v. State ex rel. Governor's Organized Crime Prevention Commission,"* see 23 N.M.L. Rev. 315 (1993).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 28 to 32, 46 et seq.

Constitutionality of authority for arrest by peace officers without a warrant, 1 A.L.R. 585.

Peace officers' criminal responsibility for killing or wounding one whom they wished to identify, 18 A.L.R. 1368, 61 A.L.R. 321.

Mobs, liability for failure to prevent killing by, 60 A.L.R. 873.

Territorial extent of power to arrest under warrant, 61 A.L.R. 377.

Personal immunity, validity and construction of legislation, conferring on police officers for acts in course of duty, 163 A.L.R. 1435.

Civil liability of law enforcement officers for malicious prosecution, 28 A.L.R.2d 646, 81 A.L.R.4th 1031.

Personal liability of sheriff, or his bond, for negligently causing personal injury or death, 60 A.L.R.2d 873.

Municipal liability for personal injuries resulting from police officer's use of excessive force in performance of duty, 88 A.L.R.2d 1330.

Liability of police officer or his bond for injuries or death of third persons resulting from operation of motor vehicle by subordinate, 15 A.L.R.3d 1189.

Nonfeasance: personal liability of policeman, sheriff or similar peace officer or his bond for injury suffered as a result of failure to enforce law or arrest lawbreaker, 41 A.L.R.3d 700.

Liability of prison authorities for injury to prisoner directly caused by assault by other prisoner, 41 A.L.R.3d 1021.

Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

Liability for false arrest or imprisonment under warrant as affected by mistake as to identity of person arrested, 39 A.L.R.4th 705.

Right to compensation for real property damaged by law enforcement personnel in course of apprehending suspect, 23 A.L.R.5th 834.

When does police officer's use of force during arrest become so excessive as to constitute violation of constitutional rights, imposing liability under Federal Civil Rights Act of 1871 (42 USCS § 1983), 60 A.L.R. Fed. 204.

62 C.J.S. Municipal Corporations §§ 574, 575, 577, 578; 80 C.J.S. Sheriffs and Constables §§ 10, 18, 26, 35 to 42.

## 29-1-2. [Stolen livestock and other property; duties.]

That it shall be the duty of all sheriffs, deputy sheriffs and constables, in their respective counties, to employ all lawful means to immediately trace and discover all livestock and other property which may have been stolen or unlawfully taken from the possession of the true owner thereof.

**History:** Laws 1921, ch. 109, § 1; C.S. 1929, § 4-201; 1941 Comp., § 40-102; 1953 Comp., § 39-1-2.

**ANNOTATIONS**

**Cross references.** — For livestock board inspector's duties, *see* 77-9-33 NMSA 1978.

For motor or other vehicle transporting livestock stopped for purpose of examining certificate, *see* 77-9-46 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 46, 48, 49 to 51, 54.

80 C.J.S. Sheriffs and Constables § 52 et seq.

## 29-1-3. [Arrest and detention of escaped prisoners.]

All persons [Any person] who shall have been committed to jail, under any criminal charge, and shall before the final trial of the cause for which he was imprisoned, or before the completion of the sentence, in case he shall be convicted in the court in

which the charge may be pending, escape from jail, and any time thereafter shall be found in any county, precinct or demarcation of this state, he shall be arrested and imprisoned again, until the judgment of the court may be had or the sentence fully complied with.

**History:** Laws 1861-1862, p. 14; C.L. 1865, ch. 61, § 48; C.L. 1884, § 832; C.L. 1897, § 1226; Code 1915, § 3060; C.S. 1929, § 75-129; 1941 Comp., § 40-103; 1953 Comp., § 39-1-3.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For penalty for permitting prisoner to escape, *see* 30-22-11 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Extradition of escaped convict, 78 A.L.R. 419.

62 C.J.S. Municipal Corporations §§ 563, 574, 575; 80 C.J.S. Sheriffs and Constables § 66 et seq.

## 29-1-4. [Officers' duties under 29-1-3.]

It shall be the duty of judicial and ministerial officers, in their respective counties, precincts or demarcations, who shall see or receive information that any of the persons mentioned in the foregoing section [29-1-3 NMSA 1978], are to be found in his county, precinct or demarcation, notwithstanding he shall have escaped at any time, to apprehend as soon as possible the fugitive, and send him forthwith to the jail of the respective county, where he shall be kept, with all possible security in order to prevent his making his escape again.

**History:** Laws 1861-1862, p. 14; C.L. 1865, ch. 61, § 49; C.L. 1884, § 833; C.L. 1897, § 1227; Code 1915, § 3061; C.S. 1929, § 75-130; 1941 Comp., § 40-104; 1953 Comp., § 39-1-4.

**ANNOTATIONS**

**No tort liability for failure to inform out-of-state officials of escape.** — In a wrongful death action arising out of the escape of state prisoners, who crossed over into Colorado and killed a resident thereof, the New Mexico State police, who were informed of the escape soon after it occurred and diligently attempted to apprehend the escapees as soon as possible, but who did not inform Colorado officials, did not breach any duty giving rise to tort liability. *Wittkowski v. State Corr. Dep't*, 1985-NMCA-066, 103 N.M.

526, 710 P.2d 93, cert. quashed, 103 N.M. 442, 708 P.2d 1043, *overruled on other grounds*, *Silva v. State*, 1987-NMSC-107, 106 N.M. 472, 745 P.2d 380.

## 29-1-5. [Penalty for violation by sheriff, constable or deputy; surety's liability.]

If any sheriff, deputy sheriff or constable, or any deputy shall be found guilty of delay, negligence or neglect in compliance with the provisions of the preceding section [29-1-4 NMSA 1978], on complaint being made before any justice of the peace [magistrate] in the county, he shall be fined in any sum not less than fifty dollars [($50.00)], nor more than one hundred dollars [($100)], which shall be collected of them or their securities.

**History:** Laws 1861-1862, p. 14; C.L. 1865, ch. 61, § 50; C.L. 1884, § 834; C.L. 1897, § 1228; Code 1915, § 3062; C.S. 1929, § 75-131; 1941 Comp., § 40-105; 1953 Comp., § 39-1-5.

### ANNOTATIONS

**Compiler's notes.** — The compilers of the 1915 code deleted "coroner" after "deputy sheriff" and substituted "with the provisions of the preceding section" for "herewith".

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The office of justice of the peace was abolished, and the jurisdiction, powers and duties were transferred to the magistrate court. *See* 35-1-38 NMSA 1978.

## 29-1-6. [Penalty for violation by magistrate.]

If any justice of the peace [magistrate] shall be guilty of a violation of Section 29-1-4 NMSA 1978, on conviction thereof before the district court, he shall be fined in any sum not less than twenty-five dollars [($25.00)] nor more than fifty dollars [($50.00)].

**History:** Laws 1861-1862, p. 14; C.L. 1865, ch. 61, § 51; C.L. 1884, § 835; C.L. 1897, § 1229; Code 1915, § 3063; C.S. 1929, § 75-132; 1941 Comp., § 40-106; 1953 Comp., § 39-1-6.

### ANNOTATIONS

**Compiler's notes.** — The compilers of the 1915 code deleted a proviso at the end of this section which provided that all fines collected under this act shall go to the county treasury of the county in which the violation shall have been committed, and it shall be the duty of the attorney general to prosecute all charges made under the provisions of this act, in the district court of the respective county. For disposition of fines and penalties, *see* N.M. Const., art. XII, § 4.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The office of justice of the peace was abolished, and the jurisdiction, powers and duties were transferred to the magistrate court. *See* 35-1-38 NMSA 1978.

## 29-1-7. Execution of process; officer may call aid.

In all cases when, by the common law or a statute of this state, any officer is authorized to execute any process, he may call to his aid all inhabitants above the age of majority in the county in which the officer is authorized to act.

**History:** Laws 1850-1851, p. 163; C.L. 1865, ch. 89, § 1; C.L. 1884, § 2612; C.L. 1897, § 3785; Code 1915, § 4537; C.S. 1929, § 106-108; 1941 Comp., § 40-107; 1953 Comp., § 39-1-7; Laws 1973, ch. 61, § 1.

### ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Voluntary exposure to unnecessary danger by insured, by aiding peace officer, 17 A.L.R. 191.

6A C.J.S. Arrest § 50.

## 29-1-8. [Penalty for refusing to aid officer; action to recover.]

If any person shall refuse or neglect to obey the summons of any such officer, such person shall be fined in any sum not exceeding fifty dollars [($50.00)], nor less than five dollars [($5.00)], to be recovered by suit before any justice of the peace [magistrate], to the use of the county in which said suit may originate.

**History:** Laws 1850-1851, p. 163; C.L. 1865, ch. 89, § 2; C.L. 1884, § 2613; C.L. 1897, § 3786; Code 1915, § 4538; C.S. 1929, § 106-109; 1941 Comp., § 40-108; 1953 Comp., § 39-1-8.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The office of justice of the peace was abolished, and the jurisdiction, powers and duties were transferred to the magistrate court. *See* 35-1-38 NMSA 1978.

**Cross references.** — For refusing to aid an officer, petty misdemeanor, *see* 30-22-2 NMSA 1978.

## 29-1-9. Appointment of peace officers; citizenship certificate of appointment; exceptions.

A. No sheriff of a county, mayor of a city or other person authorized by law to appoint special deputy sheriffs, marshals, police officers or other peace officers in the state of New Mexico to preserve the public peace and to prevent and quell public disturbances shall appoint as such special deputy sheriff, marshal, police officer or other peace officer any person who is not a citizen of the United States of America or has not been authorized to work by the United States citizenship and immigration services.

B. No person shall assume or exercise the functions, powers, duties and privileges incident and belonging to the office of special deputy sheriff, marshal, police officer or other peace officer without first having received an appointment in writing from a person authorized by law to appoint special deputy sheriffs, marshals, police officers or other peace officers; provided that nothing in this section shall apply to lawfully appointed United States marshals or to deputies of those marshals or to railroad peace officers appointed pursuant to Section 63-2-18 NMSA 1978 in the performance of their duties as peace officers.

C. This section shall not apply in times of riot or unusual disturbance and when so declared by the public proclamation of the governor of the state.

**History:** Laws 1891, ch. 60, §§ 1, 2; C.L. 1897, §§ 743, 744; Code 1915, § 1256; C.S. 1929, § 33-4412; 1941 Comp., § 40-109; 1953 Comp., § 39-1-9; 1979, ch. 98, § 1; 2006, ch. 30, § 2; 2025, ch. 78, § 1.

## ANNOTATIONS

**Cross references.** — For deputy sheriff, appointment and qualifications, *see* 4-41-5, 4-41-8, 4-41-10 NMSA 1978.

**The 2025 amendment,** effective June 20, 2025, allowed individuals with work authorization from the United States Citizenship and Immigration Services to be appointed as law enforcement officers; and in Subsection A, after "United States of America" added "or has not been authorized to work by the United States citizenship and immigration services".

**The 2006 amendment,** effective March 2, 2006, deleted references to special constables; required that appointed peace officers be citizens of the United States of America; and provided that appointed peace officers be appointed by a person authorized by law to appoint such officers.

**Legislature may set restrictions upon public employees.** — Nothing in the constitution prevents the legislature setting such restrictions as it sees fit upon public employees. The legislature has exercised its power in Section 10-1-5 NMSA 1978 (repealed) over all public employees, and in this section and Section 4-41-10 NMSA 1978, additional requirements are stated for deputy sheriffs and other peace officers. 1960 Op. Att'y Gen. No. 60-222.

**Wildlife law enforcement officers can be required to hold New Mexico and United States citizenship.** 1979 Op. Att'y Gen. No. 79-30.

**At common law sheriff could appoint peace officers.** — At common law a sheriff could appoint an undersheriff and as many general or special deputies as the public service may have required. 1957 Op. Att'y Gen. No. 57-83.

**Sheriff can commission officers.** — A sheriff can commission as a special deputy sheriff a full-time law enforcement officer employed by a municipality, the Navajo tribe or the federal government. The applicants, of course, would have to secure the appointment from the sheriff of the county in which they wish to act and qualify in accordance with this section and Sections 4-41-8, 4-41-10 NMSA 1978, and any other statutes of the state of New Mexico pertaining to the qualification of deputy sheriffs. 1957 Op. Att'y Gen. No. 57-83.

**In absence of emergency, patrol member must be furnished request.** — When no actual emergency exists, a member of the mounted patrol whose assistance is requested by the state police must be furnished the request in writing, signed by the officer making the request. 1960 Op. Att'y Gen. No. 60-239.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 70 Am. Jur. 2d Sheriffs, Police, and Constables §§ 1 to 5, 8, 10, 13.

Power to appoint public officer for term commencing at or after expiration of term of appointing officer or body, 75 A.L.R.2d 1277.

Validity, construction and application of regulation regarding outside employment of government employees or officers, 94 A.L.R.3d 1230.

Validity, construction, and application of regulations regarding outside employment of governmental employees of officers, 62 A.L.R.5th 671.

63 C.J.S. Municipal Corporations § 478 et seq.; 80 C.J.S. Sheriffs and Constables §§ 3, 22, 37.

## 29-1-10. [Law enforcement agencies, state and local; participation in federal programs.]

All state and local law enforcement agencies are hereby authorized to participate in the Federal Law Enforcement Assistance Act of 1965 (Public Law 98-197 [89-197]).

**History:** 1953 Comp., § 39-1-11, enacted by Laws 1966, ch. 24, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The federal Law Enforcement Assistance Act of 1965 was codified as a note following 18 USCS § 3001 prior to its repeal by Public Law 90-351 on June 19, 1968.

**Bracketed material.** — The bracketed material was inserted by the compiler to correct an error and is not part of the law.

## 29-1-10.1. Federal funds; receipt and expenditure for law enforcement activities.

Any law enforcement agency of the state of New Mexico may receive and spend for law enforcement activities, in addition to amounts appropriated to it, transfers from the United States department of justice or the United States department of the treasury pursuant to the Controlled Substances Act, 21 U.S.C. § 881(e) (1970), and the Tariff Act of 1930, 19 U.S.C. § 1616(a) (1930), both as amended before or after the effective date of this section.

**History:** Laws 1986, ch. 87, § 1.

**ANNOTATIONS**

**Compiler's notes.** — The Tariff Act of 1930, 19 USC 1616, referred to in this section, was repealed in 1986. For present comparable provisions, *see* 19 USC § 1616a.

## 29-1-11. Authorization of tribal and pueblo police officers and certain federal officers to act as New Mexico peace officers; authority and procedure for commissioned peace officers.

A. All persons who are duly commissioned officers of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or who are law enforcement officers employed by the bureau of Indian affairs and are assigned in New Mexico are, when commissioned under Subsection B of this section, recognized and authorized to act as New Mexico peace officers. These officers have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws.

B. The chief of the New Mexico state police is granted authority to issue commissions as New Mexico peace officers to members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs to implement the provisions of this section. The procedures to be followed in the issuance and revocation of commissions and the respective rights and responsibilities of the departments shall be set forth in a written agreement to be executed between the chief of the New Mexico state police and the Indian nation, tribe or pueblo or the appropriate federal official.

C. The agreement referred to in Subsection B of this section shall contain the following conditions:

(1) the Indian nation, tribe or pueblo, but not the bureau of Indian affairs, shall submit proof of adequate public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state;

(2) each applicant for a commission shall successfully complete four hundred hours of basic police training that is approved by the director of the New Mexico law enforcement academy;

(3) the chief of the New Mexico state police shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within the chief's discretion;

(4) if any provision of the agreement is violated by the Indian nation, tribe or pueblo or any of its agents, the chief of the New Mexico state police shall suspend the agreement on five days' notice, which suspension shall last until the chief is satisfied that the violation has been corrected and will not recur;

(5) the goldenrod-colored officer's second copy of any citation issued pursuant to a commission authorized by this section shall be submitted within five days to the chief of the New Mexico state police;

(6) any citation issued pursuant to a commission authorized by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court;

(7) the agreement or any commission issued pursuant to it shall not confer any authority on a tribal court or other tribal authority that the court or authority would not otherwise have;

(8) the authority conferred by any agreement entered into pursuant to the provisions of this section shall be coextensive with the exterior boundaries of the reservation; except that an officer commissioned under this section may proceed in hot pursuit of an offender beyond the exterior boundaries of the reservation, and the authority conferred in any written agreement between the chief of the New Mexico state police and the Navajo Nation may extend beyond the exterior boundaries of the Navajo reservation to and including the area enclosed by the following description:

Beginning at a point where the southern boundary line of the Navajo Nation reservation intersects the western right-of-way line of US 491, and running thence; southerly along the western right-of-way line of US 491 to the northerly city limits of Gallup; thence, easterly along the northerly city limits of Gallup to the northern side of the right of way of I-40; thence, in an easterly direction along the northerly side of the

right of way of I-40 to the northerly limits of the village of Prewitt; thence, in a straight line between the northerly boundary of the village of Prewitt to the southerly boundary of Ambrosia Lake; thence in a straight line between the southerly boundary of Ambrosia Lake to the southerly boundary of Hospah; thence, east along a straight line from the southerly boundary of Hospah to the southern boundary of Torreon; thence along the easterly side of the right of way of state road 197 to the westerly city limits of Cuba; thence, north along the westerly side of the right of way of state road 44 to the southerly boundary of the Jicarilla Apache Nation reservation; thence, westerly along the southerly boundary of the Jicarilla Apache Nation reservation to the southwest corner of that reservation; thence, northerly along the westerly boundary of the Jicarilla Apache Indian reservation to a point where the westerly boundary of the reservation intersects the southerly side of the right of way of state road 44; thence, northerly along the southerly side of the right of way of state road 44 to its intersection with the northerly side of the right of way of Navajo road 3003; thence, along the northerly side of the right of way of Navajo road 3003 to a point where the northerly side of the right of way of Navajo road 3003 intersects the westerly side of the right-of-way line of state road 371; thence, northerly along the west side of the right of way of state road 371 to the southerly side of the right of way of Navajo road 36; thence, westerly along the southerly side of the right of way of Navajo road 36 to the eastern border of the Navajo Nation reservation; thence, along the eastern and southerly borders of the Navajo Nation reservation to the point of beginning.

The municipalities of Cuba and Gallup and the villages of Thoreau and Prewitt are excluded from the grant of authority that may be conferred in any written agreement entered into pursuant to provisions of this section; provided, however, any written agreement may include under such grant of authority the communities of Ambrosia Lake, Hospah, Torreon, Lybrook, Nageezi, Counselors and Blanco Trading Post and those communities commonly known as the Wingate community; the Navajo Nation Blue Water ranch area of the Thoreau community; the Prewitt community, exclusive of the village of Prewitt; the Haystack community; the Desidero community; the Sand Springs community; the Rincon Marquis community; the Charley Jesus Arviso and the Castillo community; and state road 264 beginning at the point where it intersects US 491 and ending where state road 264 intersects the Arizona-New Mexico state line; and

(9) the chief of the New Mexico state police or the chief's designee and the Indian nation, tribe or pueblo or the appropriate federal official shall be required to meet at least quarterly or more frequently at the call of the chief of the New Mexico state police to discuss the status of the agreement and invite other law enforcement or other officials to attend as necessary.

D. Nothing in this section impairs or affects the existing status and sovereignty of an Indian nation, tribe or pueblo as established under the laws of the United States.

E. All persons who are duly commissioned federal law enforcement officers employed by the federal bureau of investigation; drug enforcement administration; bureau of alcohol, tobacco and firearms; United States secret service; United States

customs service; immigration and naturalization service; United States marshals service; postal inspection service; United States probation department; and United States pretrial services agency; and other appropriate federal officers whose primary duty is law enforcement related, who are assigned in New Mexico and who are required to be designated by the county sheriff on a case-by-case basis in the county in which they are working, are recognized and authorized to act as New Mexico peace officers and have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws. The department of public safety shall maintain a registry that lists the name and affiliated federal agency of every federal law enforcement officer recognized and authorized to act as a New Mexico peace officer pursuant to the provisions of this subsection. This subsection shall not be construed to impose liability upon or to require indemnification by the state for any act performed by a federal law enforcement officer pursuant to this subsection.

F. The provisions of Subsection E of this section regarding designation of federal law enforcement officers by a county sheriff do not apply to federal law enforcement officers who are duly commissioned officers of a police or sheriff's department for an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs.

G. Nothing in this section limits, impairs or nullifies the authority of county sheriffs to appoint pursuant to Chapter 4, Article 41 NMSA 1978 duly commissioned state or federally certified officers who are employees of a police or sheriff's department of an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs as deputy sheriffs authorized to enforce New Mexico criminal and traffic law.

**History:** 1953 Comp., § 39-1-12, enacted by Laws 1972, ch. 8, § 1; 1979, ch. 39, § 1; 1981, ch. 120, § 1; 1983, ch. 275, § 1; 1988, ch. 14, § 3; 1993, ch. 179, § 1; 1995, ch. 186, § 1; 1997, ch. 260, § 1; 2002, ch. 92, § 1; 2005, ch. 290, § 1.

## ANNOTATIONS

**The 2005 amendment,** effective June 17, 2005, added Subsection G to provide that nothing in this section limits, impairs or nullifies the authority of county sheriffs to appoint duly commissioned state or federally certified officers who are employees of a police or sheriff’s department of an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs as deputy sheriffs authorized to enforce New Mexico criminal and traffic law.

**The 2002 amendment,** effective May 15, 2002, deleted "payment" following "authority" in the section heading; and deleted Paragraph C(10), which provided for payment from the law enforcement protection fund to tribes or pueblos for each commissioned peace officer in the tribe or pueblo.

**The 1997 amendment,** effective July 1, 1997, in Subsection E, in the first sentence, inserted "United States probation department; United States pretrial services agency;", deleted "as designated by the chief of the New Mexico state police upon a recommendation by a county sheriff" preceding "who are assigned", and inserted "and who are required to be designated by the county sheriff on a case-by-case basis in the county in which they are working", added the second sentence; and added Subsection F.

**The 1995 amendment,** effective June 16, 1995, substituted "pursuant to provisions of" for "under" near the end of Paragraph (8) in Subsection C, and in Subsection E deleted "and" preceding "postal" and substituted "whose primary duty is law enforcement related, as designated by the chief of the New Mexico state police upon a recommendation by a county sheriff" for "as designated by the chief of the New Mexico state police".

**The 1993 amendment,** effective June 18, 1993, inserted "payment" and substituted "commissioned peace officers" for "commissioning" in the section heading; added Paragraph (10) of Subsection C; and made minor stylistic changes in Paragraphs (2), (4), (8), and (9) of Subsection C and in Subsection E.

**Tribal officer was properly cross-commissioned.** — Where defendant, who was a non-Indian, was arrested by a Pueblo police officer on property of the Pueblo and charged in a county magistrate court with aggravated DWI; the officer was cross-commissioned as a county special deputy sheriff by the county sheriff's office; the officer signed an oath of office that was also signed by the county sheriff and carried a card issued by the county sheriff's office indicating the officer's cross-commissioning status; the officer was wearing the Pueblo police department uniform at the time of the arrest; the officer was a commissioned, full-time Pueblo tribal officer; and the officer's salary was paid by the Pueblo police department and included incremental pay financed from a grant from the bureau of Indian affairs to assist the Pueblo police department in targeting the motoring public, the officer was properly cross-commissioned and could properly arrest defendant while wearing the uniform of and receiving a salary from the Pueblo police department. *State v. Sanchez*, 2014-NMCA-095.

**Off-reservations crimes.** — State officers have the authority to enter Indian country to investigate off-reservation crimes committed in their presence by Indians, so long as the investigation does not infringe on tribal sovereignty by circumventing or contravening a governing tribal procedure. A traffic stop which included the administration of field sobriety tests, did not circumvent or contravene the Navajo Nation Code and, therefore, did not infringe on the sovereignty of the Navajo Nation. *State v. Harrison*, 2010-NMSC-038, 148 N.M. 500, 238 P.3d 869, *aff'g* 2008-NMCA-107, 144 N.M. 651, 190 P.3d 1146.

**Authority of non-cross-commissioned officer.** — A state police officer, who is not cross-commissioned with the bureau of Indian affairs or the tribe, may pursue an Indian onto the reservation, across jurisdictional lines, for a minor traffic offense committed outside the reservation and after determining that the officer lacks jurisdiction, the officer

may continue to detain the Indian and collect evidence for use against him. *State v. Harrison*, 2008-NMCA-107, 144 N.M. 651, 190 P.3d 1146, *aff'd*, 2010-NMSC-038, 148 N.M. 500, 238 P.3d 869.

**Inconsistency between written agreements.** — It is inconsistent for the legislature to require a written agreement for the issuance of a cross commission under this section between state law enforcement and Indian tribal police officers and not require a written agreement for mutual aid agreements under Section 29-8-3 NMSA 1978. *State v. Branham*, 2004-NMCA-131, 136 N.M. 579, 102 P.3d 646.

**Authority of cross-commissioned officer.** — Traffic stop and detention and arrest are not illegal where Navajo tribal officer acted as a New Mexico peace officer with authority to enforce the Motor Vehicle Code on non-Indian land in the city of Gallup. *State v. Martinez*, 2005-NMCA-052, 137 N.M. 432, 112 P.3d 293, cert. denied, 2005-NMCERT-005, 137 N.M. 522, 113 P.3d 345.

Because Navajo tribal officer claims to have been deputized by the McKinley County sheriff, Subsection C(8) of Section 29-1-11 NMSA 1978 does not defeat his claimed authority to act as a cross-commissioned county deputy. *State v. Martinez*, 2005-NMCA-052, 137 N.M. 432, 112 P.3d 293, cert. denied, 2005-NMCERT-005, 137 N.M. 522, 113 P.3d 345.

**Authority of non-cross-commissioned officers.** — A non-cross-commissioned federal police officer has the lawful authority not only to stop a motor vehicle within an Indian reservation, but also to issue the driver a federal traffic citation based on state law. *Ryder v. State*, 1982-NMSC-066, 98 N.M. 316, 648 P.2d 774.

A non-cross-commissioned bureau of Indian affairs officer is empowered to stop a vehicle within the borders of an Indian reservation for a traffic law offense and, upon determining that the offender is a non-Indian, to request him to wait until a cross-commissioned BIA officer arrives. *State v. Ryder*, 1981-NMCA-017, 98 N.M. 453, 649 P.2d 756, *aff'd*, 1982-NMSC-066, 98 N.M. 316, 648 P.2d 774.

**Authority of tribal police officer over non-Indian.** — A tribal police officer has the authority to stop and issue a tribal citation, and arrest a non-Indian, so long as the Indian authorities promptly deliver up the non-Indian offender, rather than try and punish him themselves. *State v. Ryder*, 1981-NMCA-017, 98 N.M. 453, 649 P.2d 756, *aff'd*, 1982-NMSC-066, 98 N.M. 316, 648 P.2d 774.

**Where state police officer initially stopped defendant for speeding** on Mescalero reservation, because the officer did not have authority to enforce Mescalero tribal traffic ordinances, defendant's motion to suppress evidence was properly granted. *State v. Branham*, 2004-NMCA-131, 136 N.M. 579, 102 P.3d 646.

**Citations issued to non-Indians.** — Traffic citations lawfully issued by a commissioned bureau of Indian affairs officer to a non-Indian cannot legally be referred

to a tribal court, but should be referred to state magistrate court. 1992 Op. Att'y Gen. No. 92-07.

**Law reviews.** — For annual survey of New Mexico law relating to criminal procedure, see 12 N.M.L. Rev. 271 (1982).

## 29-1-12. Authorization to maintain and retake custody of Arizona prisoners.

An officer or employee of the Arizona department of corrections who has in his custody, pursuant to Arizona law, a ward, offender or prisoner of the state of Arizona whom he is transporting from a facility in Arizona to another point in Arizona via New Mexico or to a point in New Mexico for firefighting or conservation work shall maintain custody of such ward, offender or prisoner in New Mexico. Such officer or employee may, in the event of escape of such ward, offender or prisoner in New Mexico, retake such ward, offender or prisoner in the same manner as if such officer or employee were a New Mexico police officer and such ward, offender or prisoner had been committed to his custody under New Mexico law.

**History:** 1953 Comp., § 39-1-13, enacted by Laws 1975, ch. 281, § 1.

## 29-1-13. Unclaimed property; inventory.

A peace officer shall immediately inventory and record any personal property that comes into his possession and is taken under authority of law or is left in his possession or in the possession of the state, county or municipality. As used in Sections 29-1-13 through 29-1-15 NMSA 1978, "peace officer" means any full-time employee of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state and which employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the state.

**History:** Laws 1983, ch. 50, § 1.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Uniform Disposition of Unclaimed Property Act, 98 A.L.R.2d 304.

## 29-1-14. Unclaimed property; authority to sell; notice of sale; deadly weapons, controlled substances and other contraband excepted.

A. Any personal property having a fair market value greater than fifty dollars ($50.00) that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the

possession of a state, county or municipal law enforcement agency for more than ninety days shall be sold at public sale.

B. Prior to the sale of seized personal property, the law enforcement agency shall make a reasonable attempt to notify the original owner of the seized personal property and shall publish a notice of the sale of unclaimed personal property once each week for two successive weeks. The notice shall contain:

(1) a brief description of the personal property to be sold;

(2) the time and place of the sale; and

(3) the name of any purported owner, if known.

C. If prior to the sale the true owner identifies the personal property to be sold and offers strict proof of identity and ownership of the personal property, the personal property shall be returned to its true owner.

D. Any personal property offered but not sold at a public sale may be destroyed or otherwise disposed of upon application to the district court, ex parte and without notice.

E. Any personal property sold at public sale, claimed by its true owner, destroyed or otherwise disposed of pursuant to this section shall be removed from the inventory record kept by the law enforcement agency.

F. Any personal property having a fair market value equal to or less than fifty dollars ($50.00) that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days may be destroyed, except as otherwise provided by order of the district court upon ex parte application without notice.

G. Any alcoholic beverage that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days may be destroyed or may be utilized by the scientific laboratory division of the department of health for educational or scientific purposes.

H. This section shall not apply to deadly weapons or items of significant historical value, poisons, controlled substances or other contraband lawfully seized as evidence for the prosecution of a violation of statute or ordinance or which has otherwise come into the lawful possession of a state, county or municipal law enforcement agency and has been in possession for more than ninety days. Once it is determined by the law enforcement agency that any property enumerated in this subsection is no longer necessary for use in obtaining a conviction or is not needed for any other public purpose, the law enforcement agency may apply to the district court, ex parte and

without notice, for an order authorizing destruction or other disposition of the property; provided that a state, county or municipal law enforcement agency shall allow state museums access to agency inventory records for the purpose of inspecting and selecting firearms that are appropriate to state museum firearm collections. The court shall grant the application if the proposed destruction or disposition is in the best interest of the public safety and welfare.

I. This section shall not apply to any personal property for which a notice of intent to claim has been served. Any victim, as defined in Section 31-26-3 NMSA 1978, or alleged victim shall be entitled to serve notice of intent to claim ownership of any personal property upon that person, agency or entity in actual custody or control of the property. Nothing in this subsection shall be construed to limit, interfere with or affect the rights or remedies of the rightful owner of any seized property.

**History:** 1978 Comp., § 29-1-14, enacted by Laws 1983, ch. 50, § 2; 1989, ch. 147, § 1; 1994, ch. 22, § 1; 2003, ch. 340, § 1.

## ANNOTATIONS

**The 2003 amendment,** effective July 1, 2003, in Subsection A, deleted the former last sentence concerning the federal Gun Control Act of 1968; in Subsection B, deleted "or owners" following "purported owner"; in Subsection H, deleted "except for firearms" following "deadly weapons" in the first sentence and "prior to the sale of firearms" following "provided that" in the second sentence; in Subsection I, substituted "Section 31-26-3" for "Section 31-24-3".

**The 1994 amendment,** effective July 1, 1994, substituted "a state, county or municipal law enforcement agency" for "the state, county, municipality or peace officer" in the first sentence in Subsections A and H, and in Subsections F and G, "Prior to the sale of seized personal property, the law enforcement agency shall make a reasonable attempt to notify original owner of seized personal property and shall" for "The peace officer shall" in the first sentence in the introductory paragraph of Subsection B, "law enforcement agency" for "peace officer" in Subsection E and near the beginning of the second sentence in Subsection H, "department of health" for "health and environment department" in Subsection G and "the law enforcement agency" for "he" near the middle of the second sentence in Subsection H; inserted "federal" in the second sentence in Subsection A; and added the proviso clause at the end of the second sentence in Subsection H.

**The 1989 amendment,** effective June 16, 1989, in Subsection A inserted "having a fair market value greater than fifty dollars ($50.00)" in the first sentence; added present Subsection D; redesignated former Subsection D as present Subsection E, while substituting therein "claimed by its true owner, destroyed or otherwise disposed of pursuant to this section" for "or claimed by its true owner"; added Subsections F and G; redesignated former Subsection E as Subsection H, while substituting "ninety days" for "one year" at the end of the first sentence; and added Subsection I.

**Intention to abandon may be manifested** by expressed acts of the owner or by acts or conduct implying abandonment which may be inferred from the circumstances. 1956 Op. Att'y Gen. No. 56-6357.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 506 et seq.

63 C.J.S. Municipal Corporations § 883.

## 29-1-15. Proceeds of sale; title to property vests in purchaser.

A. Any money derived by a peace officer from the sale of unclaimed personal property shall be paid to the appropriate treasurer for credit to the general fund of the state, county or municipality.

B. Any person purchasing unclaimed personal property at a public auction conducted by a peace officer has good title to the property. The true owner of the unclaimed personal property is divested of any right to the property and is estopped from making any claim to the property.

**History:** Laws 1983, ch. 50, § 3.

**ANNOTATIONS**

**Law reviews.** — For comment, "Regional Planning - Subdivision Control - New Mexico's New Municipal Code," see 6 Nat. Res. J. 135 (1966).

## 29-1-16. Electronic recordings of custodial interrogations.

A. A state or local law enforcement officer shall comply when reasonably able to do so with the following procedures when conducting a custodial interrogation:

(1) the custodial interrogation shall be electronically recorded in its entirety;

(2) if conducted in a police station, the custodial interrogation shall be electronically recorded by a method that includes audio or visual or both, if available; and

(3) the electronic recording shall include the advice of constitutional rights required by law.

B. A law enforcement officer shall comply with the provisions of this section unless the law enforcement officer has good cause not to electronically record the entire custodial interrogation and makes a contemporaneous written or electronic record of the reasons for not doing so. Good cause includes:

(1) the electronic recording equipment was not reasonably available;

(2) the electronic recording equipment failed and obtaining replacement equipment was not feasible;

(3) the individual refused to be recorded; or

(4) the statement was made in a court proceeding or a grand jury proceeding.

C. Statements that are spontaneously volunteered and not the result of custodial interrogation are not subject to the provisions of this section.

D. The provisions of this section shall apply only to custodial interrogations when, at the time of the interrogation, the person is suspected of committing a felony offense.

E. The provisions of this section do not apply to custodial interrogations conducted outside the state of New Mexico.

F. The provisions of this section do not apply to statements used for impeachment purposes.

G. The provisions of this section do not apply within a correctional facility.

H. As used in this section:

(1) "custodial interrogation" means questioning by law enforcement officers that requires the advice of constitutional rights; and

(2) "electronic recording" means a complete and authentic electronic recording created by visual or audio media, including by motion picture, videotape, audio tape or digital media.

I. This section shall not be construed to exclude otherwise admissible evidence in any judicial proceeding.

**History:** Laws 2005, ch. 252, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2005, ch. 252, § 3 made Laws 2005, ch. 252, § 1 effective January 1, 2006.

**Severability.** — Laws 2005, ch. 252, § 2 provided that if any part of Laws 2005, ch. 252, § 1 is held invalid, the remainder shall not be affected.

**Law not retroactive.** — Where defendant made statements to police officers at an interview that occurred on May 31, 2005, and Laws 2005, Chapter 252, Section 3 made Section 29-1-16 NMSA 1978 effective on January 1, 2006, Section 29-1-16 NMSA 1978 did not apply to defendant's statements. *State v. Garcia*, 2011-NMSC-003, 149 N.M. 185, 246 P.3d 1057.

## 29-1-17. Identity theft reports.

When a law enforcement officer interviews an alleged identity theft victim, the law enforcement officer shall make a written report of the information provided by the victim and by witnesses on appropriate forms provided by the attorney general. A copy of the police report shall be filed with the office of the attorney general.

**History:** Laws 2009, ch. 95, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 95, § 6 made Laws 2009, ch. 95, § 1 effective July 1, 2009.

## 29-1-18. Requiring certain law enforcement agencies to use body-worn cameras while on duty; exceptions; adoption of policies and procedures governing use.

A. A law enforcement agency shall require peace officers the agency employs and who routinely interact with the public to wear a body-worn camera while on duty, except as provided in Subsection B of this section. Each law enforcement agency subject to the provisions of this section shall adopt policies and procedures governing the use of body-worn cameras, including:

(1) requiring activation of a body-worn camera whenever a peace officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a peace officer and a member of the public;

(2) prohibiting deactivation of a body-worn camera until the conclusion of a law enforcement or investigative encounter;

(3) requiring that any video recorded by a body-worn camera shall be retained by the law enforcement agency for not less than one hundred twenty days; and

(4) establishing disciplinary rules for peace officers who:

(a) fail to operate a body-worn camera in accordance with law enforcement agency policies;

(b) intentionally manipulate a body-worn camera recording; or

(c) prematurely erase a body-worn camera recording in violation of law enforcement agency policies.

B. The provisions of Subsection A of this section shall not apply when a peace officer:

(1) conducts an undercover operation sanctioned by a law enforcement agency; or

(2) conducts an explosive recovery and disposal operation to render safe or disassemble an explosive or incendiary device and materials.

C. Peace officers who fail to comply with the policies and procedures required to be adopted pursuant to Subsection A of this section may be presumed to have acted in bad faith and may be deemed liable for the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence.

D. As used in this section:

(1) "body-worn camera" means an electronic device worn on a person's body that records both audio and video data;

(2) "law enforcement agency" means the police department of a municipality, the sheriff's office of a county, the New Mexico state police or the department of public safety;

(3) "peace officer" means any full-time salaried or certified part-time salaried officer who by virtue of office or public employment is vested by law with the duty to maintain the public peace; and

(4) "undercover operation" means an operation that:

(a) is conducted by one or more law enforcement agencies that is focused on a suspect or suspects who are the target of an ongoing criminal investigation;

(b) involves one or more covert operatives whose identities are concealed and kept confidential; and

(c) is designed to either obtain information about criminal activity of individuals or organizations through the development of ongoing relationships with individuals or organizations or to effect an arrest.

**History:** Laws 2020 (1st S.S.), ch. 7, § 1; 2023, ch. 47, § 1.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, provided exceptions to the requirement that law enforcement use body-worn cameras, and defined "undercover operation" as used in this section; in the section heading, added "exceptions"; in Subsection A, after "while on duty", added "except as provided in Subsection B of this section"; added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; in Subsection C, after "Subsection A of this section", deleted "shall" and added "may", and after "bad faith and", deleted "shall" and added "may"; and in Subsection D, added Paragraph D(4).

**New Mexico Livestock Board inspectors are not law enforcement officers subject to body-worn camera requirements.** — Although the New Mexico Livestock Board has certain law enforcement functions, and livestock inspectors routinely respond to calls and conduct investigations of livestock-related crimes, the legislature included a specific definition of "law enforcement agency" for purposes of construing the body-worn camera requirements of this section, and the livestock board or its inspectors were not included in this definition; the livestock board's absence from the definition of "law enforcement agency" evinces the legislative intent to limit the statute's applicability to only certain law enforcement agencies, which would exclude the livestock board and its inspectors from the requirements of this section. 2024 Op. Att'y Gen. No. 24-01.

## 29-1-19. Consult nontraditional communication or disability registry.

Prior to interacting with a driver or occupant of a motor vehicle, every peace officer shall, if practicable, consult the national crime information center system or other electronic motor vehicle record management system to determine if the motor vehicle is on the nontraditional communication or disability registry, and if the motor vehicle is on the registry, take appropriate safety precautions during the interaction. If the registry reveals that a driver or occupant of the motor vehicle has a seizure disorder that may be triggered by flashing lights, including photosensitive epilepsy, the peace officer shall minimize the use of flashing lights to the extent feasible, taking safety into consideration.

**History:** Laws 2023, ch. 136, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 136, § 4 made Laws 2023, ch. 136, § 2 effective July 1, 2024.

# ARTICLE 2
# State Police

## 29-2-1. New Mexico state police created.

There is created in the department of public safety the "New Mexico state police division".

**History:** 1941 Comp., § 40-201, enacted by Laws 1941, ch. 147, § 1; 1953 Comp., § 39-2-1; Laws 1977, ch. 257, § 19; 1979, ch. 202, § 12; 1987, ch. 254, § 17; 1989, ch. 204, § 21.

**ANNOTATIONS**

**Cross references.** — For radio communication property, ownership transferred to the department of information technology, *see* 9-27-18 NMSA 1978.

For educational funds for children of police killed in active duty, *see* 28-14-1 NMSA 1978 et seq.

**The 1989 amendment,** effective July 1, 1989, substituted "department of public safety" for "department of state government".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States § 81.

## 29-2-1.1. Definitions.

As used in Chapter 29 NMSA 1978:

A. "chief" or "chief of the state police" means the director of the New Mexico state police division of the department;

B. "commission" means the public safety advisory commission;

C. "department" means the department of public safety;

D. "member of the New Mexico state police" means a commissioned officer of the New Mexico state police, including an officer who is certified and commissioned as of June 30, 2015 in the former motor transportation division or the former special investigations division;

E. "New Mexico law enforcement academy" or "academy" means a division of the department established pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978];

F. "New Mexico state police" means the New Mexico state police division of the department; and

G. "secretary" means the secretary of public safety.

**History:** 1978 Comp., § 29-2-1.1, enacted by Laws 1987, ch. 254, § 18; 1989, ch. 204, § 22; 2015, ch. 3, § 4.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by amending certain law enforcement definitions; in Subsection D, after the second occurrence of "state police," added the remainder of the sentence; in Subsection E, after "means a", deleted "bureau of the training and recruiting", after "department", deleted "of public safety" and added "established pursuant to the Law Enforcement Training Act"; in Subsection F, after the semicolon, added "and"; and deleted former Subsection G and redesignated former Subsection H as Subsection G.

**The 1989 amendment,** effective July 1, 1989, deleted "public safety" preceding "department" in Subsections A and F, and substituted "department of public safety" for "public safety department" in Subsection C, "New Mexico state police" for "department" in Subsection D, and all of the present language of Subsection E following "means" for "the training division of the public safety department".

## 29-2-2. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 254, § 27 repealed 29-2-2 NMSA 1978, as amended by Laws 1979, ch. 202, § 13, relating to police board composition, effective July 1, 1987.

## 29-2-3. New Mexico state police; organization.

The New Mexico state police shall consist of a chief and such patrol officers, sergeants, lieutenants and captains as the secretary may deem advisable within the limits of the funds appropriated for the New Mexico state police; provided that the number of captains, lieutenants and sergeants shall not exceed twenty-five percent of the total number of the police, exclusive of the chief; but this requirement shall not be interpreted so as to require the demotion of any member of the previous state police division, the former motor transportation division or the former special investigations division.

**History:** 1941 Comp., § 40-203, enacted by Laws 1941, ch. 147, § 3; 1953 Comp., § 39-2-3; Laws 1977, ch. 257, § 21; 1979, ch. 202, § 14; 2015, ch. 3, § 5.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying references to positions within the organizational structure of the New Mexico state police; after the first occurrence of "chief", added

"and"; after "such", deleted "patrolmen" and added "patrol officers"; after "captains as the", deleted "New Mexico state police board" and added "secretary", after "provided", deleted "however", and after "police division", deleted "of the criminal justice department" and added "the former motor transportation division or the former special investigations division".

## 29-2-4. Appointments; removal.

The chief of the New Mexico state police shall be appointed by the secretary. All patrol officers and other officers and all civilian employees shall be appointed by the chief.

**History:** 1941 Comp., § 40-204, enacted by Laws 1941, ch. 147, § 4; 1953 Comp., § 39-2-4; Laws 1977, ch. 257, § 22; 1979, ch. 202, § 15; 2015, ch. 3, § 6.

**ANNOTATIONS**

**Compiler's notes.** — Although "removal" was added to the section heading, no provisions relevant to removal were added to this section by the 1979 amendment.

**Cross references.** — For removal during probationary period, *see* 29-2-9 NMSA 1978.

For disciplinary proceedings culminating in removal, *see* 29-2-11 NMSA 1978.

For removal of chief, *see* 29-2-19 NMSA 1978.

For certificate from law enforcement academy, *see* 29-7-6 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying certain duties regarding appointment within the department of public safety; after "appointed by the", deleted "New Mexico state police board" and added "secretary", and after "All", deleted "patrolmen" and added "patrol officers.

## 29-2-4.1. Rules.

The secretary shall promulgate rules governing employment and operating practices and related matters for employees of the New Mexico state police.

**History:** 1978 Comp., § 29–2–4.1, enacted by Laws 1979, ch. 202, § 16; 2015, ch. 3, § 7.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by providing the secretary of public safety with the authority

to create rules for the department; in the catchline, deleted "and regulations"; after "The", deleted "New Mexico state police board" and added "secretary"; and after "rules", deleted "and regulations".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

## 29-2-5. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 254, § 27 repealed 29-2-5 NMSA 1978, as enacted by Laws 1941, ch. 147, § 5, relating to retention of chief and members of state police, effective July 1, 1987.

## 29-2-6. Qualifications of members.

A. Members of the New Mexico state police, except the chief, shall:

(1) at the time of their appointment, be citizens of the United States or be authorized to work by the United States citizenship and immigration services;

(2) at the time of their appointment, have reached twenty-one years of age;

(3) except as otherwise provided in Subsection B of this section, at the time of their appointment, have completed at least sixty hours of college credit or have had two years of military or law enforcement service. This requirement shall not apply to officers who are certified and commissioned as of June 30, 2015 in the former motor transportation division or the former special investigations division;

(4) be of good moral character and not have been convicted of a felony or infamous crime in the courts of this state or other state or any country or in the federal courts; and

(5) pass a physical examination that the New Mexico state police may require.

B. Notwithstanding the requirement of Paragraph (3) of Subsection A of this section, the chief may appoint a member of the New Mexico state police who has at least thirty hours of college credit, and the chief shall determine an appropriate time period after appointment for the member to complete the additional thirty hours of college credit required. This provision shall not apply to officers who are certified and commissioned as of June 30, 2015 in the former motor transportation division or the former special investigations division.

**History:** 1941 Comp., § 40-206, enacted by Laws 1941, ch. 147, § 6; 1953 Comp., § 39-2-6; Laws 1963, ch. 100, § 1; 1967, ch. 64, § 1; 1973, ch. 37, § 1; 1977, ch. 257, § 23; 1979, ch. 202, § 17; 1993, ch. 70, § 1; 1998, ch. 5, § 1; 2001, ch. 45, § 1; 2009, ch. 55, § 1; 2011, ch. 91, § 1; 2015, ch. 3, § 8; 2025, ch. 78, § 2.

## ANNOTATIONS

**Cross references.** — For inapplicability of Criminal Offender Employment Act to law enforcement agencies, *see* 28-2-5 NMSA 1978.

**The 2025 amendment,** effective June 20, 2025, allowed individuals with work authorization from the United States Citizenship and Immigration Services to serve as members of the New Mexico state police; and in Subsection A, Paragraph A(1), after "United States" added "or be authorized to work by the United States citizenship and immigration services".

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying qualification requirements for members of the New Mexico state police; in Subsection A, Paragraph 3, added the second sentence relating to certain certified and commissioned officers; in Subsection B, added the second sentence relating to certain certified and commissioned officers; and deleted Subsection C.

**The 2011 amendment,** effective June 17, 2011, supplemented the educational requirement for state police officers by adding, as an alternative to the college credit requirement, a requirement of two years of military or law enforcement service.

**The 2009 amendment,** effective June 19, 2009, in Paragraph (3) of Subsection A, added "except as otherwise provided in Subsection B of this section", deleted "not less than", and added "at least"; deleted former Subparagraph (b) of Paragraph (3) of Subsection A that required not less than 30 hours of college credit and completion of an additional 30 hours of college credit; and added Paragraph B.

**The 2001 amendment,** effective July 1, 2001, added Subparagraph A(3)(b).

**The 1998 amendment,** effective July 1, 1998, rewrote Paragraph A(3); deleted "any" preceding "or" in two places in Paragraph A(4); substituted "pass a physical" for "successfully pass any physical" in Paragraph A(5); and in Subsection B, substituted "A" for "No", inserted "not" following "shall", and substituted "a member of the public safety advisory commission for "any member of the department of public safety advisory commission".

**The 1993 amendment,** effective June 18, 1993, substituted "twenty-one years of age" for "age of majority and be not more than thirty-five years of age" in Paragraph (2) of Subsection A; deleted former Subsection B which read "Members of the New Mexico state police, including the chief, shall not be over sixty-one years of age"; redesignated

former Subsection C as Subsection B; and substituted "department of public safety advisory commission" for "New Mexico state police board" at the end of Subsection B.

**Discretion to terminate officer for not passing physical.** — The board (now commission) charged with management and control of the department has the discretion to terminate an officer for failure to pass the required physical examination. This is a continuing qualification and members must pass any reasonable physical examination required from time to time. *Tafoya v. N.M. State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

**Notice and hearing required.** — While the board (now commission) may require its officers to submit to and pass any physical examination reasonably required and while the failure to pass may be the basis for a removal proceeding, this is far different from vaulting this section to a power of dismissal at the discretion of the board (now commission) without prior notice and a hearing. *Tafoya v. N.M. State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

**Nepotism provision controls over general statute.** — The general state statute pertaining to nepotism (Section 10-1-10 NMSA 1978) is not applicable in regard to the hiring of state police personnel, but rather this section, which pertains specifically to the state police, is controlling. 1963 Op. Att'y Gen. No. 63-114.

**When fully qualified individual not appointed as member.** — One who is otherwise fully qualified cannot be appointed as a member of the New Mexico state police if his two years of residency did not occur immediately prior to the time of appointment, but such a person can be accepted by the state police as a candidate to attend the recruit training school. 1962 Op. Att'y Gen. No. 62-120 (opinion rendered prior to 1963 and 1967 amendments).

**Prohibited relationship degrees.** — It may be said that the officer and his wife stand one and the same, in relation to the collateral line relationship of the wife. This being so, the wife and her brother stand as to one another in the second degree. And continuing one degree further to the son of the aforesaid brother, being also the nephew of the herein considered officer's wife, a prohibited relationship degree exists, e.g., a third-degree separation. 1958 Op. Att'y Gen. No. 58-170 (opinion rendered prior to 1963 and 1967 amendments).

**Applicant not considered for state police.** — It is not permissible for an applicant to be considered for the New Mexico state police force whose father's sister is married to an officer of said force. 1958 Op. Att'y Gen. No. 58-170 (opinion rendered prior to 1963 and 1967 amendments).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction and effect of state constitutional or statutory provision regarding nepotism in the public service, 11 A.L.R.4th 826.

Sex discrimination in law enforcement and corrections employment, 53 A.L.R. Fed. 31.

81A C.J.S. States § 83.

## 29-2-7. Commissioned officers; application; procedure.

The New Mexico state police shall cause all applicants for the position of commissioned officer to submit a written detailed application on forms as the secretary shall prescribe, and the secretary shall cause an investigation to be made of all applicants, subsequent to their taking the examination referred to in Section 29-2-8 NMSA 1978, for the purpose of determining the moral character, general reputation and fitness of any applicant. An applicant who is found unfit as a result of the investigation shall be disqualified for employment. The secretary shall by rule prescribe the physical qualifications of applicants and shall require each applicant to submit to a physical examination by doctors as the secretary shall designate. An applicant who does not meet the physical requirements prescribed by the secretary shall be disqualified for employment. Inasmuch as laws have been enacted providing for retirement, disability and life insurance funds for members of the New Mexico state police, it is the intention of the legislature that no applicants will be appointed who are in such physical condition that the cost of such protection will thereby be increased.

**History:** 1941 Comp., § 40-207, enacted by Laws 1941, ch. 147, § 7; 1953 Comp., § 39-2-7; Laws 1977, ch. 257, § 24; 1978, ch. 82, § 1; 1979, ch. 202, § 18; 2015, ch. 3, § 9.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying certain duties of the secretary of public safety with regard to commissioning officers; after "application on", deleted "such"; substituted "secretary" for "board" throughout the section; after the first occurrence of "examination", deleted "hereinafter"; after "referred to", added "in Section 29-2-8 NMSA 1978"; after "any applicant", inserted a period, deleted "and any such", began a second sentence and added "An"; in the present second sentence, after "result of", deleted "such" and added "the", after "examination by", deleted "such", and after "designate", inserted a period, deleted "and any", began a third sentence, and added "An".

## 29-2-8. New Mexico state police; commissioned officers; examination.

The New Mexico state police shall conduct a written examination of all applicants for the position of commissioned officer for the purpose of determining their mental qualifications and knowledge of the laws of New Mexico and their ability to render assistance in case of accidents upon the public highways. No applicant shall be appointed a member of the New Mexico state police, other than the chief, until the applicant has passed the written examination with a grade of not less than seventy-two

percent. This section shall not apply to officers who are certified and commissioned as of June 30, 2015 in the former motor transportation division or the former special investigations division.

**History:** 1941 Comp., § 40-208, enacted by Laws 1941, ch. 147, § 8; 1953 Comp., § 39-2-8; Laws 1977, ch. 257, § 25; 1978, ch. 82, § 2; 1979, ch. 202, § 19; 2015, ch. 3, § 10.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying certain qualification requirements of officers within the New Mexico state police; after "highways", deleted "and", inserted a period, and began a second sentence; in the present second sentence, after "until", deleted "he shall have" and added "the applicant has", after "passed", deleted "such" and added "the"; and added the third sentence relating to certain certified and commissioned officers.

## 29-2-9. Probationary period; length; permanent commission; salary.

A. All new appointments as members of the New Mexico state police shall be for a probationary period of two years. During the probationary period, the new members may be removed or suspended at the discretion of the chief. At the end of two years of satisfactory service and upon recommendation of the chief and with concurrence of the secretary, the appointee may receive a permanent commission as a member of the New Mexico state police. However, the probationary period may be extended beyond a two-year period upon the recommendation of the chief with the concurrence of the secretary. This subsection shall not apply to officers who are certified and commissioned as of June 30, 2015 in the former motor transportation division or the former special investigations division. Members who are on probation on July 1, 2015 shall complete the probationary period under which they were hired.

B. The salaries of all members of the New Mexico state police, probationary and permanent, and that of the chief shall be fixed by the secretary.

**History:** 1941 Comp., § 40-209, enacted by Laws 1941, ch. 147, § 9; 1953, ch. 80, § 2; 1953 Comp., § 39-2-9; Laws 1977, ch. 257, § 26; 1979, ch. 202, § 20; 2015, ch. 3, § 11.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying certain duties of the secretary of public safety and amending qualification requirements for certain officers; designated the previously undesignated paragraphs as Subsections A and B; in the second sentence of Subsection A, deleted each occurrence of "such" and added "the", after "chief", deleted "of the New Mexico state police"; in the third sentence of Subsection A, after

"concurrence of the", deleted "New Mexico state police board" and added "secretary"; in the fourth sentence of Subsection A, deleted "board" and added "secretary"; added the fifth sentence relating to certain certified and commissioned officers; and in Subsection B, after "fixed by the", deleted board and added "secretary".

## 29-2-10. Promotions.

All promotions in the New Mexico state police to the rank of sergeant shall be made after written examinations. All promotions above the rank of sergeant shall be made by the chief after concurrence and approval by the secretary. The ranks of sergeant, lieutenant and captain shall be permanent unless established as an exempt rank by the chief with the concurrence of the secretary. All promotions above the rank of captain are by executive appointment of the chief with concurrence of the secretary, and those persons shall serve at the pleasure of the chief with the concurrence of the secretary.

**History:** 1941 Comp., § 40-210, enacted by Laws 1941, ch. 147, § 10; 1953 Comp., § 39-2-10; Laws 1979, ch. 202, § 21; 2015, ch. 3, § 12.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying certain duties of the secretary of public safety with regard to promotions in the New Mexico state police; in the first sentence, after "written examinations", deleted the remainder of the sentence; and substituted "secretary" for "New Mexico state police board" and "board" throughout the section.

## 29-2-11. Disciplinary proceedings; appeal.

A. A New Mexico state police officer holding a permanent commission shall not be removed from office, demoted or suspended except for incompetence, neglect of duty, violation of a published rule of conduct, malfeasance in office or conduct unbecoming an officer, except as provided in this section. A probationary officer not holding a permanent commission may be removed from office, demoted or suspended in accordance with New Mexico state police rules.

B. The secretary may suspend an officer for disciplinary reasons for not more than thirty days in accordance with New Mexico state police rules without further review or appeal.

C. In the event an officer is removed from office, demoted or suspended for a period of more than thirty days, the secretary shall provide written notification of the grounds supporting the action to the officer. The officer may appeal the secretary's action to the commission within thirty days of the date of receipt of the secretary's written notification. The appeal process shall be public and conducted in accordance with New Mexico state police rules.

D. In the event the commission finds that there is just cause for the removal, demotion or suspension of the officer for a period in excess of thirty days, the officer may appeal the decision of the commission to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1941 Comp., § 40-211, enacted by Laws 1941, ch. 147, § 11; 1953, ch. 80, § 3; 1953 Comp., § 39-2-11; Laws 1970, ch. 5, § 1, 1977, ch. 257, § 27; 1979, ch. 202, § 22; 1987, ch. 254, § 19; 1989, ch. 204, § 23; 1998, ch. 55, § 40; 1999, ch. 265, § 42; 2006, ch. 11, § 1; 2006, ch. 12, § 1.

## ANNOTATIONS

**Cross references.** — For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

**The 2006 amendment,** effective February 24, 2006, provided in Subsection A that a probationary officer not holding a permanent commission may be removed from office, demoted or suspended in accordance with state police rules; deleted the provision in Subsection B, which provided that an officer holding a permanent commission had the right to have a suspension reviewed by the commission; deleted provisions in Subsection C, which provided for the filing of written charges with the commission, notice of charges to the officer, a prompt hearing by the commission, legal representation of the officer, and the making of a record of the hearing; added a provision in Subsection C that the secretary shall provide notification to the officer of the grounds supporting a removal, demotion or suspension; added a provision in Subsection C, which provided for an appeal of the secretary's action to the commission in accordance with state police rules; and provided in Subsection D for an appeal to district court if the commission finds that there is just cause for the removal, demotion or suspension.

Laws 2006, ch. 11, § 1 and Laws 2006, ch. 12, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2006, ch. 12, § 1. *See* 12-1-8 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection D.

**The 1998 amendment,** effective September 1, 1998, inserted "; appeal" in the section heading; added the subsection designations; in Subsection B, substituted "rules" for "regulations"; in Subsection C, deleted "so" following "person"; and rewrote Subsection D.

**The 1989 amendment,** effective July 1, 1989, substituted "except as provided in this section" for "and only on specific written charges filed with the commission with timely and adequate notice of the charges to the person charged and after a hearing on the charges by the commission" in the first sentence; added the present second through

fifth sentences; inserted "of his own choice and at his own expense" in the sixth sentence; rewrote the ninth sentence, which formerly read: "In the event the commission recommends to the secretary that the person charged shall be removed, demoted or suspended for a period in excess of thirty days and the secretary so orders, the person may appeal from the decision of the secretary to the district court of the district in which the alleged cause or any one of the alleged causes for the proceeding arose"; substituted "commission" for "secretary" and "commission's" for "secretary's" in the next-to-last sentence; deleted "provided, however, that the chief of the New Mexico state police may suspend members of the New Mexico state police for disciplinary reasons for periods not to exceed thirty days" at the end of the present last sentence; and deleted the former last sentence, which read: "Any member holding a permanent commission thus suspended by the chief has the right to have the suspension reviewed by the commission, but no further review or appeal shall be allowed."

**Incompetence includes physical inability to perform.** — Incompetence includes physical inability to perform, which inclusion fits in with the pattern and purpose of the statutory plan. A termination or removal for physical unfitness is no less final than one for another form of incompetence. *Tafoya v. N.M. State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

**Physical inability to perform constitutes voluntary resignation not governed by section.** — Request by officer injured in line of duty who had used all his sick leave for leave of absence which was improper under Rule 7, regulatory rule promulgated by state police board, issued pursuant to Section 29-2-22 NMSA 1978, and his physical inability to perform the functions of his job as a senior patrolman, constituted a voluntary resignation, not a termination governed by this section. *Budagher v. N.M. State Police Bd.*, 1971-NMSC-077, 82 N.M. 787, 487 P.2d 489.

**Officer must first pursue administrative remedy.** — Police officer who was wrongfully dismissed and who claimed salary and other benefits must first pursue them administratively. *Tafoya v. N.M. State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

**Board (now commission) is required to meet statutory procedures when it desires to terminate officer,** and if this is not done consequently the severance from service is short of statutory right. *Tafoya v. N.M. State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

**Doubts as to right to procedural safeguards.** — Any doubt as to the right to procedural safeguards should be resolved in the officer's favor unless the right to remove at will or pleasure is clearly expressed. *Tafoya v. N.M. State Police Bd.*, 1970-NMSC-106, 81 N.M. 710, 472 P.2d 973.

**No hearing required when reduction in rank.** — The procedures of advancement, not a promotion, and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanently enable the chief to shift key

personnel to positions where their interest and ability are used to best advantage, without the necessity of a hearing by New Mexico state police board. *Wimberly v. N.M. State Police Bd.*, 1972-NMSC-034, 83 N.M. 757, 497 P.2d 968.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Sexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying officer's demotion or removal or suspension from duty, 9 A.L.R.4th 614.

81A C.J.S. States § 110.

## 29-2-12. Oath.

All members of the New Mexico state police and the secretary shall take the oath of office required of all state officials.

**History:** 1941 Comp., § 40-212, enacted by Laws 1941, ch. 147, § 12; 1953 Comp., § 39-2-12; Laws 1977, ch. 257, § 28; 1978, ch. 82, § 3; 1979, ch. 202, § 23; 2015, ch. 3, § 13.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the secretary of public safety to take the oath of office required of all state officials; after "police and the", deleted "New Mexico state police board" and added "secretary".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 81A C.J.S. States § 91.

## 29-2-13. Uniforms and badges; uniform allowance to be set by secretary.

A suitable and distinctive uniform shall be prescribed by the secretary. The secretary shall provide and issue to each commissioned officer a uniform and an appropriate badge which shall contain in plain legible letters the words "New Mexico state police". The prescribed uniform and badge shall be worn at all times when on duty, except when by direction of the chief or the governor, any member of the New Mexico state police is assigned to special duties. Uniform allowance and subsistence pay shall be established by the secretary and allowed in addition to a commissioned officer's salary and paid on a monthly basis to each commissioned officer of the division. The uniform allowance and subsistence pay shall be expended only for the purposes allowed and any portion of the uniform allowance or subsistence pay not so spent in each fiscal year shall revert to the general fund.

**History:** 1941 Comp., § 40-213, enacted by Laws 1941, ch. 147, § 13; 1953 Comp., § 39-2-13; Laws 1976, ch. 8, § 1; 1977, ch. 257, § 29; 1979, ch. 202, § 24; 1989, ch. 204, § 24.

**ANNOTATIONS**

**The 1989 amendment,** effective July 1, 1989, substituted "secretary" for "board" in the section heading and "secretary" for "New Mexico state police board" in the first sentence, deleted the former second and third sentences relating to establishment and expenditure of uniform allowance, substituted all of the language of the present second sentence preceding "which" for "The board shall also provide and issue to each member an appropriate badge and uniform", and added the last two sentences.

**Section allows each officer to purchase own uniform.** — This section indicates the legislative intention to allow each officer to purchase his own uniforms, since the phraseology cannot be said to even imply that the purchase of uniforms is to be made by the department pursuant to the State Purchasing Agent Act. 1964 Op. Att'y Gen. No. 64-134.

## 29-2-14. Unauthorized wearing of uniform or badge; unauthorized marking of motor vehicle; penalty.

A. Unauthorized wearing of uniform or badge consists of the wearing or requiring the wearing, without authorization by the secretary, of a uniform or badge or both whose material, color or design, or any combination of them, is such that the wearer appears to be a member of the New Mexico state police.

B. Unauthorized marking of motor vehicle consists of the marking, using, possessing or owning or requiring the marking or using, without authorization by the secretary, of a motor vehicle whose insignia, color or equipment, or any combination of them, is such that the motor vehicle appears to be a New Mexico state police motor vehicle.

C. Whoever commits unauthorized wearing of uniform or badge or unauthorized marking of motor vehicle is guilty of a petty misdemeanor.

**History:** 1953 Comp., § 39-2-13.1, enacted by Laws 1971, ch. 87, § 1; 1977, ch. 257, § 30; 1979, ch. 202, § 25; 2015, ch. 3, § 14.

**ANNOTATIONS**

**Cross references.** — For impersonating peace officer, *see* 30-27-2.1 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, changed references made to the New Mexico police board to the secretary of public safety; in Subsection A, after "authorization by the", deleted "New Mexico state police board" and added "secretary", in Subsection B, after "authorization by the", deleted "board" and added "secretary".

## 29-2-15. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 254, § 27 repealed 29-2-15 NMSA 1978, as enacted by Laws 1941, ch. 147, § 14, relating to division of state police, effective July 1, 1987.

## 29-2-16. State police school; compensation.

A. Before entering upon the appointee's duties, every appointee to the New Mexico state police shall be required to attend a school of instruction approved by the secretary. A uniform course of instruction shall be given all trainees governing the operation, maintenance and temporary roadside repair of motor vehicles, the laws of the state that the appointee may be called on to enforce and other instruction as the secretary may require. Attendance at the school or other course of instruction as may be prescribed renders the person attending subject to the control of the New Mexico state police during attendance.

B. The secretary may, within the budgetary means of the New Mexico state police, allow subsistence and compensation for trainees attending the school of instruction at the New Mexico state police headquarters or elsewhere.

C. This section shall not apply to members of the former motor transportation division or the former special investigations division.

**History:** 1941 Comp., § 40-215, enacted by Laws 1941, ch. 147, § 15; 1953 Comp., § 39-2-15; Laws 1959, ch. 231, § 1; 1971, ch. 211, § 1; 1977, ch. 257, § 31; 1978, ch. 82, § 4; 1979, ch. 202, § 26; 1981, ch. 189, § 1; 2015, ch. 3, § 15.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by amending certain duties of appointees to the New Mexico state police and clarifying certain duties of the secretary of public safety; in Subsection A, after "upon", deleted "his" and added "the appointee’s", after "attend", deleted "for a period of at least ninety days", after "approved by", deleted "New Mexico state police board" and added "secretary", after "laws of the state", deleted "which" and added "that", and after "instruction as the", deleted "New Mexico state police board" and added "secretary"; in Subsection B, after "The", deleted "board" and added "secretary", and deleted the second sentence; and added Subsection C.

## 29-2-17. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 202, § 53, repealed 29-2-17 NMSA 1978, as enacted by Laws 1941, Ch. 147, § 16, relating to the state police reserve, effective July 1, 1979.

## 29-2-18. State police chief and other members; powers and duties.

A. The chief and other members of the New Mexico state police, when duly commissioned and sworn under the provisions of Sections 29-2-1 through 29-2-29 NMSA 1978, shall have the following powers and shall be:

(1) conservators of the peace within the state with full power to apprehend, arrest and bring before the proper court all law violators within the state;

(2) ex-officio deputies and agents of all the officers and departments of the taxation and revenue department and of the officers and departments within the state charged with the registration of motor vehicles, the issuance of licenses to operators of motor vehicles and of the officers and departments of the state charged with the regulation and control of motor vehicles operated upon the public highways for hire in the transportation of either passengers or property; and

(3) charged with the enforcement of all laws of New Mexico regulating the use of highways.

B. Upon request of any officer or agency of the state charged with the duty of enforcing any law of the state that is made to the secretary, one or more members of the New Mexico state police may be temporarily designated specifically to enforce the provisions of such law.

**History:** 1941 Comp., § 40-217, enacted by Laws 1941, ch. 147, § 17; 1953 Comp., § 39-2-17; Laws 1977, ch. 257, § 33; 1979, ch. 202, § 27; 2015, ch. 3, § 16.

**ANNOTATIONS**

**Cross references.** — For request for aid from New Mexico mounted patrol, *see* 29-6-5 NMSA 1978.

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying the language in the section and changing references to the New Mexico police board to the secretary of public safety; designated the previously undesignated introductory language as Subsection A, redesignated former Subsections A, B and C as Paragraphs 1, 2 and 3 of Subsection A, and redesignated former Subsection D as Subsection B; in the introductory language of Subsection A, after "state police", deleted "who" and after "powers and", deleted "shall perform the following duties: they"; in Subsection A, Paragraph 2, deleted "they shall be" preceding "ex-officio", and at the end of the paragraph, added "and"; in Subsection A, Paragraph 3, deleted "they shall be" preceding "charged" and at the end of the paragraph, deleted "and"; and in Subsection B, after the second occurrence of "state", added "that is", and after "made to the", deleted "New Mexico state police board" and added "secretary".

**Arrest for possession of marijuana.** — Defendant's car was stopped during a general roadblock and defendant opened his car trunk and then his suitcase at the police officer's request. The officer found marijuana residue in the suitcase and defendant was then placed under arrest for possession of marijuana and the contraband was seized. This stop and seizure was not unlawfully accomplished and the court of appeals was in error in reversing the conviction of defendant for marijuana possession. *State v. Bloom*, 1977-NMSC-016, 90 N.M. 192, 561 P.2d 465.

**During course of arrest may not use excessive force.** — Plaintiff charged defendant police officer with unlawfully, willfully and maliciously assaulting him when the defendant threw plaintiff onto the pavement while removing him from a bar for drunkenness and disorderly conduct, causing breaks to plaintiff's leg. Police officers are entitled to use only reasonable force, not excessive force, in performing their duties. *Mead v. O'Connor*, 1959-NMSC-077, 66 N.M. 170, 344 P.2d 478.

**Officer's authority as conservator of peace** gave him the right to be on the plaintiff's property when called by another person who was involved in a dispute with the plaintiff, and he was within his rights in detaining the plaintiff when it was necessary to preserve the peace and further his investigation of the dispute. *Romero v. Sanchez*, 1995-NMSC-028, 119 N.M. 690, 895 P.2d 212.

**Arrest of persons charged with violating state gambling laws.** 1944 Op. Att'y Gen. No. 44-4616.

**State police and county sheriffs have concurrent authority within county** and each has the duty and authority of enforcing the state's laws. 1943 Op. Att'y Gen. No. 43-4252.

## 29-2-19. Chief; qualifications; removal.

A. The chief is the executive officer of the New Mexico state police and is subject to the control, supervision and direction of the secretary. The appointee, at the time of appointment as chief by the secretary, shall have been a member of the New Mexico state police holding a permanent commission for ten continuous years immediately prior to the appointment and shall have served not less than three years in a supervisory capacity. Appointment shall be made with the consent of the senate.

B. The chief shall serve at the pleasure of the secretary.

C. The seniority and retirement rating of the chief shall be continuous as for any other member.

D. The chief shall maintain an office in Santa Fe in such quarters as are provided by the New Mexico state police for that purpose.

**History:** 1953 Comp., § 39-2-18, enacted by Laws 1977, ch. 257, § 34; 1979, ch. 202, § 28; 1981, ch. 185, § 1; 2015, ch. 3, § 17.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1977, ch. 257, § 34, repealed former 39-2-18, 1953 Comp., relating to executive duties of chief, removal, seniority and retirement, location of office and residence, and enacted a new 39-2-18, 1953 Comp. Laws 1977, ch. 257, § 107, also repealed former 39-2-18, 1953 Comp., as it existed before the enactment of the new section.

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying the qualifications of the chief of the state police; in Subsection A, after "police and", deleted "shall be" and added "is", after "direction of the", deleted "New Mexico state police board. He shall" and added "secretary. The appointee"; in the second sentence of Subsection A, after "time of", deleted "his", after "appointment", added "as chief", after "by the", deleted "board" and added "secretary shall", after "prior to", deleted "his" and added "the", and after "capacity", deleted "and said"; in Subsection B, after "pleasure of the" deleted "New Mexico state police board" and added "secretary"; and in Subsection D, after "maintain", deleted "his" and added "an".

## 29-2-20. Districts.

The New Mexico state police chief, subject to the control of the secretary, may divide the state into districts and may designate home stations for the members of the New Mexico state police.

**History:** 1941 Comp., § 40-219, enacted by Laws 1941, ch. 147, § 19; 1953 Comp., § 39-2-19; Laws 1977, ch. 257, § 35; 1979, ch. 202, § 29; 2015, ch. 3, § 18.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, changed references made to the New Mexico state police board to the secretary of public safety; after "control of the", deleted "New Mexico state police board" and added "secretary".

## 29-2-21. Details.

The governor of New Mexico may from time to time detail all or any part of the New Mexico state police to such part of the state as in his judgment may be necessary to bring about proper law enforcement in the state to handle disturbances or to investigate specific law violations.

**History:** 1941 Comp., § 40-220, enacted by Laws 1941, ch. 147, § 20; 1953 Comp., § 39-2-20; Laws 1977, ch. 257, § 36; 1979, ch. 202, § 30.

## 29-2-22. Rulemaking power; rules to establish standards of conduct.

The secretary has authority to make and promulgate rules and regulations for the purpose of carrying out the provisions of Sections 29-2-1 through 29-2-29 NMSA 1978. The secretary shall establish by rules, from time to time, standards of conduct for members of the New Mexico state police, and a copy of the rules shall be delivered to each member and displayed at each station of the department. The rules shall be filed pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1941 Comp., § 40-221, enacted by Laws 1941, ch. 147, § 21; 1953, ch. 80, § 5; 1953 Comp., § 39-2-21; Laws 1977, ch. 257, § 37; 1978, ch. 82, § 5; 1979, ch. 202, § 31; 2015, ch. 3, § 19.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by giving the secretary of public safety rulemaking power; in the first sentence, after "The", deleted "New Mexico state police board shall have" and added "secretary has"; in the second sentence, after "The", deleted "New Mexico state police board" and added "secretary", after "copy", deleted "thereof" and added "of the rules", and after "each", deleted "such"; in the third sentence, deleted "Such" and added "The".

**Board's authority to make rules controlled by statute.** — Authority of the police board to promulgate rules and regulations must be found in and is limited by statute. Such authority is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. *Winston v. N.M. State Police Bd.*, 1969-NMSC-066, 80 N.M. 310, 454 P.2d 967.

**Agency's authority includes express and implied powers granted.** — It is a fundamental principle of administrative law that the authority of an agency is not limited to those powers expressly granted by statute, but includes, also, all powers that may fairly be implied therefrom. *Wimberly v. N.M. State Police Bd.*, 1972-NMSC-034, 83 N.M. 757, 497 P.2d 968.

**Temporary rank adjustments within scope of powers.** — Where New Mexico state police board has adopted a regulation providing that "all ranks above captain will be appointments and not permanent," and the officers who hold these ranks are given additional salary and emoluments, but these ranks, according to the record, are considered by the board and the department to be temporary, plaintiff's adjustments in rank from captain to major and major to lieutenant colonel were not promotions as such but were temporary advancements within the framework of administration of the New Mexico state police and both chief of police and the board acted within the scope of their authority under the laws of the state of New Mexico in adjusting plaintiff's rank from

lieutenant colonel to major and from major to captain. *Wimberly v. N.M. State Police Bd.*, 1972-NMSC-034, 83 N.M. 757, 497 P.2d 968.

**Regulation allowing director to shift key personnel.** — The procedures of advancement and reduction in rank resulting from regulation providing that all ranks above captain will be appointments and not permanent enable the chief of police to shift key personnel to positions where their interest and ability are used to best advantage. *Wimberly v. N.M. State Police Bd.*, 1972-NMSC-034, 83 N.M. 757, 497 P.2d 968.

**Board can prohibit employee from running for office.** — The board can constitutionally promulgate a rule prohibiting a state police employee from running for or accepting a political office. *State ex rel. Harkleroad v. N.M. State Police Bd.*, 1985-NMSC-076, 103 N.M. 270, 705 P.2d 676.

**Involuntary retirement rule is invalid.** — State police board regulation providing for involuntary retirement of all police officers who had completed 30 years of service, even where such officers had not reached mandatory retirement age, exceeded statutory authority of the board and therefore was invalid. *Winston v. N.M. State Police Bd.*, 1969-NMSC-066, 80 N.M. 310, 454 P.2d 967.

**Effect of using all of sick leave.** — Rule 7 of regulation promulgated by state police board filed pursuant to this section makes it clear that under no circumstances can an officer who was injured in line of duty but who has used up all of his sick leave be granted a leave of absence from the police department, and request for such leave constitutes a voluntary resignation. *Budagher v. N.M. State Police Bd.*, 1971-NMSC-077, 82 N.M. 787, 487 P.2d 489 (decided under prior law).

**No authority for rule requiring mandatory retirement after 30 years.** — There is no delegated authority for the state police board to promulgate a rule requiring mandatory retirement after 30 years of service; such rule would be unreasonable, arbitrary and conflict with the former retirement by age 61 requirement of Section 29-2-6B NMSA 1978. 1967 Op. Att'y Gen. No. 67-72 (rendered under prior law).

## 29-2-23. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 202, § 53 repealed 29-2-23 NMSA 1978, as enacted by Laws 1941, Ch. 147, § 23, relating to the transfer of powers and duties in the bureau of identification of the department of justice to the technical services bureau of the criminal justice support division of the criminal justice department, effective July 1, 1979.

## 29-2-24. Waiver.

The provisions of Sections 29-2-6 through 29-2-8 NMSA 1978 may be waived by the secretary with regard to plainclothes or special investigators and other employees not regularly uniformed.

**History:** 1941 Comp., § 40-225, enacted by Laws 1941, ch. 147, § 25; 1953 Comp., § 39-2-25; Laws 1977, ch. 257, § 39; 1979, ch. 202, § 32; 2015, ch. 3, § 20.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by providing authority to the secretary of the department of public safety to waive certain qualification requirement for officers; after "waived by the", deleted "unanimous vote of all members of the New Mexico state police board" and added "secretary", and after "plainclothes", deleted "men".

## 29-2-25. Accident reports.

When any member of the New Mexico state police investigates a motor vehicle accident, the member shall make a written report of the findings on appropriate forms furnished by the New Mexico state police, the original of which report shall be filed in the office of the New Mexico state police and shall be furnished to any person upon written application accompanied by a fee as set by the secretary for the photocopy of each surface of all documents comprising a report.

**History:** 1941 Comp., § 40-226, enacted by Laws 1947, ch. 38, § 1; 1953 Comp., § 39-2-26; Laws 1957, ch. 59, § 1; 1977, ch. 257, § 40; 1978, ch. 82, § 6; 1979, ch. 202, § 33; 2015, ch. 3, § 21.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by amending the language relating to the completion of vehicle accident reports; after the first occurrence of "police", deleted "shall investigate" and added "investigates"; after "accident", deleted "he" and added "the member"; after "written report of", deleted "his" and added "the"; after the second occurrence of "report", deleted "and of all reports of motor vehicle accidents heretofore made"; after "set by the", deleted "New Mexico state police board" and added "secretary"; and changed "photostat" to "photocopy".

**Limited protection of accused.** — Section 29-10-4 NMSA 1978 protects the confidentiality of information concerning the identity of a person who has been accused, but not charged, with a crime only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under Section 14-2-1 NMSA 1978 et seq. Finally, even if it would otherwise

be protected under either statute, information about a person accused but not charged with a crime is open to public inspection if it is contained in a document listed in Section 29-10-7 NMSA 1978. 1994 Op. Att'y Gen. No. 94-02.

**No conflict between Arrest Record Information Act and section** when accident falls within exemption of former 39-10-8D, 1953 Comp. (repealed and reenacted as Section 29-10-7 NMSA 1978), if the information on the accident report is the same as that information on the initial record of entry, or if any arrest information on the report is deleted from the copy disseminated. 1975 Op. Att'y Gen. No. 75-37 (opinion rendered under former law).

**Accident report not confidential.** — Reports made by police officers regarding an accident would not be considered confidential under Section 66-7-213 NMSA 1978, and would be subject to inspection by persons interested either in the office of the governor's traffic safety coordinating committee or in the police department which made and transmitted the report. 1953 Op. Att'y Gen. No. 53-5840 (opinion rendered under former law).

## 29-2-26. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 202, § 53 repealed 29-2-26 NMSA 1978, as enacted by Laws 1955, Ch. 193, § 1, relating to the representation of the state police board and police officers by the attorney general, effective July 1, 1979.

## 29-2-27. Security for the governor and the legislature.

A. The New Mexico state police shall provide security and protection for the governor, and security and protection for the governor's family. The extent and manner in which the security is provided shall be determined by the governor and the chief of the New Mexico state police.

B. The New Mexico state police shall provide security and protection for the legislature while it is in session.

**History:** 1953 Comp., § 39-2-28, enacted by Laws 1969, ch. 125, § 1; 1977, ch. 257, § 41; 1979, ch. 202, § 34.

## 29-2-28. Provide concurrent jurisdiction of state property and grounds.

The New Mexico state police shall have concurrent jurisdiction for the protection of all public buildings, grounds and property of the state government, its agencies, instrumentalities and institutions, including but not limited to the state capitol and the

state capitol complex. Such concurrent jurisdiction shall include the exercise of supervisory authority over any other security forces employed on such property by the agency, instrumentality or institution, at the option or election of the chief of the New Mexico state police.

**History:** 1953 Comp., § 39-2-28.1, enacted by Laws 1971, ch. 259, § 1; 1977, ch. 257, § 42; 1979, ch. 202, § 35.

## 29-2-29. State police; group life insurance.

Notwithstanding the provisions of Section 10-7-4 NMSA 1978 and in addition to all other benefits provided commissioned officers, the department shall provide life insurance coverage in the amount of twenty-five thousand dollars ($25,000) for each state police officer to be paid to his designated beneficiary. The coverage shall include double indemnity provisions for death incurred in line of duty. The coverage shall be provided by a group term insurance policy, the premium for which shall be paid out of state funds appropriated to the department of public safety.

**History:** 1953 Comp., § 39-2-29, enacted by Laws 1973, ch. 297, § 1; 1989, ch. 204, § 25.

**ANNOTATIONS**

**Cross references.** — For educational funds for children of police killed in active duty, *see* 28-14-1 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, substituted all of the present language of the first sentence preceding "shall" for "Notwithstanding the provisions of Section 5-4-12 NMSA 1953 and in addition to all other benefits provided state police officers, the New Mexico state police", and substituted "department of public safety" for "state police" in the last sentence.

# ARTICLE 3
# Identification of Criminals

## 29-3-1. New Mexico state police; identification and information.

A. It is the duty of the New Mexico state police to install and maintain complete systems for the identification of criminals, including the fingerprint system and the modus operandi system. The New Mexico state police shall obtain, from whatever source procurable, and shall file and preserve for record, plates, photographs, outline pictures, fingerprints, measurements, descriptions, modus operandi statements and such other information about, concerning and relating to any and all persons who have been or who shall be convicted of a felony or who shall attempt to commit a felony

within this state or who are well-known and habitual criminals or who have been convicted of any of the following felonies or misdemeanors:

(1) illegally carrying, concealing or possessing a pistol or any other dangerous weapon;

(2) buying or receiving stolen property;

(3) unlawful entry of a building;

(4) escaping or aiding an escape from prison;

(5) making or possessing a fraudulent or forged check or draft;

(6) petit larceny;

(7) unlawfully possessing or distributing habit-forming narcotic drugs; and

(8) driving while under the influence of intoxicating liquor or drugs.

B. The New Mexico state police may also obtain like information concerning persons who have been convicted of violating any of the military, naval or criminal laws of the United States or who have been convicted of a crime in any other state, country, district or province, which, if committed within this state, would be a felony.

C. The New Mexico state police shall make a complete and systematic record and index of all information obtained for the purpose of providing a convenient and expeditious method of consultation and comparison.

**History:** Laws 1935, ch. 149, § 4; 1941 Comp., § 40-301; 1953 Comp., § 39-3-1; Laws 1977, ch. 257, § 43; 1979, ch. 202, § 36; 1997, ch. 242, § 1.

**ANNOTATIONS**

**Cross references.** — For the DNA Identification Act, *see* Chapter 29, Article 16 NMSA 1978.

**The 1997 amendment,** effective July 1, 1997, in Subsection A, deleted "such" preceding "plates" and "hereafter" following "who shall", designated the paragraphs and added Paragraph (8), in Subsection C inserted "of" following "index", and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6A C.J.S. Arrest § 62.

## 29-3-2. New Mexico state police; cooperation; local and state.

The New Mexico state police shall cooperate with the respective sheriffs, constables, marshals, police and other peace officers of this state in the detection of crime and the apprehension of criminals throughout the state and shall, on the direction of the chief of the New Mexico state police, governor or attorney general, conduct such investigations as may be deemed necessary to obtain and secure evidence which may be considered necessary or essential for the conviction of alleged violators of the criminal laws of this state, and the chief is hereby authorized to assist any prosecuting attorney in the prosecution of any criminal case which may in his judgment require such cooperation. All expenses such as travel, meals and lodging involved in such assistance shall be paid from the court fund of the county in which the trial is held or to be held.

**History:** Laws 1935, ch. 149, § 5; 1941 Comp., § 40-302; 1953 Comp., § 39-3-2; Laws 1977, ch. 257, § 44; 1979, ch. 202, § 37.

## 29-3-3. New Mexico state police; cooperation; federal.

It shall be the duty of the New Mexico state police and it is hereby granted the power to cooperate with agencies of other states and of the United States having similar powers to develop and carry on a complete interstate, national and international system of criminal identification and investigation, and also to furnish upon request any information in their possession concerning any person charged with crime to any court, district attorney or police officer or any peace officer of this state, or of any other state or the United States.

**History:** Laws 1935, ch. 149, § 6; 1941 Comp., § 40-303; 1953 Comp., § 39-3-3; Laws 1977, ch. 257, § 45; 1979, ch. 202, § 38.

**ANNOTATIONS**

**No tort liability for failure to inform out-of-state officials of escape.** — In a wrongful death action arising out of the escape of state prisoners, who crossed over into Colorado and killed a resident thereof, the New Mexico State police, who were informed of the escape soon after it occurred and diligently attempted to apprehend the escapees as soon as possible, but who did not inform Colorado officials, did not breach any duty giving rise to tort liability. *Wittkowski v. State Corr. Dep't*, 1985-NMCA-066, 103 N.M. 526, 710 P.2d 93, cert. quashed, 103 N.M. 442, 708 P.2d 1043, *overruled on other grounds*, *Silva v. State*, 1987-NMSC-107, 106 N.M. 472, 745 P.2d 380.

## 29-3-4. State agencies; cooperation.

A. It is the duty of the university of New Mexico, the human services department, [health care authority department] the department of health and all other state departments, divisions, bureaus, boards, commissions, institutions and officials, free of charge or reward, to cooperate with the law enforcement officers of the state and the New Mexico state police, and to render to them such services and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and

all other sciences and matters relating to or that would aid in controlling crime and the detection, apprehension, identification and prosecution of criminals.

B. Beginning July 1, 2018 and through June 30, 2021, the department of public safety forensic laboratories bureau shall assist a law enforcement agency crime laboratory in a class A county with a population greater than six hundred thousand according to the most recent federal decennial census by processing and testing sexual assault examination kits that consist of one or more samples of biological material collected pursuant to a medical examination of a sexual assault victim for that laboratory. The bureau may charge a laboratory that the bureau assists as provided in this subsection a fee of up to eight hundred dollars ($800) for each sexual assault examination kit that the bureau processes and tests. Fees collected by the bureau in accordance with this subsection shall be deposited in the sexual assault examination kit fund.

C. As used in this section, "biological material" means material that is derived from a human body and includes bodily fluids, hair and skin cells.

**History:** Laws 1935, ch. 149, § 7; 1941 Comp., § 40-304; 1953 Comp., § 39-3-4; Laws 1977, ch. 257, § 46; 1978, ch. 3, § 1; 1979, ch. 202, § 39; 2017, ch. 98, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**The 2017 amendment,** effective June 16, 2017, required the department of public safety forensic laboratories bureau to assist certain local law enforcement crime laboratories for a three year period with testing samples of biological material collected pursuant to a medical examination of a sexual assault victim, allowed the bureau to charge a fee for assisting in testing samples of biological material, and defined "biological material" for purposes of this section; added the subsection designation "A."; in Subsection A, after "It", deleted "shall be" and added "is", after "human services department, the", added "department of" and after "health", deleted "and environment department", and after "departments", added "divisions"; and added Subsections B and C.

## 29-3-5 to 29-3-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1979, ch. 202, § 53 repealed 29-3-5 to 29-3-7 NMSA 1978, as enacted by Laws 1935, Ch. 149, §§ 8, 9, & 10, relating to supplies, quarters and reports

of the technical services bureau of the criminal justice support division, criminal justice department, effective July 1, 1979.

## 29-3-8. Biometric identifying information of persons arrested; state arrest records; disposition.

A. A booking facility shall electronically collect biometric identifying information from a person arrested for the following crimes prior to the person's release:

(1) the commission of a criminal offense amounting to a felony;

(2) the commission of a criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of the state or a political subdivision of the state; or

(3) the violation of a provision of Section 66-8-102 NMSA 1978 or the violation of a municipal or county ordinance prescribing criminal penalties for driving while under the influence of intoxicating liquor or drugs.

B. Biometric identifying information shall be obtained each time a person is arrested.

C. At the time biometric identifying information is collected, the booking facility shall create an arrest record with a state arrest tracking number provided by the department. The arrest record shall include:

(1) the date of arrest;

(2) the state arrest tracking number assigned to the arrest record;

(3) the state personal identification number assigned to the arrestee by the department;

(4) the arrestee's biometric identifying information; and

(5) a completed description with charge code of each offense charged.

D. The department shall promulgate rules addressing:

(1) collection of biometric identifying information;

(2) submission of biometric identifying information;

(3) creation of a state personal identification number system to identify a person arrested and charged with a crime and ensure that the same state personal

identification number is assigned to the person regardless of the number of times the person is arrested or the location of the arrest within the state; and

(4) creation of a state arrest tracking number system for each arrest record.

E. At booking, the booking facility shall immediately forward the arrest record and any other information required by department rule to the department.

F. The department shall immediately provide the:

(1) biometric identifying information to the federal bureau of investigation in Washington, D.C.;

(2) state personal identification number to agencies at all levels of government that are engaged in the apprehension, prosecution or defense, adjudication, incarceration or rehabilitation of criminal offenders; and

(3) arrest record to the administrative office of the district attorneys for submission to the appropriate prosecuting authority.

G. Biometric identifying information shall be collected from an inmate who is charged with a felony or misdemeanor offense while incarcerated, and the jail or corrections facility shall forward the offender's biometric identifying information to the department.

H. The administrative office of the courts shall provide to the department the disposition of all criminal cases assigned a state arrest tracking number. The disposition shall be provided in electronic format, promptly upon the conclusion of the case.

I. The administrative office of the district attorneys shall provide to the department the disposition of all criminal cases assigned a state arrest tracking number when the district attorney decides not to file charges in the case. The disposition shall be provided in electronic format promptly upon a district attorney's decision not to file charges in the case.

J. The department shall forward the disposition of all criminal cases to the federal bureau of investigation and the national crime information center within five business days of receipt.

K. Law enforcement agencies, the administrative office of the courts and the administrative office of the district attorneys shall allow the department access to their records for the purpose of auditing those records to ensure compliance with the provisions of this section.

L. As used in this section:

(1) "biometric identifying information" means physical characteristics used in verifying the identity of an individual, including photographs, fingerprint impressions and palm print impressions;

(2) "booking facility" means a jail, police station, sheriff's office or other place of detention;

(3) "charge code" means the unique code assigned to the crime from the master charge code table distributed by the New Mexico justice information sharing council;

(4) "state arrest tracking number" means an incident-based unique number assigned to the arrest; and

(5) "state personal identification number" means a unique number assigned to the arrestee based on the arrestee's biometric identifying information.

**History:** 1953 Comp., § 39-3-8, enacted by Laws 1978, ch. 87, § 1; 1979, ch. 202, § 40; 1997, ch. 242, § 2; 2002, ch. 46, § 1; 2011, ch. 17, § 1; 2019, ch. 192, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1977, ch. 364, § 1, repealed former 39-3-8, 1953 Comp., relating to fingerprinting of persons arrested for felonies and disposition of prints, and enacted a new 39-3-8, 1953 Comp. (29-3-8 NMSA 1978).

Laws 1978, ch. 87, § 1, repealed 39-3-8, 1953 Comp. (29-3-8 NMSA 1978), relating to fingerprinting of persons arrested and disposition, and enacted a new 29-3-8 NMSA 1978.

**The 2019 amendment,** effective July 1, 2019, specified that photographs, fingerprints and palm prints are biometric identifying information of an arrested person; required booking facilities to electronically collect biometric identifying information from a person arrested for certain crimes, provided requirements for the content and disposition of arrest records, required the department of public safety to promulgate rules addressing the collection of biometric identifying information, and provided additional duties for the department of public safety; in the section heading, deleted "fingerprint and palm print impressions" and added "biometric identifying information", and after "arrested", added "state arrest records"; in Subsection A, after "A", deleted "person arrested for" and added "booking facility shall electronically collect biometric identifying information from a person arrested for the following crimes prior to the person's release", in Paragraph A(1), after "felony", deleted "under the laws of this state or any other jurisdiction shall be required by the arresting peace officer or the jail to make fingerprint and palm print impressions prior to the person's release. The arresting peace officer or the jail shall obtain fingerprint and palm print impressions and a photograph", added new Paragraphs A(2) and A(3); in Subsection B, added "Biometric identifying information

shall be obtained"; in Subsection C, after "time", deleted "of fingerprinting and palm printing" and added "biometric identifying information is collected, the booking facility shall create an arrest record with", after "state", added "arrest", and after "number", deleted "shall be assigned to the fingerprint and palm print records and the booking sheet." and added "provided by the department. The arrest record shall include", and added Paragraphs C(1) through C(5); deleted former Subsections B and C, added new Subsections D and E and redesignated former Subsections D through G as Subsections F through I, respectively; in Subsection F, deleted "Fingerprint and palm print impressions shall be made pursuant to rules adopted by the department. Fingerprint and palm print record submission policies and a state tracking number system for fingerprint and palm print records shall be implemented pursuant to rules adopted by the department. All felony, misdemeanor and DWI arrest fingerprints and palm prints shall be made in duplicate. Both copies and a photograph of the person arrested shall be forwarded to the department within five days following the date of arrest.", after "department shall", deleted "forward one copy" and added "immediately provide the", and added Paragraphs F(1) through F(3); in Subsection G, added "Biometric identifying information shall be collected from", after "incarcerated", deleted "shall be fingerprinted, palm printed and photographed", after "offender's", deleted "fingerprint and palm print records and photograph" and added "biometric identifying information"; in Subsection H, after "assigned a state", added "arrest"; in Subsection I, after "assigned a state", added "arrest"; added Subsection J and redesignated former Subsection H as Subsection K; and added Subsection L.

**The 2011 amendment,** effective June 17, 2011, required palm prints of persons who are arrested.

**The 2002 amendment,** effective July 1, 2002, in Subsection A, inserted "or the jail" and "prior to the person's release" in the first sentence, and added the second and third sentences; in Subsection B, substituted "by the arresting peace officer or the jail to make fingerprint impressions prior to the person's release" for "to make fingerprint impressions" in the first sentence, and added the second and third sentences; in Subsection C, inserted "or the jail" and "prior to the person's release" in the first sentence, and added the second and third sentences; rewrote Subsection D, substituting "the department" for "the New Mexico state police board" in the first sentence, adding the present second sentence, inserting "misdemeanor and DWI" in the third sentence, and adding the requirement of a photograph and the five-day requirement in the fourth sentence; deleted former Subsection E in light of the other amendments, and added present Subsections E through H.

**The 1997 amendment,** effective July 1, 1997, added Subsection C, redesignating the following subsections accordingly, and substituted "federal bureau of investigation" for "FBI" in Subsection E.

## 29-3-8.1. Repealed.

**History:** Laws 2002, ch. 46, § 2; repealed by Laws 2019, ch. 203, § 8.

**ANNOTATIONS**

**Repeals.** — Laws 2019, ch. 203, § 8 repealed 29-3-8.1 NMSA 1978, as enacted by Laws 2002, ch. 46, § 2, relating to petition to expunge arrest information, effective January 1, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

## 29-3-9. Instruction.

The governor or the chief of the New Mexico state police may, when deemed necessary or advisable, detail and commission any member or members of the New Mexico state police to attend as a student any school of instruction, now or which may hereafter be established and operated by the United States or any of its agencies, having for its purpose the instruction and training of operators in crime detection and identification, investigation and apprehension of criminals. Such person or persons so detailed and commissioned shall, when they are members of the New Mexico state police, draw the same salaries and allowances as when on duty in this state and shall be deemed to be on leave of absence for such purpose. All other persons so detailed and commissioned for such purpose shall be paid such compensation and allowance as may be provided by law.

**History:** Laws 1935, ch. 149, § 13; 1941 Comp., § 40-309; 1953 Comp., § 39-3-9; Laws 1977, ch. 257, § 50; 1979, ch. 202, § 41.

## 29-3-10. DNA collection from persons arrested.

A. A person eighteen years of age or over who is arrested for the commission of a felony under the laws of this state or any other jurisdiction shall provide a DNA sample to jail or detention facility personnel upon booking. A sample is not required if it is determined that a sample has previously been taken, is in the possession of the administrative center, has not been expunged pursuant to the DNA Identification Act [Chapter 29, Article 16 NMSA 1978] and is sufficient for DNA identification testing.

B. Jail or detention facility personnel who collect samples pursuant to this section shall forward the samples to the administrative center. A sample shall not be analyzed and shall be destroyed unless one of the following conditions has been met:

(1) the arrest was made upon an arrest warrant for a felony;

(2) the defendant has appeared before a judge or magistrate who made a finding that there was probable cause for the arrest; or

(3) the defendant posted bond or was released prior to appearing before a judge or magistrate and then failed to appear for a scheduled hearing.

C. Samples shall be collected in accordance with rules and procedures adopted by the DNA oversight committee, shall be subject to the confidentiality and penalty provisions of the DNA Identification Act and shall be used only as authorized by that act.

D. As used in this section:

(1) "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system pursuant to the provisions of the DNA Identification Act;

(2) "DNA" means deoxyribonucleic acid; and

(3) "sample" means a sample of biological material that is sufficient for DNA testing.

**History:** Laws 2006, ch. 104, § 1; 2011, ch. 84, § 1.

**ANNOTATIONS**

**The 2011 amendment,** effective July 1, 2011, required DNA samples from all persons arrested for commission of a felony if the arrest was made upon an arrest warrant, a judge or a magistrate has found probable cause for the arrest, or the defendant failed to appear for a hearing after posting bond.

## 29-3-11. Uniform crime reporting system established; duties of department.

A. The department of public safety shall develop, operate and maintain a uniform crime reporting system and shall be the central repository for the collection, storage, retrieval and analysis of crime incident and arrest reports generated by all law enforcement agencies in this state. The system shall be operational as of January 1, 2008.

B. The department shall:

(1) compile statistical data and forward such data as required to the federal bureau of investigation or the appropriate department of justice agency in accordance with standards and procedures of the national system;

(2) provide forms, standards and procedures and related training to state and local law enforcement agencies as necessary for the agencies to report incident and arrest activity for inclusion in the statewide system;

(3) in conjunction with the New Mexico sentencing commission, annually publish a report on the nature and extent of crime in New Mexico and submit the report to the governor and to the legislature;

(4) maintain the privacy and security of information in accordance with applicable state and federal laws;

(5) provide the New Mexico sentencing commission access to the data collected and maintained by the department; and

(6) establish rules as necessary to implement the provisions of this section.

C. Every law enforcement agency in the state shall:

(1) submit crime incident reports to the department of public safety on forms or in the format prescribed by the department;

(2) submit any other crime incident information as may be required by the department of public safety; and

(3) use the unique code assigned to the crime from the master charge code table distributed by the New Mexico justice information sharing council for the automated fingerprint identification system and use uniform crime incident reporting as provided by the department for all incidents and arrests.

D. The annual report and other statistical data reports generated by the department shall be made available to state and local law enforcement agencies, the administrative office of the courts and the general public.

**History:** Laws 2007, ch. 37, § 1; 2019, ch. 192, § 3.

**ANNOTATIONS**

**Cross references.** — For duty of state police to establish and maintain complete systems for the identification of criminals, *see* 29-3-1 NMSA 1978.

For the public safety department, *see* 9-19-4 NMSA 1978.

**The 2019 amendment,** effective July 1, 2019, required the department of public safety to share data with the New Mexico sentencing commission; in Subsection B, added Paragraph B(5); in Subsection C, Paragraph C(3), after "use the", deleted "state uniform statutory charge codes" and added "unique code assigned to the crime from the master charge code table distributed by the New Mexico justice information sharing council"; and in Subsection D, after "law enforcement agencies," added "the administrative office of the courts".

## 29-3-12. Updates to criminal history records.

The department of public safety shall maintain an electronic subscription service to provide notice of updates to criminal history records, including dispositions, for agencies

authorized by law to receive particular criminal history record information. The department shall update, upon receipt, criminal history repository records and dispositions pursuant to any change in information discovered by the department. Within forty-eight hours after the department becomes aware that an individual's criminal history record information in a repository record has changed, the department shall provide notice of the updated information to any agency authorized by law to receive information on that particular record.

**History:** Laws 2011, ch. 83, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 83 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

# ARTICLE 3A
# Criminal Record Expungement

## 29-3A-1. Short title.

Chapter 29, Article 3A NMSA 1978 may be cited as the "Criminal Record Expungement Act".

**History:** Laws 2019, ch. 203, § 1; 2021 (1st S.S.), ch. 3, § 3.

**ANNOTATIONS**

**The 2021 (1st S.S.) amendment,** effective June 29, 2021, changed "This act" to "Chapter 29, Article 3A NMSA 1978".

## 29-3A-2. Definitions.

As used in the Criminal Record Expungement Act:

A. "arrest records" means records of identification of a person under arrest or under investigation for a crime taken or gathered by an official; "arrest records" includes information gathered from the national crime information center or another criminal record database, photographs, fingerprints and booking sheets; except "arrest records" does not include:

(1) driving while intoxicated citations maintained by the taxation and revenue department;

(2) computer-aided dispatch information; or

(3) log books relating to breath alcohol testing equipment;

B. "expungement" means the removal from access to the general public of a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections or law enforcement internet website; and

C. "public records" means documentation relating to a person's arrest, indictment, proceeding, finding or plea of guilty, conviction, acquittal, dismissal or discharge, including information posted on a court or law enforcement website; but "public records" does not include:

(1) arrest record information that:

(a) reveals confidential sources, methods, information or individuals accused but not charged with a crime and that is maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime; or

(b) is confidential and unlawful to disseminate or reveal, except as provided in the Arrest Record Information Act [Chapter 29, Article 10 NMSA 1978] or other law;

(2) the file of a district attorney or attorney general maintained as a confidential record for law enforcement purposes and not open for inspection by members of the public;

(3) a record maintained by the children, youth and families department, the human services department [health care authority department] or the public education department when that record is confidential under state or federal law and is required to be maintained by state or federal law for audit or other purposes; or

(4) a record received pursuant to a background check as authorized by law.

**History:** Laws 2019, ch. 203, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**Effective dates.** — Laws 2019, ch. 203, § 9 made Laws 2019, ch. 203 effective January 1, 2020.

## 29-3A-3. Expungement of records upon identity theft.

A. A person who is wrongfully identified in arrest records or public records as a result of identity theft may petition the district court for an order to expunge arrest records and public records.

B. After a hearing on the petition and upon a showing that the person is a victim of identity theft, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records be expunged.

C. The court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts. The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of such records to any person, except upon order of the court.

D. After notice to and a hearing for all interested parties and in compliance with all applicable law, the court shall insert in the records the correct name and other identifying information of the offender, if known or ascertainable, in lieu of the name of the person wrongly identified.

**History:** Laws 2019, ch. 203, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 203, § 9 made Laws 2019, ch. 203 effective January 1, 2020.

## 29-3A-4. Expungement of records upon release without conviction.

A. One year from the date of the final disposition in the case, a person released without conviction for a violation of a municipal ordinance, misdemeanor, felony, penalty assessments under the Criminal Code [30-1-1 NMSA 1978] and the Motor Vehicle Code [66-1-1 NMSA 1978] or violations and deferred sentences under the Motor Vehicle Code may petition the district court in the district in which the charges against the person originated for an order to expunge arrest records and public records related to that case.

B. A petitioner shall provide notice by first-class United States mail of the filed petition to the following parties, which parties shall be given thirty days in which to provide to the district court any objections to the petition:

(1) the district attorney for that district; and

(2) the department of public safety.

C. A single petition filed pursuant to Subsection A of this section may include a request to expunge multiple arrest records and public records that originated within the jurisdiction of a district. A petition shall be filed under seal or under pseudonym.

Petitions brought pursuant to the Criminal Record Expungement Act and all records of proceedings thereunder shall be expunged upon the conclusion of proceedings. The petitioner shall attach to and file with the petition copies of the petitioner's record of arrest and prosecutions from the department of public safety dated no earlier than ninety days prior to the date the petition is filed.

D. A party that seeks to object to a petition on the basis of the contents of a petitioner's record of arrest and prosecutions from the federal bureau of investigation must provide a copy of that record to a petitioner at no charge at the time the party objects.

E. After a hearing on the petition, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records related to the case be expunged if it finds that no other charge or proceeding is pending against the petitioner and if the petitioner was released without a conviction, including:

(1) an acquittal or finding of not guilty;

(2) a nolle prosequi, a no bill or other dismissal;

(3) a referral to a preprosecution diversion program;

(4) an order of conditional discharge pursuant to Section 31-20-13 NMSA 1978; or

(5) the proceedings were otherwise discharged.

F. The court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts. The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of the records to any person, except upon order of the court.

**History:** Laws 2019, ch. 203, § 4; 2021 (1st S.S.), ch. 3, § 4.

## ANNOTATIONS

**The 2021 (1st S.S.) amendment,** effective June 29, 2021, added penalty assessments under the Criminal Code and the Motor Vehicle Code or violations and deferred sentences under the Motor Vehicle Code to the existing provision that authorizes a person to petition a district court for an order to expunge arrest records and public records related to the case, made changes to the requirements for notice of petitions and objections, and added provisions governing the form and content of petitions; in Subsection A, after "felony", added "penalty assessments under the Criminal Code and the Motor Vehicle Code or violations and deferred sentences under the Motor Vehicle Code"; in Subsection B, after "provide notice", added "by first-class United States mail", and after "shall be given", deleted "an opportunity" and added "thirty days in which", and

deleted former Paragraph B(3); and added new Subsections C and D and redesignated former Subsections C and D as Subsections E and F, respectively.

## 29-3A-5. Expungement of records upon conviction.

A. A person convicted of a violation of a municipal ordinance, misdemeanor or felony, following the completion of the person's sentence and the payment of any fines or fees owed to the state for the conviction, may petition the district court in which the person was convicted for an order to expunge arrest records and public records related to that conviction.

B. A petitioner shall provide notice of the filed petition to the following parties, which parties shall be given an opportunity to provide to the district court any objections to the petition:

(1) the district attorney for that district;

(2) the department of public safety; and

(3) the law enforcement agency that arrested the petitioner.

C. After a hearing on a petition, the court shall issue an order within thirty days of the hearing requiring that all arrest records and public records related to the conviction be expunged if the court finds that:

(1) no other charge or proceeding is pending against the petitioner;

(2) justice will be served by an order to expunge;

(3) the petitioner has fulfilled any victim restitution ordered by the court in connection with the petitioner’s conviction; and

(4) no other criminal conviction of the petitioner has occurred for a period of:

(a) two years if the petition relates to a conviction for a violation of a municipal ordinance or a misdemeanor not otherwise provided in this paragraph;

(b) four years if the petition relates to a misdemeanor conviction for aggravated battery as provided in Subsection B of Section 30-3-5 NMSA 1978 or to a conviction for a fourth degree felony not otherwise provided in this paragraph;

(c) six years if the petition relates to a conviction for a third degree felony not otherwise provided in this paragraph;

(d) eight years if the petition relates to a conviction for a second degree felony not otherwise provided in this paragraph; or

(e) ten years if the petition relates to a conviction for a first degree felony or for any offense provided in the Crimes Against Household Members Act [30-3-10 to 30-3-18 NMSA 1978].

D. The court shall cause a copy of the order to be delivered to all relevant law enforcement agencies and courts. The order shall prohibit all relevant law enforcement agencies and courts from releasing copies of such records to any person, except upon order of the court.

E. To determine whether justice will be served by an order to expunge, the court shall consider:

(1) the nature and gravity of the offense or conduct that resulted in the petitioner's conviction;

(2) the petitioner's age, criminal history and employment history;

(3) the length of time that has passed since the offense was committed and the related sentence was completed;

(4) the specific adverse consequences the petitioner may be subject to if the petition is denied; and

(5) any reasons to deny expungement of the records submitted by the district attorney.

F. For the purposes of determining the time lapsed since a criminal conviction as required in Subsection C of this section, time shall be measured from the last date on which a person completed a sentence for a conviction in any jurisdiction.

G The provisions of Subsection A of this section do not apply to an offense committed against a child, an offense that caused great bodily harm or death to another person, a sex offense as defined in Section 29-11A-3 NMSA 1978, embezzlement pursuant to Section 30-16-8 NMSA 1978 or an offense involving driving while under the influence of intoxicating liquor or drugs.

**History:** Laws 2019, ch. 203, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 203, § 9 made Laws 2019, ch. 203 effective January 1, 2020.

## 29-3A-6. Notices; rulemaking.

The administrative office of the courts and the department of public safety shall develop rules and procedures to implement the Criminal Record Expungement Act, including procedures for notifying the accused of the accused's rights under that act.

**History:** Laws 2019, ch. 203, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 203, § 9 made Laws 2019, ch. 203 effective January 1, 2020.

## 29-3A-7. Effect of an order to expunge.

Upon entry an of order to expunge, the proceedings shall be treated as if they never occurred, and officials and the person who received the order to expunge may reply to an inquiry that no record exists with respect to the person; provided that arrest or conviction records shall be disclosed by the person and officials in connection with any application for or query regarding qualification for employment or association with any financial institution regulated by the financial industry regulatory authority or the securities and exchange commission.

**History:** Laws 2019, ch. 203, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 203, § 9 made Laws 2019, ch. 203 effective January 1, 2020.

## 29-3A-8. Expungement of arrest and conviction records; procedure.

A. If a person was charged with an offense involving cannabis that is no longer a crime on June 29, 2021 or that would have resulted in a lesser offense if the Cannabis Regulation Act [Chapter 26, Article 2C NMSA 1978] had been in effect at the time of the offense, whether or not the person is convicted, all public records held by a court or an agency of the state or a local jurisdiction that relate to the person's arrest or conviction shall be automatically expunged two years after the date of the person's conviction or the date of the person's arrest if there was no conviction. If the person is or was under eighteen years of age at the time of the arrest or conviction, the public records under this section shall be retained for two years or until the person is eighteen years of age, whichever comes first, and shall then be automatically expunged. Automatic expungement under this section applies to public records involving only cannabis and cannabis paraphernalia charges and requires destruction of the records.

B. The administrative office of the courts shall implement a procedure allowing persons charged with offenses eligible for automatic expungement under this section to

verify whether automatic expungement has occurred and request expedited automatic expungement if eligible charges have not yet been expunged.

C. If an arrest or conviction involved cannabis and non-cannabis charges, a person may request expungement of eligible cannabis charges as defined in Subsection A of this section by the administrative office of the courts through the procedure implemented in Subsection B of this section.

D. Requests for expungement to the administrative office of the courts from persons charged with offenses eligible for automatic expungement shall remain confidential and are not subject to disclosure.

**History:** Laws 2021 (1st S.S.), ch. 3, § 5; 2023, ch. 74, § 1.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, provided that automatic expungement applies to public records involving only cannabis and cannabis paraphernalia charges and that automatic expungement requires destruction of the records, required the administrative office of the courts to implement a procedure allowing persons charged with offenses eligible for automatic expungement to verify whether their charges have been expunged, provided that if an arrest or conviction involved cannabis and non-cannabis charges, a person may request expungement of eligible cannabis charges through an administrative process through the administrative office of the courts, and required that requests for automatic expungement remain confidential; in Subsection A, after "no longer a crime on", deleted "the effective date of the Cannabis Regulation Act" and added "June 29, 2021", after "if there was no conviction", deleted "provided that if the arrest or conviction included multiple charges, only the portions of the public records related to the cannabis charge shall be expunged", and after "shall then be automatically expunged", deleted "provided that if the arrest or conviction included multiple charges, only the portions of the public records related to the cannabis charge shall be expunged. The public records shall be removed from all statewide criminal databases. The supreme court shall promulgate rules to implement the provisions of this section" and added "Automatic expungement under this section applies to public records involving only cannabis and cannabis paraphernalia charges and requires destruction of the records."; and added Subsections B through D.

## 29-3A-9. Dismissal of sentences; incarcerated persons.

A. Within thirty days following the effective date of this section, a correctional facility, a county jail or a juvenile correctional facility in which a person is currently incarcerated for an offense that is no longer a crime pursuant to the provisions of the Cannabis Regulation Act [Chapter 26, Article 2C NMSA 1978], or that would have resulted in a lesser offense if that act had been in effect at the time of the offense, shall notify the court that the convicted person's case may be:

(1) reopened to consider possible dismissal of the person's sentence; or

(2) expunged pursuant to the provisions of the Criminal Record Expungement Act.

B. A court shall reopen a case pursuant to Subsection A of this section and dismiss the person's sentence if it is legally invalid.

C. A person who has completed the person's sentence for a conviction, whether by trial or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense if the Cannabis Regulation Act had been in effect at the time of the offense is entitled to have the conviction dismissed and expunged because the prior conviction is now legally invalid or redesignated as a penalty assessment citation.

D. On or before January 1, 2022, the department of public safety shall review the public records in the state criminal history databases and shall identify all past convictions that are potentially eligible for dismissal and expungement or redesignation pursuant to the Cannabis Regulation Act. The department of public safety shall notify the corrections department, prosecutors and defense counsel of record in the case resulting in the conviction of all cases that are eligible for dismissal and expungement or redesignation.

E. The prosecutor of the case shall have until July 1, 2022 to review all cases and determine whether to challenge the dismissal and expungement or redesignation.

F. The prosecutor of the case may challenge the resentencing of a person pursuant to this section when the person does not meet the criteria established under the Cannabis Regulation Act.

G. On or before July 1, 2022, the prosecutor of the case shall inform the court and defense counsel of record in the case resulting in the conviction when the prosecutor of the case is challenging a particular dismissal and expungement or redesignation. The prosecutor of the case shall also inform the court when the prosecutor of the case is not challenging a particular dismissal and expungement or redesignation.

H. If the prosecutor of the case does not challenge the dismissal and expungement or redesignation by July 1, 2022, the court shall notify the department of public safety that the case has been dismissed. Upon notice, the department of public safety shall expunge the public record pertaining to the offense; provided that if the arrest included multiple charges, only the portions of the public records related to the cannabis charge shall be expunged.

I. A person who is currently incarcerated or who was incarcerated in the past for a cannabis offense that is no longer a crime may at any time petition to modify the person's criminal sentence or to have the person's conviction vacated. If the petition is

granted, the court shall issue an order within thirty days of the granting of the petition requiring that the portions of the public records related to the cannabis offense, as well as all records of proceedings related to the petition for expungement, be expunged.

J. Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to a person who was convicted of or incarcerated for a cannabis offense.

K. The provisions of this section shall apply equally to juvenile delinquency adjudications and convictions of a juvenile if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense as provided in the Cannabis Regulation Act.

L. No fee or cost of any kind shall be imposed upon a person whose sentence is reviewed pursuant to this section.

**History:** Laws 2021 (1st S.S.), ch. 3, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2021 (1st S.S.), ch. 3 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 29, 2021, 90 days after adjournment of the legislature.

# ARTICLE 3B
# Accurate Eyewitness Identification

## 29-3B-1. Short title.

Sections 12 through 15 [29-3B-1 to 29-3B-4 NMSA 1978] of this act may be cited as the "Accurate Eyewitness Identification Act".

**History:** Laws 2019, ch. 211, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 211, § 17 made Laws 2019, ch. 211, § 12 effective July 1, 2019.

## 29-3B-2. Definitions.

As used in the Accurate Eyewitness Identification Act:

A. "administrator" means a person conducting a photo lineup or live lineup;

B. "blind" means the administrator does not know the identity of the suspect;

C. "blinded" means the administrator may know who the suspect is but does not know which lineup member is being viewed by the eyewitness;

D. "eyewitness" means a person who observes another person at or near the scene of an offense;

E. "filler" means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure;

F. "live lineup" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;

G. "photo lineup" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form or via computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;

H. "showup" means an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator; and

I. "suspect" means a person believed by law enforcement to be the possible perpetrator of the crime.

**History:** Laws 2019, ch. 211, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 211, § 17 made Laws 2019, ch. 211, § 12 effective July 1, 2019.

## 29-3B-3. Eyewitness identification procedures.

A. Not later than January 1, 2020, a criminal justice entity conducting eyewitness identification procedures shall adopt and comply with written policies for using an eyewitness to make a decision about whether a suspect is the perpetrator of a crime upon viewing the suspect in person in a live lineup or showup or upon viewing a representation of the suspect in a photo lineup.

B. Each governmental entity in New Mexico that administers eyewitness identification procedures shall provide a copy of its written policies to the secretary of

public safety no later than February 1, 2020 and the secretary shall make those policies available to the public.

C. A law enforcement agency shall biennially review policies adopted pursuant to this section to incorporate new scientifically supported protocols.

D. In developing and revising policies pursuant to this section, a law enforcement agency shall adopt those practices shown by reliable evidence to enhance the accuracy of identification procedures. Each governmental entity in New Mexico that administers eyewitness identification procedures shall submit its updated written policies to the secretary of public safety no later than February 1 of each odd-numbered year.

E. A law enforcement agency shall include in policies adopted pursuant to this section practices to enhance the objectivity and reliability of eyewitness identifications and to minimize the possibility of mistaken identifications, including the following:

(1) having a blind administrator or blinded administrator perform the live lineup or photo lineup;

(2) documenting a description of the suspect provided by the eyewitness, including a description of the circumstances under which the suspect was seen by the eyewitness, the time of day, the length of time the suspect was seen, the perceived or actual distance from the eyewitness to the suspect and the lighting conditions;

(3) providing the eyewitness with instructions that minimize the likelihood of an inaccurate identification, including that the perpetrator may or may not be in the identification procedure and that the investigation will continue regardless of whether an identification is made;

(4) composing the lineup so that the fillers generally resemble the eyewitness's description of the perpetrator so that the suspect does not unduly stand out from the fillers;

(5) using at least four fillers in a live lineup and at least five fillers in a photo lineup;

(6) ensuring, when practicable, that a photograph of the suspect used in a photo lineup is contemporary and resembles the suspect's appearance at the time of the offense;

(7) presenting separate photo lineups and live lineups when there are multiple eyewitnesses, ensuring that the same suspect is placed in a different position for each identification procedure;

(8) having the administrator seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the

eyewitness's confidence level that the person identified is the person who committed the crime;

(9) minimizing factors at any point in time that influence an eyewitness to identify a suspect or affect the eyewitness's confidence level in identifying a suspect, including verbal or nonverbal statements by or reactions from the administrator;

(10) presenting lineup members one at a time;

(11) adopting relevant practices shown to enhance the reliability of an eyewitness participating in a showup procedure, such as:

(a) identifying the circumstances under which a showup is warranted;

(b) transporting the eyewitness to a neutral, non-law enforcement location where the detained suspect is being held;

(c) removing the suspect from the law enforcement squad car;

(d) removing restraints from the suspect when the suspect is being observed by the eyewitness; and

(e) administering the showup procedure close in time to the commission of the crime;

(12) video recording the entirety of the photo lineup and live lineup and, where practicable, the showup procedure, unless the recording equipment is not reasonably available or the recording equipment fails and obtaining replacement equipment is not feasible; and

(13) preserving photographic documentation of all live lineup and photo lineup members and showup suspects, as well as all descriptions provided by the eyewitness of the perpetrator.

F. All written departmental eyewitness identification policies shall be made available to the public upon request.

**History:** Laws 2019, ch. 211, § 14.

## ANNOTATIONS

**Effective dates.** — Laws 2019, ch. 211, § 17 made Laws 2019, ch. 211, § 12 effective July 1, 2019.

**Article II, Sec. 18 provides broader due process protections than the United States constitution in the context of admission of eyewitness identification**

**evidence.** — Article II, Section 18 of the New Mexico constitution affords broader due process protection than the United States constitution in the context of admission of eyewitness identification evidence because the federal reliability standard, the *Manson* rule, is both scientifically and jurisprudentially unsound, and hence flawed under an interstitial review, and therefore does not satisfy due process under the New Mexico constitution. *State v. Martinez*, 2021-NMSC-002, *overruling Patterson v. LeMaster*, 2001-NMSC-013, 130 N.M. 179, 21 P.3d 1032, *State v. Jacobs*, 2000-NMSC-026, 129 N.M. 448, 10 P.3d 127, and *State v. Baca*, 1983-NMSC-049, 99 N.M. 754, 664 P.2d 360.

**New standard for determining whether eyewitness identification evidence is admissible at trial.** — Under New Mexico's new standard for determining whether eyewitness identification evidence is admissible at trial, if a witness makes an identification of a defendant as a result of a police identification procedure that is unnecessarily suggestive and conducive to misidentification, the identification and any subsequent identification by the same witness must be suppressed. *State v. Martinez*, 2021-NMSC-002, *overruling Patterson v. LeMaster*, 2001-NMSC-013, 130 N.M. 179, 21 P.3d 1032, *State v. Jacobs*, 2000-NMSC-026, 129 N.M. 448, 10 P.3d 127, and *State v. Baca*, 1983-NMSC-049, 99 N.M. 754, 664 P.2d 360.

**Good reason must be shown for police to employ suggestive eyewitness identification procedures.** — The State can meet its burden to show that good reason existed for the police to employ suggestive eyewitness identification procedures by demonstrating that a suggestive identification was conducted for a legitimate law enforcement purpose, such as protecting public safety or quickly confirming the identity of an assailant in the immediate aftermath of a crime. If the State meets that burden, then the suggestive identification is admissible. *State v. Garcia*, 2025-NMSC-030.

**The district court correctly concluded that the state of emergency provided good reason for the suggestive eyewitness identification procedures.** — Where codefendants were indicted by a grand jury for first-degree murder and related charges stemming from a drive-by shooting, and where, during the investigation of the murder, investigators showed one of the victims photographs of the suspects, and where the defense argued that the nonstandard identification procedure used by investigators was so highly suggestive that the admission of the evidence would violate due process, the district court did not abuse its discretion in allowing the eyewitness identification, because the nature of the crime was extremely violent and dangerous, and the corresponding concerns for public safety were similarly high. The district court correctly concluded that the state of emergency provided good reason for the suggestive eyewitness identification procedures, and therefore the admission of evidence of the identification did not violate codefendants' due process rights. *State v. Garcia*, 2025-NMSC-030.

**Burden of proof for admitting evidence of eyewitness identifications.** — Under New Mexico's approach to admitting eyewitness identifications, the initial burden falls on the accused to establish prima facie that some aspect of the identification procedure

employed by the police was suggestive in nature. If the accused does not meet that burden, suppression is not required. However, if the accused demonstrates that the identification procedure contained one or more suggestive elements, the burden shifts to the state to prove by clear and convincing evidence *either* that (1) the procedure employed was not so suggestive as to materially taint the identification made by the eyewitness, which is to say that any departure from proper procedure could not have increased the risk of misidentification, *or* (2) good reason existed for the police to employ the suggestive procedure in the first instance. If the state fails to carry its responsive burden, the identification evidence and any subsequent in-court identification must be suppressed. *State v. Martinez*, 2021-NMSC-002, *overruling Patterson v. LeMaster*, 2001-NMSC-013, 130 N.M. 179, 21 P.3d 1032, *State v. Jacobs*, 2000-NMSC-026, 129 N.M. 448, 10 P.3d 127, and *State v. Baca*, 1983-NMSC-049, 99 N.M. 754, 664 P.2d 360.

**New Mexico courts abandon the independent source doctrine in the context of disputed eyewitness identifications.** — Pursuant to the independent source doctrine, an in-court identification which is independent of and not tainted by an out-of-court identification is admissible at trial. The independent source doctrine in the context of due process and disputed eyewitness identification evidence lacks legal justification and is contrary to existing science. New Mexico therefore abandons the doctrine in the context of disputed eyewitness identifications. *State v. Martinez*, 2021-NMSC-002, *overruling Patterson v. LeMaster*, 2001-NMSC-013, 130 N.M. 179, 21 P.3d 1032, *State v. Jacobs*, 2000-NMSC-026, 129 N.M. 448, 10 P.3d 127, and *State v. Baca*, 1983-NMSC-049, 99 N.M. 754, 664 P.2d 360.

**Suppression of eyewitness identification not required where defendant failed to establish prima facie that some aspect of the identification procedure used was suggestive in nature.** — Where defendant was charged with two counts of murder in the first-degree, and where, during the investigation, detectives showed an eyewitness five or six photos of different individuals, including a picture of defendant, and where the eyewitness identified defendant in one of the photographs as the person he saw at the scene of the shooting, and where, two days later, detectives assembled a photo array and requested that the eyewitness view the array which was composed of six photographs, some of which were the same photos shown to the eyewitness two days before as well as some photos that were new to him, and where the eyewitness again identified defendant in a photo as the person he saw at the scene of the shooting, the district court did not err in admitting evidence of the eyewitness's identification because defendant failed to establish prima facie that some aspect of the identification procedure used by the detectives was suggestive in nature. *State v. Martinez*, 2021-NMSC-002, *overruling Patterson v. LeMaster*, 2001-NMSC-013, 130 N.M. 179, 21 P.3d 1032, *State v. Jacobs*, 2000-NMSC-026, 129 N.M. 448, 10 P.3d 127, and *State v. Baca*, 1983-NMSC-049, 99 N.M. 754, 664 P.2d 360.

## 29-3B-4. Training of law enforcement officers.

The secretary of public safety shall create, administer and conduct training programs for law enforcement officers and recruits on the methods and technical aspects of the eyewitness identification practices and procedures shown by reliable evidence to enhance the accuracy of eyewitness evidence referenced in the Accurate Eyewitness Identification Act.

**History:** Laws 2019, ch. 211, § 15.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 211, § 17 made Laws 2019, ch. 211, § 12 effective July 1, 2019.

# ARTICLE 4
# State Police Pension Fund

## 29-4-1. [Police board may establish trust funds; purpose.]

Authority is hereby granted to the board of supervisors of the New Mexico state police [secretary of public safety] to create and establish in behalf and for the benefit of eligible members of the New Mexico state police a pension trust fund providing termination benefits and retirement benefits and a supplementary trust fund providing benefits to such members and their dependents in the event of disability or death as limited hereinafter or in the trust agreements.

**History:** Laws 1939, ch. 213, § 1; 1941 Comp., § 40-401; 1953 Comp., § 39-4-1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The name of the board of supervisors of the New Mexico state police was changed by Laws 1941, ch. 147, § 24 (compiled as 39-2-24, 1953 Comp.), to the board of supervisors of the division of courtesy and information. Laws 1977, ch. 257, § 107, repealed 39-2-24, 1953 Comp. Under former 29-2-2 NMSA 1978, the New Mexico state police board appeared to exercise the powers and functions of the former board of supervisors. Section 29-2-2 NMSA 1978 was repealed by Laws 1984, ch. 254, § 27. Pursuant to 29-2-1.1 NMSA 1978, "New Mexico state police board" or "board" now means the secretary of public safety.

**Cross references.** — For membership in public employees' retirement association of New Mexico, *see* 10-11-3 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 60A Am. Jur. 2d Pensions and Retirement Funds § 1618.

81A C.J.S. States §§ 46, 112 to 119.

## 29-4-2. [Provisions governing trust funds; trust agreements; approval by governor, police board and insurance department [public regulation commission].]

All monies in said pension trust fund and said supplementary trust fund shall be deposited, administered and disbursed in accordance with the terms of this act [29-4-1 to 29-4-11 NMSA 1978] and with the terms of the pension trust agreement and supplementary trust agreement which shall be drafted pursuant to the terms of this act and shall not become effective until specifically approved by the governor of New Mexico, the board of supervisors of the New Mexico state police [secretary of public safety] and the insurance department of the state of New Mexico [public regulation commission].

**History:** Laws 1939, ch. 213, § 2; 1941 Comp., § 40-402; 1953 Comp., § 39-4-2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

The name of the board of supervisors of the New Mexico state police was changed by Laws 1941, ch. 147, § 24 (compiled as 39-2-24, 1953 Comp.), to the board of supervisors of the division of courtesy and information. Laws 1977, ch. 257, § 107, repealed 39-2-24, 1953 Comp. Under former 29-2-2 NMSA 1978, the New Mexico state police board appeared to exercise the powers and functions of the former board of supervisors. Section 29-2-2 NMSA 1978 was repealed by Laws 1984, ch. 254, § 27. Pursuant to 29-2-1.1 NMSA 1978, "New Mexico state police board" or "board" now means the secretary of public safety.

Laws 1998, ch. 108, § 80 provided that references in law to the insurance board be construed to be references to the public regulation commission.

**Insurance policy limits benefits paid.** — An insurance policy constitutes the supplemental trust agreement referred to in this section, and this insurance policy has limits on the total amount of benefits which may be paid in any particular instance. If it is desired to have benefits for disabled policemen over and above the limits of coverage of the policy, then those benefits should themselves be the subject of a trust agreement. 1965 Op. Att'y Gen. No. 65-92.

## 29-4-3. [Contributions to funds; maximum.]

Contributions to the pension trust fund by members of the New Mexico state police shall not exceed six percent (6%) of their regular monthly salaries, and contributions to

the supplementary trust fund shall not exceed five percent (5%) of their regular monthly salaries.

**History:** Laws 1939, ch. 213, § 3; 1941 Comp., § 40-403; 1953 Comp., § 39-4-3.

## 29-4-4. State contributions to funds; liquidation.

State contributions to the pension trust fund and the supplementary trust fund shall be appropriated as a part of the annual operating budget of the state police. Contributions to the funds shall be in an amount necessary to prevent any actuarial deterioration of the fund as determined by an annual actuarial investigation. Termination of the trust and liquidation of the funds shall be effected only by specific legislative act.

**History:** 1978 Comp., § 29-4-4 enacted by Laws 1980, ch. 8, § 1.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1980, ch. 8, § 1, repealed former 29-4-4 NMSA 1978, relating to state appropriations to the state police pension trust fund and supplementary trust fund, and enacted a new section.

## 29-4-5. [State treasurer is trustee of funds; duties.]

The treasurer of the state of New Mexico shall serve as trustee for the pension trust fund and the supplementary trust fund and shall receive and hold as trustee for the uses and purposes set out in the trust agreements any and all funds paid to it as such trustee by the state, the department, the employee beneficiaries or by any other person or persons.

**History:** Laws 1939, ch. 213, § 5; 1941 Comp., § 40-405; 1953 Comp., § 39-4-5.

## 29-4-6. [Pension consultants; employment; duties.]

The board of supervisors of the New Mexico state police [secretary of public safety] are [is] hereby authorized and empowered to engage pension consultants to assist in drafting the trust agreements and establishing an equitable, practical and actuarially sound pension program. The trustee shall engage pension consultants to supervise and assist in the technical operation of the pension trust in order that there may be no deterioration in the actuarial status of the plan.

**History:** Laws 1939, ch. 213, § 6; 1941 Comp., § 40-406; 1953 Comp., § 39-4-6.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The name of the board of supervisors of the New Mexico state police

was changed by Laws 1941, ch. 147, § 24 (compiled as 39-2-24, 1953 Comp.), to the board of supervisors of the division of courtesy and information. Laws 1977, ch. 257, § 107, repealed 39-2-24, 1953 Comp. Under former 29-2-2 NMSA 1978, the New Mexico state police board appeared to exercise the powers and functions of the former board of supervisors. Section 29-2-2 NMSA 1978 was repealed by Laws 1984, ch. 254, § 27. Pursuant to 29-2-1.1 NMSA 1978, "New Mexico state police board" or "board" now means the secretary of public safety.

## 29-4-7. [Annual report of trustee.]

Within ninety days after the close of each fiscal year the trustee, with the aid of the pension consultants, shall prepare and file an annual report with the department and the New Mexico insurance department which shall include the following:

Schedule I. Receipts and disbursements.

Schedule II. Assets of pension trust listing investments as to book value and current market value as of the end of the fiscal year.

Schedule III. List of terminations, showing cause and amount of refund.

Schedule IV. The application of actuarially computed "reserve factors" to the payroll data properly classified for the purpose of computing the reserve liability of the trust fund as of the end of the fiscal year.

Schedule V. The application of actuarially computed "current liability factors" to the payroll data properly classified for the purpose of computing the liability of the trust fund as of the end of the fiscal year.

Schedule VI. An actuarial computation of the pension liability for all employees retired prior to the close of the fiscal year.

**History:** Laws 1939, ch. 213, § 7; 1941 Comp., § 40-407; 1953 Comp., § 39-4-7.

## 29-4-8. [Administration of pension program; pension advisory board; membership; assistance to trustee.]

The complete pension program authorized by the terms of this act [29-4-1 to 29-4-11 NMSA 1978] shall be administered by the trustee with the assistance and counsel of a pension advisory board which shall consist of the chief of the department [director of the New Mexico state police division of the department] as chairman, two members appointed by the board of supervisors of the New Mexico state police [secretary of public safety] with the approval of the governor, and two members elected by the participating members. One of the initial appointees and one of the initial elected representatives shall serve for one-year terms and the other elected and appointed representatives shall serve for two-year terms.

**History:** Laws 1939, ch. 213, § 8; 1941 Comp., § 40-408; 1953 Comp., § 39-4-8.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1977, ch. 257, changed several references in this chapter from the chief of the state police to director of the state police division. Laws 1979, ch. 202, changed several references in this chapter from the director of the state police division to the chief of the New Mexico state police. *See* 29-2-3 NMSA 1978. Pursuant to 29-2-1.1 NMSA 1978, "chief of the state police" now means the director of the New Mexico state police division of the department. The bracketed language was not enacted by the legislature and is not part of the law.

The name of the board of supervisors of the New Mexico state police was changed by Laws 1941, ch. 147, § 24 (compiled as 39-2-24, 1953 Comp.), to the board of supervisors of the division of courtesy and information. Laws 1977, ch. 257, § 107, repealed 39-2-24, 1953 Comp. Under former 29-2-2 NMSA 1978, the New Mexico state police board appeared to exercise the powers and functions of the former board of supervisors. Section 29-2-2 NMSA 1978 was repealed by Laws 1984, ch. 254, § 27. Pursuant to 29-2-1.1 NMSA 1978, "New Mexico state police board" or "board" now means the secretary of public safety.

## 29-4-9. [Repeal of conflicting laws; fees, rewards and previously accumulated funds go into supplementary trust fund.]

Upon the establishment of the pension trust fund and supplementary trust fund as outlined by this act [29-4-1 to 29-4-11 NMSA 1978], all conflicting laws are expressly repealed and any funds previously accumulated for this purpose shall be transferred to the supplementary trust fund. No fee for the performance of an act in line of duty and no reward offered for the apprehension or conviction of any person or persons, or for the recovery of any property may be accepted by any member of the department of state police, but any fee or reward to which such member would be entitled except for the foregoing provisions shall be paid to the supplementary trust fund. All laws and parts of laws in conflict herewith are hereby repealed.

**History:** Laws 1939, ch. 213, § 9; 1941 Comp., § 40-409; 1953 Comp., § 39-4-9.

## 29-4-10. [Interest in trust fund not subject to assignment, lien or judicial process; trustee may pay expenses.]

No person entitled to any interest in or share of or pension or benefit from the trust funds shall, prior to the actual payment therefor, have the right to anticipate the same, or to sell, assign, pledge or mortgage or otherwise dispose of or encumber the same, nor shall such interest, share, pension or benefit prior to the actual payment thereof, be liable for the debts or liabilities of the person entitled thereto or be subject to attachment, garnishment, execution or to levy or sale on judicial proceedings, or be

transferable by any means, voluntarily or involuntarily. The trustee may expend such sums as it [he] may deem proper from such fund for the necessary expenses connected therewith.

**History:** Laws 1939, ch. 213, § 10; 1941 Comp., § 40-410; 1953 Comp., § 39-4-10.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The bracketed word "he" in the last sentence was inserted by the 1941 compiler of the New Mexico statutes and was not deleted by the compiler of the 1953 compilation or by the present compiler.

**Cross references.** — For exemption from legal process for Public Employees Retirement Act benefits, *see* 10-11-135 NMSA 1978.

For exemption from legal process for Judicial Retirement Act benefits, *see* 10-12B-7 NMSA 1978.

For exemption from legal process for Magistrate Retirement Act benefits, *see* 10-12C-7 NMSA 1978.

For exemption from legal process for Educational Retirement Act benefits, *see* 22-11-42 NMSA 1978.

For exemption from legal process for married persons or heads of households, *see* 42-10-1 NMSA 1978.

For rules governing garnishment and writs of execution in the district, magistrate, and metropolitan courts, *see* Rules 1-065.1, 2-801, and 3-801 NMRA, respectively.

For form for claim of exemptions on executions, *see* Rule 4-803 NMRA.

For form for order on claim of exemption and order to pay in execution proceedings, *see* Rule 4-804 NMRA.

For form for application for writ of garnishment and affidavit, *see* Rule 4-805 NMRA.

For form for notice of right to claim exemptions from execution, *see* Rule 4-808A NMRA.

For form for claim of exemption from garnishment, *see* Rule 4-809 NMRA.

**Law reviews.** — For article, "Attachment in New Mexico - Part II," see 2 Nat. Res. J. 75 (1962).

## 29-4-11. [Effective date of act and pension program; approval of governor, police board and insurance department.]

The powers conferred upon the board of supervisors of the New Mexico state police [secretary of public safety] by the provisions of this act [29-4-1 to 29-4-11 NMSA 1978] shall be possessed and may be exercised from and after the first day of July, 1939, and this act shall be in full force and effect from and after that date. The pension program authorized in this act may become operative at any time after the passage of this act upon the approval of the governor of New Mexico, the board of supervisors of the New Mexico state police [secretary of public safety] and the insurance department of the state of New Mexico.

**History:** Laws 1939, ch. 213, § 12; 1941 Comp., § 40-411; 1953 Comp., § 39-4-11.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The name of the board of supervisors of the New Mexico state police was changed by Laws 1941, ch. 147, § 24 (compiled as 39-2-24, 1953 Comp.), to the board of supervisors of the division of courtesy and information. Laws 1977, ch. 257, § 107, repealed 39-2-24, 1953 Comp. Under former 29-2-2 NMSA 1978, the New Mexico state police board appeared to exercise the powers and functions of the former board of supervisors. Section 29-2-2 NMSA 1978 was repealed by Laws 1984, ch. 254, § 27. Pursuant to 29-2-1.1 NMSA 1978, "New Mexico state police board" or "board" now means the secretary of public safety.

**Severability.** — Laws 1939, ch. 213, § 11 provided for the severability of the act if any part or application thereof is held invalid.

# ARTICLE 4A
# Peace Officers', New Mexico Mounted Patrol Members' and Reserve Police Officers' Survivors Supplemental Benefits

## 29-4A-1. Short title.

Chapter 29, Article 4A NMSA 1978 may be cited as the "Peace Officers', New Mexico Mounted Patrol Members' and Reserve Police Officers' Survivors Supplemental Benefits Act".

**History:** Laws 1995, ch. 59, § 1; 2002, ch. 78, § 1; 2016, ch. 41, § 1.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, amended the title of the act to include New Mexico mounted patrol members and reserve police officers; and after "Peace Officers'", added "New Mexico Mounted Patrol Members' and Reserve Police Officers'".

**The 2002 amendment,** effective May 15, 2002, substituted "Chapter 29, Article 4A NMSA 1978" for "This act".

## 29-4A-2. Findings; purpose.

The legislature finds that peace officers throughout the state risk their lives daily to protect the citizens of New Mexico. The legislature further finds that when peace officers are killed in the line of duty, their immediate families can suffer grievously, both emotionally and economically. To recognize the substantial public safety benefits conferred by peace officers and in consideration of the sacrifices undertaken by these officers and their families for the citizens of New Mexico, it is the purpose of the Peace Officers' Survivors Supplemental Benefits Act to ensure that certain supplemental death benefits accrue to the spouse and surviving children, or parents if there are no surviving children or spouse, of a peace officer killed in the line of duty.

**History:** Laws 1995, ch. 59, § 2; 2002, ch. 78, § 2.

**ANNOTATIONS**

**The 2002 amendment,** effective May 15, 2002, inserted "or parents if there are no surviving children or spouse" in the last sentence.

## 29-4A-3. Definitions.

As used in the Peace Officers', New Mexico Mounted Patrol Members' and Reserve Police Officers' Survivors Supplemental Benefits Act:

A. "fund" means the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund;

B. "New Mexico mounted patrol" means units or troops officered and manned to assist with law enforcement pursuant to the provisions of Sections 29-6-1 and 29-6-4 NMSA 1978, Subsection A of Section 29-6-5 NMSA 1978 and Section 29-6-6 NMSA 1978;

C. "peace officer" means any full-time salaried and commissioned or certified law enforcement officer of a police or sheriff's department or a conservation officer of the department of game and fish [department of wildlife] as used in Chapter 17 NMSA 1978 that is part of or administered by the state or any political subdivision of the state;

D. "reserve police officer" means a volunteer or a temporary or part-time employee of a state or local law enforcement agency who is accepted by that agency as a reserve

law enforcement officer after receiving a background check and training as needed by that agency and who is not a member of the New Mexico mounted patrol; and

E. "secretary" means the secretary of public safety.

**History:** Laws 1995, ch. 59, § 3; 1997, ch. 165, § 1; 2016, ch. 41, § 2.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2025, ch. 9, § 11 provided that references in law to the department of game and fish shall be deemed to be references to the department of wildlife.

**The 2016 amendment,** effective May 18, 2016, defined New Mexico mounted patrol members and reserve police officers as used in the Peace Officers', New Mexico Mounted Patrol Members' and Reserve Police Officers' Supplemental Benefits Act; in the introductory sentence, after "Peace Officers'", added "New Mexico Mounted Patrol Members' and Reserve Police Officers'", in Subsection A, after "peace officers'", added ", New Mexico mounted patrol members' and reserve police officers'"; added new Subsection B and redesignated former Subsection B as Subsection C; and added new Subsection D and redesignated former Subsection C as Subsection E.

**The 1997 amendment,** effective June 20, 1997, inserted "or a conservation officer of the department of game and fish as used in Chapter 17 NMSA 1978" in Subsection B.

## 29-4A-4. Fund created.

The "peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund" is created in the state treasury and shall be administered by the department of public safety. The fund shall consist of all gifts, donations and bequests of money to the fund as well as any appropriations made to the fund. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the department of public safety for the purpose of paying death benefits pursuant to the Peace Officers', New Mexico Mounted Patrol Members' and Reserve Police Officers' Survivors Supplemental Benefits Act and shall be paid out only upon warrants issued by the secretary of finance and administration pursuant to vouchers signed by the secretary of public safety. Any unexpended or unencumbered balance remaining in the fund at the end of any fiscal year shall not revert.

**History:** Laws 1995, ch. 59, § 4; 2016, ch. 41, § 3.

**ANNOTATIONS**

**The 2016 amendment,** effective May 18, 2016, amended the name of the fund to include New Mexico mounted patrol members and reserve police officers; after "'peace officers'", added ", New Mexico mounted patrol members' and reserve police officers'",

and after "Peace Officers'", added "New Mexico Mounted Patrol Members' and Reserve Police Officers'".

## 29-4A-5. Peace officers', New Mexico mounted patrol members' and reserve police officers' survivors supplemental death benefits; review committee; determination; payment.

A. There is created the "peace officers', New Mexico mounted patrol members' and reserve police officers' survivors supplemental death benefits review committee". The committee shall consist of the attorney general, the chief of the New Mexico state police and the state president of the fraternal order of police or their designees.

B. The peace officers', New Mexico mounted patrol members' and reserve police officers' survivors supplemental death benefits review committee shall determine whether a peace officer, New Mexico mounted patrol member or reserve police officer has been killed in the line of duty and advise the secretary of that determination. In addition to any other death benefits provided by law, the surviving spouse, children or parents shall be paid one million dollars ($1,000,000) as supplemental death benefits whenever a peace officer, New Mexico mounted patrol member or reserve police officer is killed in the line of duty. The benefits shall be paid from the fund.

C. The benefits shall be paid first to the surviving spouse. If there is no surviving spouse, the benefits shall be distributed in pro rata shares to all surviving children. If there are no surviving children or spouse, benefits shall be distributed to the surviving parents of the peace officer, New Mexico mounted patrol member or reserve police officer.

**History:** Laws 1995, ch. 59, § 5; 2002, ch. 78, § 3; 2007, ch. 59, § 1; 2016, ch. 41, § 4; 2022, ch. 56, § 3.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, enhanced peace officers' survivors supplemental death benefits; and in Subsection B, after "shall be paid", deleted "two hundred fifty thousand dollars ($250,000)" and added "one million dollars "(1,000,000)".

**The 2016 amendment,** effective May 18, 2016, provided survivors supplemental death benefits for New Mexico mounted patrol members and reserve police officers; in the catchline, added "New Mexico mounted patrol members' and reserve police officers'" and throughout the sections, after "'peace officers'", added "New Mexico mounted patrol members' and reserve police officers'".

**The 2007 amendment,** effective June 15, 2007, increased supplemental death benefits from $100,000 to $250,000.

**The 2002 amendment,** effective May 15, 2002, inserted "or parents" in the second sentence of Subsection B; and added the last sentence in Subsection C.

# ARTICLE 5
# Educational Institutions; Traffic Regulations and Police Officers

## 29-5-1. Educational institutions; campus traffic regulations.

A. The board of regents of each state educational institution designated in Article 12, Section 11 of the constitution of New Mexico may promulgate regulations governing the operation and parking of vehicles on any area within the exterior boundaries of lands under its control which is not a public street or highway, including but not limited to:

(1) limiting the rates of speed;

(2) assigning parking spaces and designating parking areas and their uses, and collecting rent therefor;

(3) prohibiting parking;

(4) removing vehicles parked in violation of campus traffic regulations, at the expense of the violator who shall pay the expense before the vehicle is released; and

(5) instituting a system of vehicle registration for the identification and regulation of vehicles regularly using institutional premises, including a reasonable charge to defray costs of registration.

B. Areas subject to campus traffic regulations shall be marked with signs conforming with standards used by the state highway department.

C. Any person who violates any campus traffic regulation adopted under this section is guilty of a misdemeanor and shall be punished by a fine of not more than five dollars ($5.00). All fines and forfeitures collected under this section may be remitted to the state educational institution on whose campus the violation occurred. The money from such fines and forfeitures remitted to state educational institutions shall be used solely for the purposes of enforcing this act [29-5-1, 29-5-2 NMSA 1978], for planning and improving movement and control and related parking problems, and for use in the operation, management and administration of the institution's security department responsible for the enforcement of this act.

**History:** 1953 Comp., § 39-5-1, enacted by Laws 1968, ch. 62, § 153; 1975, ch. 167, § 2.

**ANNOTATIONS**

**Board may also employ and assign duties of campus security.** — The board of regents of the university of New Mexico is specifically given traffic control jurisdiction on its property and may employ and assign duties of campus security officers for the institution. 1969 Op. Att'y Gen. No. 69-48.

**Section 35-14-2 NMSA 1978 supplements section.** — Section 35-14-2 NMSA 1978, providing for a waiver of the right to regulate university property under agreement between boards of regents of state educational institutions and municipalities for traffic offenses occurring on the university campus, supplements this section and Section 29-5-2 NMSA 1978. 1969 Op. Att'y Gen. No. 69-48.

**City crime ordinances not applicable to land under board's control.** — Ordinances of the city of Albuquerque dealing with crimes do not apply to land under the control of the board of regents of the university of New Mexico except for traffic offenses as provided in Section 35-14-2 NMSA 1978. 1969 Op. Att'y Gen. No. 69-48.

## 29-5-1.1. Educational institutions; campus traffic regulations.

A. The board of regents of each state educational institution designated in Article 12, Section 11 of the constitution of New Mexico that is located within a county having a population in excess of ninety-five thousand according to the most recent federal decennial census may promulgate regulations governing the operation and parking of vehicles on any area within the exterior boundaries of lands under its control which is not a municipal street or highway, including but not limited to:

(1) limiting the rates of speed;

(2) assigning parking spaces, designating parking areas and their uses and collecting rent for them;

(3) prohibiting parking;

(4) removing vehicles parked in violation of campus traffic regulations at the expense of the violator who shall pay the expense before the vehicle is released; and

(5) instituting a system of vehicle registration for the identification and regulation of vehicles regularly using institutional premises, including a reasonable charge to defray costs of providing parking and traffic enforcement services and campus parking.

B. Areas subject to campus traffic regulations shall be marked with signs conforming with standards used by the state highway and transportation department.

C. Regulations of a board of regents promulgated pursuant to this section shall include a specific penalty for each type of violation, which shall not exceed one hundred dollars ($100). In addition, the regents may impose an administrative cost assessment not exceeding five dollars ($5.00) for each parking citation issued as costs of administration of a campus traffic program.

D. Except as provided by Subsection J of this section, unless a warning notice or a parking citation is given, at the time of making an arrest for any violation of this section, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment or appearing in the metropolitan, municipal or magistrate court within five days after issuance of the citation. The violator's signature on the penalty assessment notice constitutes as acknowledgment of guilt of the offense stated in the notice.

E. Payment of any parking violation penalty assessment shall be made by mailing the payment within five days from the date the citation was issued to the university police office for processing in the manner prescribed by the board of regents.

F. Payment of any moving violation penalty assessment shall be made by mailing the payment within thirty days from the date of issuance of the citation to the motor vehicle division of the taxation and revenue department, Santa Fe. Payments of penalty assessments are timely if postmarked within thirty days from the date of issuance of the citation. When a penalty assessment is paid by currency, a receipt may be immediately mailed to the violator. When a penalty assessment is paid by check, the canceled check is a sufficient receipt.

G. No record of any penalty assessment payment is admissible as evidence in any court in any civil action.

H. If a penalty assessment is not paid within thirty days from the date of issuance of the citation, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued.

I. Any penalty assessment collected by the motor vehicle division of the taxation and revenue department pursuant to Subsection F of this section shall be remitted to the state treasurer for deposit into the current school fund. Any administrative cost assessment collected by the division pursuant to this section shall be remitted within thirty days to the state educational institution which issued the citation for administering parking and traffic regulations on that campus. Any penalty assessment or administrative cost assessment collected by the university police office pursuant to Subsection E of this section shall be retained by the state educational institution as reimbursement for its expenses.

J. No penalty assessment citation shall be issued for:

(1) speeding in excess of twenty-five miles an hour in excess of the speed limit;

(2) operating a vehicle while under the influence of alcohol or drugs; or

(3) an offense which has caused or contributed to the cause of an accident resulting in injury or death to any person.

K. The uniform traffic citation form approved by the director of the motor vehicle division shall be used as the complaint for violations of regulations promulgated pursuant to the provisions of this section. Citations for moving violations shall be issued in the manner set forth in Sections 66-8-123 through 66-8-127 NMSA 1978.

**History:** 1978 Comp., § 29-5-1.1, enacted by Laws 1981, ch. 304, § 1; 1987, ch. 111, § 1; 1988, ch. 33, § 1; 1989, ch. 59, § 1.

**ANNOTATIONS**

**The 1989 amendment,** effective March 16, 1989, deleted "within metropolitan court districts" following "institutions" in the section heading; in Subsection A substituted "having a population in excess of ninety-five thousand according to the most recent federal decennial census" for "which has a metropolitan court" in the introductory paragraph; and in Subsection D inserted "municipal or magistrate" in the first sentence.

## 29-5-2. Educational institutions; university police officers.

A. The board of regents of each state educational institution designated in Article 12, Section 11 of the constitution of New Mexico may employ and assign duties of university police officers for the institution.

B. At all times while on duty, university police officers shall carry commissions of office issued by the board of regents. University police officers have the powers of peace officers within the exterior boundaries of lands under control of the board of regents employing them, including public streets and highways within the boundaries, or immediately adjacent to a campus where students are educated. Within this territory, a university police officer may enforce all applicable laws, ordinances and campus traffic regulations, but no arrest for violation of any law, ordinance or campus traffic regulation relating to motor vehicles is valid unless, at the time of arrest, the university police officer is wearing:

(1) a distinctive badge bearing the name of the institution, issued to the officer by the board of regents; or

(2) a distinctive uniform prescribed and issued to the officer by the board of regents.

**History:** 1953 Comp., § 39-5-2, enacted by Laws 1968, ch. 62, § 154; 1975, ch. 22, § 1; 2019, ch. 14, § 1.

## ANNOTATIONS

**The 2019 amendment,** effective July 1, 2019, extended the authority of university police officers to public streets and highways immediately adjacent to a campus where students are educated; and in Subsection B, added "or immediately adjacent to a campus where students are educated".

**Authority of university police officers.** — University of New Mexico officers possessed the powers of peace officers in dealing with defendant as long as he was parked "within the exterior boundaries" of the university. *State v. Dawson*, 1999-NMCA-072, 127 N.M. 472, 983 P.2d 421.

**Arrest permitted off grounds under "fresh pursuit" doctrine.** — The common law doctrine of "fresh pursuit" applies to university police to permit an arrest off of university grounds of suspect observed committing a felony on grounds. *State v. Nysus*, 2001-NMCA-102, 131 N.M. 338, 35 P.3d 993, cert. denied, 131 N.M. 363, 36 P.3d 953 (2002).

**Traffic control jurisdiction.** — The board of regents of the university of New Mexico is specifically given traffic control jurisdiction on its property and may employ and assign duties of campus security officers for the institution. 1969 Op. Att'y Gen. No. 69-48.

**Section 35-14-2 NMSA 1978 supplements section.** — Section 35-14-2 NMSA 1978, providing for a waiver of the right to regulate university property under agreement between boards of regents of state educational institutions and municipalities for traffic offenses occurring on the university campus, supplements Section 29-5-1 NMSA 1978 and this section. 1969 Op. Att'y Gen. No. 69-48.

**City's jurisdiction over university limited.** — With certain exceptions the jurisdiction of the city of Albuquerque over the university of New Mexico campus is limited to the enforcement of state laws on the campus. 1969 Op. Att'y Gen. No. 69-48.

**Crime ordinances not applicable except for traffic offenses.** — Ordinances of the city of Albuquerque dealing with crimes do not apply to land under the control of the board of regents of the university of New Mexico except for traffic offenses as provided in Section 35-14-2 NMSA 1978. 1969 Op. Att'y Gen. No. 69-48.

# 29-5-3. Post-secondary educational institutions; boards authorized to establish campus police force; qualifications and authority of campus police officers.

A. As used in this section "post-secondary educational institution" means a community college operating pursuant to Chapter 21, Article 13 NMSA 1978, a technical and vocational institute operating pursuant to Chapter 21, Article 16 NMSA 1978 and an area vocational school operating pursuant to Chapter 21, Article 17 NMSA 1978.

B. The governing board of a post-secondary educational institution may adopt and promulgate traffic regulations to apply to areas within the exterior boundaries of the lands under control of the board, including streets and highways.

C. The governing board of a post-secondary educational institution may employ and assign duties to persons as campus police officers for the community college.

D. Persons employed as campus police officers by a post-secondary educational institution governing board:

(1) shall have the powers of peace officers within the exterior boundaries of lands under the control of the board, including streets and highways;

(2) shall at all times while on duty carry commissions of office issued by the board;

(3) shall fulfill the requirements for certification in Subsection A of Section 29-7-6 NMSA 1978 within one year of the date of first employment;

(4) may enforce all applicable laws, ordinances and campus traffic regulations within the territory in which they have powers of peace officers; and

(5) may make arrests for violations of laws, ordinances and campus traffic regulations that they have authority to enforce, but no arrest is valid unless the arresting campus police officer is at the time of the arrest wearing:

(a) a distinctive badge issued to him by the post-secondary educational institution governing board and bearing the name of the post-secondary educational institution; and

(b) a distinctive uniform prescribed and issued to him by the board.

**History:** Laws 1997, ch. 115, § 1.

## 29-5-4. Post-secondary educational institutions; campus traffic regulations; agreement with municipality.

A. As used in this section, "post-secondary educational institution" means a community college operating pursuant to the Community College Act [Chapter 21, Article 13 NMSA 1978] or a technical and vocational institute operating pursuant to the Technical and Vocational Institute Act [Chapter 21, Article 16 NMSA 1978] that does not have campus police officers created pursuant to Section 29-5-3 NMSA 1978.

B. The governing board of a post-secondary educational institution may adopt and promulgate traffic regulations to apply to areas within the exterior boundaries of the

lands under the control of the board, including streets and highways. Traffic regulations may include:

(1) limiting the rates of speed;

(2) assigning parking spaces and designating parking and no parking areas and their uses;

(3) prohibiting parking;

(4) removing, disabling or booting vehicles parked in violation of campus traffic regulations at the expense of the violator, who shall pay the expense before the vehicle is released; and

(5) instituting a system of vehicle registration for the identification and regulation of vehicles regularly using campus facilities, including a reasonable charge to defray the costs of providing parking and traffic enforcement services and campus parking.

C. All areas subject to traffic regulations shall be marked with signs conforming with standards used by the department of transportation.

D. Traffic regulations adopted by a post-secondary educational institution pursuant to this section shall include a specific penalty for each type of violation that shall not exceed the penalty for the same violation under state law or municipal ordinance for the municipality where the post-secondary educational institution is located.

E. A post-secondary educational institution may enter into a written agreement with the municipality where the institution is located for municipal police enforcement of traffic regulations and for enforcement of applicable laws and ordinances within the exterior boundaries of the lands under the control of the institution. The written agreement shall outline the terms and conditions for municipal enforcement of the institution's traffic regulations, including the following:

(1) unless a warning notice or a parking citation is given at the time of making an arrest for a traffic violation, the arresting officer shall offer the alleged violator the option of accepting a penalty assessment or appearing in municipal court for adjudication within five days after issuance of the citation;

(2) if an alleged violator elects to appear in municipal court in lieu of accepting a penalty assessment, the fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment;

(3) a violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice;

(4) payment of a parking violation penalty assessment shall be made by mailing the payment within five days from the date the citation was issued to the municipality for processing in accordance with the written agreement. Payment of the penalty assessment is timely if postmarked within five days from the date of issuance of the citation;

(5) payment of any moving violation penalty assessment shall be made by mailing the payment within thirty days from the date the citation was issued to the municipality for processing in accordance with the written agreement. Payment of the penalty assessment is timely if postmarked within thirty days from the date of issuance of the citation;

(6) when a penalty assessment is paid by currency, a receipt shall be immediately mailed to the violator;

(7) if a penalty assessment is not paid within thirty days from the date of issuance of the citation, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued;

(8) all penalties and fines assessed shall be paid to the municipality to defray the costs of enforcement and adjudication of citations issued at the post-secondary educational institution; and

(9) the uniform traffic citation form approved by the motor vehicle division of the taxation and revenue department shall be used as the complaint for violations of campus traffic regulations. Citations for moving violations shall be issued in the manner set forth in Sections 66-8-123 through 66-8-127 NMSA 1978.

F. A municipality enforcing campus traffic regulations pursuant to this section may, by commission, authorize campus security personnel at the post-secondary educational institution to issue citations for violations of non-moving traffic regulations on such terms and conditions as provided in the written agreement but in no event shall campus security personnel be given arrest powers.

G. In the absence of a written agreement with a municipality for the enforcement of traffic regulations, campus security personnel may enforce traffic regulations. The punishment for a violation of a campus traffic regulation shall be not more than five dollars ($5.00) per violation. All fines collected pursuant to this subsection shall be remitted to the post-secondary educational institution and shall be used solely for the purposes of enforcing campus traffic regulations and for planning and improving movement and control of vehicles and related parking problems and for use in the operation, management and administration of the institution's security office.

H. When a traffic citation is issued by a campus security officer, the officer shall be wearing a distinctive badge and uniform issued to the officer by the post-secondary educational institution.

I. A record of a penalty assessment payment is not admissible as evidence in court in a civil action.

J. A post-secondary educational institution may withhold the issuance of grades and degrees in order to secure payment of unpaid traffic or parking assessments.

**History:** 1978 Comp., § 29-5-4, enacted by Laws 2011, ch. 53, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 53, § 3 made Laws 2011, ch. 53, § 1 effective July 1, 2011.

# ARTICLE 6
# New Mexico Mounted Patrol

## 29-6-1. [Establishment; composition.]

There is hereby created the New Mexico mounted patrol to be composed of units or troops situated throughout the state and organized, officered and manned pursuant to and under the direction of the governor.

**History:** 1941 Comp., § 66-1101, enacted by Laws 1941, ch. 149, § 1; 1953 Comp., § 9-11-1.

## 29-6-2. Board of directors; elections[; commissions as emergency and voluntary state police].

A. The control, management, supervision and power of internal organization is vested in a board of directors composed of not less than one member from each troop of the New Mexico mounted patrol elected by the members of the organization to serve for a term of two years and until their successors are duly elected and qualified. The first election hereunder shall be held and conducted at such time and pursuant to such rules promulgated by the governor. Succeeding elections shall be pursuant to rules and regulations promulgated by the qualified and active board of directors.

B. The director of the New Mexico state police [division of the department] may, at the expense of members of the New Mexico mounted patrol, execute and deliver to each member of the mounted patrol proper pocket commissions as emergency and voluntary state police, the same to be effective only upon specific request of the New Mexico state police in each instance of service. Such commissions shall bear the written

approval of the governor of New Mexico; such commissions shall automatically expire and new ones issued and delivered upon each change in the directorship of the New Mexico state police or the governorship.

**History:** 1941 Comp., § 66-1103, enacted by Laws 1941, ch. 149, § 3; 1951, ch. 49, § 1; 1953 Comp., § 9-11-3; Laws 1979, ch. 327, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

## 29-6-3. [Duties of board of directors.]

The board of directors shall be empowered to make rules and regulations for the government, control, management, supervision and internal organization of the New Mexico mounted patrol and to provide for the selection of troopers and for such officers and noncommissioned officers as may be necessary from time to time to command the various units or troops.

**History:** 1941 Comp., § 66-1104, enacted by Laws 1941, ch. 149, § 4; 1953 Comp., § 9-11-4.

## 29-6-4. [Duties of mounted patrol.]

It shall be the duty of the New Mexico mounted patrol and the members thereof to assist in the enforcement of law by cooperating with all law enforcement agencies and regulatory bodies of the state of New Mexico when requested by them and under their direction and control; to act as an official bodyguard to the governor of this state or to distinguished visitors upon the call of the governor.

**History:** 1941 Comp., § 66-1105, enacted by Laws 1941, ch. 149, § 5; 1953 Comp., § 9-11-5.

**ANNOTATIONS**

**Legislative intent that patrol perform voluntarily.** — Since no provision is found relating to the salaries or other compensation for services rendered, it must be concluded as the legislative intent that all members of the patrol were to perform in a voluntary and honorary capacity only. 1957 Op. Att'y Gen. No. 57-41.

**Power to arrest same as private citizen.** — Unless called in specific instances to assist law enforcement officers, officer's power to arrest is no different than that of a private citizen. Throughout the statutes it is seen that authority to arrest, other than as a private citizen, exists only when there is a specific request from regular law enforcement officers. And it is further apparent that when called upon to assist law enforcement

agencies that patrol's conduct shall be under their direction and control. The commission which is issued can, of course, have no more force than the authority given by the statutes under which that commission is issued. 1956 Op. Att'y Gen. No. 56-6350.

**Uniform unnecessary to exercise authority.** — It is not necessary that mounted patrol be in uniform in order to exercise the authority which it has. 1956 Op. Att'y Gen. No. 56-6350.

**Extra-hazardous duty not performed under color of employment agreement.** — A trooper or officer of the New Mexico mounted patrol, in carrying out duties as provided, is without question engaging in extra-hazardous activities. However, such extra-hazardous duty is not being performed under any color of an employment agreement. 1957 Op. Att'y Gen. No. 57-41.

## 29-6-4.1. Training and entrance requirements of the New Mexico mounted patrol.

A. The New Mexico law enforcement academy is hereby empowered to approve a basic law enforcement training program for New Mexico mounted patrol members. The academy is authorized to promulgate the necessary rules and regulations setting program standards and record keeping requirements.

B. New Mexico mounted patrol members who began active service prior to July 1, 1983 are exempted from the basic law enforcement training requirements set forth in Subsection A of this section.

**History:** 1978 Comp., § 29–6–4.1, enacted by Laws 1985, ch. 83, § 1.

**ANNOTATIONS**

**Cross references.** — For law enforcement training, *see* 29-7-1 NMSA 1978 et seq.

## 29-6-4.2. Mounted patrol; applicants; criminal history screening; denial of commission.

A. As used in this section:

(1) "criminal record" means information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising from them, including convictions, dismissals, acquittals, sentencing and correctional supervision, collected by criminal justice agencies and stored in the databases of the federal bureau of investigation, the national law enforcement telecommunications system, the department of public safety or the repositories of criminal history information of other states; and

(2) "criminal history screening" means a criminal history background investigation of an applicant for the New Mexico mounted patrol conducted by using fingerprints collected by the department of public safety or a local law enforcement agency and submitted to the federal bureau of investigation.

B. The New Mexico mounted patrol shall perform a criminal history screening on all applicants for mounted patrol. If an applicant has a criminal record, his application for a commission in the mounted patrol may be denied. If an applicant has a felony conviction or a conviction for a misdemeanor involving moral turpitude, his application for a commission in the mounted patrol shall be denied.

C. The chief of the New Mexico state police shall determine whether to grant a commission to an applicant who has a criminal record that did not result in conviction of a felony or a misdemeanor involving moral turpitude. The chief's decision to deny an application for a commission in the mounted patrol is final and may not be appealed.

D. An applicant for the New Mexico mounted patrol shall be fingerprinted and the applicant shall provide two fingerprint cards or the equivalent electronic fingerprints to the mounted patrol to assist the mounted patrol in conducting a criminal history screening of the applicant. The applicant shall pay the cost of the criminal history screening. The mounted patrol shall not charge the applicant more than the actual cost of the nationwide criminal history screening.

**History:** Laws 1999, ch. 121, § 1.

## 29-6-5. Mounted patrol; aid to law enforcement agencies; workmen's compensation.

A. Members of the New Mexico mounted patrol may be detailed to assist and render aid in specific instances involving law enforcement or other matters when request is made for such assistance and aid by the New Mexico state police or other state or local law enforcement agencies. When acting upon such call, members shall be deemed to be the agents or deputies of the authority issuing such request, shall be possessed of the same powers and duties as such requesting authorities and shall be completely covered by the Workmen's [Workers'] Compensation Act [Chapter 52, Article 1 NMSA 1978] if the employer's insurance policy is endorsed to clearly show that its coverage extends to the claimant.

B. For purposes of calculating the amount of any mounted patrol member's disability or death benefits pursuant to the Workmen's [Workers'] Compensation Act, the member's average weekly wages shall be deemed to be the average weekly wages the member was receiving from any and every employer, regardless of whether the member's employment with such employer was covered in fact by the Workmen's [Workers'] Compensation Act. The degree of disability, if any, shall be determined on the basis of the member's disability in regard to such other employment.

C. If a mounted patrol member is covered by workmen's compensation coverage pursuant to Subsection A of this section, the Workmen's [Workers'] Compensation Act shall be his exclusive remedy against the mounted patrol and the supervising law enforcement agency for any injury or death proximately caused by accident arising out of and in the course of the member's duties.

**History:** 1941 Comp., § 66-1106, enacted by Laws 1941, ch. 149, § 6; 1953 Comp., § 9-11-6; Laws 1961, ch. 241, § 1; 1983, ch. 247, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Meaning of "state police".** — When the statute refers to the New Mexico state police without any qualification, it grants power to any regularly appointed, active member of the state police to call upon a member of the mounted patrol for assistance. 1960 Op. Att'y Gen. No. 60-239.

**State police may call for law enforcement matters only.** — The mounted patrol may only be called upon by the state police for matters involving law enforcement, to assist and render aid to the state police, and for other matters related to the function of the state police. The statute does not contemplate calling upon members of the mounted patrol for training purposes, and the state police may not call upon members of the mounted patrol for the purpose of giving training to the mounted patrol. But where the purpose is law enforcement, or to render assistance to the state police in a proper function of the state police, then any member of the state police is authorized to call out members of the mounted patrol for assistance. 1960 Op. Att'y Gen. No. 60-239.

**When no actual emergency exists,** a member of the mounted patrol whose assistance is requested by the state police must be furnished the request in writing, signed by the officer making the request. 1960 Op. Att'y Gen. No. 60-239.

**No state insurance or compensation plan coverage.** — Members of the New Mexico mounted patrol are not covered by any state insurance or compensation plan during periods of service as provided. 1957 Op. Att'y Gen. No. 57-41.

**If group insurance is acquired, then classification is as a unit.** — For purposes of acquiring group insurance protection, a troop of the New Mexico mounted patrol was classified as a unit or group under former Section 59-18-16 NMSA 1978. 1957 Op. Att'y Gen. No. 57-41.

## 29-6-6. [Service upon call of governor.]

The governor shall have the power in case of insurrection, invasion, riot, breach of the peace or imminent danger to call into service the New Mexico mounted patrol or any

unit or member thereof. Any and all service under such call shall be under the direction and control of the governor.

**History:** 1941 Comp., § 66-1107, enacted by Laws 1941, ch. 149, § 7; 1953 Comp., § 9-11-7.

# ARTICLE 7
# Law Enforcement Training

## 29-7-1. Short title.

Chapter 29, Article 7 NMSA 1978 may be cited as the "Law Enforcement Training Act".

**History:** 1953 Comp., § 39-6-1, enacted by Laws 1969, ch. 264, § 1; 1970, ch. 48, § 1; 1981, ch. 114, § 1; 1993, ch. 255, § 1.

**ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "Chapter 29, Article 7 NMSA 1978" for "Sections 29-7-1 through 29-7-11".

## 29-7-2. Academy established.

The "New Mexico law enforcement academy" is established to provide a planned program of basic law enforcement training and in-service law enforcement training for police officers and to furnish instruction and seminars to constantly upgrade law enforcement within the state.

**History:** 1953 Comp., § 39-6-2, enacted by Laws 1969, ch. 264, § 2; 1970, ch. 48, § 2; 1981, ch. 114, § 2.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Liability of supervisory officials and governmental entities for having failed to adequately train, supervise, or control individual peace officers who violate plaintiff's civil rights under 42 USCS § 1983, 70 A.L.R. Fed. 17.

## 29-7-3. New Mexico law enforcement standards and training council.

A. The "New Mexico law enforcement standards and training council" is created and is administratively attached to the New Mexico law enforcement academy of the department of public safety, which shall provide staff support for the council.

B. The council shall develop and promulgate training requirements, curricula and methods; professional development programs; and performance standards for law enforcement officers and public safety telecommunicators at all levels, including basic, field training officer programs, advanced, specialized and instructor training to be consistent throughout New Mexico.

C. The council consists of:

(1) the director of the academy and the directors of the accredited regional law enforcement training facilities, who serve ex officio; and

(2) eleven members appointed by the governor and confirmed by the senate, consisting of:

(a) one attorney employed in a district attorney's office;

(b) one attorney employed by the public defender department;

(c) one certified police chief of a New Mexico Indian nation, tribe or pueblo;

(d) two New Mexico state-certified public safety telecommunicators, one of whom shall be from an agency that offers fire and medical telecommunications services and one of whom shall be from a public safety agency serving a rural part of the state;

(e) two members who have experience and specialize in providing adult education;

(f) two citizen-at-large members, one of whom has behavioral health expertise and neither of whom is an active or retired law enforcement officer or public safety telecommunicator or has a familial or financial connection to an active or retired law enforcement officer or public safety telecommunicator or any agency or department for which a law enforcement officer or public safety telecommunicator works;

(g) a sheriff who is a New Mexico state-certified law enforcement officer; and

(h) a municipal law enforcement manager who is a New Mexico-state certified law enforcement officer in a command position.

D. An appointed council member shall serve and have all the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointments. Vacancies on the council shall be filled by

appointment by the governor with the consent of the senate for the remainder of the unexpired term.

E. Appointments to the council shall be for staggered terms of four years or less made in such manner that the terms of not more than four members expire on July 1 of each year.

F. Members of the council are entitled to receive, for their service as members of the council, per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

**History:** 1978 Comp., § 29-7-3, enacted by Laws 1979, ch. 202, § 42; 1983, ch. 121, § 1; 1993, ch. 250, § 1; 1993, ch. 255, § 2; 1994, ch. 39, § 1; 2015, ch. 3, § 22; 2003, ch. 260, § 5; 2022, ch. 56, § 4; 2023, ch. 86, § 2.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1977, ch. 257, § 51 repealed a former 39-6-3, 1953 Comp., relating to the academy board, and enacted a new 39-6-3, 1953 Comp. (29-7-3 NMSA 1978).

Laws 1979, ch. 202, § 42 repealed former 29-7-3 NMSA 1978, relating to the control and management of the law enforcement academy, and enacted a new 29-7-3 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, required the department of public safety to provide staff support for the New Mexico law enforcement standards and training council, revised the duties and responsibilities of the law enforcement standards and training council, and revised the required composition of the law enforcement standards and training council; in Subsection A, deleted "There is created", and after "council", added "is created and is administratively attached to the New Mexico law enforcement academy of the department of public safety, which shall provide staff support for the council"; in Subsection B, after "develop and", deleted "adopt basic training and in-service training standards for police officers and telecommunicators in New Mexico" and added "promulgate training requirements, curricula and methods; professional development programs; and performance standards for law enforcement officers and public safety telecommunicators at all levels, including basic, field training officer programs, advanced, specialized and instructor training to be consistent throughout New Mexico"; in Subsection C, Paragraph C(1), after "director of the", deleted "New Mexico law enforcement", after "directors of the", deleted "satellites" and added "accredited regional", after "law enforcement", deleted "academies, who shall serve automatically by reason of their position. The remaining seven" and added "training facilities, who serve ex officio; and", in Paragraph C(2), in the introductory clause, added "eleven", after "confirmed by the senate", deleted "An appointed council member shall serve and have all of the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointment.

The members appointed by the governor shall consist" and added "consisting", and added Subparagraph C(2)(d), in Subparagraph C(2)(f), after "neither of whom", deleted "shall be a police officer or retired police officer" and added "is an active or retired law enforcement officer or public safety telecommunicator", after the next two occurrences of "retired law enforcement officer", added "or public safety telecommunicator", added Subparagraphs C(2)(g) and C(2)(h); added new Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively; and in Subsection E, after "not more than", deleted "two" and added "four".

**Temporary provisions.** — Laws 2023, ch. 86, § 15 provided that the rules of the New Mexico law enforcement academy board shall continue in effect until amended or repealed by the New Mexico law enforcement standards and training council or the law enforcement certification board, as applicable.

**The 2022 amendment,** effective July 1, 2023, revised duties and responsibilities of the council, and revised the qualifications and terms for membership in the council; in the section heading, deleted "academy board" and added "standards and training council"; in Subsection A, after "New Mexico law enforcement", deleted "academy board" and added "standards and training council"; deleted former Subsection B, added new Subsections B and C and redesignated former Subsections C and D as Subsections D and E, respectively; in Subsection D, after "Appointments to the", deleted "board" and added "council", and deleted "At all times, the board shall have represented on it, as members, one municipal police chief, one sheriff, one state police officer, one attorney who is currently employed in a district attorney's office, one certified police chief of a New Mexico Indian tribe or pueblo, one certified New Mexico police officer holding the rank of sergeant or below and two citizen-at-large members, neither of whom shall be a police officer or retired police officer or have familial or financial connections to a police officer or any agency or department for which a police officer works. Vacancies shall be filled by the governor for the unexpired term."; and in Subsection E, substituted each occurrence of "board" with "council".

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by amending the qualifications for the composition of the New Mexico law enforcement academy board; in Subsection B, after "reason of", deleted "his", after "serve as", deleted "chairman" and added "chair", and after "of the board, and", deleted "six" and added "eight"; in Subsection C, deleted "On or before July 1, 1994, the governor shall increase the number of members on the board to eight by appointing two additional members. The seventh member of the board shall be a citizen at-large member whose term shall end on July 1, 1996. The eighth member of the board shall be a police officer who is a New Mexico certified police officer, holding the rank of sergeant or below at the time of his appointment, and whose term shall end on July 1, 1996 or sooner if he retires or is deactivated from duty for longer than thirty days.", after "police officer, one", deleted "district", after "attorney", added "who is currently employed in a district attorney’s office", and after "citizen-at-large members", added the remainder of the sentence.

**The 1994 amendment,** effective May 18, 1994, deleted "not later than July 1, 1983" following "governor" in the second sentence in Subsection B; and, in Subsection C, substituted the first three sentences for the former first three sentences, relating to appointment of the first board members, and substituted "Appointments to the board" for "Thereafter, all appointments" in the fourth sentence and "one certified New Mexico police officer holding the rank of sergeant or below and two citizen-at-large members" for "and one citizen-at-large member" in the next-to-last sentence.

**The 1993 amendment,** effective July 1, 1993, substituted "academy" for "New Mexico law enforcement academy" in the first sentence of Subsection B.

## 29-7-4. Powers and duties of council.

The council shall:

A. develop a planned program, to be implemented by the director, of:

(1) basic law enforcement training and in-service law enforcement training, a portion of which may be conducted on a regional basis; and

(2) basic telecommunicator training and in-service telecommunicator training, as provided in the Public Safety Telecommunicator Training Act [29-7C-1 to 29-7C-9 NMSA 1978], a portion of which may be conducted on a regional basis;

B. prescribe qualifications for instructors and prescribe courses of instruction for:

(1) basic law enforcement training and in-service law enforcement training; and

(2) basic telecommunicator training and in-service telecommunicator training, as provided in the Public Safety Telecommunicator Training Act;

C. report annually to the governor;

D. in its discretion, accept donations, contributions, grants or gifts from whatever source for the benefit of the academy, which donations, contributions, grants or gifts are appropriated for the use of the academy; and

E. adopt, publish and file, in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules concerning the implementation and enforcement of Sections 29-7-2 through 29-7-7.7, 29-7-12, 29-7-14, 29-7C-4, 29-7C-5 and 29-7C-7 NMSA 1978.

**History:** 1953 Comp., § 39-6-6, enacted by Laws 1969, ch. 264, § 6; 1970, ch. 48, § 4; 1977, ch. 257, § 52; 1979, ch. 202, § 43; 1981, ch. 114, § 3; 1987, ch. 254, § 20; 1993, ch. 255, § 3; 2003, ch. 320, § 1; 2022, ch. 56, § 5.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, revised the powers and duties of the New Mexico law enforcement standards and training council; deleted former Subsection A, which provided "approve or disapprove the appointment of the director by the secretary", and redesignated former Subsections B through F as Subsections A through E, respectively; in Subsection A, after "develop", deleted "and implement", and after "a planned program", added "to be implemented by the director"; and in Subsection E, after "State Rules Act, all", deleted "regulations and", after "rules concerning", deleted "the operation of the academy and", and deleted "the provisions of the Law Enforcement Training Act and the Public Safety Telecommunicator Training Act" and added "Sections 29-7-2 through 29-7-7.7, 29-7-12, 29-7-14, 29-7C-4, 29-7C-5 and 29-7C-7 NMSA 1978"; and deleted former Subsections G through I.

**The 2003 amendment,** effective July 1, 2003, in Subsection A deleted "of the academy" following "of the director" and deleted "of public safety" following "by the secretary"; rewrote former Subsection B to create present Subsection B and Paragraph B(1); added Subsection B(2); rewrote former Subsection C to create present Subsection C and Paragraph C(1); added Subsection C(2); inserted "and the Public Safety Telecommunicator Training Act" following "Law Enforcement Training Act" near the end of Subsection F; rewrote former Subsection G to create present Subsection G and Paragraph G(1); added Subsection G(2); and inserted "subpoena persons" following "administer oaths," in Subsection H.

**The 1993 amendment,** effective July 1, 1993, deleted former Subsection F, which read "promulgate rules concerning the operation of the academy; and"; added present Subsections F, G, and H; and redesignated former Subsection G as present Subsection I.

**Board is authorized to set qualifications for instructors at the academy.** 1982 Op. Att'y Gen. No. 82-10.

**Qualifications for instructors at facilities independent of academy.** — Police officers may receive basic law enforcement training at a facility which offers a program which is comparable to or exceeds the standards of the programs of the law enforcement academy. If such comparable programs are offered by a regional training facility certified by the director of the academy with the approval of the board, the board has the authority to prescribe qualifications for instructors. However, if such comparable programs are offered by facilities which are established independently of the law enforcement academy, the board cannot have given that authority. 1982 Op. Att'y Gen. No. 82-10.

## 29-7-4.1. Domestic abuse incident training.

Domestic abuse incident training that includes information on strangulation shall be included in the curriculum of each basic law enforcement training class. Domestic abuse

incident training shall be included as a component of in-service training each year for certified police officers.

**History:** Laws 2002, ch. 34, § 3; 2002, ch. 35, § 3; 2018, ch. 37, § 1.

**ANNOTATIONS**

**The 2018 amendment,** effective July 1, 2018, required that information on strangulation be included in domestic abuse incident training in the curriculum of each basic law enforcement training class; and after "Domestic abuse incident training", added "that includes information on strangulation".

## 29-7-4.2. Child abuse incident training.

Child abuse incident training shall be included in the curriculum of each basic law enforcement training class. Child abuse incident training shall be included as a component of in-service training each year for certified police officers.

**History:** Laws 2011, ch. 49, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 49, § 2 made Laws 2011, ch. 49, § 1 effective July 1, 2011.

## 29-7-4.3. Law enforcement certification board; appointment; powers and duties; refusal to issue or denial, suspension or revocation of certification; suspension of certification for failure to meet required in-service training; confidentiality of investigations; law enforcement certification office created.

A. The "law enforcement certification board" is established and administratively attached to the department of public safety, and the department shall provide administrative services for the board and the law enforcement certification office.

B. The board consists of eleven members appointed by the governor with the advice and consent of the senate. No more than six members shall be members of the same political party. Members shall be appointed so as to represent different geographic areas of the state and the ethnic and cultural diversity of the state's population. The members shall be appointed for staggered five-year terms, except that for the initial board, two members shall be appointed for one-year terms, two members shall be appointed for two-year terms, two members shall be appointed for three-year terms, two members shall be appointed for four-year terms and three members shall be appointed for five-year terms.

C. The board shall include the following members:

(1) a retired district judge, who serves as chair of the board;

(2) a current or retired New Mexico state-certified municipal law enforcement manager in a command position;

(3) a retired sheriff who was certified or a current sheriff who is certified as a law enforcement officer;

(4) a current or retired state or local New Mexico state-certified law enforcement officer who has law enforcement management command experience;

(5) a current or retired tribal law law enforcement officer;

(6) a certified public safety telecommunicator;

(7) an attorney in private practice who practices as a plaintiff's attorney in the area of civil rights or who represents criminal defendants;

(8) an attorney in private practice who represents public entities in civil rights claims;

(9) an attorney who is employed by the public defender department;

(10) a professor of criminal justice at a public post-secondary educational institution in New Mexico; and

(11) a citizen-at-large who has knowledge and interest in law enforcement training.

D. An appointed member shall serve and have all of the duties, responsibilities and authority of that office during the period prior to the final action by the senate in confirming or rejecting the appointment. Vacancies shall be filled by appointment by the governor with the consent of the senate for the unexpired term of the member. Members are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

E. The board shall:

(1) deny, suspend or revoke:

(a) a peace officer's certification for just cause as provided in the Law Enforcement Training Act; and

(b) a telecommunicator's certification for just cause as provided in the Public Safety Telecommunicator Training Act [29-7C-1 to 29-7C-9 NMSA 1978]; and

(2) conduct investigations, administer oaths and subpoena persons as necessary to make determination regarding fitness of a law enforcement officer to execute a law enforcement officer's duties.

F. The board may require by subpoena the attendance of witnesses or the production of records and other evidence relevant to an investigation and shall have such other powers and duties and administer or enforce such other acts as further provided by law.

G. The board shall appoint a chief executive officer to assist the board in carrying out its functions. The chief executive officer shall employ persons as necessary to assist the board in carrying out its functions.

H. The board shall adopt, publish and file, in accordance with the provisions of the State Rules Act, all rules concerning the implementation and enforcement of the Law Enforcement Training Act and Public Safety Telecommunicator Training Act except those sections enumerated in Subsection E of Section 29-7-4 NMSA 1978 for which rules shall be adopted, published and filed by the council.

I. The board shall issue or renew a certification to:

(1) graduates from an approved basic law enforcement training program who satisfy the qualifications for certification as set forth in Section 29-7-6 NMSA 1978; or

(2) graduates from an approved basic telecommunicator training program who satisfy the qualifications for certification as set forth in the Public Safety Telecommunicator Training Act.

J. Members of the board shall receive, for their service as members of the board, per diem and mileage as provided in the Per Diem and Mileage Act.

K. Internal affairs and other investigation documents provided to or developed by the board for use in a certification case shall remain confidential. A decision of the board is a final agency decision and may be appealed as provided in Section 39-3-1.1 NMSA 1978.

**History:** 1978 Comp., § 29-7-4.3, enacted by Laws 2022, ch. 56, § 13; 2023, ch. 86, § 3.

## ANNOTATIONS

**The 2023 amendment,** effective July 1, 2023, required the department of public safety to provide administrative services for the law enforcement certification board and the

law enforcement certification office, revised the required composition of the law enforcement certification board, provided that documents provided to or developed by the law enforcement certification board for use in certification shall remain confidential, and provided that decisions by the board may be appealed as provided by law; in the section heading, added "refusal to issue or denial, suspension or revocation of certification; suspension of certification for failure to meet required in-service training; confidentiality of investigations; law enforcement certification office created"; in Subsection A, after "department of public safety", deleted "as an independent board in accordance with the Executive Reorganization Act" and added "and the department shall provide administrative services for the board and the law enforcement certification office"; redesignated former Subsection B as Subsection C; in Subsection B, after "No more than", deleted "five" and added "six", after "political party", added "Members shall be appointed so as to represent different geographic areas of the state and the ethnic and cultural diversity of the state's population.", after "shall be appointed for", added "staggered", after "five-year terms", added "except that for the initial board", and after "four-year terms and", deleted "one of the initial board" and added "three"; in Subsection C, Paragraph C(2), after "a", added "current or retired New Mexico state-certified", and after "municipal", deleted "police officer" and added "law enforcement manager in a command position", added new Paragraphs C(3) and C(4) and redesignated former Paragraph C(4) as Paragraph C(5), in Paragraph C(5), after "a", added "current or retired", and after "tribal law", deleted "peace" and added "law enforcement", added new Paragraph C(6) and redesignated former Paragraphs C(5) through C(7) as Paragraphs C(7) through C(9), respectively, and added Paragraphs C(10) and C(11); added a new Subsection D and redesignated former Subsections C through H as Subsections E through J, respectively; and added Subsection K.

**Temporary provisions.** — Laws 2023, ch. 86, § 15 provided that the rules of the New Mexico law enforcement academy board shall continue in effect until amended or repealed by the New Mexico law enforcement standards and training council or the law enforcement certification board, as applicable.

## 29-7-4.4. Law enforcement officer training.

The curriculum of each basic law enforcement training class and in-service training each year for certified police officers shall include:

A. crisis management and intervention;

B. dealing with individuals who are experiencing mental health issues;

C. methods of de-escalation;

D. peer-to-peer intervention;

E. stress management;

F. racial sensitivity;

G. reality-based situational training; and

H. use of force training that includes the elimination of vascular neck restraints.

**History:** 1978 Comp., § 29-7-4.4, enacted by Laws 2022, ch. 56, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2022, ch. 56, § 53 made Laws 2022, ch. 56, § 6 effective July 1, 2023.

## 29-7-5. Powers and duties of the director.

The director shall be under the supervision and direction of the secretary of public safety. The director shall:

A. be the chief executive officer of the academy and employ necessary personnel;

B. issue a certificate of completion to any person who:

(1) graduates from an approved basic law enforcement training program and who satisfies the qualifications for certification as set forth in Section 29-7-6 NMSA 1978; or

(2) graduates from an approved basic telecommunicator training program and who satisfies the qualifications for certification as set forth in the Public Safety Telecommunicator Training Act [29-7C-1 to 29-7C-9 NMSA 1978];

C. perform all other acts necessary and appropriate to the carrying out of the director's duties;

D. implement the training standards and requirements developed and adopted by the council; and

E. annually evaluate the courses of instruction being offered by the academy and make necessary modifications and adjustments to the programs.

**History:** 1953 Comp., § 39-6-7, enacted by Laws 1969, ch. 264, § 7; 1977, ch. 257, § 53; 1978, ch. 2, § 1; 1979, ch. 202, § 44; 1981, ch. 114, § 4; 1993, ch. 255, § 4; 2003, ch. 320, § 2; 2022, ch. 56, § 7.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, clarified that the director of the New Mexico law enforcement academy of the department of public safety is under the supervision and direction of the secretary of public safety, and revised the powers and duties of the director; added "The director shall be under the supervision and direction of the secretary of public safety"; and deleted former Subsections D and E, added a new Subsection D and redesignated former Subsection F as Subsection E.

**The 2003 amendment,** effective July 1, 2003, rewrote former Subsection B to create present Subsection B and Paragraph B(1) and added Paragraph B(2).

**The 1993 amendment,** effective July 1, 1993, deleted "as such" preceding "employ" in Subsection A; deleted former Subsection B, which read "certify graduates of approved basic law enforcement training programs in accordance with Section 29-7-8 NMSA 1978"; deleted former Subsection C, which read "issue appropriate certifications to graduates of the academy programs"; added present Subsection B; and redesignated Subsections D through G as C through F, respectively.

## 29-7-5.1. Removal of director.

The director may be removed by the secretary in accordance with the procedures provided in Section 29-2-11 NMSA 1978 for removal of members of the New Mexico state police holding permanent commissions. In the case of removal proceedings for the director under that section, "commission", as used in Subsections C and D of Section 29-2-11 NMSA 1978, shall be construed to mean the New Mexico law enforcement standards and training council.

**History:** 1978 Comp., § 29–7–5.1, enacted by Laws 1979, ch. 202, § 45; 1993, ch. 255, § 5; 2015, ch. 3, § 23; 2022, ch. 56, § 8.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, provided that the director of the New Mexico law enforcement academy may be removed by the secretary of public safety and removed that authority from the former law enforcement academy board, and clarified that, in the case of removal proceedings under Section 29-2-11 NMSA 1978, "commission" shall be construed to mean the New Mexico law enforcement standards and training council; and after "The director may be removed", deleted "board" and added "secretary", and after "New Mexico law enforcement", deleted "academy board" and added "standards and training council".

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying language relating to the procedures for removal of the director of the New Mexico law enforcement academy; in the second sentence, after "section", deleted "the words ‘New Mexico state police board’ or ‘board’", and added "‘commission’ as used in Subsections C and D of Section 29-2-11 NMSA 1978".

**The 1993 amendment,** effective July 1, 1993, in the first sentence, substituted "director" for "director of the New Mexico law enforcement academy" and substituted "board" for "New Mexico law enforcement academy board" and in the second sentence, substituted "that section" for "Section 29-2-11 NMSA".

## 29-7-6. Qualifications for certification.

A. An applicant for certification shall provide evidence satisfactory to the board that the applicant:

(1) is a citizen of the United States or has been authorized to work by the United States citizenship and immigration services and has reached the age of majority;

(2) holds a high school diploma or the equivalent;

(3) holds a valid driver's license;

(4) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding the application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;

(5) after examination by a licensed physician, is free of any physical condition that might adversely affect the applicant's performance as a police officer or prohibit the applicant from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;

(6) after examination by a certified psychologist, is free of any emotional or mental condition that might adversely affect performance as a police officer or prohibit the applicant from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;

(7) is of good moral character;

(8) has met any other requirements for certification prescribed by the board pursuant to regulations adopted by the board; and

(9) has previously been awarded a certificate of completion by the director attesting to the applicant's completion of an approved law enforcement training program.

B. A person employed as a police officer by any law enforcement agency in this state shall forfeit the person's position unless, no later than twelve months after beginning employment as a police officer, the person satisfies the qualifications for

certification set forth in Subsection A of this section and is awarded a certificate attesting to that fact.

**History:** 1978 Comp., § 29-7-6, enacted by Laws 1993, ch. 255, § 6; 2025, ch. 78, § 3.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1993, ch. 255, § 6 repealed former 29-7-6 NMSA 1978, as amended by Laws 1988, ch. 58, § 1, and enacted a new section, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

**Cross references.** — For the inapplicability of the Criminal Offender Employment Act to law enforcement agencies, *see* 28-2-5 NMSA 1978.

**The 2025 amendment,** effective June 20, 2025, allowed individuals with work authorization from the United States Citizenship and Immigration Services to qualify for certification as law enforcement officers; and in Subsection A, Paragraph A(1), after "United States" added "or has been authorized to work by the United States citizenship and immigration services".

**Authority to act as a police officer prior to certification.** — An officer who becomes employed as a police officer after a break in service that was not intended to circumvent the certification requirement is provided twelve (12) months from the date of the officer's new employment to obtain certification. *State v. Reyes*, 2009-NMCA-091, 146 N.M. 776, 215 P.3d 85, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

Where a police officer was employed by a municipal police department and attended the police academy; after two months of employment, the officer dropped out of the police academy due to traffic violations and for two years, obtained different employment; the officer then restarted a career as a police officer by re-enrolling in the police academy and obtaining a job as an officer with a municipal police department; after four months of employment with the police department and while the officer was still in the police academy, the officer arrested defendant; and after the officer arrested defendant, within twelve months of the officer's employment with the police department, the officer completed training in the police academy and received police certification, the officer was authorized to perform the duties of a police officer when the officer arrested defendant. *State v. Reyes*, 2009-NMCA-091, 146 N.M. 776, 215 P.3d 85, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**Health inquiry not necessarily excepted from ADA.** — The fact that New Mexico law makes good health a prerequisite for police officer certification does not necessarily mean that inquiring into officer's health and terminating him as a result of his response falls within the "job-related and consistent with business necessity" exception of the Americans with Disabilities Act, 42 USC § 12112(d)(4)(A); whether an inquiry falls within this exception is a fact-intensive question, and the existence of the New Mexico law,

although it supports such a finding, is only one fact to be considered. *Gonzales v. Sandoval Cnty.*, 2 F. Supp. 2d 1442 (D.N.M. 1998).

**Forfeiture of position for failure to receive certificate of completion.** — A deputy sheriff must forfeit the deputy sheriff's position if the deputy sheriff has not been awarded a certificate of completion by the director of the New Mexico law enforcement academy board attesting to the deputy sheriff's completion of an approved law enforcement training program within twelve months after beginning the deputy sheriff's employment as a deputy. 2009 Op. Att'y Gen. No. 09-01.

**Decommissioning process for failure to receive certificate of completion.** — The mechanical process of decommissioning a deputy sheriff, for failure to obtain a certificate under Subsection B of Section 29-7-6 NMSA 1978 or otherwise, is a matter for the reasonably exercised discretion of the sheriff. If a deputy sheriff fails to obtain a certificate, procedural due process would not require a hearing in order to terminate employment as a deputy sheriff and consequent revocation of the appointment or commission to act as such. 2009 Op. Att'y Gen. No. 09-01

**A merit system ordinance does not override the forfeiture provision.** — There is no indication that the legislature intended that a merit system ordinance enacted by a county pursuant to Section 4-41-5 NMSA 1978, as further authorized by Section 4-41-6 NMSA 1978, overrides the "forfeiture" provision of Subsection B of Section 29-7-6 NMSA 1978. 2009 Op. Att'y Gen. No. 09-01.

**Regulations cannot be waived.** — A county sheriff and a board of county commissioners do not have the authority to waive or otherwise disregard the regulations promulgated by the law enforcement academy board where a deputy sheriff fails to submit to the department of public safety training and recruiting division an application for certification and required supporting documentation within fourteen days of the deputy sheriff's employment as a deputy sheriff, as set forth in 10.29.9.18 (C) NMAC, or within thirty days of his employment, as set forth in 10.29.9.10 (B)(1) NMAC. 2009 Op. Att'y Gen. No. 09-01.

**Must reach eighteenth birthday.** — One who has reached his eighteenth birthday is entitled to apply for, and be admitted to, the New Mexico law enforcement academy, provided he meets the other requirements specified in the section. 1971 Op. Att'y Gen. No. 71-126.

**Candidate with general discharge from military may be certified.** — A candidate for admission to the law enforcement academy who received a general discharge from the military may be certified as a police officer. In order to comply with constitutional and statutory requirements, the academy should evaluate candidates who have received general discharges on an individual basis. The circumstances surrounding the discharge should be evaluated to determine if the discharge was predicated on reasons which would render the applicant ineligible for certification. In the absence of such

circumstances, applicants with general discharges should not be excluded solely because they received a general discharge. 1989 Op. Att'y Gen. No. 89-23.

**Effect of gubernatorial pardon on eligibility of convicted felon.** — An unconditional gubernatorial pardon allows a person convicted of a felony to be eligible for certification by the law enforcement academy for permanent appointment as a police officer. However, if authorized by statute or regulation, a pardoned felon's character and the acts underlying the conviction may be considered in certification or licensing. 1992 Op. Att'y Gen. No. 92-09.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 70 Am. Jur. 2d Sheriffs, Police, and Constables § 10.

Sex discrimination in law enforcement and corrections employment, 53 A.L.R. Fed. 31.

63 C.J.S. Municipal Corporations § 478 et seq.

## 29-7-6.1. County sheriffs; training requirement.

A. Sheriffs are eligible to attend the academy and are eligible to receive certification as provided in the Law Enforcement Training Act.

B. Every county sheriff, except sheriffs who have previously been awarded a certificate attesting to completion of a basic law enforcement training program, shall participate in and complete an administrative law enforcement training program no later than twelve months after the date the sheriff assumes office as a county sheriff.

C. The director shall establish the administrative law enforcement training program for county sheriffs, subject to review and approval by the executive committee of the sheriff's affiliate of the New Mexico association of counties.

D. A county sheriff's per diem, mileage and tuition expenses attributed to attendance at the administrative law enforcement training shall be paid for by the governing body of the county served by that sheriff.

**History:** 1978 Comp., § 29-7-6.1, enacted by Laws 1993, ch. 255, § 7; 2015, ch. 3, § 24; 2023, ch. 86, § 4.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, provided that county sheriffs are eligible to attend the academy and are eligible to receive certification; added a new Subsection A and redesignated former Subsections A through C as Subsections B through D, respectively.

**Temporary provisions.** — Laws 2023, ch. 86, § 15 provided that the rules of the New Mexico law enforcement academy board shall continue in effect until amended or repealed by the New Mexico law enforcement standards and training council or the law enforcement certification board, as applicable.

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by amending language relating to training requirements for county sheriffs; in Subsection A, after "date", deleted "he" and added "the sheriff"; and in Subsection B, after "director", deleted "of the training and recruiting division of the department of public safety".

## 29-7-7. Definitions.

For the purpose of the Law Enforcement Training Act:

A. "academy" means the New Mexico law enforcement academy;

B. "basic law enforcement training" means a course consisting of not less than four hundred hours of instruction in basic law enforcement training as required by the Law Enforcement Training Act;

C. "board" means the law enforcement certification board;

D. "conviction" means an adjudication of guilt or a plea of no contest and includes convictions that are suspended or deferred;

E. "council" means the New Mexico law enforcement standards and training council;

F. "director" means the director of the division;

G. "division" means the New Mexico law enforcement academy of the department of public safety;

H. "in-service law enforcement training" means a course of instruction required of all certified peace officers and designed to train and equip all police officers in the state with specific law enforcement skills and to ensure the continuing development of all police officers in the state. The training and instruction shall be kept current and may be conducted on a regional basis at the discretion of the director;

I. "law enforcement agency" means an agency of the state or local political subdivision of the state that employs certified law enforcement officers or the police department of a tribe that has entered into an agreement with the department of public safety pursuant to Section 29-1-11 NMSA 1978;

J. "police officer" means any commissioned employee of a law enforcement agency that is part of or administered by the state or any political subdivision of the state, and

includes any employee of a missile range civilian police department who is a graduate of a recognized certified regional law enforcement training facility and who is currently certifiable by the academy, which employee is responsible for the prevention and detection of crime or the enforcement of the penal, or traffic or highway laws of this state. The term specifically includes deputy sheriffs. Sheriffs are eligible to attend the academy and are eligible to receive certification as provided in the Law Enforcement Training Act. As used in this subsection, "commissioned" means an employee of a law enforcement agency who is authorized by a sheriff or chief of police to apprehend, arrest and bring before the court all violators within the law enforcement agency's jurisdiction; and

K. "certified regional law enforcement training facility" means a law enforcement training facility within the state certified by the director, with the approval of the academy's board of directors, that offers basic law enforcement training and in-service law enforcement training that is comparable to or exceeds the standards of the programs of the academy.

**History:** 1978 Comp., § 29-7-7, enacted by Laws 1981, ch. 114, § 6; 1988, ch. 58, § 2; 1993, ch. 255, § 8; 1997, ch. 213, § 1; 2015, ch. 3, § 25; 2022, ch. 56, § 9.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1981, ch. 114, § 6 repealed former 29-7-7 NMSA 1978, relating to basic course minimum requirements, and enacted a new 29-7-7 NMSA 1978.

**The 2022 amendment,** effective July 1, 2023, defined "council" and "law enforcement agency", and revised the definitions of "board" and "police officer", for purposes of the Law Enforcement Training Act; in Subsection C, after "means the", deleted "New Mexico" and after "law enforcement", deleted "academy" and added "certification"; added a new Subsection E and redesignated former Subsections E through G as Subsections F through H, respectively; added a new Subsection I and redesignated former Subsections H and I as Subsections J and K, respectively; and in Subsection J, after "all violators within the", deleted "state" and added "law enforcement agency's jurisdiction".

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by clarifying definitions of the Law Enforcement Training Act; in Subsection E, after "director of the", deleted "academy" and added "division"; added new Subsection F, and redesignated the subsequent subsections accordingly; in the present Subsection G, after "officers", added "and"; and in the present Subsection H, after "certifiable by the", deleted "New Mexico law enforcement".

**The 1997 amendment,** effective June 20, 1997, inserted "and includes any employee of a missile range civilian police department who is a graduate of a recognized certified

regional law enforcement training facility, and who is currently certifiable by the New Mexico law enforcement academy" in the first sentence of Subsection G.

**The 1993 amendment,** effective July 1, 1993, substituted "the Law Enforcement Training Act" for "this Act" in Subsection B; added present Subsection D; redesignated former Subsections D through G as E through H; substituted "academy" for "New Mexico law enforcement academy" in Subsection E; rewrote Subsection F; and made minor stylistic changes in Subsections G and H.

**Police officers are public employees,** not public officers, and have no sovereign power. *Walck v. City of Albuquerque*, 1994-NMCA-058, 117 N.M. 651, 875 P.2d 407, cert. denied, 118 N.M. 695, 884 P.2d 1174.

An agent of the department of alcoholic beverage control (ABC) is a "police officer" as defined in Subsection G and is required to satisfy the law enforcement certification requirement of former Section 29-7-8 NMSA 1978, even if the agent was hired by the department before the enactment of this section in 1981, which expanded the definition of "police officer" to include agents such as those employed by ABC. *Serrano v. State Dep't of Alcoholic Beverage Control*, 1992-NMCA-015, 113 N.M. 444, 827 P.2d 159.

**"Police officer".** — The livestock board in its capacity of enforcing the law is a "law enforcement agency", its officers are "police officers" for purposes of this section, and livestock inspectors have 12 months after employment in which to receive their certification from the law enforcement academy or forfeit their positions. 1987 Op. Att'y Gen. No. 87-34.

## 29-7-7.1. In-service law enforcement training; requirements; eligibility; penalties for failure to complete or report requirements.

A. To maintain certification as a police officer, in-service law enforcement training is required. In-service law enforcement training consists of a minimum of forty hours of academic instruction approved by the council for each certified police officer during each twenty-four month period of employment or service with a state or local law enforcement agency. The first required in-service law enforcement training period shall commence no later than twelve months after graduation from an approved basic law enforcement training program.

B. Each certified police officer shall provide proof of completing in-service law enforcement training requirements to the officer's law enforcement agency and the executive director no later than March 1 of the year in which the requirements must be met. The executive director shall provide annual notice to all certified police officers regarding in-service law enforcement training requirements. Failure to complete in-service law enforcement training requirements or failure to report completion to the board may be grounds for suspension of a police officer's certification and may result in the state withholding the law enforcement agency's law enforcement protection fund distribution. A police officer's certification may be reinstated by the board when the

police officer presents the board with evidence of satisfying in-service law enforcement training requirements.

C. The board shall audit in-service law enforcement training compliance.

**History:** 1978 Comp., § 29-7-7.1, enacted by Laws 1981, ch. 114, § 7; 1993, ch. 255, § 9; 2023, ch. 86, § 5.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, provided that failure to report completion of in-service law enforcement training requirements may be grounds for suspension of a police officer's certification and that that failure to complete or report in-service law enforcement training requirements may result in the state withholding the law enforcement agency's law enforcement protection fund distribution, and required the law enforcement certification board to audit in-service law enforcement training compliance; in the section heading, added "penalties for failure to complete or report requirements"; in Subsection A, added "To maintain certification as a police officer"; in Subsection B, deleted "All certified police officers who are eligible for in-service training shall, during each twenty-four month period of employment, complete a minimum of forty hours of in-service law enforcement training in courses approved by the board. All" and added "Each", after "Failure to complete in-service law enforcement training requirements", added "or failure to report completion to the board", and after "suspension of a police officer's certification", added "and may result in the state withholding the law enforcement agency's law enforcement protection fund distribution"; and added Subsection C.

**Temporary provisions.** — Laws 2023, ch. 86, § 15 provided that the rules of the New Mexico law enforcement academy board shall continue in effect until amended or repealed by the New Mexico law enforcement standards and training council or the law enforcement certification board, as applicable.

**The 1993 amendment,** effective July 1, 1993, rewrote this section.

**In-service training not mandatory.** — The legislature has required the establishment of in-service training programs by the law enforcement academy, but has not compelled attendance at such programs by imposing the sanction of forfeiture of employment. As police officers are not bound to obey the requirement for in-service training, it is not mandatory. 1981 Op. Att'y Gen. No. 81-10 (rendered under prior law).

## 29-7-7.2. Reports.

Every law enforcement agency within the state shall submit quarterly a report to the director and the board on the status of each police officer employed by the law enforcement agency. The reports shall include the status of in-service law enforcement training. The reporting forms and submittal dates shall be prescribed by the board.

**History:** 1978 Comp., § 29-7-7.2, enacted by Laws 1981, ch. 114, § 8; 1988, ch. 58, § 3; 2022, ch. 56, § 10.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, amended an existing provision that required every law enforcement agency within the state to submit a quarterly report to the director of the law enforcement academy to also submit the report to the law enforcement certification board, and provided that the law enforcement certification board is required to prescribe the reporting forms and submittal dates, and removed this duty from the director of the law enforcement academy; after "report to the director", added "and the board", and after "prescribed by the", deleted "director" and added "board".

**The 1988 amendment,** effective July 1, 1988, added the second sentence.

## 29-7-7.3. Ensuring child safety upon arrest; training.

Training for ensuring child safety upon the arrest of a parent or guardian shall be included in the curriculum of each basic law enforcement training class and as a component of in-service training each year for certified police officers.

**History:** Laws 2007, ch. 89, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 89, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## 29-7-7.4. Missing person and AMBER alert training.

A minimum of four hours of combined missing person and AMBER alert training shall be included in the curriculum of each basic law enforcement training class. Missing person and AMBER alert training shall be included as a component of in-service training each year for certified police officers.

**History:** Laws 2010, ch. 33, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## 29-7-7.5. Interaction with persons with mental impairments; training.

A. A minimum of forty hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, shall be included in the curriculum of each basic law enforcement training class.

B. A minimum of two hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, shall be included as a component of in-service law enforcement training pursuant to Section 29-7-7.1 NMSA 1978.

C. A pre-recorded course on crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, shall not satisfy the requirements of the basic law enforcement training class required pursuant to Subsection A of this section.

D. As used in this section, "mental impairment" includes a mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis and traumatic brain injury.

**History:** Laws 2011, ch. 180, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2011, ch. 180, § 6 made Laws 2011, ch. 180, § 1 effective July 1, 2011.

**Temporary provisions.** — Laws 2011, ch. 180, § 3 provided:

A. The chief law enforcement officer of a state, county or municipal law enforcement agency who was elected or appointed prior to July 1, 2011 shall complete a minimum of two hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, no later than July 1, 2012.

B. A law enforcement officer who on September 1, 2010 held an intermediate proficiency certificate or an advanced proficiency certificate issued pursuant to Section 29-7-7.1 NMSA 1978 shall complete a minimum of two hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, no later than July 1, 2012.

C. As used in this section, "mental impairment" includes a mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis and traumatic brain injury.

## 29-7-7.6. Law enforcement officers; naloxone rescue kit.

A. As agency funding and agency supplies of naloxone rescue kits permit, each local and state law enforcement agency shall provide naloxone rescue kits to its law enforcement officers and require that officers carry the naloxone rescue kits in accordance with agency procedures so as to optimize the officers' capacity to timely assist in the prevention of opioid overdoses.

B. Nothing in this section shall be construed to impose civil or criminal liability on a local or state law enforcement agency or law enforcement officer when ordinary care is used in the administration or provision of naloxone in cases where an individual appears to be experiencing an opioid overdose.

C. As used in this section:

(1) "naloxone" means naloxone hydrochloride, which is an opioid antagonist for the treatment of opioid overdose; and

(2) "naloxone rescue kit" means a kit containing:

(a) two doses of naloxone in either a generic form or in a form approved by the federal food and drug administration; and

(b) overdose education materials that conform to department of health or federal substance abuse and mental health services administration guidelines for opioid overdose education that explain the signs and causes of an opioid overdose and instruct when and how to administer in accordance with medical best practices: 1) life-saving rescue techniques; and 2) an opioid antagonist.

**History:** Laws 2017, ch. 59, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 59 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

## 29-7-7.7. Tourniquet and trauma kit training and distribution.

A. Tourniquet and trauma kit training shall be included in the curriculum of each basic law enforcement training class and as a component of in-service law enforcement training each year for certified police officers. The academy, in coordination with certified regional law enforcement training facilities, shall provide a tourniquet and trauma kit to each cadet who graduates from the academy or from a certified regional law enforcement training facility and to each previously certified police officer who attends a certification-by-waiver course.

B. The academy shall provide hands-on tourniquet and trauma kit training to all officers using tourniquet and trauma kit equipment designed for training purposes. The training shall be designed in a manner that will safely replicate field conditions without the risk of injury in order for officers to develop the necessary skills to use tourniquets and trauma kits. In order to supplement the hands-on training, the academy may produce a training video on the proper use of tourniquets and trauma kits for use in the academy and certified regional law enforcement training facilities.

C. The academy, in coordination with certified regional law enforcement training facilities, shall distribute a tourniquet and trauma kit to each police officer who has been certified pursuant to the Law Enforcement Training Act.

**History:** Laws 2017, ch. 35, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2017, ch. 35, § 6 made Laws 2017, ch. 35, § 1 effective July 1, 2017.

## 29-7-8. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 255, § 11 repealed 29-7-8 NMSA 1978, as enacted by Laws 1979, ch. 202, § 48, relating to prerequisites for permanent appointment and continued employment as a police officer, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

## 29-7-9. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1988, ch. 58, § 7 repealed former 29-7-9 NMSA 1978, as enacted by Laws 1971, ch. 247, § 3, relating to the definition of "police officer", effective July 1, 1988. For present comparable provisions, *see* 29-7-7 NMSA 1978.

## 29-7-10. Certification by waiver.

A. The board may, with the approval of the council, waive the basic law enforcement training program and certify applicants who are employed as full-time police officers and who furnish evidence of satisfactory completion of a basic law enforcement training program which is comparable to or exceeds the standards of the programs of the academy.

B. All individuals allowed a waiver under this section shall meet the requirements set out in the Law Enforcement Training Act, and this section shall not be construed to exempt them from those requirements in any manner.

**History:** 1953 Comp., § 39-6-12, enacted by Laws 1971, ch. 247, § 4; 1977, ch. 257, § 54; 1979, ch. 104, § 1; 1979, ch. 202, § 49; 1981, ch. 107, § 1; 1981, ch. 114, § 10; 2022, ch. 56, § 11.

### ANNOTATIONS

**The 2022 amendment,** effective July 1, 2023, provided duties to the law enforcement certification board that were previously held by the director of the law enforcement academy, and provided the law enforcement standards and training council with approval authority over certifications by waiver; and in Subsection A, after "The", deleted "director shall" and added "board may", and after "approval of the", deleted "board" and added "council".

**Authority of director to consider qualifications of instructors.** — In exercising his authority to certify by waiver, the director should take into account the qualifications of instructors to determine if another basic law enforcement training program is comparable to the academy program. In that context, the director and the board are authorized to review and consider the qualifications of instructors at facilities not otherwise under the control of the law enforcement academy board. 1982 Op. Att'y Gen. No. 82-10.

## 29-7-11. Repealed.

### ANNOTATIONS

**Repeals.** — Laws 1991, ch. 44, § 3 repealed 29-7-11 NMSA 1978, as enacted by Laws 1988, ch. 58, § 5, pertaining to the law enforcement training center fund, effective July 1, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 29-7-12 NMSA 1978.

## 29-7-12. Charges; fund created; use.

A. The division shall not charge local public bodies or New Mexico Indian tribes or pueblos for any expenses associated with providing basic law enforcement training programs to applicants for certification seeking commission pursuant to the provisions of the Law Enforcement Training Act. The division may charge state agencies and institutions and federal agencies and shall charge civilian participants for the cost of providing basic law enforcement training programs, which charges shall be specified in a tuition and fee schedule promulgated by the council and shall not exceed the actual cost of providing the training programs.

B. The division may charge state agencies and institutions, local public bodies, New Mexico Indian tribes and pueblos and federal agencies and shall charge civilian participants for the cost of providing advanced training programs, which charges shall be specified in a tuition and fee schedule promulgated by the council and shall not exceed the actual cost of providing the training programs.

C. The division may charge for the rental or other use of the academy's facility, personnel and equipment, which charges shall be specified in a tuition and fee schedule promulgated by the council and shall not exceed the actual cost of the facility, personnel or equipment.

D. The "law enforcement training and recruiting fund" is created in the state treasury. Money received by the division for activities specified in this section shall be deposited in the fund. The department of public safety shall administer the fund, and money in the fund is appropriated to the division to offset the operational costs of the division. Money in the fund shall be nonreverting. Money shall be expended on warrants issued by the secretary of finance and administration upon vouchers signed by the secretary of public safety or the secretary of public safety's authorized representative.

E. As used in this section, "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions.

**History:** 1978 Comp., § 29–7–12, enacted by Laws 1981, ch. 114, § 12; 1983, ch. 270, § 1; 2000, ch. 14, § 1; 2015, ch. 3, § 26; 2022, ch. 56, § 12.

## ANNOTATIONS

**Cross references.** — For department of public safety, *see* 9-19-1 NMSA 1978.

**The 2022 amendment,** effective July 1, 2023, provided the law enforcement standards and training council with duties previously held by the board; and substituted each occurrence of "board" with "council" throughout the section.

**The 2015 amendment,** effective July 1, 2015, provided for the reorganization of the department of public safety by amending language relating to the New Mexico law enforcement academy’s charges for providing law enforcement training programs; in Subsection A, after "The", deleted "training and recruiting", after "division", deleted "of the department of public safety", after "bodies", deleted "and" and added "or", after tribes, deleted "and" and added "or", and after "promulgated by the", deleted "New Mexico law enforcement academy"; in Subsection B, after "The", deleted "training and recruiting", and after "promulgated by the", deleted "New Mexico law enforcement academy"; in Subsection C, after "The", deleted "training and recruiting", and after "promulgated by the", deleted "New Mexico law enforcement academy"; and in Subsection D, after "Money received by the", deleted "training and recruiting", after the second sentence, deleted the sentence "Unexpended unencumbered balances in the

fund shall revert to the general fund at the end of the fiscal year." and added the new sentence "Money in the fund shall be nonreverting.", and after "public safety", deleted "his" and added "the secretary of public safety's".

**The 2000 amendment,** effective May 17, 2000, added "Fund created; Use" to the section heading; designated most of the existing provisions of the section as Subsection A; in Subsection A, substituted "training and recruiting division of the department of public safety" for "New Mexico law enforcement academy", substituted "and" for "or" following "local public bodies" and "New Mexico Indian tribes", and added the last sentence; added Subsections B, C and D; and designated the former last sentence of the section as Subsection E.

## 29-7-13. Refusal, suspension or revocation of certification.

A. After consultation with the employing agency, the board may refuse to issue, or may suspend or revoke a police officer's certification when the board determines that a person has:

(1) failed to satisfy the qualifications for certification, set forth in Section 29-7-6 NMSA 1978;

(2) committed acts that constitute dishonesty or fraud;

(3) been convicted of, pled guilty to or entered a plea of no contest to:

(a) any felony charge; or

(b) any violation of federal or state law or a local ordinance relating to aggravated assault, theft, driving while under the influence of intoxicating liquor or drugs, controlled substances or any law or ordinance involving moral turpitude;

(4) knowingly made any false statement in his application for certification.

B. The board shall develop, adopt and promulgate administrative procedures for suspension or revocation of a police officer's certification that include notice and an opportunity for the affected police officer to be heard as well as procedures for review of the board's decision.

**History:** 1978 Comp., § 29-7-13, enacted by Laws 1993, ch. 255, § 10.

## 29-7-14. Law enforcement officers as school resource officers; training required.

A. As used in this section, "school resource officer" means a commissioned and certified law enforcement officer who is designated to be responsible for school safety

and crime prevention and the appropriate response to crimes in public schools and has completed the training specified in Subsection B of this section.

B. A law enforcement officer who is or will be assigned as a school resource officer shall receive specific training for the duty, including instruction on the following:

(1) the differences in successful law enforcement when conducted inside a school environment, including understanding the adolescent brain, crisis management and de-escalation techniques;

(2) tools to be a positive role model for youth, including mentoring and informal counseling techniques;

(3) the school resource officer's role and responsibilities to school personnel and students and their families and strategies for connecting students and families to appropriate resources that will assist students to succeed in school, including strategies for mitigating truancy;

(4) a variety of instructional techniques as well as classroom management tools to provide law-related education to students;

(5) an understanding of adolescent development and adolescent mental health disorders and treatment; and

(6) identification and response to students who are suspected of having a mental health need, including critical skills and capacity for appropriately responding to behavior issues that are typically observed among adolescents with mental health needs.

C. Beginning with the 2022-2023 school year, a law enforcement officer who:

(1) is assigned as a school resource officer shall complete the training required in Subsection B of this section within twelve months of being assigned as a school resource officer; or

(2) was serving as a school resource officer prior to the 2022-2023 school year and who has not received specific training for the position of school resource officer shall complete the training required in Subsection B of this section no later than July 1, 2023.

D. The school resource officer training shall be provided by or approved by the New Mexico law enforcement academy in consultation with the public education department.

**History:** Laws 2020, ch. 67, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2020, ch. 67, § 7 made Laws 2020, ch. 67, § 1 effective July 1, 2022.

## 29-7-15. Revoke police officer certification after conviction or making certain pleas.

Notwithstanding any other provision of law, if any police officer is convicted of or pleads guilty or nolo contendere to a crime involving the unlawful use or threatened use of physical force or a crime involving the failure to intervene in the use of unlawful force, the board shall permanently revoke the police officer's certification. The board shall not, under any circumstance, reinstate the police officer's certification or grant new certification to the police officer unless the police officer is exonerated by a court or pardoned by the governor.

**History:** Laws 2020 (1st S.S.), ch. 7, § 2.

**ANNOTATIONS**

Effective dates. — Laws 2020 (1st S.S.), ch. 7 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective September 20, 2020, 90 days after the adjournment of the legislature.

## 29-7-16. Police officer database.

By July 1, 2024, the board shall employ a web-based technology solution that will enable any member of the public to search for outcomes of misconduct investigations that result in dismissal, denial, suspension or revocation of a police officer's or public safety telecommunicator's certification. The database shall show the officer's or telecommunicator's name, the action taken by the board and the date of the action.

**History:** 1978 Comp., § 29-7-16, enacted by Laws 2023, ch. 86, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 86, § 16 made Laws 2023, ch. 86, § 6 effective June 16, 2023.

**Temporary provisions.** — Laws 2023, ch. 86, § 15 provided that the rules of the New Mexico law enforcement academy board shall continue in effect until amended or repealed by the New Mexico law enforcement standards and training council or the law enforcement certification board, as applicable.

# ARTICLE 7A
# Radio Dispatcher Training Program (Repealed.)

## 29-7A-1 to 29-7A-7. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 320, § 12 repealed 29-7A-1 to 29-7A-7 NMSA 1978, as enacted by Laws 1979, ch. 228, relating to the Radio Dispatcher Training Program, effective July 1, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For the Public Safety Telecommunicator Training Act, *see* 29-7C-1 NMSA 1978 et seq.

# ARTICLE 7B
# Law Enforcement Youth Cadet Corps

## 29-7B-1. Short title.

This act [29-7B-1 to 29-7B-4 NMSA 1978] may be cited as the "Law Enforcement Youth Cadet Corps Act".

**History:** Laws 1994, ch. 35, § 1.

## 29-7B-2. Findings and purpose.

A. The legislature finds that:

(1) the level and increasingly violent nature of juvenile crime in New Mexico has reached alarming proportions; and

(2) alcohol and drug abuse among minors remains a serious social problem.

B. The purpose of the Law Enforcement Youth Cadet Corps Act is to:

(1) provide leadership training to students;

(2) improve awareness and appreciation among students regarding the functions and roles of law enforcement agencies in New Mexico; and

(3) prepare students to assist as volunteers in law enforcement programs in their own communities, including such programs as neighborhood watch, D.A.R.E. and pounders.

**History:** Laws 1994, ch. 35, § 2.

## 29-7B-3. Definitions.

As used in the Law Enforcement Youth Cadet Corps Act:

A. "academy" means the New Mexico law enforcement academy;

B. "department" means the department of public safety;

C. "program" means a law enforcement leadership training and awareness program conducted at the academy; and

D. "student" means an individual enrolled in a high school in New Mexico.

**History:** Laws 1994, ch. 35, § 3.

## 29-7B-4. Law enforcement leadership training and awareness program; administration.

The department shall:

A. provide information to high schools regarding the existence of the program and the availability of scholarships to students who apply to participate in the program;

B. approve or disapprove student applications to participate in the program, with priority given to students who express a desire to pursue a career in law enforcement;

C. organize and schedule no less than four programs at the academy annually, with each program to consist of not less than ten students; and

D. promulgate rules regarding the content of the program, including:

(1) providing students with leadership training;

(2) improving students' awareness of the functions and roles of law enforcement agencies in New Mexico; and

(3) preparing students to assist as volunteers in law enforcement programs in their own communities, including neighborhood watch, D.A.R.E. and pounders.

**History:** Laws 1994, ch. 35, § 4.

# ARTICLE 7C
# Public Safety Telecommunicator Training

## 29-7C-1. Short title.

Sections 3 through 11 [29-7C-1 to 29-7C-9 NMSA 1978] of this act may be cited as the "Public Safety Telecommunicator Training Act".

**History:** Laws 2003, ch. 320, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 320, § 13 made Laws 2003, ch. 320, § 3 effective on July 1, 2003.

## 29-7C-2. Definitions.

As used in the Public Safety Telecommunicator Training Act:

A. "board" means the law enforcement certification board;

B. "certified" means meeting the training standards established by statute and rule as determined by the board;

C. "council" means the New Mexico law enforcement standards and training council;

D. "director" means the director of the New Mexico law enforcement academy;

E. "dispatch" means the relay of information to public safety personnel by all forms of communication;

F. "high-quality telecommunicator cardiopulmonary resuscitation" means the instructions that a telecommunicator provides to a bystander of a cardiac emergency on how to perform cardiopulmonary resuscitation;

G. "safety agency" means a unit of state or local government, a special purpose district or a private business that provides police, firefighting or emergency medical services; and

H. "telecommunicator" means an employee or volunteer of a safety agency who:

(1) receives calls or dispatches the appropriate personnel or equipment in response to calls for police, fire or medical services; and

(2) makes decisions affecting the life, health or welfare of the public or safety employees.

**History:** Laws 2003, ch. 320, § 4; 2022, ch. 56, § 14; 2025, ch. 47, § 1.

**ANNOTATIONS**

**The 2025 amendment,** effective June 20, 2025, defined the term "high-quality telecommunicator cardiopulmonary resuscitation" as used in the Public Safety Telecommunicator Training Act; added a new Subsection F and redesignated the succeeding subsections accordingly.

**The 2022 amendment,** effective July 1, 2023, defined "council" and revised the definition of "board"; in Subsection A, after "means the", deleted "New Mexico" and after "law enforcement", deleted "academy" and added "certification"; and added a new Subsection C and redesignated former Subsections C through F as Subsections D through G, respectively.

## 29-7C-3. Qualifications for certification.

An applicant for certification shall provide evidence satisfactory to the board that the applicant:

A. is a citizen or legal resident of the United States and has reached the age of majority;

B. holds a high school diploma or high school equivalency credential from an accredited institution;

C. has not been convicted of, pled guilty to or entered a plea of nolo contendere to a:

(1) felony charge; or

(2) violation of a federal or state law, a local ordinance relating to aggravated assault or theft or a law involving moral turpitude within the three-year period immediately preceding the application;

D. has not received a dishonorable discharge from the armed forces of the United States;

E. is free from a physical, emotional or mental condition that might adversely affect the applicant's performance;

F. is of good moral character;

G. has met all other requirements for certification prescribed by the board; and

H. has received a certificate attesting to the applicant's completion of an approved basic telecommunicator training program from the director.

**History:** Laws 2003, ch. 320, § 5; 2015, ch. 122, § 15.

**ANNOTATIONS**

**The 2015 amendment,** effective July 1, 2015, replaced the term "high school general equivalency diploma" with "high school equivalency credential" in the provision relating to qualifications for certification as a telecommunicator in the Public Safety Telecommunicator Training Act; in the introductory sentence, after "to the board that", deleted "he" and added "the applicant"; in Subsection B, after "high school", added "diploma", after "or", deleted "general" and added "high school", and after "equivalency", deleted "diploma" and added "credential"; in Paragraph (2) of Subsection C, after "immediately preceding", deleted "his" and added "the"; in Subsection E, after "adversely affect", deleted "his" and added "the applicant's"; and in Subsection H, after "attesting to", deleted "his" and added "the applicant's".

## 29-7C-4. Telecommunicator training program.

A. The council shall:

(1) after consultation with the board, adopt by rule professional standards that describe the skills, knowledge and behaviors that characterize exemplary practice and professional growth of telecommunicators in New Mexico and training standards that implement the professional standards; and

(2) develop and adopt a telecommunicator training program for telecommunicator certification. The program shall be evidence- and performance-based and shall meet best practices and evolving national standards and the needs of telecommunicators at each level of certification.

B. Until new evidence- and standards-based training programs are adopted and promulgated, the board shall certify telecommunicators after successful completion of the training programs then in effect. During the process of updating the telecommunicator training system, the council and the New Mexico law enforcement academy shall provide periodic reports to the legislature and shall make a final report, including recommendations for funding and statutory changes, to the governor and the legislature.

**History:** Laws 2003, ch. 320, § 6; 2022, ch. 56, § 15; 2023, ch. 86, § 7.

**ANNOTATIONS**

**The 2023 amendment,** effective July 1, 2023, revised the New Mexico law enforcement training and standards council's duties related to the telecommunicator training program; in the section heading, deleted "Basic"; in Subsection A, added Paragraph A(1), in Paragraph A(2), after "The program shall be", deleted "constructed to" and added "evidence- and performance-based and shall", after "meet", added "best practices and evolving national standards and", and after "telecommunicators", deleted "in New Mexico" and added "at each level of certification"; and added Subsection B.

**The 2022 amendment,** effective July 1, 2023, required the New Mexico law enforcement standards and training council to develop and adopt a basic telecommunicator training program for telecommunicator certification, and removed this duty from the former law enforcement academy board; and after "The", deleted "board" and added "council".

## 29-7C-4.1. Public safety telecommunicator training.

The curriculum of each basic telecommunicator training class and in-service training each year for telecommunicators shall include:

A. crisis management and intervention;

B. dealing with individuals who are experiencing mental health issues;

C. methods of de-escalation;

D. peer-to-peer intervention;

E. stress management;

F. racial sensitivity;

G. reality-based situational training; and

H. high-quality telecommunicator cardiopulmonary resuscitation using the most current nationally recognized emergency cardiovascular care guidelines. Training on high-quality telecommunicator cardiopulmonary resuscitation shall include instruction on out-of-hospital cardiac arrest protocols and compression-only cardiopulmonary resuscitation.

**History:** Laws 2022, ch. 56, § 19; 2025, ch. 47, § 2.

**ANNOTATIONS**

**The 2025 amendment,** effective June 20, 2025, required public safety telephone line telecommunicators to be trained in high-quality telecommunicator cardiopulmonary resuscitation; added Subsection H.

## 29-7C-5. Minimum training standards for certification.

A. A telecommunicator shall satisfy the qualifications for certification set forth in the Public Safety Telecommunicator Training Act within twelve months after beginning employment and shall provide a certificate of completion to the director.

B. The director shall waive the training requirements set forth in Subsection A of this section for a police radio dispatcher who is certified as a police radio dispatcher and has met all other requirements set forth by the council.

**History:** Laws 2003, ch. 320, § 7; 2022, ch. 56, § 16.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, replaced "board" with "council"; and after "set forth by the", deleted "board" and added "council".

## 29-7C-6. Certification by waiver.

A. The board may, with the approval of the council, waive the basic telecommunicator training program and certify applicants who furnish evidence of satisfactory completion of a basic telecommunicator training program that, in the director's opinion, is substantially equivalent to the board's basic telecommunicator training program.

B. A telecommunicator granted a waiver under this section shall meet all other requirements set out in the Public Safety Telecommunicator Training Act.

**History:** Laws 2003, ch. 320, § 8; 2022, ch. 56, § 17.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, provided the law enforcement certification board the authority, with the approval of the council, to issue certifications by waiver, and removed this authority from the director; and in Subsection A, after "The", deleted "director shall" and added "board may, with the approval of the council".

## 29-7C-7. In-service telecommunicator training.

A. In-service telecommunicator training consists of at least twenty hours of board-approved advanced training, including one hour of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, for each certified telecommunicator during each two-year period. The first training course shall commence no later than twelve months after graduation from a board-approved basic telecommunicator training program.

B. A certified telecommunicator shall provide proof of completion of in-service training requirements to the director no later than March 1 of the year subsequent to the year in which the requirements are met. The director shall provide annual notice to all certified telecommunicators regarding in-service training requirements. Failure to complete in-service training requirements may be grounds for suspension of a telecommunicator's certification at the board's discretion as provided in Section 29-7-4.3

NMSA 1978. A telecommunicator may be reinstated by the board when the telecommunicator presents to the board evidence the telecommunicator has satisfied the in-service training requirements.

C. As used in this section, "mental impairment" includes a mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis and traumatic brain injury.

**History:** Laws 2003, ch. 320, § 9; 2011, ch. 180, § 2; 2023, ch. 86, § 8.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, transferred certain discretionary responsibilities from the director of the New Mexico law enforcement academy to the law enforcement certification board; and in Subsection B, after "certification at the", deleted "director's" and added "board's", after "discretion", added "as provided in Section 29-7-4.3 NMSA 1978", after "may be reinstated", deleted "at the discretion of the director" and added "by the board", and after "presents to the", deleted "director" and added "board".

**The 2011 amendment,** effective July 1, 2011, required training in crisis management, including interaction with persons with mental impairments training, and added a definition of "mental impairment".

## 29-7C-8. Reports and rosters.

A. A safety agency that operates within the state shall submit a quarterly report to the director and the board on the status of each telecommunicator. The reporting forms and submittal dates shall be prescribed by the director.

B. The director and the board shall maintain a roster of all certified telecommunicators.

**History:** Laws 2003, ch. 320, § 10; 2022, ch. 56, § 18.

**ANNOTATIONS**

**The 2022 amendment,** effective July 1, 2023, amended an existing provision that required safety agencies that operate within the state to submit a quarterly report to the director of the law enforcement academy to also submit the report to the law enforcement certification board, and required the board, along with the director, to maintain a roster of all certified telecommunicators; in Subsection A, after "report to the director", added "and the board"; and in Subsection B, after "The director", added "and the board".

## 29-7C-9. Refusal, suspension or revocation of certification.

A. The board shall refuse to issue or shall suspend or revoke a telecommunicator's certification, after consultation with his employing safety agency, if the board determines that a person has:

(1) failed to satisfy the qualifications for certification set forth in Section 29-7A-3 NMSA 1978 [repealed];

(2) committed acts that constitute dishonesty or fraud;

(3) been convicted of, pled guilty to or entered a plea of nolo contendere to a:

(a) felony charge; or

(b) violation of a federal or state law, a local ordinance relating to aggravated assault or theft or a law involving moral turpitude; or

(4) knowingly made a false statement on his application.

B. The board shall develop, adopt and promulgate administrative procedures for suspension or revocation of a telecommunicator's certification that include:

(1) notice and opportunity for the affected telecommunicator to be heard; and

(2) procedures for review of the board's decision.

**History:** Laws 2003, ch. 320, § 11.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 29-7A-3 was repealed by Laws 2003, Ch. 320, § 12, effective July 1, 2003. For present comparable provisions *see* 29-7C-3 NMSA 1978.

**Effective dates.** — Laws 2003, ch. 320, § 13 made Laws 2003, ch. 320, § 11 effective on July 1, 2003.

# ARTICLE 7D
# Use of Force Procedures

## 29-7D-1. Short title.

Sections 10 through 14 [29-7D-1 to 29-7D-5 NMSA 1978] of this act may be cited as the "Use of Force Procedures Act".

**History:** Laws 2023, ch. 86, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 86, § 16 made Laws 2023, ch. 86, § 10 effective June 16, 2023.

## 29-7D-2. Use of force statewide policy.

Each law enforcement agency shall develop and maintain policies regarding use of force by law enforcement officers in its employ. At a minimum, such use-of-force policies shall incorporate:

A. a discussion of considerations that law enforcement officers must make prior to the application of physical force, including an explanation of reasonable force necessary to accomplish a lawful objective; and

B. ethical considerations law enforcement officers shall make during the application of physical force, including provisions pursuant to Section 14 [29-7D-5 NMSA 1978] of this 2023 act.

**History:** Laws 2023, ch. 86, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 86, § 16 made Laws 2023, ch. 86, § 11 effective June 16, 2023.

## 29-7D-3. Unlawful use of force.

A law enforcement officer shall not:

A. discharge a firearm into a fleeing motor vehicle unless such discharge is necessary to prevent an imminent threat of death or serious bodily injury to an officer or another person and the officer has no reasonable alternative course of action to prevent death or serious bodily injury; provided that when possible, an officer threatened by an oncoming motor vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants; or

B. use a vascular neck restraint, unless a person's attack poses a threat of imminent harm to the officer or another person; provided that an officer shall cease the use of a vascular neck restraint as soon as the person no longer poses a threat of imminent harm to the officer or another person.

**History:** Laws 2023, ch. 86, § 12.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 86, § 16 made Laws 2023, ch. 86, § 12 effective June 16, 2023.

## 29-7D-4. Unlawful use of force; prescribing penalties.

If a law enforcement officer is found to have used unlawful physical force, the officer shall be disciplined and, depending on the seriousness of the unlawful physical force, may be decommissioned and terminated from the officer's position or have any officer certification revoked or suspended.

**History:** Laws 2023, ch. 86, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 86, § 16 made Laws 2023, ch. 86, § 13 effective June 16, 2023.

## 29-7D-5. Intervention.

A. A law enforcement officer present and observing another officer using physical force, including deadly physical force, that the law enforcement officer has probable cause to believe is excessive based on the totality of the circumstances shall intervene to prevent the use of excessive force, unless intervening would result in imminent harm to the officer or another identifiable individual.

B. A law enforcement officer who observes another officer using physical force, including deadly physical force, that the law enforcement officer has probable cause to believe is excessive based on the totality of the circumstances shall report the incident to the officer's direct supervisor as soon as reasonably possible but no later than the end of the officer's shift.

C. A law enforcement officer who had a duty to intervene and failed to do so shall be disciplined and, depending on the seriousness of the violation, may be suspended, decertified, decommissioned or terminated from the officer's position.

**History:** Laws 2023, ch. 86, § 14.

**ANNOTATIONS**

**Effective dates.** — Laws 2023, ch. 86, § 16 made Laws 2023, ch. 86, § 14 effective June 16, 2023.

# ARTICLE 8
# Mutual Aid

## 29-8-1. Short title.

This act [29-8-1 to 29-8-3 NMSA 1978] may be cited as the "Mutual Aid Act".

**History:** 1953 Comp., § 39-7-1, enacted by Laws 1971, ch. 153, § 1.

## 29-8-2. [Public agency defined.]

As used in the Mutual Aid Act, "public agency" includes the federal government or any department or agency thereof, an Indian tribal council, Indian pueblo council and the state or any county or municipality thereof.

**History:** 1953 Comp., § 39-7-2, enacted by Laws 1971, ch. 153, § 2.

## 29-8-3. Mutual aid agreements.

Any state, county or municipal agency having and maintaining peace officers may enter into mutual aid agreements with any public agency as defined in the Mutual Aid Act, with respect to law enforcement, provided any such agreement shall be approved by the agency involved and the governor.

**History:** 1953 Comp., § 39-7-3, enacted by Laws 1971, ch. 153, § 3.

**ANNOTATIONS**

**Applicability to gaming compacts with Indian tribes.** — The Mutual Aid Act does not in any way pertain to gaming compacts and thus provides no statutory basis for the governor to enter into compacts and revenue-sharing agreements with Indian tribes which would permit gaming on Indian lands pursuant to the federal Indian gaming laws. *State ex rel. Clark v. Johnson*, 1995-NMSC-048, 120 N.M. 562, 904 P.2d 11.

**By adding the limiting language that mutual aid agreements must be approved by both the agency involved and the governor of the state of New Mexico,** the legislature contemplated a written agreement. *State v. Branham*, 2004-NMCA-131, 136 N.M. 579, 102 P.3d 646.

**Inconsistency between written agreements.** — It is inconsistent for the legislature to require a written agreement for the issuance of a cross commission under Section 29-1-11 NMSA 1978 between state law enforcement and Indian tribal police officers and not require a written agreement for mutual aid agreements under this section. *State v. Branham*, 2004-NMCA-131, 136 N.M. 579, 102 P.3d 646.

**Where state police officer initially stopped defendant for speeding on Mescalero reservation,** because the officer did not have authority to enforce Mescalero tribal traffic ordinances, defendant's motion to suppress evidence was properly granted. *State v. Branham*, 2004-NMCA-131, 136 N.M. 579, 102 P.3d 646.

**Deputization of city or county officials by state agency.** — The environmental improvement division (EID) (now Air Quality Bureau of Environment Department) may seek assistance from city and county law enforcement agencies to enforce asbestos disposal regulations pursuant to the Mutual Aid Act, Sections 29-8-1 to 29-8-3 NMSA 1978, but it cannot deputize city or county law enforcement officials to act as EID agents to enforce the division's asbestos disposal regulations. 1987 Op. Att'y Gen. No. 87-48.

# ARTICLE 9
# Organized Crime

## 29-9-1. Short title.

Sections 29-9-1 through 29-9-17 NMSA 1978 may be cited as the "Organized Crime Act".

**History:** 1953 Comp., § 39-9-1, enacted by Laws 1973, ch. 225, § 1; 1977, ch. 215, § 1.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1981, ch. 234, § 2 repealed Laws 1977, ch. 215, § 9, which had provided that the act shall terminate on July 1, 1981.

**Statute not amenable to vagueness claim.** — The Organized Crime Act [Sections 29-9-1 through 29-9-17 NMSA 1978] is not the type of statute that is amenable to a claim of unconstitutional vagueness because the vagueness doctrine is applied when a potential actor is exposed to criminal sanctions without a fair warning as to the nature of a proscribed activity, whereas the Organized Crime Act is not a penal statute; the only sanction that can come from the act is a contempt citation for failure to abide by a court order. *In re Governor's Organized Crime Prevention Comm'n*, 1978-NMSC-022, 91 N.M. 516, 577 P.2d 414.

**Word "racketeering" does not need to appear in title to Laws 1977, ch. 215,** which amends the Organized Crime Act; nor does the title violate N.M. Const., art. IV, § 16, although the 1977 amendment for the first time authorizes the commission to investigate racketeering, since racketeering is reasonably germane to the subject matter of organized crime. *In re Governor's Organized Crime Prevention Comm'n*, 1978-NMSC-022, 91 N.M. 516, 577 P.2d 414.

## 29-9-2. Definitions.

As used in the Organized Crime Act:

A. "organized crime" means the supplying for profit of illegal goods and services, including, but not limited to, gambling, loan sharking, narcotics and other forms of vice and corruption, by members of a structured and disciplined organization;

B. "public officer" means any elected or appointed officer of the state or any of its political subdivisions, serving with or without remuneration for his services; and

C. "commission" means the governor's organized crime prevention commission.

**History:** 1953 Comp., § 39-9-2, enacted by Laws 1973, ch. 225, § 2.

## 29-9-3. Commission created; membership.

A. There is created the "governor's organized crime prevention commission". The commission shall consist of seven members appointed by the governor with the advice and the consent of the senate. No more than four members shall belong to the same political party and at least one member shall be a member of the New Mexico bar.

B. Persons appointed to the commission shall:

(1) be of unquestioned integrity and of high standing and influence within the state by virtue of their demonstrated capacity for leadership;

(2) be selected from the various parts of the state in such manner as to provide broad geographical representation on the commission; and

(3) be given a security clearance by an appropriate agency designated by the governor to conduct a clearance investigation.

C. Members of the commission shall be appointed for staggered terms of four years each, three ending on December 31, 1975, two ending on December 31, 1976, and two ending on December 31, 1977. Thereafter, appointments shall be made for terms of four years or less so that the terms of not more than three commission members expire on December 31 of any year.

D. Members of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. Any vacancy on the commission shall be filled for the unexpired term by the governor. A vacancy on the commission shall not impair the right of the remaining members to exercise all the powers of the commission, provided the commission has at least four members.

**History:** 1953 Comp., § 39-9-3, enacted by Laws 1973, ch. 225, § 3; 1977, ch. 215, § 2.

## 29-9-4. Purpose of commission.

The purpose of the commission is to forestall, check and prevent the infiltration and encroachment of organized crime into public and private affairs within New Mexico by:

A. investigating the extent to which organized crime and racketeering has or has not infiltrated and encroached into private and public affairs within New Mexico;

B. investigating those conditions, including the effectiveness of the execution and enforcement of the laws and the conduct of public officers and employees, which may lead to, or may have led to, the infiltration and encroachment of organized crime into public and private affairs within New Mexico; and

C. reporting to the proper authorities and making public as authorized by this act [29-9-1 to 29-9-17 NMSA 1978] the results of its investigations and recommending corrective measures and improvements.

**History:** 1953 Comp., § 39-9-3.1, enacted by Laws 1977, ch. 215, § 3.

## 29-9-5. Powers and duties of commission.

A. The commission shall:

(1) assess and evaluate the activities and problems involving organized crime within New Mexico;

(2) develop a comprehensive plan for the suppression and control of organized crime in New Mexico and its encroachment into the state;

(3) recommend programs to combat organized crime;

(4) examine matters relating to law enforcement extending across the boundaries of the state into other states and consult and exchange information with officers and agencies of other states with respect to law enforcement problems of mutual concern in regard to organized crime;

(5) make an annual report to the governor and legislature which shall include its recommendations concerning matters within its jurisdiction and authority;

(6) keep the public informed as to the operation of organized crime and the problems of criminal law enforcement in New Mexico as they relate to organized crime by such means and to such extent as it deems appropriate;

(7) advise and assist, upon request, the attorney general, a district attorney or any other law enforcement official in the performance of his official powers and duties;

(8) cooperate with departments and officers of the federal government in the suppression of organized crime; and

(9) cooperate with agencies concerned with organized crime in coordinating efforts to investigate and suppress organized crime.

B. The commission shall conduct investigations as are necessary to carry out the purpose of the commission pursuant to Section 29-9-4 NMSA 1978.

C. The commission is authorized to:

(1) empower its staff to conduct any investigation authorized by this section and to maintain offices and hold meetings and functions at any place within New Mexico as it may deem necessary;

(2) conduct private and public hearings and designate one or more commission members or staff members to preside over any such hearings; provided staff members shall be without vote in such hearings;

(3) receive testimony from witnesses, request their attendance, examine them and request production of any books, records, documents or other evidence as it may deem relevant or material to an investigation. The commission may designate any of its members or members of its staff to exercise any such powers pursuant to regulations adopted by the commission;

(4) administer oaths or affirmations; examine witnesses under oath or affirmation; and subpoena witnesses, compel their attendance before the commission and require them to produce before the commission any books, records, documents or other evidence relevant or material to an investigation. No subpoena shall be issued without the adoption and acknowledgment, by resolution of five members of the commission, and further provided that a copy of said resolution with acknowledgments be attached to any and all subpoenas issued by the commission. The commission may designate any of its members or members of its staff to exercise any such powers, pursuant to regulations adopted by the commission. If any person subpoenaed pursuant to this section neglects or refuses to obey the command of the subpoena, any district court may, on proof by affidavit of service of the subpoena and of refusal or neglect by the person to obey the command of the subpoena, issue an order for the person to appear immediately before the court, which is authorized to proceed against the person as for a contempt of court. At any time before the return date of the subpoena, the person subpoenaed may file a petition to set aside the subpoena, modify the subpoena, or extend the return date thereon in the district court of any county in which the commission has an office or the district court of the county to which the person is subpoenaed to appear, and the court upon a showing of good cause may set aside the subpoena, modify it or extend the return date of the subpoena;

(5) petition a district court ex parte to order the attendance of witnesses before the commission and the production before the commission of any books, records, documents or other evidence relevant or material to an investigation, where it appears that the witness resides outside the state, may imminently depart the state or may secrete himself to avoid attendance before the commission or to avoid other lawful process. A witness may challenge execution of the order by filing a motion to quash the order with the district court before the return date named in the order;

(6) any and all proceedings brought before the court pursuant to Paragraphs 4 and 5 of this section, regarding subpoenas, shall be conducted in camera and shall be kept under the seal of the court.

D. Every witness appearing before the commission may request to be examined in private. Upon such request, the witness's testimony shall be in private with no persons present other than members of the commission, members of the commission's staff and the witness. The testimony and other evidence may be disseminated to law enforcement agencies as deemed proper by the commission but the content or details of the testimony and records produced by the witness shall not be made public, except that the commission, without disclosing the name of the witness, may issue a public report summarizing information obtained from its private hearings for the purpose of informing the public and its officials of the extent to which organized crime has infiltrated New Mexico and conditions which may lead to the infiltration of organized crime.

E. The commission shall not take testimony at a public hearing unless at least four of its members are present, or unless at least two members of the commission and at least two staff members are present. The commission shall not take testimony at a private hearing unless at least one of its members is present.

F. Witnesses appearing before the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 39-9-4, enacted by Laws 1973, ch. 225, § 4; 1977, ch. 215, § 4; 1979, ch. 148, § 1.

## ANNOTATIONS

**Cross references.** — For divisions of the corrections department, *see* 9-3-3 NMSA 1978.

**Limitations on subpoena power.** — Any exception or limitation to the express power of the commission should be strictly construed. *Doe v. State ex rel. Governor's Organized Crime Prevention Comm'n*, 1992-NMSC-022, 114 N.M. 78, 835 P.2d 76.

**Administrative subpoenas not subject to fourth amendment.** — The commission is an investigatory rather than an accusatory body, and, therefore, its subpoenas are administrative subpoenas. Administrative subpoenas, including subpoenas duces tecum, are not subject to the search and seizure provisions of the fourth amendment of the United States constitution. *In re Governor's Organized Crime Prevention Comm'n*, 1978-NMSC-022, 91 N.M. 516, 577 P.2d 414 (decided before 1979 amendment).

**Requirements for lawful subpoena.** — In order to obtain a subpoena, the commission must show, and the district court must decide, that the investigation is within the power of the commission, the subpoena is definite enough and the material sought is

reasonably relevant to the purpose of the investigation; what is reasonably relevant depends on the nature and purpose of the investigation, and relevancy cannot be determined in the absence of a stated purpose. *In re Governor's Organized Crime Prevention Comm'n*, 1978-NMSC-022, 91 N.M. 516, 577 P.2d 414 (decided before 1979 amendment).

**Right to challenge subpoena.** — After a subpoena is issued the individual or institution upon whom it is served has an opportunity to challenge it. Since the subpoenas issued under the Organized Crime Act (Sections 29-9-1 to 29-9-17 NMSA 1978) ask only for voluntary compliance, and the commission is authorized to go to district court to seek enforcement, the legislature must have contemplated that the subpoenaed person would be allowed to show at that hearing why the subpoena should not be enforced. *In re Governor's Organized Crime Prevention Comm'n*, 1978-NMSC-022, 91 N.M. 516, 577 P.2d 414 (decided before 1979 amendment).

**Law reviews.** — For note, "Criminal Procedure - New Mexico Denies Fifth Amendment Protection to Corporations: John Doe and Five Unnamed Corporations v. State ex rel. Governor's Organized Crime Prevention Commission," see 23 N.M.L. Rev. 315 (1993).

## 29-9-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 204, § 26 repealed 29-9-6 NMSA 1978, as enacted by Laws 1973, ch. 225, § 5, relating to employees, effective July 1, 1989. For provisions of former section, *see* the 1988 NMSA 1978 on *NMOneSource.com*.

## 29-9-7. Construction.

Nothing contained in the Organized Crime Act shall be construed to supersede, repeal or limit any power, duty or function of the executive department, or any agency of the state, or any political subdivision thereof, conferred by law.

**History:** 1953 Comp., § 39-9-6, enacted by Laws 1973, ch. 225, § 6.

## 29-9-8. Confidentiality; impounding of exhibits.

A. Upon application of the commission, a district court may impound an exhibit marked in evidence at any public or private hearing held by the commission, and may order the exhibit to be retained by or delivered to and placed in the custody of the commission. If impounded, an exhibit shall not be taken from the custody of the commission except upon order of the district court granted after five days' notice to the commission or at the request or with the consent of the commission. Upon the removal from the custody of the commission of any impounded exhibit, it shall be returned to the person lawfully entitled to its possession.

B. The records, reports and files of the commission are not subject to the Public Records Act [Chapter 14, Article 3 NMSA 1978] or Sections 10-15-1 through 10-15-4 NMSA 1978. The records, reports and files of the commission shall not be subject to subpoena except by order of the supreme court of New Mexico.

C. Any person, except the governor or the commission, who discloses information contained in the records, reports and files of the commission or obtained in a private hearing conducted by the commission, shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one year or the imposition of a fine of not more than one thousand dollars ($1,000), or both imprisonment and fine.

**History:** 1953 Comp., § 39-9-7, enacted by Laws 1973, ch. 225, § 7; 1977, ch. 215, § 5.

**ANNOTATIONS**

**Discovery of commission records only by supreme court order unconstitutional.** — The last sentence in Subsection B, allowing discovery of the records of the governor's organized crime prevention commission by supreme court order only, is unconstitutional, as the legislature lacks the power to prescribe and regulate practice, pleading and procedure. *In re Motion for a Subpoena Duces Tecum*, 1980-NMSC-010, 94 N.M. 1, 606 P.2d 539.

**Unconstitutional last sentence in Subsection B is severable;** the remainder of the organized crime act remains in full force and effect. *In re Motion for a Subpoena Duces Tecum*, 1980-NMSC-010, 94 N.M. 1, 606 P.2d 539.

**District courts authorized to hear duces tecum subpoena application for commission records.** — The district courts are authorized and directed, upon proper application for a subpoena duces tecum under Rule 1-045 NMRA, to hear and determine whether the records, reports and files of the governor's organized crime prevention commission may be subpoenaed, and, if so, upon what conditions. *In re Motion for a Subpoena Duces Tecum*, 1980-NMSC-010, 94 N.M. 1, 606 P.2d 539.

## 29-9-9. Immunity from criminal prosecution or penalty.

A. If, in the course of any investigation or hearing conducted by the commission pursuant to the Organized Crime Act, a person refuses to answer a question or questions or produce evidence of any kind on the ground that he will thereby be exposed to criminal prosecution or penalty or forfeiture, the commission may order the person to answer the question or questions or produce the requested evidence and confer immunity as provided in this section. No order to answer or produce evidence with immunity shall be made except by resolution of a two-thirds majority of all the members of the commission and after the attorney general and the appropriate district attorney have been given at least ten days' written notice of the commission's intention to issue such order and afforded an opportunity to be heard in respect to any objections they or either of them may have to the granting of immunity. Upon application of the

attorney general or the appropriate district attorney within ten days of the written notice, the commission shall defer the issuance of any order under this subsection for such period, not longer than thirty days from the date of the application, as the attorney general or district attorney may specify.

B. If, upon issuance of an order pursuant to Subsection A of this section, the person complies with such order, he shall be immune from having such responsive answer given by him or such responsive evidence produced by him, or evidence derived therefrom used to expose him to criminal prosecution or penalty or forfeiture, except that such person may be prosecuted for any perjury committed in such answer or in producing such evidence, or for contempt for failing to give an answer or produce evidence in accordance with the order of the commission; and any such answer given or evidence produced shall be admissible against him upon any criminal investigation, proceeding or trial against him for such perjury, or upon any investigation, proceeding or trial against him for such contempt.

**History:** 1953 Comp., § 39-9-8, enacted by Laws 1977, ch. 215, § 6.

**ANNOTATIONS**

**Repeals and reenactments.** — Laws 1977, ch. 215, § 6 repealed 20-9-8, 1953 Comp., relating to immunity from prosecution, and enacted the above section.

**Privilege against self-incrimination not applicable to corporations.** — The evidentiary privilege against self-incrimination of the fifth amendment of the U.S. Constitution, N.M. Const., art. II, § 15 and this section do not apply to corporations or a corporation's agent in his representative capacity. *Doe v. State ex rel. Governor's Organized Crime Prevention Comm'n*, 1992-NMSC-022, 114 N.M. 78, 835 P.2d 76.

**Claims of privilege are premature before incriminatory information is specifically requested,** either in the form of questions or documents, by the investigating agency. *Governor's Organized Crime Prevention Comm'n v. Jaramillo*, 1979-NMSC-087, 93 N.M. 525, 602 P.2d 622.

**Law reviews.** — For note, "Criminal Procedure - New Mexico Denies Fifth Amendment Protection to Corporations: *John Doe and Five Unnamed Corporations v. State ex rel. Governor's Organized Crime Prevention Commission,"* see 23 N.M.L. Rev. 315 (1993).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Propriety, under state constitutional provisions, of granting use or transactional immunity for compelled incriminating testimony - post-Kastigar cases, 29 A.L.R.5th 1.

## 29-9-10. [Receipt of grants and donations.]

The commission is authorized to receive such grants, subsidies, donations, allotments or bequests as may be offered to the state, by the federal government or any

department thereof, or by any public or private foundation or individuals for the investigation or suppression of organized crime.

**History:** 1953 Comp., § 39-9-9, enacted by Laws 1973, ch. 225, § 9.

## 29-9-11. Investigators.

Investigators appointed and employed by the commission shall be peace officers and have the powers and duties afforded peace officers.

**History:** 1953 Comp., § 39-9-10, enacted by Laws 1973, ch. 225, § 10; 1977, ch. 215, § 7.

## 29-9-12 to 29-9-16. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 223, § 3 repealed 29-9-12 to 29-9-16 NMSA 1978, as enacted by Laws 1975, Ch. 230, §§ 1 through 5, relating to a legislative oversight committee on organized crime. For provisions of former sections, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

## 29-9-17. Code of fair procedure.

A. As used in this section:

(1) "hearing" means any hearing in the course of an investigatory proceeding conducted before the commission at which testimony or the production of other evidence is compelled by subpoena;

(2) "public hearing" means any hearing open to the public, or any hearing, or such part thereof, as to which testimony or other evidence is made available or disseminated to the public by the commission; and

(3) "private hearing" means any hearing other than a public hearing.

B. No person may be required to appear at a hearing or to testify at a hearing unless there has been personally served upon him prior to the time when he is required to appear, a copy of the Organized Crime Act, and a general statement of the subject of the investigation. A copy of the resolution, statute, order or other provision of law authorizing the investigation shall be furnished by the commission upon request by the person summoned.

C. A witness summoned to a hearing shall have the right to be accompanied by counsel, who shall be permitted to advise the witness of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct

of the hearing. Counsel for any witness who testifies at a public hearing may submit proposed questions to be asked of the witness relevant to the matters upon which the witness has been questioned, and the commission shall ask the witness such of the questions as it may deem appropriate to its inquiry.

D. A complete and accurate record shall be kept of each public hearing and a witness shall be entitled to receive a copy of his testimony at such hearing at his own expense. Where testimony which a witness has given at a private hearing becomes relevant in a criminal proceeding in which the witness is a defendant, or in any subsequent hearing in which the witness is summoned to testify, the witness shall be entitled to a copy of such testimony, at his own expense, provided a copy is available, and provided further that the furnishing of such copy will not prejudice the public safety or security.

E. A witness who testifies at any hearing shall have the right at the conclusion of his examination to file a brief sworn statement relevant to his testimony for incorporation in the record of the investigatory proceeding.

F. Any person whose name is mentioned or who is specifically identified and who believes that testimony or other evidence given at a public hearing or comment made by any member of the commission or its counsel at such a hearing tends to defame him or otherwise adversely affect his reputation shall have the right, either to appear personally before the commission and testify in his own behalf as to matters relevant to the testimony or other evidence complained of, or in the alternative at the option of the commission, to file a statement of facts under oath relating solely to matters relevant to the testimony or other evidence complained of, which statement shall be incorporated in the record of the investigatory proceeding.

G. Nothing in the Organized Crime Act shall be construed to prevent the commission from granting to witnesses appearing before it, or to persons who claim to be adversely affected by testimony or other evidence adduced before it, such further rights and privileges as it may determine.

H. Nothing in the Organized Crime Act shall be construed to affect, diminish or impair the right, under any other provision of law, rule or custom, of any member or group of members of the commission to file a statement or statements of minority views to accompany and be released with or subsequent to the report of the commission.

**History:** 1953 Comp., § 39-9-16, enacted by Laws 1977, ch. 215, § 8.

**ANNOTATIONS**

**Compiler's notes.** — Laws 1981, ch. 234, § 2, repealed Laws 1977, ch. 215, § 9, which had provided that the act shall terminate on July 1, 1981.

## 29-9-18. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 223, § 3 repealed 29-9-18 NMSA 1978, as enacted by Laws 1981, Ch. 234, § 1, relating to a task force studying the governor's organized crime prevention commission. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com*.

# ARTICLE 10
# Arrest Record Information

## 29-10-1. Short title.

Chapter 29, Article 10 NMSA 1978 may be cited as the "Arrest Record Information Act".

**History:** 1953 Comp., § 39-10-1, enacted by Laws 1975, ch. 260, § 1; 1993, ch. 260, § 2.

**ANNOTATIONS**

**Cross references.** — For right to inspect public records, *see* 14-2-1 NMSA 1978.

For children's code, confidentiality of social and legal records, *see* 32A-2-32 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 29, Article 10 NMSA 1978" for "This act".

**Article does not authorize expungement.** — The Arrest Records Information Act [Chapter 29, Article 10 NMSA 1978] does not grant the courts authority to expunge or seal criminal records. *Toth v. Albuquerque Police Dep't*, 1997-NMCA-079, 123 N.M. 637, 944 P.2d 285.

**Arrest Record Information Act may be viewed as establishing statutory exceptions** to the fundamental right to inspect. It does so, however, in a rather conflicting manner, and it appears that virtually all arrest record information is subject to at least a limited or conditional disclosure. 1978 Op. Att'y Gen. No. 78-09.

**Identity of individuals arrested or charged with crime not protected.** — Neither the Arrest Record Information Act [Chapter 29, Article 10 NMSA 1978] nor the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] authorizes a law enforcement agency to protect the identity of persons who have been arrested or charged with a crime. 1994 Op. Att'y Gen. No. 94-02.

**Release of timely, accurate information.** — The Arrest Record Information Act does not prohibit release of timely, accurate information when a juvenile is arrested for a criminal act. 1987 Op. Att'y Gen. No. 87-29.

## 29-10-2. Purpose of act.

The legislature finds and declares that the responsible exchange of complete and accurate information among law enforcement agencies is recognized as necessary and indispensable to effective law enforcement. Individual rights, however, may be infringed if information is inaccurate, incomplete or is disseminated irresponsibly. The Arrest Record Information Act is for the purpose of protecting those rights.

**History:** 1953 Comp., § 39-10-2, enacted by Laws 1975, ch. 260, § 2.

**ANNOTATIONS**

**Violation not limited.** — The Arrest Record Information Act does not limit the violation of the act to any particular class of persons. 1975 Op. Att'y Gen. No. 75-37 (opinion superseded by 1978 Op. Att'y Gen. No. 78-09).

**Release of juvenile's arrest information.** — A law enforcement agency is not prohibited by the Children's Code (Chapter 32A NMSA 1978), this act, or any other law from releasing to the public the names of juveniles who have been arrested for criminal acts and the charges for which they were arrested. 1987 Op. Att'y Gen. No. 87-29.

## 29-10-3. Definition.

As used in the Arrest Record Information Act, "arrest record information" means notations of the arrest or detention or indictment or filing of information or other formal criminal charge against an individual made by a law enforcement agency.

**History:** 1953 Comp., § 39-10-3, enacted by Laws 1975, ch. 260, § 3; 1977, ch. 339, § 1; 1993, ch. 260, § 3.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, made a minor stylistic change in the section heading, deleted the Subsection A designation which formerly preceded "arrest record information", deleted "which resulted in a negative disposition; and" which formerly followed "law enforcement agency", and deleted former Subsection B which defined "negative disposition".

**Section includes both felony and misdemeanor arrest records.** 1975 Op. Att'y Gen. No. 75-37 (opinion superseded by 1978 Op. Att'y Gen. No. 78-09).

**Definition of "arrest record information" does not include investigative reports.** 1978 Op. Att'y Gen. No. 78-09.

**Confidentiality provisions do not apply to a suspect who was never arrested, detained or charged with a crime.** — Information as to an individual who has been accused but not charged with a crime is confidential under the Arrest Record Information Act (ARIA), 29-10-1 to 29-10-8 NMSA 1978, only when contained in arrest record information pertaining to another individual who has been criminally charged, and therefore ARIA does not apply to records pertaining to a suspect who was investigated twice for possible criminal violations, but was never arrested, detained, or charged with a crime, because the records involved are not "arrest record information" as defined by 29-10-3 NMSA 1978. Because the suspect was never arrested, detained, or charged with a crime, the records involved cannot possibly be notations of an arrest, detention or criminal charge, and therefore ARIA does not apply. *Interpretation of Arrest Record Information Act* (11/25/20), Att'y Gen. Adv. Ltr. 2020-09.

## 29-10-4. Confidentiality of arrest records.

Arrest record information that reveals confidential sources, methods, information or individuals accused but not charged with a crime and that is maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime is confidential and dissemination or revealing the contents of the record, except as provided in the Arrest Record Information Act or any other law, is unlawful.

**History:** 1953 Comp., § 39-10-4, enacted by Laws 1975, ch. 260, § 4; 1993, ch. 260, § 4.

**ANNOTATIONS**

**Cross references.** — For use of police reports for commercial solicitation, *see* 14-2A-1 NMSA 1978.

For crimes defined and classified, *see* 30-1-4 to 30-1-6 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, inserted "that reveals confidential sources, methods, information or individuals accused but not charged with a crime and that is", inserted "or any other law", and made minor stylistic changes throughout the section.

**Penalty provision repealed.** — While this section still provides that violations of the Arrest Record Information Act are "unlawful," there are no longer any criminal sanctions for releasing arrest record information in violation of the provisions of the act, since 39-10-7, 1953 Comp., the penalty provision, was repealed by Laws 1977, ch. 339, § 6. 1978 Op. Att'y Gen. No. 78-09.

**Limited protection of accused.** — This section protects the confidentiality of information concerning the identity of a person who has been accused but not charged with a crime only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under Section 14-2-1 NMSA 1978 et seq. Finally, even if it would otherwise be protected under either statute, information about a person accused but not charged with a crime is open to public inspection if it is contained in a document listed in Section 29-10-7 NMSA 1978. 1994 Op. Att'y Gen. No. 94-02.

**Confidentiality provisions do not apply to a suspect who was never arrested, detained or charged with a crime.** — Information as to an individual who has been accused but not charged with a crime is confidential under the Arrest Record Information Act (ARIA), 29-10-1 to 29-10-8 NMSA 1978, only when contained in arrest record information pertaining to another individual who has been criminally charged, and therefore ARIA does not apply to records pertaining to a suspect who was investigated twice for possible criminal violations, but was never arrested, detained, or charged with a crime, because the records involved are not "arrest record information" as defined by 29-10-3 NMSA 1978. Because the suspect was never arrested, detained, or charged with a crime, the records involved cannot possibly be notations of an arrest, detention or criminal charge, and therefore ARIA does not apply. *Interpretation of Arrest Record Information Act* (11/25/20), Att'y Gen. Adv. Ltr. 2020-09.

**Confidentiality provisions do not apply where records at issue exclusively pertain to an individual who was arrested but not criminally charged.** — Information as to an individual who has been accused but not charged with a crime is confidential under the Arrest Record Information Act (ARIA), 29-10-1 to 29-10-8 NMSA 1978, only when contained in arrest record information pertaining to another individual who has been criminally charged, and therefore ARIA does not apply when the records at issue exclusively pertain to an individual who has been arrested but not criminally charged. The only way this arrestee could be afforded confidentiality under ARIA would be if the information at issue pertained to some other individual who had been charged with the commission of a crime. *Interpretation of Arrest Record Information Act* (11/25/20), Att'y Gen. Adv. Ltr. 2020-09.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 66 Am. Jur. 2d Records and Recording Laws § 27.

6A C.J.S. Arrest § 62.

## 29-10-5. Exchange of information.

A law enforcement agency may disseminate arrest record information to a federal, state or local government law enforcement agency, provided that when the arrest record information is disseminated to a law enforcement agency situated outside this state, the

information shall be accompanied by a statement substantially embodying the intent set forth in Section 29-10-4 NMSA 1978. Nothing in the Arrest Record Information Act prohibits direct access by the attorney general, the district attorney, the crime victims reparation commission or the courts to such information where it is deemed necessary in the performance of their functions under law. Nothing in that act prohibits direct access by a law enforcement agency to automated wanted information pertaining to a person or to stolen property information.

**History:** 1953 Comp., § 39-10-5, enacted by Laws 1975, ch. 260, § 5; 1977, ch. 339, § 2; 1987, ch. 140, § 1.

## 29-10-6. Access by individuals.

A. Upon satisfactory verification of his identity, any individual may inspect, in person, through counsel or through his authorized agent, arrest record information maintained by a law enforcement agency concerning him.

B. Personnel assigned to contractual research for a state or federally approved criminal justice project shall be permitted access to arrest record information. Approval personnel shall not further disseminate such information except as statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

**History:** 1953 Comp., § 39-10-6, enacted by Laws 1975, ch. 260, § 6; 1977, ch. 339, § 3.

## 29-10-7. Application.

A. Information contained in the following documents shall be available for public inspection:

(1) posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

(2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if the records are organized on a chronological basis;

(3) court records of public judicial proceedings;

(4) published court or administrative opinions or public judicial, administrative or legislative proceedings;

(5) records of traffic offenses and accident reports;

(6) announcements of executive clemency; and

(7) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

B. Nothing prevents a law enforcement agency from disclosing to the public arrest record information related to the offense for which an adult individual is currently within the criminal justice system. A law enforcement agency is not prohibited from confirming prior arrest record information to members of the news media or any other person, upon specific inquiry as to whether a named individual was arrested, detained, indicted or whether an information or other formal charge was filed on a specified date, if the arrest record information disclosed is based on data enumerated by Subsection A of this section.

**History:** 1953 Comp., § 39-10-8, enacted by Laws 1977, ch. 339, § 4; 1993, ch. 260, § 5.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1977, ch. 339, § 4 repealed 39-10-8, 1953 Comp., relating to the application of the Arrest Record Information Act, and enacted a new section.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, in the introductory language, deleted "The provisions of the Arrest Record Information Act do not apply to criminal history record", inserted "the following documents shall be available for public inspection" and made stylistic changes; and, in Subsection B, deleted "in this act" following "Nothing" near the beginning of the first sentence and made stylistic changes.

**Information to be included in police blotter.** — The following information may be appropriately included by a law enforcement agency in a police blotter or original record of entry: the name, physical description, place and date of birth, address and occupation of the individual arrested; the time and place of arrest; the offense for which the individual was arrested or detained; and the name of the arresting officer. This list should be interpreted as a minimum requirement but not to the exclusion of additional information which may presently appear on the initial records of entry or police blotters being used by some law enforcement agencies. 1975 Op. Att'y Gen. No. 75-37 (opinion superseded by 1978 Op. Att'y Gen. No. 78-09).

**Limited privacy of accused.** — Section 29-10-4 NMSA 1978 protects the confidentiality of information concerning the identity of a person who has been accused but not charged with a crime only if that information has been collected in connection with an investigation of, or otherwise relates to, another person who has been charged with committing a crime. However, information in other records which identifies a person accused but not charged with or arrested for a crime may be protected from public disclosure under Section 14-2-1 NMSA 1978 et seq. Finally, even if it would otherwise be protected under either statute, information about a person accused but not charged

with a crime is open to public inspection if it is contained in a document listed in this section. 1994 Op. Att'y Gen. No. 94-02.

**Repeal and reenactment broadened exemption.** — In the repeal and reenactment of this section, the phrase "indexed chronologically" in Subsection A(2) became "compiled chronologically," thus removing the requirement that the records must be "indexed" to qualify as "original records of entry." The phrase "or long-standing custom" was added also, thereby legitimating a long-standing custom by which many law enforcement agencies had released information from police blotters and other such original records. 1978 Op. Att'y Gen. No. 78-09.

**Meaning of "within the criminal justice system".** — While the statute does not specify what is meant by "within the criminal justice system," the term appears to relate to the status of an adult who has been arrested or formally charged with a criminal offense until such time as there is a final "negative disposition." 1978 Op. Att'y Gen. No. 78-09.

## 29-10-8. Review of arrest record information; appeal.

A person who believes that arrest record information concerning him is inaccurate or incomplete is, upon satisfactory verification of his identity, entitled to review the information and obtain a copy of it for the purpose of challenge or correction. In the event a law enforcement agency refuses to correct challenged information to the satisfaction of the person to whom the inaccurate or incorrect information relates, the person is entitled to appeal to the district court to correct the information pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 39-10-9, enacted by Laws 1977, ch. 339, § 5; 1998, ch. 55, § 41; 1999, ch. 265, § 43.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in the last sentence.

**The 1998 amendment,** effective September 1, 1998, inserted "; appeal" in the section heading; substituted "is" for "shall"; deleted "be" preceding "entitled"; substituted "the" for "such" twice; substituted "is" for "shall be"; substituted "appeal to" for "petition"; and inserted "pursuant to the provisions of Section 12-8A-1 NMSA 1978" at the end of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Expunction of federal arrest records in absence of conviction, 97 A.L.R. Fed. 652.

Effect of expungement of conviction on § 241(a)(4), (11) of Immigration and Nationality Act of 1952 (8 USCS § 1251(a)(4), (11)), making aliens deportable for crimes involving moral turpitude or drugs, 98 A.L.R. Fed. 750.

# ARTICLE 11
# Sexual Crimes Prosecution and Treatment

## 29-11-1. Short title.

This act [29-11-1 to 29-11-7 NMSA 1978] may be cited as the "Sexual Crimes Prosecution and Treatment Act".

**History:** Laws 1978, ch. 27, § 1.

**ANNOTATIONS**

**Law reviews.** — For article, "Of Psychopaths and Pendulums: Legal and Psychiatric Treatment of Sex Offenders in the United States," see 30 N.M.L. Rev. 69 (2000).

## 29-11-2. Purpose.

The purpose of the Sexual Crimes Prosecution and Treatment Act is to promote effective law enforcement and prosecution of sexual crimes and to provide medical and psychological assistance for victims of such crimes. Implementation of the Sexual Crimes Prosecution and Treatment Act will serve to assist existing community-based victim treatment programs, to provide interagency cooperation, training of law enforcement, criminal justice and medical personnel and to effect proper handling and testing of evidence in sexual crime offenses.

**History:** 1978 Comp., § 29-11-2, enacted by Laws 1978, ch. 27, § 2.

## 29-11-3. Definitions.

As used in the Sexual Crimes Prosecution and Treatment Act:

A. "administrator" means the director of the mental health division of the department of health, or such person or office as the administrator may designate to act in his stead;

B. "evidence" means that evidence relating to the commission of a sexual crime;

C. "medical and psychological treatment" includes that medical, mental or emotional treatment provided a victim of a sexual crime. In addition to the improved physical and emotional condition of a victim, the treatment should result in the improved ability of a

victim to make informed and rational choices about serving as a witness in the prosecution of a suspect of a sexual crime; and

D. "sexual crime" includes any act which may be alleged to be a sexual offense or an attempted sexual offense under the provisions of Sections 30-9-10 through 30-9-16 and 30-10-3 NMSA 1978.

**History:** 1978 Comp., § 29-11-3, enacted by Laws 1978, ch. 27, § 3; 1995, ch. 91, § 1.

**ANNOTATIONS**

**The 1995 amendment,** effective July 1, 1995, substituted "mental health division of the department of health" for "behavioral health services division of the health and environment department" in Subsection A; substituted "Sections 30-9-10 through 30-9-16 and 30-10-3 NMSA 1978" for "Sections 40A-9-20 through 40A-9-26 and 40A-10-3 NMSA 1953" in Subsection D; and made a minor stylistic change.

## 29-11-4. Fund created; administration.

A. There is created in the state treasury the "sexual crimes prosecution and treatment fund". Money appropriated to the fund shall be used to carry out the purposes of the Sexual Crimes Prosecution and Treatment Act.

B. The fund shall be administered by the administrator.

**History:** 1978 Comp., § 29-11-4, enacted by Laws 1978, ch. 27, § 4.

## 29-11-5. Sexual crimes prosecution and treatment program.

A. The administrator shall develop, with the cooperation of the criminal justice department [corrections department], the New Mexico state police, the New Mexico law enforcement academy, other authorized law enforcement agencies and existing community-based victim treatment programs, a statewide comprehensive plan to train law enforcement officers and criminal justice and medical personnel in the ability to deal with sexual crimes; to develop strategies for prevention of such crimes; to provide assistance in the assembly of evidence for the facilitation of prosecution of such crimes; and to provide medical and psychological treatment to victims of such crimes. This plan shall include, but not be limited to:

(1) education and training of law enforcement officers and criminal justice and medical personnel;

(2) collection, processing and analysis of evidence which facilitates prosecution of suspects of sexual crimes; and

(3) medical and psychological treatment of victims of such crimes.

B. The comprehensive plan shall be implemented throughout the state, and the administrator may contract with appropriate persons, entities, agencies or community-based programs to provide the services to be rendered pursuant to Subsection A of this section and may pay a reasonable fee for such services.

C. Nothing in this section shall be construed to require criminal prosecution of a suspect of a sexual crime by the victim to whom services are rendered pursuant to the provisions of the Sexual Crimes Prosecution and Treatment Act.

D. Training for law enforcement officers in the proper treatment of victims of sexual crimes and collection of evidence and coordination among agencies shall be incorporated in the regular training program for recruits by the New Mexico state police; the basic course taught by the New Mexico law enforcement academy or by other authorized law enforcement agencies. Already-commissioned officers and sex-crime investigators shall receive advanced training through in-service programs.

**History:** 1978 Comp., § 29-11-5, enacted by Laws 1978, ch. 27, § 5; 1979, ch. 202, § 50.

**ANNOTATIONS**

**Compiler's notes.** — The bracketed phrase "corrections department" was inserted in Subsection A by the compiler, as Laws 1980, ch. 150 renames the criminal justice department as the corrections and criminal rehabilitation department. Laws 1981, chs. 73 and 127 rename the corrections and criminal rehabilitation department as the corrections department. The bracketed material was not enacted by the legislature and is not part of the law.

## 29-11-6. Report.

By December 15 of each year, a report shall be filed with the governor and the legislative council by the administrator concerning all aspects of the sexual crimes prosecution and treatment program and specifically the administrator's conclusions and recommendations regarding the effectiveness of the sexual crimes prosecution and treatment program implemented throughout the state.

**History:** 1978 Comp., § 29–11–6, enacted by Laws 1978, ch. 27, § 6.

## 29-11-7. Free forensic medical exams for victims of sexual crimes.

The administrator shall:

A. provide free forensic medical exams to victims of sexual crimes;

B. arrange for victims of sexual crimes to obtain free forensic medical exams; or

C. reimburse victims of sexual crimes for the cost of forensic medical exams, provided that:

(1) the reimbursement covers the full cost of the forensic medical exam, without any deductible requirement or limit on the amount of the reimbursement;

(2) the victim of a sexual crime is entitled to apply for reimbursement for a period of one year from the date of the forensic medical exam;

(3) reimbursement is provided not later than ninety days after the administrator receives written notification of the expense incurred by the victim for the forensic medical exam; and

(4) all victims of sexual crimes, including victims with limited or no English proficiency, are provided with information at the time of the forensic medical exam regarding how to obtain reimbursement for the cost of the exam.

**History:** Laws 1995, ch. 91, § 2.

# ARTICLE 11A
# Sex Offender Registration and Notification

## 29-11A-1. Short title.

Chapter 29, Article 11A NMSA 1978 may be cited as the "Sex Offender Registration and Notification Act".

**History:** Laws 1995, ch. 106, § 1; 1999, ch. 19, § 1.

**ANNOTATIONS**

**Cross references.** — For the DNA Identification Act, *see* Chapter 29, Article 16 NMSA 1978.

**The 1999 amendment,** effective July 1, 1999, substituted "Chapter 29, Article 11A NMSA 1978" for "This act" and inserted "and Notification".

**1999 amendments did not expressly apply retroactively** to convictions occurring before its effective date. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

**Law reviews.** — For note and comment, "ACLU of New Mexico v. City of Albuquerque: Does Current Equal Protection Adequately Protect Some of the Most Hated Members of Our Society." See 37 N.M.L. Rev. 637 (2007).

## 29-11A-2. Findings; purpose.

A. The legislature finds that:

(1) sex offenders pose a significant risk of recidivism; and

(2) the efforts of law enforcement agencies to protect their communities from sex offenders are impaired by the lack of information available concerning convicted sex offenders who live within the agencies' jurisdictions.

B. The purpose of the Sex Offender Registration and Notification Act is to assist law enforcement agencies' efforts to protect their communities by:

(1) requiring sex offenders who are residents of New Mexico to register with the county sheriff of the county in which the sex offender resides;

(2) requiring sex offenders who are residents in other states, but who are employed in New Mexico or who attend school in New Mexico, to register with the county sheriff of the county in which the sex offender works or attends school;

(3) requiring the establishment of a central registry for sex offenders; and

(4) providing public access to information regarding certain registered sex offenders.

**History:** Laws 1995, ch. 106, § 2; 1999, ch. 19, § 2.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "and Notification" in Subsection B, inserted "who are residents of New Mexico" in Paragraph B(1), added Paragraphs B(2) and B(4), redesignated former Paragraph B(2) as Paragraph B(3), and made minor stylistic changes.

**Constitutionality of act.** — Sex Offender Registration and Notification Act does not violate either the federal or state ex post facto clause, does not violate either the federal or the state due process clause, and does not violate N.M. Const. art. IV, §ection 34. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

Where a constitutionally permissible retroactive application of Sex Offender Registration and Notification Act requirements to defendant made him subject to a probation violation if he knowingly failed to register and if he were found to have committed a felony by failing to register, this does not constitute a legislative act that changes rules of evidence or procedure in a pending case. Therefore, the legislative changes are too indirect, remote, and attenuated to be considered unconstitutional under N.M. Const. art. IV, § 34. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

Retroactive application of Sex Offender Registration and Notification Act does not violate the ex post facto clause of the United States or New Mexico constitutions. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

**Sex Offender Registration and Notification Act is part of New Mexico's law enforcement code** and not part of the criminal code. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

**Legislative intent.** — Legislature's intent in enacting Sex Offender Registration and Notification Act was to enact a civil, remedial, regulatory, nonpunitive law. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

Notification provisions are rationally related to a legitimate governmental interest, purpose, and goal. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

The State's interest in attempting to protect society from convicted sex offenders who pose a significant risk of recidivism is both legitimate and compelling. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

**Purpose and principal effect of notification provisions** are to inform the public for its own safety, not to punish or stigmatize and ostracize the offender. *State v. Druktenis*, 2004-NMCA-032, 135 N.M. 223, 86 P.3d 1050.

## 29-11A-3. Definitions.

As used in the Sex Offender Registration and Notification Act:

A. "business day" means a day that is not a Saturday, a Sunday or a state holiday;

B. "conviction" means a conviction in any court of competent jurisdiction and includes a deferred sentence, but does not include a conditional discharge;

C. "department" means the department of public safety;

D. "institution of higher education" means a:

(1) private or public post-secondary educational institution;

(2) trade school; or

(3) professional school;

E. "habitually lives" means any place where a sex offender lives for at least thirty days in any three-hundred-sixty-five-day period;

F. "out-of-state registrant" means any person who establishes a residence in New Mexico while the person is required to register as a sex offender in another state or territory;

G. "registration requirement" means any requirement set forth in Section 29-11A-4 NMSA 1978 that requires a sex offender to register; provide information, including a DNA sample; renew, revise or change registration information; or provide written notice or disclosure regarding the sex offender's status as a sex offender;

H. "sex offender" means a person who:

(1) is a resident of New Mexico who is convicted of a sex offense pursuant to state, federal, tribal or military law;

(2) changes residence to New Mexico, when that person has been convicted of a sex offense pursuant to state, federal, tribal or military law;

(3) does not have an established residence in New Mexico, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico and who has been convicted of a sex offense pursuant to state, federal, tribal or military law; or

(4) is a resident of another state and who has been convicted of a sex offense pursuant to state, federal, tribal or military law, but who is:

(a) employed full time or part time in New Mexico for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year, including any employment or vocation, whether financially compensated, volunteered or for the purpose of government or educational benefit; or

(b) enrolled on a full-time or part-time basis in a private or public school or an institution of higher education in New Mexico;

I. "sex offense" means any of the following offenses or their equivalents in any other jurisdiction:

(1) aggravated criminal sexual penetration or criminal sexual penetration in the first, second, third or fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(4) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(6) kidnapping, as provided in Section 30-4-1 NMSA 1978, when committed with the intent to inflict a sexual offense;

(7) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when committed with the intent to inflict a sexual offense;

(8) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(9) enticement of child, as provided in Section 30-9-1 NMSA 1978;

(10) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is younger than eighteen years of age;

(11) child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978, for convictions occurring on or after July 1, 2013;

(12) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(13) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (11) of this subsection, as provided in Section 30-28-1 NMSA 1978; and

J. "social networking site" means an internet web site that facilitates online social interaction by offering a mechanism for communication with other users, where such users are likely to include a substantial number of minors under the age of sixteen, and allowing users, through the creation of web pages, profiles or other means, to provide information about themselves that is available to the public or to other users.

**History:** Laws 1995, ch. 106, § 3; 1999, ch. 19, § 3; 2000, ch. 8, § 1; 2003 (1st S.S.), ch. 1, § 10; 2005, ch. 279, § 1; 2007, ch. 68, § 1; 2007, ch. 69, § 5; 2013, ch. 152, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, added terms and definitions; added Subsections A, C, E, F and J; in Paragraph (6) of Subsection I, after "Section 30-4-1 NMSA 1978", deleted "the victim is less than eighteen years of age and the offender is not a parent of the victim" and added "committed with the intent to inflict a sexual offense"; in Paragraph (7) of Subsection I, after "Section 30-4-3 NMSA 1978, when", deleted "the victim is less than eighteen years of age and the offender is not a parent of

the victim" and added "committed with the intent to inflict a sexual offense"; and in Paragraph (11) of Subsection I, after "Section 30-37-3.2 NMSA 1978", added "for convictions occurring on or after July 1, 2013":

**Applicability.** — Laws 2013, ch. 152, § 5 provided that the provisions of the amendments to the Sex Offender Registration and Notification Act enacted by Laws 2013, ch. 152 are applicable to a person who, on or after July 1, 2013, is found guilty of committing a sex offense.

**The 2007 amendment,** effective July 1, 2007, defined "sex offender" as a New Mexico resident who is convicted of a sex offense pursuant to state, federal, tribal or military law; and defined "sex offense" to mean offenses or their equivalents in any other jurisdiction, including aggravated criminal sexual penetration.

**Applicability.** — Laws 2007, ch. 69, § 8 provided that Laws 2007, ch. 69, § 5 was applicable to a person convicted of a sex offense on or after July 1, 1995 and a person convicted of a sexual offense prior to July 1, 1995 and who, on July 1, 1995, was still incarcerated, on probation or on parole for commission of that sex offense.

**The 2005 amendment,** effective July 1, 2005, added the definition of "conviction" in Subsection A; added the definition of "institution of higher education" in Subsection B; added the definition of "registration requirement" in Subsection C; deleted the requirement that a person be eighteen years of age or older in the definition of "sex offender" in Subsection D; added the reference to tribal law in Subsection D(2), (3) and (5); added Subsection D(4) to provide that a sex offender is a person who does not have an established residence in New Mexico, but stays in temporary quarters in New Mexico and who has been convicted of a sex offense; provided in Subsection B(5)(a) that employment includes any employment or vocation, whether financially compensated, volunteered or for the purpose of government or educational benefit; provided in Subsection B(5)(b) that the person is enrolled in an institution of higher education in New Mexico; deleted the former reference in Subsection B(5)(b) secondary school, trade school, professional institution or an institution of higher education; and added Subsections E(8) through (10) to provide that sex offense includes aggravated indecent exposure, enticement of child and incest respectively.

**Applicability.** — Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**The 2003 (1st S.S.) amendment,** effective February 3, 2004, inserted "second" in Paragraphs (3) and (8) of Subsection B, and deleted "Subsection A, B or C of" preceding "Section" in Paragraph (4) of that subsection.

**The 2000 amendment,** effective July 1, 2000, deleted "employed in New Mexico or attends school in New Mexico; and" from the end of Subsection A(4), added Subsections A(4)(a) and A(4)(b), added Subsections B(6) and B(7) and redesignated former Subsections B(6) and B(7) as present Subsections B(8) and B(9), substituted "(7)" for "(5)" in present Subsection B(9).

**The 1999 amendment,** effective July 1, 1999, inserted "and Notification" in the introductory language; added "a person eighteen years of age or older" in Subsection A; in Paragraph A(1), substituted "who is a resident of New Mexico who is" for "a person" and substituted "in New Mexico" for "on or after July 1, 1995; or"; in Paragraph A(2), deleted "a person" at the beginning, and substituted "pursuant to state, federal or military law" for "on or after July 1, 1995; and"; added Paragraphs A(3), A(4), B(6), and B(7); and made minor stylistic changes.

**Determination of equivalency of sex offenses.** — Where defendant, who had been convicted of taking indecent liberties with children in North Carolina, moved to New Mexico; although there was no one-to-one correlation between the North Carolina offense and a single New Mexico sex offense, indecent liberties with children encompassed several sex offenses in New Mexico, the district court was required to determine if defendant's actual conduct supporting defendant's North Carolina conviction would have constituted any of the sex offenses under the New Mexico Sex Offender Registration and Notification Act, Section 29-11A-1 NMSA 1978 et seq. *State v. Orr*, 2013-NMCA-069, 304 P.3d 449.

**Equivalent offense is based on actual conduct.** — An offense is "equivalent" to a New Mexico offense, for purposes of the New Mexico Sex Offender Registration and Notification Act, if the defendant's actual conduct that gave rise to the out-of-state conviction would have constituted one of the enumerated offenses requiring registration pursuant to the Act. When the defendant's out-of-state conviction results from a plea agreement, courts may look to the charging documents, the defendant's written plea agreement, and the transcript of the plea hearing to determine the defendant's actual conduct and whether the conduct would have constituted one of the enumerated offenses. *State v. Hall*, 2013-NMSC-001, 294 P.3d 1235, *rev'g* 2011-NMCA-047, 149 N.M. 546, 252 P.3d 770.

**Failure to prove equivalent offense.** — Where defendant had been convicted in California of a misdemeanor offense of annoying or molesting a child under the age of eighteen; the state alleged that the California offense was equivalent to the New Mexico crime of sexual contact of a minor in the fourth degree because defendant's California conviction was based on defendant inappropriately touching the private parts of several boys that defendant lifted up to look into a camera's viewfinder; and the state failed to provide evidence to support the elements of the New Mexico offense by establishing the California victim's ages at the time of the offense or, other than saying that defendant touched the victims' clothed private parts, where on their bodies defendant touched the California victims, a court could not determine whether defendant's conduct violated one of the enumerated offenses in Section 29-11A-3 NMSA 1978 because the record was

insufficient for a court to determine in what conduct defendant engaged that gave rise to defendant's California conviction. *State v. Hall*, 2013-NMSC-001, 294 P.3d 1235, *rev'g* 2011-NMCA-047, 149 N.M. 546, 252 P.3d 770.

**Sex offense.** — Defendant's conviction in California of the misdemeanor offense of annoying or molesting a child, which does not require touching or application of force, was not the equivalent of sexual contact of a minor, which requires touching or the application of force, was not a "sex offense" as that term is defined in the Sex Offender Registration and Notification Act, and did not require defendant to register as a sex offender in New Mexico. *State v. Hall*, 2011-NMCA-047, 149 N.M. 546, 252 P.3d 770, cert. granted, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Determining equivalency under SORNA.** — Where defendant appealed from the judgment and sentence entered upon his conditional guilty plea to one count of failure to register as a sex offender, the trial court erred in ruling that defendant's Colorado conviction, had it occurred in New Mexico, required registration pursuant to SORNA, because the statute under which defendant was convicted in Colorado is not, on its face, equivalent to a SORNA offense, and the trial court's reliance on an unsigned and unfiled presentence report was not sufficient to determine actual conduct for purposes of an equivalency analysis under SORNA. The presentence report lacked proof of authenticity and reliability and therefore constituted inadmissible evidence that the trial court erred in considering and determining defendant's actual conduct underlying his Colorado sexual assault conviction. *State v. Winn*, 2019-NMCA-011.

**A *nolo contendere* plea which is a conviction in a foreign jurisdiction is a conviction in New Mexico.** — Where petitioner pled *nolo contendere* to engaging in a sex act with a child under eighteen years old in Florida; the Florida court required petitioner to serve thirty days imprisonment, two years of community control, five years of probation, pay restitution for mental counseling of the victim, have no unsupervised contact with children under eighteen years old, surrender the petitioner's teaching credentials and register as a sex offender in Florida; Florida did not adjudicate petitioner's guilt; and Florida law defined a conviction of a sex offense for purposes of sex offender registration to be a determination of guilt as the result of a plea of *nolo contendere* regardless of whether adjudication is withheld, Florida's disposition of petitioner's case was a conviction for purposes of SORNA. *Vives v. Verzino*, 2009-NMCA-083, 146 N.M. 673, 213 P.3d 823.

**"Sex offender".** — A court order granting defendant an early discharge from supervised probation and dismissing the charges against him did not eradicate his convictions and his status as a sex offender under Subsection A(1). *State v. Brothers*, 2002-NMCA-110, 133 N.M. 36, 59 P.3d 1268, cert. denied, 133 N.M. 30, 59 P.3d 1262.

**Application of multiple amendments of definition of "sex offense".** — Where in 2012, defendant pled guilty to the charge of solicitation of a child by electronic communication device; in 2007, the legislature enacted two acts amending Sections 29-11A-3 and 29-11A-5 NMSA 1978 which were signed on the same day by the governor;

Laws 2007, ch. 68 created the new criminal offense of child solicitation by electronic communication device; Laws 2007, ch. 69 created the new crime of aggravated criminal sexual penetration; in 2012, Section 12-1-8 NMSA 1978 provided that if, in the same legislative session, the legislature enacted two or more acts amending the same section of the New Mexico Statutes Annotated, then the last act signed by the governor is presumed to be the law and shall be compiled into the NMSA; and Laws 2007, ch. 69 was compiled into the NMSA, child solicitation by electronic communication device was not a SORNA-covered crime in 2012 when defendant pled guilty and defendant was not subject to SORNA. *State v. Ho*, 2014-NMCA-038, cert. granted, 2014-NMCERT-003.

## 29-11A-4. Registration of sex offenders; information required; verification; criminal penalty for noncompliance.

A. A sex offender residing in this state shall register with the county sheriff for the county in which the sex offender resides.

B. A sex offender who is a resident of New Mexico shall initially register with the county sheriff no later than five business days after being released from the custody of the corrections department, a municipal or county jail or a federal, military or tribal correctional facility or detention center or being placed on probation or parole. A sex offender who changes residence to New Mexico shall register with the county sheriff no later than five business days after arrival in this state. When a sex offender initially registers with the county sheriff, the sex offender shall provide the following registration information:

(1) the sex offender's legal name and any other names or aliases that the sex offender is using or has used;

(2) the sex offender's date of birth;

(3) the sex offender's social security number;

(4) the sex offender's current physical and mailing address and the address of every place where the sex offender habitually lives;

(5) the sex offender's place of employment;

(6) the sex offense for which the sex offender was convicted;

(7) the date and place of the sex offense conviction;

(8) the sex offender's names, email addresses and monikers and other self-identifiers used on social networking sites, to be used only for law enforcement purposes;

(9) the sex offender's landline and cellular telephone numbers and any other telephone numbers primarily used by the sex offender;

(10) the sex offender's professional licenses;

(11) the license plate or other identifier and the description of any vehicle owned or primarily operated by the sex offender, including aircraft and watercraft;

(12) the name and address of any school or institution of higher education that the sex offender is attending; and

(13) copies of the sex offender's passport and immigration documents.

C. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff for the county in which the sex offender is working or attending school or an institution of higher education.

D. A sex offender who is a resident of another state but who is employed in New Mexico or attending public or private school or an institution of higher education in New Mexico shall register with the county sheriff no later than five business days after beginning work or school. When the sex offender registers with the county sheriff, the sex offender shall provide the following registration information:

(1) the sex offender's legal name and any other names or aliases that the sex offender is using or has used;

(2) the sex offender's date of birth;

(3) the sex offender's social security number;

(4) the sex offender's current physical and mailing address in the sex offender's state of residence and, if applicable, the address of the sex offender's place of lodging in New Mexico while working or attending school or an institution of higher education;

(5) the sex offender's place of employment or the name of the school the sex offender is attending;

(6) the sex offense for which the sex offender was convicted; and

(7) the date and place of the sex offense conviction.

E. When a sex offender registers with a county sheriff, the sheriff shall obtain:

(1) a photograph of the sex offender and a complete set of the sex offender's fingerprints and a palm print;

(2) a physical description, including a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and

(3) a DNA sample for inclusion in the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act [Chapter 29, Article 16 NMSA 1978].

F. When a sex offender who is registered changes any information required under this section, the sex offender shall send written notice of the change on a form approved by the department to the county sheriff no later than five business days after the change occurs.

G. When a sex offender who is registered changes residence to a new county in New Mexico, the sex offender shall register with the county sheriff of the new county no later than five business days after establishing the new residence. The sex offender shall also send written notice of the change in residence to the county sheriff with whom the sex offender last registered no later than five business days after establishing the new residence.

H. When a sex offender who is registered or required to register is homeless or does not have an established residence, but lives in a shelter, halfway house or transitional living facility or stays in multiple locations in New Mexico, the sex offender shall register each address or temporary location with the county sheriff for each county in which the sex offender is living or temporarily located. The sex offender shall register no later than five business days after a change in living arrangements or temporary location.

I. When a sex offender who is registered or required to register is employed, begins a vocation or is enrolled as a student at an institution of higher education in New Mexico, the sex offender shall disclose the sex offender's status as a sex offender in writing to the county sheriff for the county in which the institution of higher education is located, the law enforcement entity responsible for the institution of higher education and the registrar for the institution of higher education no later than five business days after beginning employment, beginning a vocation or enrolling at the institution of higher education. The sex offender shall also send written notice of any change regarding employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar no later than five business days after the change in employment, vocation or enrollment status.

J. When a sex offender who is registered or required to register is employed or is enrolled as a student at a public or private school in New Mexico, the sex offender shall disclose the sex offender's status as a sex offender in writing to the county sheriff for the

county in which the school is located and to the principal of the school no later than five business days after beginning employment or enrolling at the school. The sex offender shall also send written notice of any change regarding employment or enrollment status at a school to the county sheriff and the principal no later than five business days after the change in employment or enrollment status.

K. When a sex offender who is registered or required to register is employed, begins a vocation or volunteers services, regardless of whether the sex offender receives payment or other compensation, the sex offender shall disclose the sex offender's status as a sex offender in writing to the sex offender's employer, supervisor or person similarly situated. The written disclosure shall be made immediately upon beginning employment, vocation or volunteer service.

L. Following initial registration pursuant to the provisions of this section:

(1) a sex offender required to register pursuant to the provisions of Subsection D of Section 29-11A-5 NMSA 1978 shall verify registration information with the county sheriff as provided in Subsection N of this section not less than once in each ninety-day period following the date of the sex offender's initial registration for the remainder of the sex offender's natural life;

(2) a sex offender required to register pursuant to the provisions of Subsection E of Section 29-11A-5 NMSA 1978 shall verify registration information with the county sheriff as provided in Subsection N of this section once every six months for a period of ten years; and

(3) an out-of-state registrant shall verify registration information with the county sheriff for whichever is the longer of:

(a) the duration of time remaining in the registrant's convicting jurisdiction and at the same frequency as required in that state or territory, but no less than once every six months; or

(b) the duration of time remaining that would be required for the equivalent offense in New Mexico.

M. Notwithstanding the provisions of Paragraph (2) of Subsection L of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in Subsection E of Section 29-11A-5 NMSA 1978, the sex offender shall verify registration information with the county sheriff as provided in Subsection N of this section not less than once in each ninety-day period following the date of the sex offender's initial registration for the remainder of the sex offender's natural life.

N. At least fifteen days prior to the time a sex offender is required to verify registration information, the department shall send a verification form to the sex offender, by first class mail, containing the sex offender's current registration information

and a notice of the date that the sex offender's next verification is due. The sex offender shall appear in person at a location designated by the department to verify the information contained on the form, to change the information as necessary and to sign a statement under oath that the information is true and correct. The department may photograph the sex offender at that time if the sex offender's appearance is significantly different from the photograph already contained in the sex offender's file. If a sex offender does not receive a verification form before the time that the sex offender is required to verify registration pursuant to Subsection L of this section, the sex offender shall appear at a location designated by the department to verify registration information as required by this section.

O. The department shall establish a secure system that will permit a sex offender to notify the department electronically of any change in registration information.

P. A sex offender who willfully or knowingly fails to comply with the registration or verification requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly fails to comply with the registration or verification requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful failure to comply with any registration or verification requirement set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

Q. A sex offender who willfully or knowingly provides false information when complying with the registration or verification requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. A sex offender who willfully or knowingly provides false information when complying with the registration or verification requirements set forth in this section after a first or subsequent conviction for a violation pursuant to this section is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978. The willful providing by a sex offender of false information with respect to the registration or verification requirements set forth in this section shall be deemed part of a continuing transaction or occurrence. A conviction pursuant to this subsection shall not be considered a felony for purposes of the imposition of sentencing enhancements pursuant to the provisions of Section 31-18-17 NMSA 1978.

**History:** Laws 1995, ch. 106, § 4; 1999, ch. 19, § 4; 2000, ch. 8, § 2; 2005, ch. 279, § 2; 2013, ch. 152, § 2.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, required sex offenders to register and update information within five business days; in the title, after "required", added "verification"; in Subsection B, in the first sentence of the introductory paragraph, after "New Mexico shall", added "initially", in the second sentence, after "no later than", deleted "ten" and added "five business", and in the third sentence, after "sex offender", added "initially"; in Paragraph (4) of Subsection B, after "sex offender's current", added "physical and mailing" and after "mailing address", added "and the address of every place where the sex offender habitually lives"; added Paragraphs (8) through (13) of Subsection B; in Subsection D, in the first sentence, after "no later than", deleted "ten" and added "five business"; in Paragraph (1) of Subsection E, after "fingerprints", added "and a palm print"; in Paragraph (2) of Subsection E, at the beginning of the sentence, added "a physical description, including"; in Subsection F, after "registered changes", deleted "his residence within the same county" and added "any information required under this section", after "notice of the change" deleted "of address" and added "on a form approve by the department", after "no later than", deleted "ten" and added "five business", and after "five business days after", deleted "establishing his new residence" and added "the change occurs"; in Subsection G, in the first sentence, after "no later than", deleted "ten" and added "five business" and in the second sentence, after "no later than", deleted "ten" and added "five business"; in Subsection H, in the first sentence, after "required to register", added "is homeless or" and after "sex offender shall register", added "each address or temporary location" and in the second sentence, after "no later than", deleted "ten" and added "five business"; in Subsection J, in the first sentence, after "no later than", deleted "ten" and added "five business" and after "five business days after", added "beginning employment or" and in the second sentence, after "any change regarding", added "employment or", after "no later than", deleted "ten" and added "five business", and after "after the change in", deleted "his" and added "employment or"; in Paragraph (1) of Subsection L, after "Section 29-11A-5 NMSA 1978 shall", deleted "renew his" and added "verify", after "verify registration", added "information", after "county sheriff", added "as provided in Subsection N of this section", and after "registration for the", deleted "entirety" and added "remainder"; in Paragraph (2) of Subsection L, after "Section 29-11A-5 NMSA 1978 shall', deleted "annually renew his" and added "verify", after "verify registration" added "information", after "county sheriff", deleted "prior to December 31 of each subsequent calendar year" and added "as provided in Subsection N of this section once every six months"; added Paragraph (3) of Subsection L; in Subsection M, after "sex offender shall", deleted "renew his" and added "verify", after "verify registration", added "information", after "county sheriff", added "as provided in Subsection N of this section", and after "initial registration for the", deleted "entirety" and added "remainder"; added Subsections N and O; in Subsection P, in the first sentence, after "registration", added "or verification", in the second sentence, after "registration", added "or verification", and in the third sentence, after "registration", added "or verification", and in Subsection Q, in the first, second and third sentences, after "registration", added "or verification.

**Applicability.** — Laws 2013, ch. 152, § 5 provided that the provisions of the amendments to the Sex Offender Registration and Notification Act enacted by Laws

2013, ch. 152 are applicable to a person who, on or after July 1, 2013, is found guilty of committing a sex offense.

**The 2005 amendment,** effective July 1, 2005, provided in Subsection B that sex offender shall register after being released from a municipal or county jail, or a federal, military or tribal correctional facility, or detention center and that a sex offender shall register within ten days after his arrival in New Mexico; provided in Subsection C that a non-resident sex offender who is attending a public or private school or an institution of higher education in New Mexico shall register in the county in which the school or institution of higher education is located; provided in Subsection D that a sex offender who is attending a public or private school or an institution of higher education shall register within ten days after beginning school; provided in Subsection D(4) that a sex offender who is attending an institution of higher education must give his residence address and the address of his place of lodging in New Mexico; added Subsection E(3) to provide that the sheriff shall obtain a sample of the sex offender's DNA for inclusion in the sex offender DNA identification system; adds Subsection H to provide for the registration of a sex offender who does not have an established residence; added Subsection I to require a sex offender to disclose his status when he is employed, begins a vocation or is enrolled in an institution of higher education or changes his employment, vocation or enrollment status; added Subsection J to require a sex offender to disclose his status if he is employed or enrolled as a student at a public or private school; added Subsection K to require a sex offender to disclose his status when he is employed, begins a vocation or volunteers his services; deleted the former provisions in Subsection L that a sex offender annually renew his registration prior to December 31 of each subsequent calendar year for a period of twenty years; provided in Subsection L that a sex offender shall renew his registration not less than once in each ninety-day period for his natural life; added Subsection M to provide that a sex offender who is convicted of a sex offense set forth in Section 29-11A-5E NMSA 1978, he shall renew his registration once in each ninety-day period for his natural life; provided in Subsection N that if a sex offender knowingly fails to comply with the registration requirement he is guilty of a fourth degree felony, that a sex offender who willfully or knowingly fails to comply with the registration requirements of this section after a first or subsequent conviction under this section is guilty of a third degree felony, that a willful failure to comply with the requirements of this section is a continuing transaction or occurrence, and that a conviction under Subsection N is not a felony for purposes of imposing sentencing enhancements; and provided in Subsection O that a sex offender who knowingly provides false information is guilty of a fourth degree felony, that a sex offender who willfully or knowingly provides false information after a first or subsequent conviction under this section is guilty of a third degree felony, that the willful providing of false information is a continuing transaction or occurrence and that a conviction under Subsection N is not a felony for purposes of imposing sentencing enhancements.

**Applicability.** — Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on

July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**The 2000 amendment,** effective July 1, 2000, inserted "registration" near the end of the introductory paragraph in Subsection B and near the end of Subsection D; rewrote Subsection H, which formerly read "Following his initial registration pursuant to the provisions of this section, a sex offender shall annually renew his registration with the county sheriff prior to December 31 of each subsequent calendar year"; and substituted "fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978" for "misdemeanor and shall be punished by imprisonment for a definite term less than one year or a fine of not more than one thousand dollars ($1,000) or both" in Subsections I and J.

**The 1999 amendment,** effective July 1, 1999, in Subsection B substituted "ten days" for "thirty days" in the first sentence and "ten days" for "forty-five days" in the second sentence; substituted "he" for "the sex offender" in Paragraph B(1); added present Subsections C, D, and H; and redesignated former Subsections C through E, F, and G as Subsections E through G, I, and J, respectively.

**Statutory elements of California and New Mexico offenses were not equivalent.** — Defendant's conviction in California of the misdemeanor offense of annoying or molesting a child, which does not require touching or application of force, was not the equivalent of sexual contact of a minor, which requires touching or the application of force, was not a "sex offense" as that term is defined in the Sex Offender Registration and Notification Act, and did not require defendant to register as a sex offender in New Mexico. *State v. Hall*, 2011-NMCA-047, 149 N.M. 546, 252 P.3d 770, cert. granted, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

**Assistance of counsel.** — Defense counsel has an affirmative duty to advise a defendant charged with a sex offense that a plea of guilty or no contest will almost certainly subject the defendant to the registration requirements of SORNA. Proper advice will also include a discussion regarding what SORNA registration will mean, both in terms of the specific registration and notification provisions set forth in this article, as well as the likely social consequences of being a registered sex offender. This is the minimum advice a defendant needs before deciding to waive his or her constitutional rights by entering into a plea agreement. Failure to so advise the defendant amounts to deficient performance under the *Strickland* test. *State v. Edwards*, 2007-NMCA-043, 141 N.M. 491, 157 P.3d 56, cert. quashed, 142 N.M. 436, 166 P.3d 1090.

**Court cannot stay registration pending appeal.** — Trial judges have neither the power nor the discretion to stay the application of the SORNA pending the outcome of an appeal. *State v. Myers*, 2011-NMSC-028, 150 N.M. 1, 256 P.3d 13, *rev'g* 2010-NMCA-007, 147 N.M. 574, 226 P.3d 673.

**A trial court has discretion to stay Sex Offender Registration and Notification Act registration pending appeal.** *State v. Myers*, 2010-NMCA-007, 147 N.M. 574, 226 P.3d 673, *rev'd*, 2011-NMSC-028, 150 N.M. 1, 256 P.3d 13.

**Stay of registration pending appeal.** — Where defendant was convicted of sexual exploitation of children by manufacturing child pornography; the diagnostic evaluation of defendant concluded that defendant is not a pedophile and that with treatment, defendant's risk of re-offending was low; defendant was required to inform the sheriff's department of defendant's current residence and work location and update the information with any changes; and the trial court released defendant pending appeal, the trial court did not abuse its discretion by staying defendant's registration as a sex offender pending the outcome of the appeal. *State v. Myers*, 2010-NMCA-007, 147 N.M. 574, 226 P.3d 673, *rev'd*, 2011-NMSC-028, 150 N.M. 1, 256 P.3d 13.

**Not applicable to Native Americans.** — The state does not have authority to require an Indian who was convicted of a sex offense in a court other than a New Mexico state court, is an Indian living in Indian country, and is not attending school or employed outside of Indian country, to comply with the requirements of Sex Offender Registration and Notification Act. *State v. Atcitty*, 2009-NMCA-086, 146 N.M. 781, 215 P.3d 90, cert. quashed, 2010-NMCERT-010, 149 N.M. 64, 243 P.3d 1146.

**Insufficient evidence that defendant willfully failed to register.** — Where the defendant was released from probation on the defendant's convictions for sex offenses in 1998; the defendant registered in 2003 after the defendant received a letter informing the defendant that the defendant was required to register; the defendant registered in 2004, but failed to register after 2004; the defendant's judgment and sentence for sex offenses, which was entered before the enactment of the Sex Offender Registration and Notification Act, did not mention any requirement that the defendant register as a sex offender; there was no evidence that when the defendant was released from probation, the defendant was informed of a duty to register as a sex offender; when the deputy sheriff validated the defendant's sex offender registry information he did not inform the defendant that the defendant had a continuing duty to register annually; there was no evidence that when the defendant registered in 2003 and 2004, the defendant was informed that he had the duty to register annually, the evidence failed to show that the defendant willfully failed to comply with the annual registration requirements. *State v. Billington*, 2009-NMCA-014, 145 N.M. 526, 201 P.3d 857, cert. denied, 2009-NMCERT-001, 145 N.M. 655, 203 P.3d 870.

**The only issue raised by an appeal of a conviction for failure to register as a sex offender** is whether the defendant's failure to register was willful. *State v. Burke*, 2008-NMSC-052, 144 N.M. 772, 192 P.3d 767, *rev'g* 2007-NMCA-093, 142 N.M. 218, 164 P.3d 99.

**The sheriff has discretion to adopt reasonable time, place and manner restrictions** on the process of registration of sex offenders. *State v. Burke*, 2007-

NMCA-093, 142 N.M. 218, 164 P.3d 99, *rev'd*, 2008-NMSC-052, 144 N.M. 772, 192 P.3d 767.

**A protocol that restricted the time when sex offenders could register** to the hours between 1:00 and 4:00 on Wednesday afternoon was reasonable. *State v. Burke*, 2007-NMCA-093, 142 N.M. 218, 164 P.3d 99, *rev'd*, 2008-NMSC-052, 144 N.M. 772, 192 P.3d 767.

**No violation of due process.** — Court's failure to advise defendant, at the time of his plea, of sex offender registration consequences under New Mexico's Sex Offender Registration and Notification Act did not violate due process of law. *State v. Moore*, 2004-NMCA-035, 135 N.M. 210, 86 P.3d 635.

**Multiple convictions for failure to register violated double jeopardy.** — Where defendant was convicted of third degree criminal sexual penetration, and was thereafter required to register as a sex offender pursuant to the Sex Offender Registration and Notification Act, 29-11A-1 to -10 NMSA 1978, which required that he register every ninety days and also within ten days of changing his address, and where during a certain period of time defendant was evicted and required to move out of his home which resulted in defendant missing both statutory deadlines, defendant's multiple convictions for failure to register violated his right to be free from double jeopardy, because the legislature's use of "any" in Subsection P indicates that it contemplated that more than one violation may occur within a given period of non-compliance before the offender next registers, and expressly stated that those violations are part of a continuing transaction or occurrence such that defendant may only be charged with one offense. *State v. Cain*, 2019-NMCA-059, cert. denied.

**Act does not constitute punishment.** — Although the notification and registration provisions under Sex Offender Registration and Notification Act are immediate and automatic, they do not constitute punishment for a crime. *State v. Moore*, 2004-NMCA-035, 135 N.M. 210, 86 P.3d 635.

**Registration and notification consequences are collateral.** — Sex offender registration law consequences are collateral consequences of a plea and therefore not consequences that require a court, under the due process clause, to advise a defendant of the consequences of registration under Sex Offender Registration and Notification Act. *State v. Moore*, 2004-NMCA-035, 135 N.M. 210, 86 P.3d 635.

**Role of court.** — The court does not impose Sex Offender Registration and Notification Act provisions or have discretion to modify them in accepting a plea. *State v. Moore*, 2004-NMCA-035, 135 N.M. 210, 86 P.3d 635.

Where defendant was charged with crimes that require, on conviction, registration under SORNA and where defendant pleaded no contest to crimes that do not require registration, district court did not have the authority to include, as a condition of defendant's probation, that defendant provide the sheriff information required under

SORNA and to give the sheriff the discretion to process the information under SORNA. *State v. Williams*, 2006-NMCA-092, 140 N.M. 194, 141 P.3d 538.

**Effect of vacated conviction.** — Where petitioner positioned petitioner's truck across the roadway to block the path of the victim's car, entered the victim's car and raped the victim; petitioner was convicted of first-degree kidnapping and second-degree criminal sexual penetration; petitioner was required to register as a sex offender; the court of appeals vacated the rape conviction because petitioner's conviction for both first-degree kidnapping and rape would result in double punishment for the same conduct in violation of the double jeopardy clause; petitioner argued that petitioner was no longer required to register as a sex offender; the jury found petitioner guilty of both first-degree kidnapping and rape based on the same conduct; and the elements of first-degree kidnapping were supported by the elements of the rape conviction, petitioner was required to register as a sex offender. *Montoya v. Driggers*, 2014-NMSC-009.

**Effect of dismissed charges.** — When a deferred sentence expires and charges are dismissed, a conviction is not eradicated under the Sex Offender Registration and Notification Act, Chapter 29, Article 11A NMSA 1978; therefore, the defendant is still subject to the registration requirements of this section. *State v. Brothers*, 2002-NMCA-110, 133 N.M. 36, 59 P.3d 1268, cert. denied, 133 N.M. 30, 59 P.3d 1262.

**Effect of conditional discharge.** — A person granted a conditional discharge under Section 31-20-13 NMSA 1978 is not required to register as a sex offender under this section. *State v. Herbstman*, 1999-NMCA-014, 126 N.M. 683, 974 P.2d 177.

**Effect of release from incarceration.** — A registered sex offender is required to renew the offender's registration upon release from custody of the corrections department on unrelated charges if the offender returns to the offender's previous registered residence. *State v. Parrish*, 2013-NMCA-066, 304 P.3d 730, cert. denied, 2013-NMCERT-004.

Where defendant was a convicted sex offender and was properly registered; defendant was subsequently incarcerated in a department of corrections facility on an unrelated matter; on the day of defendant's release from the facility, defendant was given a copy of the department's notice to register form, which defendant signed and which stated that a convicted sex offender was required to register after being released from custody; and defendant returned to defendant's registered residence, defendant was required to register upon release from custody. *State v. Parrish*, 2013-NMCA-066, 304 P.3d 730, cert. denied, 2013-NMCERT-004.

## 29-11A-4.1. Procedures when a sex offender moves from New Mexico to another state.

A. If a sex offender intends to move from New Mexico to another state, no later than thirty days prior to moving to the other state, he shall:

(1) notify the county sheriff of the county he resides in that he is moving to the other state; and

(2) provide the county sheriff with a written notice that identifies the state to which the sex offender is moving.

B. Within five days of receiving a sex offender's written notice of intent to move to another state, the county sheriff shall transmit that information to the department of public safety. Within five days of receiving that information from a county sheriff, the department shall contact the state agency responsible for registering sex offenders in the state to which the sex offender is moving. The department shall provide that state agency with registration information regarding the sex offender. The department shall also obtain information regarding registration requirements for sex offenders in the state to which the sex offender is moving. The department shall provide the sex offender with written notification of the registration requirements in the state to which the sex offender is moving.

C. A sex offender who willfully fails to comply with the requirements set forth in this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 2000, ch. 8, § 6; 2005, ch. 279, § 3.

**ANNOTATIONS**

**The 2005 amendment,** effective July 1, 2005, deleted the former provision in Subsection C that the crime is a misdemeanor punishable by imprisonment for a definite term of not less that one year or a fine of not more that $1,000, or both; and provided in Subsection C that the crime is a fourth degree felony punishable as provided in Section 31-18-15 NMSA 1978.

**Applicability.** — Laws 2005, ch. 279, § 14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

## 29-11A-5. Local registry; central registry; administration by department of public safety; participation in the national sex offender registry; rules.

A. A county sheriff shall maintain a local registry of sex offenders in the sheriff's jurisdiction required to register pursuant to the provisions of the Sex Offender Registration and Notification Act.

B. The county sheriff shall forward:

(1) registration information obtained from sex offenders to the department of public safety. The initial registration information and any new registration information subsequently obtained from a sex offender shall be forwarded by the county sheriff no later than ten working days after the information is obtained from a sex offender. If the department of public safety receives information regarding a sex offender from a governmental entity other than a county sheriff, the department shall send that information to the sheriff for the county in which the sex offender resides; and

(2) samples of DNA obtained from sex offenders to the administrative center for the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act [Chapter 29, Article 16 NMSA 1978].

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice. The department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

D. The department of public safety shall retain registration information regarding a sex offender convicted for any of the following sex offenses for the entirety of the sex offender's natural life:

(1) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(4) kidnapping, as provided in Section 30-4-1 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(5) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978; or

(6) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978.

E. The department of public safety shall retain registration information regarding a sex offender convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

(1) criminal sexual penetration in the fourth degree, as provided in Section 30-9-11 NMSA 1978;

(2) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(3) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(4) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;

(5) enticement of child, as provided in Section 30-9-1 NMSA 1978;

(6) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;

(7) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978;

(8) child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978; or

(9) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (6) of this subsection, as provided in Section 30-28-1 NMSA 1978.

F. Notwithstanding the provisions of Subsection E of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in that subsection, the department of public safety shall retain information regarding the sex offender for the entirety of the sex offender's natural life.

G. The department of public safety shall adopt rules necessary to carry out the provisions of the Sex Offender Registration and Notification Act. Rules necessary for the collection of DNA samples and the administration and operation of the sex offender DNA identification system shall be adopted by the DNA identification system oversight committee pursuant to the provisions of the DNA Identification Act.

**History:** Laws 1995, ch. 106, § 5; 1999, ch. 19, § 5; 2000, ch. 8, § 3; 2003 (1st S.S.), ch. 1, § 11; 2005, ch. 279, § 4; 2007, ch. 68, § 2; 2007, ch. 69, § 6.

## ANNOTATIONS

**2007 Multiple Amendments.** — Laws 2007, ch. 68, § 2 and Laws 2007, ch. 69, § 6 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2007, ch. 69, § 6, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2007,

ch. 68, § 2 and Laws 2007, ch. 69, § 6 are described below. To view the session laws in their entirety, *see* the 2007 session laws on *NMOneSource.com*.

Laws 2007, ch. 69, § 6, effective July 1, 2007, required the department of public safety to retain registration information regarding a sex offender convicted of aggravated criminal sexual penetration.

Laws 2007, ch. 68, § 2, effective July 1, 2007, required the department of public safety to retain registration information regarding sex offenders convicted of child solicitation by electronic communication device.

**The 2005 amendment,** effective July 1, 2005, added Subsection B(2) to provide that the sheriff shall forward samples of DNA obtained from sex offenders to the administrative center for the sex offender DNA identification system; deleted the former provision in Subsection D that the department shall retain registration information for a period of twenty years after a sex offender's conviction, release from prison or release from probation or parole, whichever is later; provided in Subsection D that the department shall retain registration information for the natural life of a sex offender; added criminal sexual penetration in the third degree in Subsection D(1); added criminal sexual contact of a minor in the fourth degree in Subsection D(2); added criminal sexual contract in the fourth degree, as provided in Section 30-9-12 NMSA 1978 in Subsection D(5); deleted the former reference to criminal sexual contact in the fourth degree as provided in Section 30-9-12 NMSA 1978 in Subsection E(2); deleted the former reference to criminal sexual contact of a minor in the fourth degree as provided in Section 30-9-13 NMSA 1978 in Subsection E(3); added the reference to aggravated indecent exposure in Subsection E(4); added enticement of child in Subsection E(5); added incest when the victim is less than eighteen years of age in Subsection E(6); added Subsection F to provide that if a sex offender is convicted a second or subsequent time for a sex offence set forth in Subsection E, the department shall retain information regarding that sex offender for the sex offender's natural life; and provided in Subsection G that the DNA identification system oversight committee shall adopt rules for the collection of DNA samples and the administration and operation of the sex offender DNA identification system.

**Applicability.** — Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**The 2003 (1st S.S.) amendment,** effective February 3, 2004, deleted "county" preceding "sheriff" near the end of the last sentence of Subsection B, inserted "second or" in Paragraph (2) and deleted "Subsection A, B or C of" preceding "Section" in Paragraph (3) of Subsection D, and inserted "second" in Paragraph (6) of Subsection E.

**The 2000 amendment,** effective July 1, 2000, inserted "initial" and "and any new registration information subsequently obtained from a sex offender" in the second sentence and added the last sentence in Subsection B; added the last sentence in Subsection C, added a new Subsection D(4) and redesignated former Subsection D(4) as present Subsection D(5); added a new Subsection E(5) and redesignated former Subsections E(5) and E(6) as present Subsections E(6) and E(7).

**The 1999 amendment,** effective July 1, 1999, in the section heading substituted "participation in the national sex offender registry" for "exchange of registration information with other states" and deleted "and regulations" following "rules"; inserted "and Notification" in Subsections A, C and F; substituted the language following "The department" through the end for "may enter into interstate compact agreements providing for the exchange of information regarding sex offenders, provided that the other state does not permit dissemination of information regarding sex offenders to any persons or entities other than law enforcement agencies" in the last sentence of Subsection C; added Paragraphs D(4), E(5) and E(6); and deleted "and regulations" following "rules" in Subsection F.

**Application of multiple amendments of definition of "sex offense".** — Where in 2012, defendant pled guilty to the charge of solicitation of a child by electronic communication device; in 2007, the legislature enacted two acts amending Sections 29-11A-3 and 29-11A-5 NMSA 1978 which were signed on the same day by the governor; Laws 2007, ch. 68 created the new criminal offense of child solicitation by electronic communication device; Laws 2007, ch. 69 created the new crime of aggravated criminal sexual penetration; in 2012, Section 12-1-8 NMSA 1978provided that if, in the same legislative session, the legislature enacted two or more acts amending the same section of the New Mexico Statutes Annotated, then the last act signed by the governor is presumed to be the law and shall be compiled into the NMSA; and Laws 2007, ch. 69 was compiled into the NMSA, child solicitation by electronic communication device was not a SORNA-covered crime in 2012 when defendant pled guilty and defendant was not subject to SORNA. *State v. Ho*, 2014-NMCA-038, cert. granted, 2014-NMCERT-003.

## 29-11A-5.1. Public access to information regarding certain registered sex offenders; active community notification; internet web site.

A. If a sex offender is convicted of one of the following sex offenses, the county sheriff shall forward registration information obtained from the sex offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:

(1) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;

(2) criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; or

(5) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

B. A person who wants to obtain registration information regarding sex offenders described in Subsection A of this section may request that information from the:

(1) sheriff for the county in which the sex offenders reside;

(2) chief law enforcement officer for the municipality in which the sex offenders reside;

(3) district attorney for the judicial district in which the sex offenders reside; or

(4) secretary of public safety.

C. Upon receiving a request for registration information regarding sex offenders described in Subsection A of this section, the county sheriff, chief municipal law enforcement officer, district attorney or secretary of public safety shall provide that registration information, with the exception of a sex offender's social security number and DNA information, within a reasonable period of time, and no later than seven days after receiving the request.

D. Within seven days of receiving registration information from a sex offender described in Subsection A of this section, the county sheriff shall contact every licensed daycare center, elementary school, middle school and high school within a one-mile radius of the sex offender's residence and provide them with the sex offender's registration information, with the exception of the sex offender's social security number and DNA information.

E. The department shall establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section, except that the department shall not provide registration information on the internet web site regarding a sex offender who was less than eighteen years of age when the sex offender committed the sex offense for which the sex offender was convicted as a youthful offender, as provided in Section 32A-2-3 NMSA 1978, unless at the time of sentencing, the court made a finding that the sex offender is not amenable to treatment and is a danger to the community. The registration information provided to the

public pursuant to this subsection shall not include a sex offender's social security number or DNA information or the identity of a sex offender's place of employment, unless the sex offender's employment requires the sex offender to have direct contact with children. The internet web site shall provide only the following registration information:

(1) the sex offender's legal name and any other names or aliases that the sex offender is using or has used;

(2) the sex offender's current address and the address of every place where the sex offender habitually lives;

(3) if the sex offender's employment involves direct contact with children, the sex offender's place of employment;

(4) the sex offenses for which the sex offender has been convicted;

(5) a photograph of the sex offender;

(6) the sex offender's date of birth;

(7) a physical description, including a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and

(8) a link that will pinpoint the location of the sex offender's place of employment if the sex offender has direct contact with children.

**History:** Laws 1999, ch. 19, § 8; 2000, ch. 8, § 4; 2003 (1st S.S.), ch. 1, § 12; 2005, ch. 279, § 5; 2007, ch. 69, § 7; 2013, ch. 152, § 3.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, provided for the availability of information on the sex offender internet web site; in Subsection E, in the introductory paragraph, in the second sentence, after "DNA information or", added "the identity", added the third introductory sentence; and added Paragraphs (1) through (8) of Subsection E.

**Applicability.** — Laws 2013, ch. 152, § 5 provided that the provisions of the amendments to the Sex Offender Registration and Notification Act enacted by Laws 2013, ch. 152 are applicable to a person who, on or after July 1, 2013, is found guilty of committing a sex offense.

**The 2007 amendment,** effective July 1, 2007, amended Subsection A to add a request that the sheriff forward registration information regarding a sex offender convicted of aggravated criminal sexual penetration to district attorneys and municipalities.

**The 2005 amendment,** effective July 1, 2005, adds criminal sexual penetration in the third degree in Subsection A(1); provides in Subsection C that DNA information shall not be disclosed to a person requesting registration information; provides in Subsection D that DNA information shall not be disclosed to daycare centers or schools; provides in Subsection E that the department shall establish a web site and that the department shall not provide information on the web site regarding a sex offender who was less than eighteen years of age when he committed the sex offense unless the sentencing court found that the sex offender is not amenable to treatment and is a danger to the community or regarding DNA information.

**The 2003 (1st S.S.) amendment,** effective February 3, 2004, deleted “Subsection A, B or C of” preceding “Section” in Paragraph (3) of Subsection A and “county” preceding “sheriff” in Paragraph (1) of Subsection B.

**The 2000 amendment,** effective July 1, 2000, inserted "active community notification; internet web site" in the section heading, rewrote Subsection C, which formerly read "All requests for registration information regarding a sex offender described in Subsection A of this section are subject to the provisions of the Inspection of Public Records Act", and added Subsections D and E.

**Applicability.** — Laws 1999, ch. 19, § 11 makes the provisions §§ 1 to 9 of the act applicable to persons convicted of a sex offense committed on or after July 1, 1999. As to persons convicted of a sex offense committed prior to July 1, 1999, the laws with respect to registration requirements for sex offenders in effect at the time the sex offense was committed shall apply.

Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction, and application of state statutes authorizing community notification of release of convicted sex offender, 78 A.L.R.5th 489.

## 29-11A-6. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1999, ch. 19, § 9 repealed 29-11A-6 NMSA 1978, as enacted by Laws 1995, ch. 106, § 6, relating to restrictions on the dissemination of information regarding sex offenders. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 29-11A-5.1 NMSA 1978.

## 29-11A-7. Notice to sex offenders of duty to register.

A. A court shall provide a sex offender convicted in that court with written notice of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The written notice shall be included in judgment and sentence forms provided to the sex offender. The written notice shall inform the sex offender that he is required to:

(1) register with the county sheriff for the county in which the sex offender will reside or, if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;

(2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;

(3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;

(4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;

(5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;

(6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and

(9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible court official, designated by the chief judge for that judicial district, has explained the written notice to the sex offender.

B. The corrections department, a municipal or county jail or a detention center at the time of release of a sex offender in its custody, shall provide a written notice to the sex offender of his duty to register, pursuant to the provisions of the Sex Offender Registration and Notification Act. The written notice shall inform the sex offender that he is required to:

(1) register with the county sheriff for the county in which the sex offender will reside or, if the sex offender will not have an established residence, with the county sheriff for each county in which the sex offender will live or be temporarily located pursuant to the provisions of the Sex Offender Registration and Notification Act;

(2) report subsequent changes of address pursuant to the provisions of the Sex Offender Registration and Notification Act;

(3) notify the county sheriff of the county he resides in if the sex offender intends to move to another state and that the sex offender is required to register in the other state pursuant to the provisions of the Sex Offender Registration and Notification Act;

(4) disclose his status as a sex offender in writing when he begins employment, begins a vocation or enrolls as a student at an institution of higher education in New Mexico to the county sheriff for the county in which the institution of higher education is located and to the law enforcement entity and registrar for the institution of higher education pursuant to the provisions of the Sex Offender Registration and Notification Act;

(5) provide written notice of any change regarding his employment, vocation or enrollment status at an institution of higher education to the county sheriff, the law enforcement entity and the registrar pursuant to the provisions of the Sex Offender Registration and Notification Act;

(6) disclose his status as a sex offender in writing when he enrolls as a student at a private or public school in New Mexico, to the county sheriff for the county in which the school is located and to the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(7) provide written notice of any change regarding his enrollment status at a public or private school in New Mexico to the county sheriff and the principal of the school pursuant to the provisions of the Sex Offender Registration and Notification Act;

(8) disclose his status as a sex offender in writing to his employer, supervisor or other person similarly situated, when he begins employment, begins a vocation or

volunteers his services, regardless of whether the sex offender receives payment or other compensation, pursuant to the provisions of the Sex Offender Registration and Notification Act; and

(9) read and sign a form that indicates that the sex offender has received the written notice and that a responsible corrections department official, designated by the secretary of corrections, or a responsible municipal or county jail official or detention center official has explained the written notice to the sex offender.

C. A court, the corrections department, a municipal or county jail or a detention center shall also provide written notification regarding a sex offender's release to the sheriff of the county in which the sex offender is released and to the department of public safety.

D. The department of public safety, at the time it is notified by officials from another state that a sex offender will be establishing residence in New Mexico, shall provide written notice to the sex offender of his duty to register pursuant to the provisions of the Sex Offender Registration and Notification Act.

**History:** Laws 1995, ch. 106, § 7; 1999, ch. 19, § 6; 2000, ch. 8, § 5; 2005, ch. 279, § 6.

## ANNOTATIONS

**The 2005 amendment,** effective July 1, 2005, provided in Subsection A(1) that the notice shall inform the sex offender that if he does not have an established address, he shall register with the sheriff of each county in which he will live or be temporarily located; added Subsections A(4) through (8) to provide that the notice shall inform the sex offender that he is required to disclose his status when he begins employment or a vocation or enrolls in an institution of higher education, provide notice of any changes in his employment, vocation or enrollment status, disclose his status as a sex offender when he enrolls at a private or public school; provide notice of any changes in his enrollment at a public or private school; disclose his status as a sex offender when he begins employment, a vocation or volunteers his services; provided in Subsection B that a municipal or county jail or detention center at the time of release of a sex offender shall provide notice to the sex offender of this duty to register; provided in Subsection B(1) that the notice shall inform the sex offender that if he will not have an established residence, he must register with the sheriff of each county in which he will live or be temporarily located; added Subsections B(4) through (8) to provide that the notice shall inform the sex offender that he is required to disclose his status when he begins employment or a vocation or enrolls in an institution of higher education, provide notice of any changes in his employment, vocation or enrollment status, disclose his status as a sex offender when he enrolls at a private or public school; provide notice of any changes in his enrollment at a public or private school; disclose his status as a sex offender when he begins employment, a vocation or volunteers his services; provided in Subsection B(9) that the sex offender shall sign a form that he has received the notice and that a responsible municipal or county jail official or detention center official has

explained the notice to him; and provided in Subsection C that a municipal or county jail or a detention center shall provide notification to the sheriff of the county in which the sex offender is released and to the department.

**Applicability.** — Laws 2005, ch. 279, § 14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**The 2000 amendment,** effective July 1, 2000, rewrote Subsections A and B, adding Paragraphs (1) to (4); designated the former last sentence in Subsection B as present Subsection C and redesignated former Subsection C as present Subsection D, in present Subsection C, added "and to the department of public safety" at the end; and, in Subsection D, substituted "notice" for "notification".

**Applicability.** — Laws 2000, ch. 8, § 9 made the provisions of this 2000 version of the Sex Offender Registration and Notification Act applicable to persons convicted of a sex offense on or after July 1, 1995 and to persons convicted of a sex offense prior to July 1, 1995 and who, on July 1, 1995, were incarcerated, on probation or on parole.

**The 1999 amendment,** effective July 1, 1999, inserted "and Notification" in Subsections A, B, and C, and substituted "convicted" for "adjudicated guilty" in Subsection A.

**Conditional discharge.** — Notice requiring defendant to register as a sex offender pursuant to this section did not need to be placed in a conditional discharge order. *State v. Herbstman*, 1999-NMCA-014, 126 N.M. 683, 974 P.2d 177.

**Jurisdiction of district court.** — Under its broad grant of jurisdiction and under the Sex Offender Registration and Notification Act, Chapter 29, Article 11A NMSA 1978, a district court has jurisdiction to determine whether a defendant is a sex offender and to give the defendant written notice of the registration requirements under this section; however, the court is not authorized to order defendant to comply with the registration requirement, that is a statutorily mandated duty under Section 29-11A-4 NMSA 1978. *State v. Brothers*, 2002-NMCA-110, 133 N.M. 36, 59 P.3d 1268, cert. denied, 133 N.M. 30, 59 P.3d 1262.

**Failure to advise a defendant of collateral sex offender registration requirements is per se deficient performance.** — A defense attorney’s failure to advise a defendant entering into a plea which requires Sex Offender Registration and Notification Act registration of that consequence is per se deficient performance under the first prong of the Strickland test. *State v. Trammell*, 2016-NMSC-030, *rev’g* 2014-NMCA-107, 336 P.3d 977.

Where defendant, who stole a truck, unaware that there was a twelve-year-old boy in the back seat, pleaded guilty to false imprisonment of a minor, which at the time was a

sex offense requiring registration under the Sex Offender Registration and Notification Act (SORNA), and where, prior to defendant's plea, defense counsel failed to advise defendant of the SORNA registration consequences of his guilty plea, defendant's attorney's performance was per se deficient, because the failure to advise a defendant of collateral SORNA registration requirements has been a well-established prerequisite to the effective assistance of counsel when arranging a plea agreement, but defendant's claim of ineffective assistance of counsel failed, because defendant failed to establish a reasonable probability that, but for defense counsel's unprofessional errors, he would not have pleaded guilty and instead gone to trial, based on defendant's testimony that had he been advised that he was pleading to a sex offense, he would have tried to negotiate a different plea agreement, the fact that defendant received some benefits by accepting the plea, and that the state had a strong case against defendant. *State v. Trammell*, 2016-NMSC-030, *rev'g* 2014-NMCA-107, 336 P.3d 977.

## 29-11A-8. Immunity.

Nothing in the Sex Offender Registration and Notification Act creates a cause of action on behalf of a person against a public employer, public employee or public agency responsible for enforcement of the provisions of that act, so long as the public employer, public employee or public agency complies with the provisions of that act.

**History:** Laws 1995, ch. 106, § 8; 1999, ch. 19, § 7.

**ANNOTATIONS**

**The 1999 amendment,** effective July 1, 1999, inserted "and Notification".

**Severability.** — Laws 1995, ch. 106, § 9 provided for the severability of the act if any part or application thereof is held invalid.

## 29-11A-9. State preemption; saving clause.

A. The state preempts the field of sex offender registration and notification. Cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or continuing in effect any ordinance, rule, regulation, resolution or statute on sex offender registration and notification and from imposing any other restrictions on sex offenders that are not included in the Sex Offender Registration and Notification Act. The department, cities, counties, home rule municipalities and other political subdivisions of the state shall not require a sex offender to report or to register more frequently or to provide information not required by the Sex Offender Registration and Notification Act.

B. After January 18, 2005, cities, counties, home rule municipalities and other political subdivisions of the state are prohibited from adopting or amending an ordinance, rule, regulation or resolution on sex offender registration and notification. An ordinance in effect on January 18, 2005 shall continue in force and effect until repealed;

provided that the ordinance shall only continue in force and effect with regard to sex offenders who are required to register pursuant to the provisions of the ordinance but who are not required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. All other sex offenders shall register pursuant to the provisions of the Sex Offender Registration and Notification Act.

**History:** Laws 2005, ch. 279, § 7; 2013, ch. 152, § 4.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, reiterated state preemption of the field of sex offender registration; prohibited law enforcement from requiring additional registration or from imposing other restrictions; in Subsection A, in the second sentence, after "registration and notification", added the remainder of the sentence and added the second sentence.

**Applicability.** — Laws 2013, ch. 152, § 5 provided that the provisions of the amendments to the Sex Offender Registration and Notification Act enacted by Laws 2013, ch. 152 are applicable to a person who, on or after July 1, 2013, is found guilty of committing a sex offense.

Laws 2005, ch. 279, § 14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**More restrictive city ordinance not preempted.** — The Albuquerque Sex Offender Registration and Notification Act ordinance did not conflict with state law even though the ordinance was more restrictive than state law because the ordinance required a broader class of sex offenders to register than did state law, sex offenders who are required to register under state law are not required to register under the ordinance, and the ordinance required sex offenders to provide more detailed information than did state law. *ACLU v. City of Albuquerque*, 2006-NMCA-078, 139 N.M. 761, 137 P.3d 1215.

## 29-11A-10. Severability.

If any part or application of the Sex Offender Registration and Notification Act is held invalid, the remainder of that act and its application to other situations or persons shall not be affected.

**History:** Laws 2005, ch. 279, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2005, ch. 279, § 15 made the act effective July 1, 2005.

**Applicability.** — Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

# ARTICLE 12
# Crime Stoppers Commission (Repealed.)

## 29-12-1 to 29-12-4. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 17, § 1 repealed 29-12-1 to 29-12-4 NMSA 1978, as enacted by Laws 1979, ch. 142, § 1, and amended by Laws 1987, ch. 139, § 1, creating the crime stoppers commission, effective July 1, 2000. For provisions of former sections, *see* the 1989 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* 29-12A-1 NMSA 1978.

# ARTICLE 12A
# Crime Stoppers

## 29-12A-1. Short title.

This act [29-12A-1 to 29-12A-6 NMSA 1978] may be cited as the "Crime Stoppers Act".

**History:** Laws 2003, ch. 249, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 29-12A-2. Advisory council; composition; vacancies; payment.

A. The "crime stoppers advisory council" is created. The council shall consist of five members from local crime stoppers programs, four of whom shall be from the four quadrants of the state and one from Albuquerque. All members of the council shall be appointed by the governor for two-year terms.

B. A vacancy on the council shall be filled by gubernatorial appointment for the remainder of the unexpired term. A vacancy on the council shall not impair the right of the remaining members to exercise all the powers and duties of the council.

C. Members of the council shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation or allowance.

**History:** Laws 2003, ch. 249, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 29-12A-3. Powers and duties of advisory council.

A. The powers and duties of the crime stoppers advisory council are to:

(1) advise and assist in the creation and maintenance of local crime stoppers programs;

(2) certify local crime stoppers programs for the purposes of confidentiality of records, privileges and immunities set forth in the Crime Stoppers Act;

(3) encourage the media to promote the functions of local crime stoppers programs; and

(4) facilitate training for local crime stoppers programs.

B. The council shall not take part in the receipt of reports or tips regarding criminal activity.

**History:** Laws 2003, ch. 249, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 29-12A-4. Confidentiality of records.

A. Evidence of a communication between a person submitting a report to a local crime stoppers program and the person accepting the report on behalf of the program is

not admissible in a court or an administrative proceeding, except as provided in Subsection B of this section.

B. Records and reports of a local crime stoppers program are confidential and shall not be produced before a court or other tribunal, except on a motion by:

(1) a criminal defendant claiming that a record or report contains specific evidence that is exculpatory to the defendant on trial for that offense; or

(2) a person in civil court who has been exonerated of a criminal charge that was filed as a result of a report to a local crime stoppers program, and denial of access to a record or report would leave the person without the ability to offer prima facie proof that a legal injury was suffered through the wrongful acts of another.

C. Upon motion made pursuant to Subsection B of this section, a court may subpoena a record or report, but shall conduct an in camera inspection of the materials produced to determine whether there is evidence as alleged to warrant disclosure pursuant to Subsection B of this section. If the court finds such evidence, the court shall determine how much of the evidence to disclose and whether the identity of the person who submitted the report to the local crime stoppers program must be disclosed.

D. The court shall protect the identity of a person who submits a report to a local crime stoppers program as it would protect the identity of a confidential police informer.

E. A local crime stoppers program shall be certified by the crime stoppers advisory council before it can claim confidentiality under this section.

**History:** Laws 2003, ch. 249, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 29-12A-5. Confidentiality; penalty.

A. It is unlawful for any member, officer or employee of a local crime stoppers program to reveal to an individual, other than the proper law enforcement agencies:

(1) information gained through the program relating to criminal activity; or

(2) the contents of records and reports that are confidential.

B. A person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

**History:** Laws 2003, ch. 249, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

## 29-12A-6. Immunity from liability.

A person who in good faith communicates a report of criminal activity to a crime stoppers program or who in good faith receives, forwards or acts upon such a report is immune from civil liability for any act or omission resulting in the arrest, filing of criminal charges or trial of a person who is later exonerated or acquitted of a criminal charge.

**History:** Laws 2003, ch. 249, § 6.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 249 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

# ARTICLE 13
# Law Enforcement Protection Fund

## 29-13-1. Short title.

Chapter 29, Article 13 NMSA 1978 may be cited as the "Law Enforcement Protection Fund Act".

**History:** Laws 1983, ch. 289, § 1; 1993, ch. 179, § 2.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 29, Article 13 NMSA 1978" for "The provisions of Sections 1 through 9 of this act".

## 29-13-2. Purpose of act.

The purpose of the Law Enforcement Protection Fund Act is to provide for the equitable distribution of money to state police, municipal police, university police, tribal police, county sheriff's and school district police departments for use in the maintenance and improvement of those departments in order to enhance the efficiency and effectiveness of law enforcement services and to sustain at a reasonable level the

payments available to the surviving eligible family members of a peace officer killed in the line of duty.

**History:** Laws 1983, ch. 289, § 2; 1993, ch. 179, § 3; 1998, ch. 83, § 1; 2002, ch. 78, § 4; 2020, ch. 67, § 2.

**ANNOTATIONS**

**The 2020 amendment,** effective July 1, 2022, added state police and school district police to the departments that receive distributions from the law enforcement protection fund; and after "distribution of money to", added "state police" and after "county sheriff's", added "and school district police".

**The 2002 amendment,** effective May 15, 2002, inserted "and to sustain at a reasonable level the payments available to the surviving eligible family members of a peace officer killed in the line of duty" at the end of the section.

**The 1998 amendment,** effective March 9, 1998, substituted "police, university police" for "and" near the middle of the section.

**The 1993 amendment,** effective June 18, 1993, substituted "money" for "funds" and substituted "tribal police and county sheriff's departments" for "county police and sheriff departments".

## 29-13-2.1. Definitions.

As used in the Law Enforcement Protection Fund Act:

A. "academy" means the New Mexico law enforcement academy;

B. "division" means the local government division of the department of finance and administration;

C. "fund" means the law enforcement protection fund;

D. "governmental entity" means the academy, the department of public safety, a municipality, a county, a university, a tribe or a school district;

E. "school district police department" means a department of commissioned law enforcement officers who are charged with preventing, investigating and solving crimes on school district property;

F. "tribal police department" means the police department of a tribe that has entered into an agreement with the department of public safety pursuant to Section 29-1-11 NMSA 1978;

G. "tribe" means an Indian nation, tribe or pueblo located wholly or partly in New Mexico; and

H. "university" means a four-year post-secondary educational institution listed in Article 12, Section 11 of the constitution of New Mexico.

**History:** 1978 Comp., § 29-13-2.1, enacted by Laws 1993, ch. 179, § 4; 1998, ch. 83, § 2; 2002, ch. 92, § 2; 2017, ch. 35, § 2; 2020, ch. 67, § 3.

**ANNOTATIONS**

**The 2020 amendment,** effective July 1, 2022, revised the definition of "governmental entity" and defined "school district police department" as used in the Law Enforcement Protection Fund Act; in Subsection D, after "academy", added "the department of public safety", after "municipality", added "a county, a", and after "tribe or a", deleted "county" and added "school district"; and added a new Subsection E and redesignated the succeeding subsections accordingly.

**The 2017 amendment,** effective July 1, 2017, defined "academy" for purposes of the Law Enforcement Protection Fund Act; added a new Subsection A and redesignated the succeeding subsections accordingly; and in Subsection D, after "means", added "the academy".

**The 2002 amendment,** effective May 15, 2002, added Subsection E and redesignated former Subsection E as Subsection F.

**The 1998 amendment,** effective March 9, 1998, in Subsection C, inserted "university" near the middle and made a minor stylistic change, and added Subsection E.

## 29-13-3. Distribution of certain insurance collections; law enforcement protection fund created.

There is created in the state treasury the "law enforcement protection fund". Ten percent of all money received for fees, licenses and penalties from life, health, general casualty and title insurance business pursuant to the New Mexico Insurance Code [59A-1-1 NMSA 1978] shall be paid monthly to the state treasurer and credited to the fund. On or before June 30 of each year, the state treasurer shall transfer to the law enforcement retention fund any balance in the law enforcement protection fund in excess of one hundred thousand dollars ($100,000) that is not obligated for expenses in that current fiscal year.

**History:** Laws 1983, ch. 289, § 3; 1985, ch. 29, § 1; 1988, ch. 96, § 1; 1993, ch. 179, § 5; 2003, ch. 202, § 1; 2004, ch. 122, § 1; 2017, ch. 1, § 1; 2018, ch. 57, § 12; 2022, ch. 56, § 20; 2023, ch. 182, § 2.

**ANNOTATIONS**

**Cross references.** — For the general fund, *see* 6-4-2 NMSA 1978.

**The 2023 amendment,** effective July 1, 2023, included a portion of money for fees from health insurance business to be credited to the law enforcement protection fund; and after "penalties from life", added "health".

**The 2022 amendment,** effective July 1, 2023, redirected transfers from the law enforcement protection fund from the general fund to the law enforcement retention fund; and after "shall transfer to the", deleted "general fund" and added "law enforcement retention fund".

**The 2018 amendment,** effective January 1, 2020, removed the exception for the health insurance premium surtax from paying into the law enforcement protection fund; and after "New Mexico Insurance Code", deleted "except for money received from the health insurance premium surtax, imposed by Subsection C of Section 59A-6-2 NMSA 1978".

**Temporary provisions.** — Laws 2018, ch. 57, § 30 provided that:

A. On January 1, 2020, all personnel directly involved with the audit and collection of the taxes imposed pursuant to the New Mexico Insurance Code prior to the effective date of this act, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the financial audit bureau of the office of superintendent of insurance shall be transferred to the taxation and revenue department.

B. On January 1, 2020, no contractual obligations of the office of superintendent of insurance shall be binding on the taxation and revenue department.

**The 2017 amendment,** effective June 16, 2017, modified the formula for the amount of funds that the state treasurer is required to transfer to the general fund from any balances in the law enforcement protection fund at the end each fiscal year; after "($100,000) that is not obligated", deleted "and that is in excess of the amount certified by the division to be distributed from that fund" and added "for expenses in that current fiscal year".

**The 2004 amendment,** effective July 1, 2004, amended this section to change "department" to “division" in the catchline and to insert after "New Mexico Insurance Code" "except for money received from the health insurance premium surtax imposed by Subsection C of Section 59A-6-2 NMSA 1978".

**The 2003 amendment,** effective June 20, 2003, substituted "monthly" for "daily" preceding "to the state treasurer".

**The 1993 amendment,** effective June 18, 1993, deleted "law enforcement protection" preceding "fund" near the end of the second sentence and rewrote the last sentence.

## 29-13-4. Determination of needs and rate of distribution.

A. Annually on or before April 15, the division shall consider and determine the relative needs as requested by tribal, municipal, school district and university police departments, county sheriff's departments, the department of public safety and the academy for money in the fund in the succeeding fiscal year pursuant to the provisions of Subsections C and E of this section.

B. As necessary during the year, the division shall transfer an amount from the fund to the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund that enables the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund to be maintained at a minimum balance of three hundred fifty thousand dollars ($350,000) through fiscal year 2023 and one million dollars ($1,000,000) thereafter.

C. The division shall determine the rate of distribution of money in the fund as follows:

(1) all municipal police, school district police and county sheriff's departments shall be entitled to a rate of distribution of forty-five thousand dollars ($45,000) through fiscal year 2023 and ninety-five thousand dollars ($95,000) thereafter;

(2) university police departments shall be entitled to a rate of distribution of forty-five thousand dollars ($45,000) through fiscal year 2023 and ninety-five thousand dollars ($95,000) thereafter;

(3) the academy shall be entitled to a rate of distribution of twenty-four thousand five hundred dollars ($24,500) to carry out the purposes of Section 29-7-7.7 NMSA 1978 and to a rate of distribution of two hundred thousand dollars ($200,000) to carry out the purposes of the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978];

(4) tribal police departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to one thousand dollars ($1,000) through fiscal year 2023 and one thousand five hundred dollars ($1,500) thereafter for each commissioned peace officer in the tribe. To be counted as a commissioned peace officer for the purposes of this paragraph, a commissioned peace officer shall have been assigned to duty and have worked in New Mexico for no fewer than two hundred days in the calendar year immediately prior to the date of payment. Payments shall be made for only those divisions of the tribal police departments that perform services in New Mexico. A tribal police department shall not be eligible for any disbursement under the fund if commissioned peace officers cite non-Indians into the tribal court for civil or criminal citations;

(5) municipal, school district and university police and county sheriff's departments shall be entitled, unless allocations are adjusted pursuant to the provisions

of Subsection D of this section, to one thousand dollars ($1,000) through fiscal year 2023 and one thousand five hundred dollars ($1,500) thereafter for each police officer or sheriff's deputy employed full time by that department who has been certified by the law enforcement certification board as a police officer or has been authorized to act as a New Mexico peace officer pursuant to the provisions of Section 29-1-11 NMSA 1978; and

(6) municipal police, sheriff's and school district police departments that assign officers as school resource officers shall be entitled to one thousand dollars ($1,000) through fiscal year 2023 and one thousand five hundred dollars ($1,500) thereafter for each assigned school resource officer's training pursuant to Section 29-7-14 NMSA 1978.

D. After distributions are determined in accordance with Subsection A, Subsection B and Paragraphs (1), (2), (3) and (6) of Subsection C of this section, if the balance in the fund is insufficient to permit the total allocations provided by Paragraphs (4) and (5) of Subsection C of this section, the division shall reduce that allocation to the maximum amount permitted by available money.

E. After all distributions have been made in accordance with Subsections A through D of this section, and if the balance in the fund is sufficient, the department of public safety shall be entitled to a rate of distribution of not more than two million dollars ($2,000,000).

F. The division shall confirm, before making any distribution under this section, that the beneficiary is in compliance with all of the beneficiary's statutory reporting requirements, including those described in Subsection C of Section 29-3-11 NMSA 1978, Subsection B of Section 29-7-7.1 NMSA 1978 and Sections 29-7-7.2, 29-7C-7 and 29-7C-8 NMSA 1978.

**History:** 1978 Comp., § 29-13-4, enacted by Laws 1993, ch. 179, § 6; 1998, ch. 83, § 3; 2000, ch. 59, § 1; 2002, ch. 78, § 5; 2002, ch. 92, § 3; 2017, ch. 1, § 2; 2017, ch. 35, § 3; 2020, ch. 67, § 4; 2022, ch. 56, § 21.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1993, ch. 179, § 6 repealed former 29-13-4 NMSA 1978, as amended by Laws 1988, ch. 96, § 2, and enacted a new section, effective June 18, 1993.

**The 2022 amendment,** effective July 1, 2022, increased the amount of distributions from the law enforcement protection fund, and increased the distribution from the law enforcement protection fund by two hundred thousand dollars for the New Mexico law enforcement academy to implement the provisions of the Law Enforcement Training Act; in Subsection B, after "three hundred fifty thousand dollars ($350,000)", added "through fiscal year 2023 and one million dollars ($1,000,000) thereafter"; in Subsection

C, Paragraphs C(1) and C(2), after "forty-five thousand dollars ($45,000)", added "through fiscal year 2023 and ninety-five thousand dollars ($95,000) thereafter", in Paragraph C(3), added "and to a rate of distribution of two hundred thousand dollars ($200,000) to carry out the purposes of the Law Enforcement Training Act", in Paragraphs C(4), C(5) and C(6), after "one thousand dollars ($1,000)", added "through fiscal year 2023 and one thousand five hundred dollars ($1,500) thereafter", and after "has been certified by the", deleted "academy, or by a regional law enforcement training facility in the state certified by the director of the academy" and added "law enforcement certification board", in Paragraph C(6), after "pursuant to Section", deleted "1 of this 2020 act" and added "29-7-14 NMSA 1978"; and added Subsection F.

**The 2020 amendment,** effective July 1, 2022, increased the amounts distributed from the law enforcement protection fund, and provided for distributions from the fund to the department of public safety and school districts; in Subsection A, after "municipal", added "school district", after "university police", added "departments", after "sheriff's departments", added "the department of public safety", after "the provisions of", deleted "Subsection" and added "Subsections", and after "C", added "and E"; in Subsection C, Paragraph C(1), after "municipal police", added "school district police", and after "departments shall be", deleted the remainder of the paragraph and added "entitled to a rate of distribution of forty-five thousand dollars ($45,000)", in Paragraph C(2), after "rate of distribution of", deleted "seventeen thousand dollars ($17,000)" and added "forty-five thousand dollars ($45,000)", in Paragraph C(3), changed "Section 1 of this 2017 act" to "29-7-7.7 NMSA 1978", in Paragraph C(4), after "Subsection D of this section, to", deleted "six hundred dollars ($600)" and added "one thousand dollars ($1,000)", in Paragraph C(5), after "municipal", added "school district", after "Subsection D of this section, to", deleted "six hundred dollars ($600)" and added "one thousand dollars ($1,000)", and added Paragraph C(6); in Subsection D, after "Paragraphs (1), (2), (3)", added "and (6)"; and added Subsection E.

**2017 Amendments.** — Laws 2017, ch. 35, § 3, effective July 1, 2017, included the New Mexico law enforcement academy for distribution of funds from the law enforcement protection fund, made a twenty-four thousand five hundred dollar ($24,500) distribution from the law enforcement protection fund to the New Mexico law enforcement academy to carry out the purposes of tourniquet and trauma kit training, and made technical changes; in Subsection A, after "county sheriff's departments", added "and the academy"; in Subsection B, after "transfer an amount from the", deleted "law enforcement protection", after the next occurrence of "fund", added "to the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund", and added "New Mexico mounted patrol members' and reserve police officers'"; in Subsection C, in the introductory clause, after "remaining in the fund", deleted "to each tribal, municipal and university police and county sheriff's department", added a new Paragraph C(3) and redesignated former Paragraph C(3) as Paragraph C(4), in Paragraph C(4), after "Subsection", changed "C" to "D", and in the fourth sentence, deleted "No" and added "A", and after "shall", added "not", and in Paragraph C(5), after "certified by the", deleted "New Mexico law enforcement", and added "or by a regional law enforcement training facility in the state certified by the director of the academy";

and in Subsection D, after "Paragraphs (1)", deleted "and", after "(2)", added "and (3)", after the next occurrence of "Paragraphs", deleted "(3)" and added "(4)", and after the next occurrence of "and", deleted "(4)" and added "(5)".

Laws 2017, ch. 1, § 2, effective June 16, 2017, in Subsection A, after "money in the fund", added "in the succeeding fiscal year"; in Subsection B, added "to the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund", and after "balance of the", deleted "peace officers' survivors" and added "latter"; and in Subsection C, in the introductory clause, after "distribution of money", deleted "remaining", in Paragraph C(3), after "Subsection", changed "C" to "D", in the fourth sentence, deleted "No" and added "A", and after "shall", added "not", and in Paragraph C(4), after "employed full time", deleted "by his department".

**2002 Amendments.** — Laws 2002, ch. 92, § 3, effective May 15, 2002, deleted Subsection A(2), relating to the calculation of considerations due to tribal police department under former Subsection C(10) of Section 29-1-11 NMSA 1978; and in Subsection B, added Paragraph (3) and redesignated former Paragraph (3) as Paragraph (4).

Laws 2002, ch. 78, § 5, effective May 15, 2002, added a new Subsection B and relettered the succeeding subsections accordingly.

**The 2000 amendment,** effective May 17, 2000, in Subsection B(1), changed the Class 1 funding amount from $17,000 to $20,000 and, in Subsection B(3), changed the amount for each officer or deputy from $300 to $600.

**The 1998 amendment,** effective March 9, 1998, inserted "and university" throughout the section; made a minor stylistic change in the table in Paragraph B(1); added Paragraph B(2), redesignated former Paragraph B(2) as Paragraph B(3); substituted "as a police officer" for "pursuant to the provisions of Section 29-7-8 NMSA 1978" near the end of Paragraph B(3); and, in Subsection C, substituted "Paragraphs (1) and (2)" for "Paragraph (1)" and "(3)" for "(2)", respectively.

## 29-13-5. Determination of needs; review.

No later than May 1 of each year, the division shall notify in writing each affected municipal police, school district police, university police, tribal police and county sheriff's department, the department of public safety and the academy of its determination of money to be distributed pursuant to the provisions of Section 29-13-4 NMSA 1978. Any affected governmental entity may appeal that determination by filing a notice of appeal with the secretary of finance and administration no later than May 15. If an appeal is filed, the secretary of finance and administration shall review the determination of the division in an informal and summary proceeding and shall certify the result of the appeal to the division no later than June 30, and the division shall adjust its determination accordingly. If no appeal is filed, the original determination of the division shall be final and binding and not subject to further review.

**History:** Laws 1983, ch. 289, § 5; 1988, ch. 96, § 3; 1993, ch. 179, § 7; 1998, ch. 83, § 4; 2017, ch. 35, § 4; 2020, ch. 67, § 5.

**ANNOTATIONS**

**The 2020 amendment,** effective July 1, 2022, added the department of public safety and affected school district police departments to the list of law enforcement departments required to receive notice in writing from the division of the amount of money they will receive from the law enforcement protection fund; and after "municipal police", added "school district police", and after "sheriff's department", added "the department of public safety".

**The 2017 amendment,** effective July 1, 2017, included the New Mexico law enforcement academy in the determination of needs from the law enforcement protection fund; after "county sheriff's department", added "and the academy", and after "Any affected", deleted "department" and added "governmental entity".

**The 1998 amendment,** effective March 9, 1998, substituted "police, university police" for "and" near the beginning of the section.

**The 1993 amendment,** effective June 18, 1993, throughout the section, substituted "division" for "local government division of the department of finance and administration" and "local government division"; substituted "tribal police and county sheriff's department" for "county police and sheriff department" and substituted "money" for "funds" in the first sentence; and substituted "filed" for "lodged" in the third and fourth sentences.

## 29-13-6. Distribution of law enforcement protection fund.

A. Based on a periodic allotment approved by the division for the current fiscal year, the state treasurer shall distribute from the fund the amounts certified by the division to be distributed to governmental entities and the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund as required in Section 29-13-4 NMSA 1978. Payments shall be made by the treasurer to the appropriate governmental entity or fund unless otherwise specified in Subsection C of this section.

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in an amount certified by the division, pursuant to an ordinance or a resolution passed by the municipality or county and a written agreement of the municipality or county and the New Mexico finance authority.

C. Based on a periodic allotment approved by the division for the current fiscal year, the state treasurer shall distribute from the money in the fund money certified by the division to be distributed to tribes. Payment shall be made to the chief financial officer of the tribe. If necessary, the fund may be decreased below the level of one hundred thousand dollars ($100,000) to enable payment to the tribes. If insufficient money

remains in the fund to fully compensate the tribes, a report shall be made to the Indian affairs department and to an appropriate interim committee of the legislature that reviews issues having impact on tribes by September 1 of the year of the shortfall.

D. The New Mexico law enforcement standards and training council may notify the division and the state treasurer to withhold the distribution to any governmental entity that has failed to submit required reports to the council as provided in Section 29-7-7.2 NMSA 1978 or that employs law enforcement officers who have failed to submit proof of completion of required in-service law enforcement training as required in Section 29-7-7.1 NMSA 1978.

**History:** Laws 1983, ch. 289, § 6; 1993, ch. 179, § 8; 1994, ch. 54, § 2; 1996, ch. 28, § 4; 1998, ch. 83, § 5; 2002, ch. 78, § 6; 2002, ch. 92, § 4; 2017, ch. 1, § 3; 2023, ch. 86, § 9.

## ANNOTATIONS

**The 2023 amendment,** effective June 16, 2023, authorized the New Mexico law enforcement standards and training council to withhold distributions from the law enforcement protection fund for failure to report completion of training requirements; and added Subsection D.

**The 2017 amendment,** effective June 16, 2017, created a new requirement for the local government division of the department of finance and administration to use periodic allotments approved by the division for the current fiscal year; in Subsection A, deleted "Annually on or before July 31" and added "Based on a periodic allotment approved by the division for the current fiscal year", after "distributed to governmental entities and", deleted "the transfer shall distribute money from the law enforcement protection fund to", after "the peace officers'", added "New Mexico mounted patrol members' and reserve police officers'", after "Payments shall be made", deleted "to" and added "by", and after "the treasurer", deleted "of" and added "to"; and in Subsection C, deleted "Annually on or before July 31" and added "Based on a periodic allotment approved by the division for the current fiscal year", after "report shall be made to the", deleted "New Mexico office of", and after "Indian affairs", added "department".

**2002 Amendments.** — Laws 2002, ch. 92, § 4, effective May 15, 2002, in Subsection A, substituted "governmental entities" for "municipalities, universities and counties" and added the phrase beginning "unless otherwise specified" at the end of the second sentence; in Subsection C, substituted "money" for "excess money remaining" and deleted "after distributions pursuant to Subsection A of this section are made" following "in the fund" in the first sentence and deleted all references to pueblos in the subsection.

Laws 2002, ch. 78, § 5, effective May 15, 2002, in Subsection A, at the end of the first sentence, added "and the transfer shall distribute money from the law enforcement

protection fund to the peace officers' survivors fund as required in Section 29-13-4 NMSA 1978", and in the second sentence, after "governmental entity", added "or fund".

**The 1998 amendment,** effective March 9, 1998, inserted "universities" near the end of the second sentence in Subsection A.

**The 1996 amendment,** effective March 4, 1996, inserted "or a resolution" following "ordinance" and "or county" following "by the municipality" in Subsection B.

**The 1994 amendment,** effective May 18, 1994, inserted present Subsection B and redesignated former Subsection B as Subsection C, and deleted "of each year" following "July 31" in the first sentence thereof.

**The 1993 amendment,** effective June 18, 1993, designated the existing provision as Subsection A; in the first sentence of Subsection A, deleted "law enforcement protection" preceding "fund" and substituted "division" for "local government division of the department of finance and administration"; and added Subsection B.

## 29-13-7. Expenditure limitation; control.

A. Except as provided for the academy and the department of public safety in Subsections B and C of this section, amounts distributed from the fund shall be expended only for the following:

(1) the repair and purchase of law enforcement apparatus and equipment, including the financing and refinancing thereof, that meet minimum nationally recognized standards;

(2) the purchase of law enforcement equipment, including protective vests, for police dogs;

(3) expenses associated with advanced law enforcement planning and training;

(4) maintaining the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund at a minimum amount of three hundred fifty thousand dollars ($350,000) through fiscal year 2023 and one million dollars ($1,000,000) thereafter;

(5) complying with match or contribution requirements for the receipt of federal funds relating to criminal justice programs;

(6) no more than fifty percent of the replacement salaries of municipal and county law enforcement personnel of municipalities or counties participating in basic law enforcement training;

(7) a law enforcement officer retention differential in the amount of seven thousand five hundred dollars ($7,500); provided that:

(a) the distribution is requested by a municipality or county law enforcement agency to retain a law enforcement officer who is certified in accordance with the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978] and has at least twenty years of actual service credit earned under a municipal police member coverage plan as determined by the public employees retirement association;

(b) the municipality or county law enforcement agency provides seven thousand five hundred dollars ($7,500) in matching funds to the law enforcement officer;

(c) the law enforcement officer remains employed with that municipality or county law enforcement agency for one additional year; and

(d) the distribution and the matching funds paid to a law enforcement officer shall not constitute the officer's base salary or wages and shall not be considered to be salary or otherwise be used to determine a pension for the purposes of the Public Employees Retirement Act [Chapter 10, Article 11 NMSA 1978]; and

(8) recruiting, providing stipends for and training law enforcement officers engaged in community-oriented policing; provided that any law enforcement officer who receives a stipend in accordance with this paragraph remains employed with the law enforcement agency providing the stipend for one additional year.

B. For the academy, amounts distributed from the fund shall be expended only for providing tourniquet and trauma kits and training on the use of tourniquet and trauma kits pursuant to Section 29-7-7.7 NMSA 1978 and to carry out the purposes of the Law Enforcement Training Act.

C. The amount distributed to the department of public safety:

(1) shall:

(a) be used only to offset overtime-pay-related expenses incurred directly by the department of public safety from the special deployment of state police officers or other emergency assistance to counties or municipalities in response to critical circumstances as authorized by the governor; and

(b) not be expended to hire new personnel; and

(2) may be expended for costs, including travel, fuel, overtime, per diem and ammunition.

D. Amounts distributed from the fund shall be expended only pursuant to approved budgets and upon duly executed vouchers approved as required by law.

**History:** Laws 1983, ch. 289, § 7; 1985, ch. 29, § 2; 1988, ch. 96, § 4; 1993, ch. 179, § 9; 1994, ch. 53, § 2; 2002, ch. 78, § 7; 2013, ch. 10, § 1; 2017, ch. 35, § 5; 2018, ch. 74, § 3; 2020, ch. 54, § 1; 2020, ch. 67, § 6; 2022, ch. 56, § 22.

## ANNOTATIONS

**The 2022 amendment,** effective July 1, 2022, provided that the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund shall be maintained at a minimum amount of one million dollars after fiscal year 2023, and added conditions under which distributions can be used for recruitment or retention payments; in Subsection A, Paragraph A(4), after "three hundred fifty thousand dollars ($350,000)", added "through fiscal year 2023 and one million dollars ($1,000,000) thereafter", in Paragraph A(7), after "officer retention", deleted "payment" and added "differential", in Subparagraph A(7)(a), after "county law enforcement agency", deleted "that on January 1, 2018 had a staffing vacancy rate of at least ten percent", added a new Subparagraph A(7)(c) and redesignated former Subparagraph A(7)(c) as Subparagraph A(7)(d), in Paragraph A(8), after "providing", deleted "bonuses" and added "stipends", and added "provided that any law enforcement officer who receives a stipend in accordance with this paragraph remains employed with the law enforcement agency providing the stipend for one additional year"; and in Subsection B, after "Section 29-7-7.7 NMSA 1978", added "and to carry out the purposes of the Law Enforcement Training Act".

**2020 Amendments.** — Laws 2020, ch. 67, § 6, effective July 1, 2022, placed certain limitations on how the department of public safety may use funds distributed from the law enforcement protection fund; in Subsection A, in the introductory clause, after "the academy", added "and the department of public safety", and after "Subsections B", added "and C", in Paragraph A(6), after "municipalities or counties", deleted "rated as class 1 in Paragraph (1) of Subsection C of Section 29-13-4 NMSA 1978"; and added new Subsection C and redesignated former Subsection C as Subsection D.

Laws 2020, ch. 54, § 1, effective July 1, 2020, expanded permissible expenditures from the law enforcement protection fund; in Subsection A, in Paragraph A(7), after the paragraph designation, deleted "contingent upon the availability of funding and until June 30, 2021", and added new Paragraph A(8).

**The 2018 amendment,** effective July 1, 2018, authorized distributions from the law enforcement protection fund for law enforcement retention payments, and added a statutory reference; added Paragraph A(7); and in Subsection B, after "pursuant to Section", deleted "1 of this 2017 act" and added "29-7-7.7".

**The 2017 amendment,** effective July 1, 2017, made provisions for the New Mexico law enforcement academy to receive funds from the law enforcement protection fund for tourniquet and trauma kit training; in Subsection A, added "Except as provided for the academy in Subsection B of this section", in Paragraph A(4), added "New Mexico mounted patrol members’ and reserve police officers’", and in Paragraph A(6), after

"Subsection", deleted "B" and added "C"; and added a new Subsection B, and redesignated former Subsection B as Subsection C.

**The 2013 amendment,** effective June 14, 2013, authorized the purchase of protective equipment for police dogs and in Subsection A, added Paragraph (2).

**The 2002 amendment,** effective May 15, 2002, in Subsection A, added Paragraph (3) and redesignated former Paragraphs (3) and (4) as Paragraphs (4) and (5).

**The 1994 amendment,** effective May 18, 1994, inserted "including the financing and refinancing thereof" in Paragraph A(1).

**The 1993 amendment,** effective June 18, 1993, deleted "law enforcement protection" preceding "fund" in Subsections A and B and substituted "that" for "which" in Paragraph (1) of Subsection A.

## 29-13-8. Rules and regulations.

The division shall promulgate necessary rules and regulations to administer the provisions of the Law Enforcement Protection Fund Act.

**History:** Laws 1983, ch. 289, § 8; 1993, ch. 179, § 10.

**ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, substituted "division" for "local government division of the department of finance and administration".

## 29-13-9. Expenditures of money distributed from the law enforcement protection fund; wrongful expenditure.

A. Amounts distributed from the fund shall be expended only for the specific purposes for which they are distributed and shall not be distributed for accumulation, except as provided for the peace officers' survivors fund.

B. Any person who expends or directs or permits the expenditure of any money distributed from the fund for purposes other than those expressly authorized by the Law Enforcement Protection Fund Act shall be personally liable to the state for the amount of money wrongfully expended and interest and costs. An action to recover the amount of any wrongful expenditure may be commenced by the attorney general or the district attorney upon the filing with that officer of a verified statement describing the wrongful expenditure.

**History:** Laws 1983, ch. 289, § 9; 1993, ch. 179, § 11; 2002, ch. 78, § 8.

**ANNOTATIONS**

**The 2002 amendment,** effective May 15, 2002, added the exception clause in Subsection A.

**The 1993 amendment,** effective June 18, 1993, deleted "law enforcement protection" preceding "fund" in Subsections A and B.

# ARTICLE 14
# Peace Officer's Employer-Employee Relations

## 29-14-1. Short title.

Sections 1 through 11 [29-14-1 to 29-14-11 NMSA 1978] of this act may be cited as the "Peace Officer's Employer-Employee Relations Act".

**History:** Laws 1991, ch. 117, § 1.

**ANNOTATIONS**

**Private right of action.** — There is no express allowance of a private right of action anywhere in the POEERA. *Sedillo v. N.M. Dep't of Pub. Safety*, 2007-NMCA-002, 140 N.M. 858, 149 P.3d 955.

## 29-14-2. Findings and purpose.

A. The legislature finds and declares that effective law enforcement is dependent upon the maintenance of stable relations between peace officers and their employers. Moreover, the existence of stable relations between peace officers and their employers will enhance law enforcement services provided to the citizens of New Mexico.

B. The purpose of the Peace Officer's Employer-Employee Relations Act is to prescribe certain rights for peace officers, particularly when they are placed under investigation by their employer.

C. Provisions of this act only apply to administrative actions and shall not apply to criminal investigations of a peace officer except as provided in Section 8 [29-14-8 NMSA 1978] of this act.

**History:** Laws 1991, ch. 117, § 2.

## 29-14-3. Definition.

As used in the Peace Officer's Employer-Employee Relations Act, "peace officer" or "officer" means any employee of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state who is responsible for

the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the state.

**History:** Laws 1991, ch. 117, § 3.

## 29-14-4. Investigations of peace officers; requirements.

When any peace officer is under investigation by his employer for alleged actions that could result in administrative sanctions being levied against the officer, the following requirements shall be adhered to:

A. any interrogation of an officer shall be conducted when the officer is on duty or during his normal waking hours, unless the urgency of the investigation requires otherwise;

B. any interrogation of an officer shall be conducted at the employer's facility, unless the urgency of the investigation requires otherwise;

C. prior to commencement of any interrogation session:

(1) an officer shall be informed of the name and rank of the person in charge of the interrogation and all other persons who will be present during the interrogation;

(2) an officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the chief administrator of the officer's employer determines that the identification of the complainant shall not be disclosed because it is necessary for the protection of an informant or because disclosure would jeopardize or compromise the integrity or security of the investigation; and

(3) a reasonable attempt shall be made to notify the officer's commanding officer of the pending interrogation;

D. during any interrogation session, the following requirements shall be adhered to:

(1) each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session;

(2) there shall not be more than two interrogation sessions within a twenty-four hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least a one-hour rest period between the sessions;

(3) the combined duration of an officer's work shift and any interrogation session shall not exceed fourteen hours within a twenty-four hour period, unless the urgency of the investigation requires otherwise;

(4) there shall not be more than two interrogators at any given time;

(5) an officer shall be allowed to attend to physical necessities as they occur in the course of an interrogation session; and

(6) an officer shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session;

E. any interrogation of an officer shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript; provided that any recesses called during the interrogation shall be noted in the transcript; and

F. an accurate copy of the transcript or tape shall be provided to the officer, upon his written request, no later than fifteen working days after the investigation has been completed.

**History:** Laws 1991, ch. 117, § 4.

## 29-14-5. Polygraph examinations.

After reviewing all the information collected in the course of an investigation of a peace officer, the chief administrator of the officer's employer may order the officer to submit to a polygraph examination administered by a licensed polygraph examiner, provided that:

A. all other reasonable investigative means have been exhausted; and

B. the officer has been advised of the administrator's reasons for ordering the polygraph examination.

**History:** Laws 1991, ch. 117, § 5.

**ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Construction and application of Employee Polygraph Protection Act of 1988 (29 USCA §§ 2001 et seq.), 154 A.L.R. Fed. 315.

## 29-14-6. Investigation of administrative matters.

When any peace officer is under investigation for an administrative matter, the officer shall be permitted to produce any relevant documents, witnesses or other evidence to support his case and he may cross-examine any adverse witnesses during any grievance process or appeal involving disciplinary action.

**History:** Laws 1991, ch. 117, § 6.

## 29-14-7. Personnel files.

A. No document containing comments adverse to a peace officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file if:

(1) the officer's refusal to sign is noted on the document by the chief administrator of the officer's employer; and

(2) the notation regarding the officer's refusal to sign the document is witnessed by a third party.

B. A peace officer may file a written response to any document containing adverse comments entered into his personnel file and the response shall be filed with the officer's employer within thirty days after the document was entered into the officer's personnel file. A peace officer's written response shall be attached to the document.

**History:** Laws 1991, ch. 117, § 7.

## 29-14-8. Constitutional rights; notification.

When any peace officer is under administrative investigation and a determination is made to commence a criminal investigation, he shall be immediately notified of the investigation and shall be afforded all the protections set forth in the bill of rights of the United States and New Mexico constitutions.

**History:** Laws 1991, ch. 117, § 8.

## 29-14-9. Forced disclosure of financial status prohibited.

A peace officer shall not be required by his police or sheriff's department employer to disclose information regarding his financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

**History:** Laws 1991, ch. 117, § 9.

## 29-14-10. Political activity.

A. A peace officer shall not be prohibited by his police or sheriff's department employer from engaging in any political activity when the officer is off duty, except as otherwise required by law.

B. Notwithstanding the provisions of Subsection A of this section, any peace officer employed by the New Mexico state police department shall be governed by the provisions of regulations adopted by the department regarding political activity.

**History:** Laws 1991, ch. 117, § 10.

## 29-14-11. Exercise of rights.

A peace officer shall not be subjected to any retaliation by his employer due to the officer's lawful exercise of his rights under the Peace Officer's Employer-Employee Relations Act.

**History:** Laws 1991, ch. 117, § 11.

# ARTICLE 15
# Missing Persons Information and Reporting

## 29-15-1. Short title.

Chapter 29, Article 15 NMSA 1978 may be cited as the "Missing Persons Information and Reporting Act".

**History:** Laws 1995, ch. 146, § 1; 2010, ch. 32, § 1; 2010, ch. 33, § 2.

**ANNOTATIONS**

**2010 Multiple Amendments.** — Laws 2010, ch. 32, § 1 and Laws 2010, ch. 33, § 2 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2010, ch. 33, § 2, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2010, ch. 32, § 1 and Laws 2010, ch. 33, § 2 are described. To view the session laws in their entirety, *see* the 2010 session laws on *NMOneSource.com*.

Laws 2010, ch. 33, § 2, effective May 19, 2010, changed "This act" to "Chapter 29, Article 15 NMSA 1978" and changed the name of the act from the "Missing Persons Information Act" to the "Missing Persons Information and Reporting Act".

Laws 2010, ch. 32, § 1, effective May 19, 2010, deleted "This act" and added "Chapter 29, Article 15 NMSA 1978".

## 29-15-2. Definitions.

As used in the Missing Persons Information and Reporting Act:

A. "Brittany alert" means a notification relating to an endangered person:

(1) who is a missing person; and

(2) about whom there is a clear indication that the person has a developmental disability as defined in Subsection A of Section 28-16A-6 NMSA 1978 and that the person's health or safety is at risk;

B. "child" means a person under the age of eighteen years who is not emancipated;

C. "clearinghouse" means the missing persons information clearinghouse;

D. "custodian" means a parent, guardian or other person who exercises legal physical control, care or custody of a child or of an adult with a developmental disability; or a person who performs one or more activities of daily living for an adult;

E. "endangered person" means a missing person who:

(1) is in imminent danger of causing harm to the person's self;

(2) is in imminent danger of causing harm to another;

(3) is in imminent danger of being harmed by another or who has been harmed by another;

(4) has been a victim of a crime as provided in the Crimes Against Household Members Act [30-3-10 through 30-3-18 NMSA 1978] or in Section 30-3A-3 or 30-3A-3.1 NMSA 1978, or their equivalents in any other jurisdiction;

(5) is or was protected by an order of protection pursuant to the Family Violence Protection Act [Chapter 40, Article 13 NMSA 1978];

(6) has Alzheimer's disease, dementia or another degenerative brain disorder or a brain injury; or

(7) has a developmental disability as defined in Subsection A of Section 28-16A-6 NMSA 1978 and that person's health or safety is at risk;

F. "immediate family member" means the spouse, nearest relative or close friend of a person;

G. "law enforcement agency" means a law enforcement agency of the state, a state agency or a political subdivision of the state;

H. "lead station" means an AM radio station that has been designated as the "state primary station" by the federal communications commission for the emergency alert system;

I. "missing person" means a person whose whereabouts are unknown to the person's custodian or immediate family member and the circumstances of whose absence indicate that:

(1) the person did not leave the care and control of the custodian or immediate family member voluntarily and the taking of the person was not authorized by law; or

(2) the person voluntarily left the care and control of the custodian without the custodian's consent and without intent to return;

J. "missing person report" means information that is:

(1) given to a law enforcement agency on a form used for sending information to the national crime information center; and

(2) about a person whose whereabouts are unknown to the reporter and who is alleged in the form submitted by the reporter to be missing;

K. "person" means an individual, regardless of age;

L. "possible match" means the similarities between unidentified human remains and a missing person that would lead one to believe they are the same person;

M. "reporter" means the person who reports a missing person;

N. "silver alert" means a notification relating to an endangered person:

(1) who is a missing person; and

(2) who is fifty years or older; or

(3) who the reporter believes displays signs or symptoms of Alzheimer's disease or another form of dementia, cognitive decline or impairment, regardless of age;

O. "state agency" means an agency of the state, a political subdivision of the state or a public post-secondary educational institution;

P. "state registrar" means the employee so designated by the public health division of the department of health pursuant to the Vital Statistics Act [Chapter 24, Article 14 NMSA 1978]; and

Q. "turquoise alert" means a notification relating to a missing person who is an enrolled member or a person eligible for enrollment in a federally or state-recognized Indian nation, tribe or pueblo and the person:

(1) is missing due to involuntary, unexplained or suspicious circumstances;

(2) is at risk due to safety or health concerns; or

(3) suffers from a mental or physical disability or substance abuse disorder.

**History:** Laws 1995, ch. 146, § 2; 2007, ch. 119, § 1; 2010, ch. 32, § 2; 2010, ch. 33, § 3; 2013, ch. 81, § 2; 2016, ch. 8, § 1; 2019, ch. 50, § 1; 2025, ch. 19, § 1; 2025, ch. 58, § 1.

## ANNOTATIONS

**2025 Multiple Amendments.** — Laws 2025, ch. 19, § 1, effective June 20, 2025, and Laws 2025, ch. 58, § 1, effective June 20, 2025, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2025, ch. 58, § 1 as the last act signed by the governor is set out above and incorporates both amendments. The amendments enacted by Laws 2025, ch. 19, § 1 and Laws 2025, ch. 58, § 1 are described below. To view the session laws in their entirety, *see* the 2025 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Section 29-15-2 NMSA 1978, as amended by Laws 2025, ch. 19, § 1, revised the definition of "silver alert," as used in the Missing Persons Information and Reporting Act, and Laws 2025, ch. 58, § 1, defined the term "turquoise alert," as that term is used in the Missing Persons Information and Reporting Act.

**Laws 2025, ch. 58, § 1,** effective June 20, 2025, defined the term "turquoise alert" as that term is used in the Missing Persons Information and Reporting Act; added new Subsection Q.

**Laws 2025, ch. 19, § 1,** effective June 20, 2025, revised the definition of "silver alert" as used in the Missing Persons Information and Reporting Act; in Subsection N, Paragraph N(3), after the paragraph designation, deleted "about whom there is a clear indication that the individual suffers from Alzheimer's disease or another form of dementia, regardless of age" and added "who the reporter believes displays signs or symptoms of Alzheimer's disease or another form of dementia, cognitive decline or impairment, regardless of age".

**The 2019 amendment,** effective June 14, 2019, revised the definition of "silver alert" as used in the Missing Persons Information and Reporting Act; and in Subsection N, Paragraph N(1), after the semicolon, added "and"; in Paragraph N(2), after the semicolon, deleted "and" and added "or", and in Paragraph N(3), after "individual", deleted "has an irreversible deterioration of intellectual faculties" and added "suffers from Alzheimer's disease or another form of dementia, regardless of age".

**The 2016 amendment,** effective July 1, 2016, added the definition of "Brittany alert" to the Missing Persons Information and Reporting Act, and made corresponding changes to the definitions of "custodian" and "endangered person" as used in the act; after the introductory sentence, added a new Subsection A and redesignated the succeeding subsections accordingly; in Subsection B, after "means", deleted "an individual" and added "a person"; in Subsection D, after "custody of a child", added "or of an adult with a developmental disability"; and in Subsection E, Paragraph (5), after the semicolon, deleted "or", in Paragraph (6), after the semicolon, added "or", and added a new Paragraph (7).

**The 2013 amendment,** effective July 1, 2013, broadened the definition of "custodian"; defined "silver alert"; in Subsection C, after "custody of a child", added the remainder of the sentence; in Paragraph (6) of Subsection D, after "Alzheimer's disease", added "dementia" and after "brain disorder", added "or a brain injury"; and added Subsection M.

**The 2010 amendment,** , effective May 19, 2010, in the introductory sentence, changed the name of the act from the "Missing Persons Information Act" to the "Missing Persons Information and Reporting Act"; in Paragraph (4) of Subsection D, after "Alzheimer's disease", added "or another degenerative brain disorder"; added Subsection F; in Subsection K, after "similarities between unidentified", deleted "body of a person" and added "human remains"; and added Subsection N.

**The 2007 amendment,** effective July 1, 2007, defined "endangered person" and "lead station".

## 29-15-3. Missing persons information clearinghouse; function.

A. The "missing persons information clearinghouse" is established in the department of public safety. The department of public safety shall provide for the administration of the clearinghouse. The department of public safety may adopt rules to carry out the provisions of the Missing Persons Information and Reporting Act [Chapter 29, Article 15 NMSA 1978] in the manner prescribed in Subsection E of Section 9-1-5 NMSA 1978.

B. The clearinghouse is a central repository of information on missing persons and shall be used by all law enforcement agencies, including tribal agencies, in this state.

C. The clearinghouse shall:

(1) establish a system of intrastate communication of information relating to missing persons;

(2) provide a centralized file for the exchange of information on missing persons and unidentified human remains within the state;

(3) communicate with the national crime information center for the exchange of information on missing persons suspected of interstate travel;

(4) collect, process, maintain and disseminate accurate and complete information on missing persons;

(5) provide a statewide toll-free telephone line for the reporting of missing persons and for receiving information on missing persons;

(6) disseminate to custodians, law enforcement agencies, the public education department, the children, youth and families department and the general public information that explains how to prevent child abduction and what to do if a child becomes missing;

(7) compile statistics relating to the incidence of missing persons within the state;

(8) provide training and technical assistance to law enforcement agencies and social services agencies pertaining to missing persons;

(9) establish a media protocol for disseminating information pertaining to missing persons; and

(10) host the annual missing in New Mexico event.

D. The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing persons.

E. The department of public safety may accept public or private grants, gifts and donations to assist the department in carrying out the provisions of the Missing Persons Information and Reporting Act.

**History:** Laws 1995, ch. 146, § 3; 2010, ch. 33, § 4; 2022, ch. 3, § 2.

## ANNOTATIONS

**The 2022 amendment,** effective February 24, 2022, required the missing persons information clearinghouse to host the annual missing in New Mexico event; and in Subsection C, added new Paragraph 10.

**Temporary provisions.** — Laws 2019, ch. 106, § 1, effective March 28, 2019, provided:

A. The "missing and murdered indigenous women task force" is created and shall exist until the end of fiscal year 2021.

B. The task force consists of:

(1) the secretary of Indian affairs or the secretary's designee from the Indian affairs department, who shall be chair of the task force;

(2) the secretary of public safety or the secretary's designee from the department of public safety;

(3) a representative of the United State bureau of Indian affairs office of justice services designated by the southwest region's deputy regional director for Indian services of the bureau of Indian affairs;

(4) one person who is a member of a pueblo, appointed by the governor;

(5) one person who is a member of the Jicarilla Apache Nation, appointed by the governor;

(6) one person who is a member of the Mescalero Apache Tribe, appointed by the governor;

(7) one person who is a member of the Navajo Nation, appointed by the governor;

(8) one person from the office of the medical investigator;

(9) one person who is a representative of an indigenous women's nongovernmental organization that provides counseling services for indigenous women and girls who have been victims of violence, appointed by the governor;

(10) one person who is a representative of a statewide or local nongovernmental organization that provides legal services to indigenous women and girls who have been victims of violence, appointed by the governor; and

(11) one person who is an indigenous woman who has been a victim of violence or a family member of an indigenous woman who has been a victim of violence, appointed by the governor.

C. Vacancies by members of the task force appointed by the governor shall be filled by appointment by the governor.

D. Task force members appointed by the governor may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

E. The task force shall conduct a study to determine how to increase state resources for reporting and identifying missing and murdered indigenous women in the state. The task force shall collaborate with tribal law enforcement agencies to

determine the scope of the problem, identify barriers to address the problem and create partnerships to improve the reporting of and the investigation of missing and murdered indigenous women.

F. The task force shall work with tribal governments and shall respect tribal sovereignty. The task force shall collaborate with the United States department of justice to improve its processes for information sharing and coordination of resources in regard to reporting and investigating cases of missing and murdered indigenous women in the state.

G. The task force shall report its findings and recommendations to the governor, the legislative council service library and the appropriate interim legislative committee and present those findings to the appropriate interim legislative committee prior to November 1, 2020.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the third sentence, after "may adopt rules", deleted "and regulations" and changed the name of the act from the "Missing Persons Information Act" to the "Missing Persons Information and Reporting Act"; in Subsection C(2), after "persons and unidentified", deleted "bodies of persons" and added "human remains"; in Subsection C(6), changed "state department of public education" to "public education department"; and in Subsection E, changed the name of the act from the "Missing Persons Information Act" to the "Missing Persons Information and Reporting Act".

## 29-15-3.1. Endangered person advisory.

A. The department of public safety shall issue an endangered person advisory if, after review and investigation of a missing person report of an endangered person, the department makes an independent determination that the missing person is an endangered person.

B. The department shall develop and implement endangered person advisory procedures for the purpose of disseminating, as rapidly as possible, information about an endangered person. The procedures shall include:

(1) notification to the lead station of the endangered person advisory;

(2) notification to other public and private media sources and members of the public as necessary; and

(3) providing information about the endangered person, including all identifying information, to the lead station and other media sources.

**History:** Laws 2007, ch. 119, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 119, § 4 made the section effective July 1, 2007.

## 29-15-3.2. Silver alert advisory.

A. The department of public safety shall issue a silver alert if, after review and investigation of a missing person report of a person subject to the alert, the department makes an independent determination that the missing person is a person subject to the alert.

B. The department of public safety shall develop and implement a silver alert plan for the purpose of disseminating, as rapidly as possible, information about a person subject to the alert. The plan shall:

(1) provide a procedure for the department to notify the lead station that a silver alert has been declared. The procedure shall include codes for use by the department in communicating with the lead station to prevent false alerts;

(2) provide a procedure in which other state and private print, radio, television or other media may alert members of the public of the missing person;

(3) include a procedure for notifying the department of information technology that a silver alert has been declared. The department of information technology shall immediately transmit the notification and related information to all state field operations employees so that they may be aware and vigilant in the course of their regular activities;

(4) require cellular service companies to implement silver alerts in accordance with the federal communication commission's wireless emergency alerts processes;

(5) include a procedure for notifying all local and federal law enforcement agencies that a silver alert has been declared;

(6) provide for dissemination of information about the missing person to the lead station, the department of information technology and local law enforcement agencies when a silver alert has been declared; and

(7) provide for collecting and maintaining the following records regarding each silver alert issued:

(a) the municipality where the missing person report originated;

(b) the age of the missing person;

(c) the gender of the missing person;

(d) the date of the missing person report;

(e) the date the silver alert is issued; and

(f) the date of recovery of the missing person.

C. The department of public safety shall distribute the silver alert notification plan to all local law enforcement agencies and provide such training and other assistance as is necessary to ensure that the plan can be properly implemented.

D. Once a silver alert has been declared, only the department of public safety may terminate the silver alert.

**History:** Laws 2013, ch. 81, § 1; 2019, ch. 50, § 2.

**ANNOTATIONS**

**The 2019 amendment,** effective June 14, 2019, expanded the notification and reporting requirements for missing persons who are fifty years or older or about whom there is a clear indication that the individual suffers from Alzheimer's disease or another form of dementia, regardless of age; in Subsection B, after "department", added "of public safety", and deleted former Paragraphs B(1) through B(3) and added new Paragraphs B(1) through B(7); and added Subsections C and D.

## 29-15-3.3. Brittany alert advisory.

A. The department of public safety shall issue a Brittany alert if, after review and investigation of a missing person report of a person subject to the alert, the department makes an independent determination that the missing person is a person subject to the alert.

B. The department shall develop and implement Brittany alert procedures for the purpose of disseminating, as rapidly as possible, information about a person subject to the alert. The procedures shall include:

(1) notification to the lead station of the Brittany alert;

(2) notification to other public and private media sources and members of the public as necessary; and

(3) the provision of information about the subject of the Brittany alert, including all identifying information, to the lead station and other media sources.

**History:** Laws 2016, ch. 8, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 8, § 3 made Laws 2016, ch. 8, § 2 effective July 1, 2016.

## 29-15-3.4. Department of public safety; Mark Daniel Aguilar information sharing requirement.

A. Within thirty days, the department of public safety shall share with the national missing and unidentified persons system created by the United States department of justice's national institute of justice:

(1) all information in the missing persons information clearinghouse; and

(2) all information the department receives pursuant to the Missing Persons Information and Reporting Act regarding the identification and location of missing and unidentified persons or human remains.

B. The requirements pursuant to this section shall be known as the "Mark Daniel Aguilar information sharing requirement".

**History:** Laws 2019, ch. 120, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2019, ch. 120 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

## 29-15-3.5. Turquoise alert advisory.

A. The department of public safety or the lead investigating law enforcement agency shall issue a turquoise alert if, after review and investigation of a missing person report of a person subject to the alert, the department of public safety or the lead investigating law enforcement agency makes an independent determination that the missing person is a person subject to the alert.

B. The department of public safety shall develop and implement a turquoise alert plan for the purpose of disseminating, as rapidly as possible, information about a person subject to the alert. The plan shall:

(1) provide a procedure for the department to notify the lead station that a turquoise alert has been declared. The procedure shall include codes for use by the department in communicating with the lead station to prevent false alerts;

(2) provide a procedure in which other state and private print, radio, television or other media may alert members of the public of the missing person;

(3) include a procedure for notifying the department of information technology that a turquoise alert has been declared. The department of information technology shall immediately transmit the notification and related information to all state field operations employees so that they may be aware and vigilant in the course of their regular activities;

(4) require cellular service companies to implement turquoise alerts in accordance with the federal communications commission's wireless emergency alerts processes. The alert from cellular service companies shall only be required after a determination by the department of public safety or the lead investigating law enforcement agency that there is evidence of imminent danger of serious bodily harm to or death of the missing person and that there is enough descriptive information about the missing person to assist in locating that person;

(5) include a procedure for notifying all local and federal law enforcement agencies that a turquoise alert has been declared;

(6) provide for dissemination of information about the missing person to the lead station, the department of information technology and local law enforcement agencies when a turquoise alert has been declared; and

(7) provide for collecting and maintaining the following records regarding each turquoise alert issued:

(a) the municipality where the missing person report originated;

(b) the age of the missing person;

(c) the gender of the missing person;

(d) the date of the missing person report;

(e) the date the turquoise alert is issued; and

(f) the date of recovery of the missing person.

C. The department of public safety shall distribute the turquoise alert notification plan to all local law enforcement agencies and provide such training and other assistance as is necessary to ensure that the plan can be properly implemented.

D. Once a turquoise alert has been declared, only the department of public safety or the lead investigating law enforcement agency may terminate the turquoise alert.

**History:** 1978 Comp., § 29-15-3.5, enacted by Laws 2025, ch. 58, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2025, ch. 58 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

## 29-15-4. State department of public education; cooperation with clearinghouse.

The state department of public education [public education department] shall cooperate with the clearinghouse in seeking to locate missing children who may be enrolled in New Mexico school systems, including private schools, and for the reporting of children who may be missing or who may be unlawfully removed from schools.

**History:** Laws 1995, ch. 146, § 4.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Cross references.** — For the public education department, *see* 9-24-4 NMSA 1978.

## 29-15-5. Custodian or immediate family member request for information.

A. Upon written or oral request to a law enforcement agency by a custodian or immediate family member of a missing person, the law enforcement agency shall immediately request from the clearinghouse information concerning the missing person that may aid the custodian or immediate family member in the identification or location of the missing person.

B. A law enforcement agency to which a request has been made pursuant to Subsection A of this section shall report to the custodian or immediate family member on the results of its inquiry to the clearinghouse within seven calendar days after the day the request is received by the law enforcement agency, or as soon as the results of its inquiry become available, whichever occurs last.

C. A law enforcement agency shall not report to a custodian or immediate family member pursuant to Subsection B of this section if the missing person is not a minor, has been found and has informed a law enforcement agency or the clearinghouse that the person requests confidentiality regarding the person's status and location. If the missing person who requests confidentiality regarding the person's status and location is a person with a custodian appointed by a judge, the law enforcement agency shall inform the court that the person has been found and has requested confidentiality regarding the person's status and location. A law enforcement agency shall also report

to the custodian that the person has been found unless there is competent evidence that to do so may cause harm to the incapacitated person.

D. The Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978] shall not apply to a request to inspect records regarding a person who has requested confidentiality pursuant to Subsection C of this section.

**History:** Laws 1995, ch. 146, § 5; 2010, ch. 33, § 5; 2021, ch. 39, § 1.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, required confidentiality in certain circumstances for a person who has been reported missing and is found by law enforcement, provided additional duties for law enforcement under these circumstances, and provided that the Inspection of Public Records Act shall not apply to a request to inspect records regarding a person who has been reported missing, is found by law enforcement and has requested confidentiality; and added Subsections C and D.

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "Upon written", deleted "notification" and added "or oral request"; after "information concerning the", added "missing"; and after "location of the", added "missing"; and in Subsection B, after "law enforcement agency to which", deleted "notification" and added "a request"; after "request has been", deleted "provided" and added "made"; after "results of its inquiry", added "to the clearinghouse"; and after "days after the day the", deleted "written notification" and added "request".

## 29-15-6. Missing person report forms.

A. The clearinghouse shall distribute missing person report forms to law enforcement agencies in the state.

B. A missing person report may be made to a law enforcement agency in person, or by telephone, electronic media or other indirect method of communication and the person taking the report may enter the information on the form for the reporter. A missing person report form may be completed by the reporter and delivered to a law enforcement officer.

C. A copy of the missing person report form shall be filed with the clearinghouse.

D. A missing person report form shall include, to the extent available, the following information:

(1) the missing person's:

(a) name, including any alternative names used;

(b) date of birth;

(c) identifying marks, including birthmarks, moles, tattoos and scars;

(d) height and weight;

(e) gender;

(f) race;

(g) current hair color and true or natural hair color;

(h) eye color;

(i) prosthetics, surgical implants or cosmetic implants;

(j) physical anomalies;

(k) blood type;

(l) driver's license number; and

(m) social security number;

(2) a photograph of the missing person, with a recent photograph being preferable;

(3) a description of the clothing the missing person was believed to be wearing;

(4) a description of items that might be with the missing person, such as jewelry and accessories;

(5) information on the missing person's electronic communications devices, including cell phone numbers and email addresses;

(6) reasons why the reporting person believes that the person is missing;

(7) the name and location of the missing person's school or employer;

(8) the name and location of the missing person's dentist or primary care physician;

(9) any circumstances that may indicate that the disappearance of the missing person was not voluntary;

(10) any circumstances that indicate that the missing person may be at risk of injury or death;

(11) a description of the possible means of transportation of the missing person, including make, model, color, license and vehicle identification number of a vehicle;

(12) any identifying information about a known or possible abductor of the missing person or the person last seen with the missing person;

(13) any other information that can aid in locating the missing person; and

(14) the date of last contact with the missing person.

**History:** Laws 1995, ch. 146, § 6; 2010, ch. 33, § 6.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection B, after "or by telephone," added "electronic media"; and added Subsection D.

## 29-15-7. Law enforcement requirements; missing person reports; unidentified human remains.

A. A law enforcement agency shall accept without delay and without exception for any reason any report of a missing person and, no later than two hours after receiving a missing person report or additional or supplemental information for the report, shall:

(1) start an appropriate investigation to determine the present location of the missing person and to determine whether the missing person is an endangered person;

(2) provide to the clearinghouse all information the law enforcement agency has relating to an investigation regarding or the location or identification of a missing person;

(3) enter the name of the missing person into the clearinghouse and the national crime information center missing person file; and

(4) if the missing person is determined to be an endangered person, notify the department of public safety in accordance with procedures prescribed by the department.

B. Information not immediately available shall be obtained as soon as possible by the law enforcement agency and, no later than two hours after receipt of the information, entered into the clearinghouse and the national crime information center file as a supplement to the original entry.

C. All New Mexico law enforcement agencies are required to enter information about all unidentified human remains found in their jurisdiction into the clearinghouse and the national crime information center unidentified person file, including all available identifying features of the human remains and a description of the clothing found on the human remains. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law enforcement agency is not required to make a direct entry of that information into the clearinghouse.

**History:** Laws 1995, ch. 146, § 7; 2007, ch. 119, § 2; 2010, ch. 32, § 3; 2010, ch. 33, § 7.

## ANNOTATIONS

**2010 Multiple Amendments.** — Laws 2010, ch. 32, § 3 and Laws 2010, ch. 33, § 7 both enacted amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2010, ch. 33, § 7, as the last act signed by the governor, has been compiled into the NMSA as set out above, and Laws 2010, ch. 32, § 3, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

**Laws 2010, ch. 33, § 7 [set out above],** effective May 19, 2010, in the title of the section, after "unidentified", deleted "bodies" and added "human remains"; in Subsection A, after "law enforcement agency" deleted "upon" and added "shall accept without delay and without exception for any reason any report of a missing person and, no later than two hours after" and after "missing person report", added "or additional or supplemental information for the report"; in Subsection A(1) and (3), deleted "immediately" from the beginning of the each sentence; in Subsection A(4), after "an endangered person," deleted "immediately"; in Subsection B, after "law enforcement agency and" added "no later than two hours after receipt of the information"; and in Subsection C, in the first sentence, after "information about all unidentified", deleted "bodies of persons" and added "human remains"; after "identifying features of the", deleted "body" and added "human remains"; and after "clothing found on the" deleted "body" and added "human remains".

**Laws 2010, ch. 32, § 3 [set out below],** effective May 19, 2010, in the title of the section, after "unidentified", deleted "bodies" and added the "human remains"; in Paragraph (4) of Subsection A, after "endangered person", deleted "immediately" and after "department of public safety", added "within twelve hours of receiving the report"; and in Subsection C, in the first sentence, after "available identifying features of the", deleted "body" and inserted "human remains"; and after "description of the clothing found", deleted "of the body" and inserted "with the body", and provided:

"29-15-7. Law enforcement requirements; missing person reports; unidentified human remains.

A. A law enforcement agency, upon receiving a missing person report, shall:

(1) immediately start an appropriate investigation to determine the present location of the missing person and to determine whether the missing person is an endangered person;

(2) provide to the clearinghouse all information the law enforcement agency has relating to an investigation regarding, or the location or identification of, a missing person;

(3) immediately enter the name of the missing person into the clearinghouse and the national crime information center missing person file; and

(4) if the missing person is determined to be an endangered person, notify the department of public safety within twelve hours of receiving the report, in accordance with procedures prescribed by the department.

B. Information not immediately available shall be obtained as soon as possible by the law enforcement agency and entered into the clearinghouse and the national crime information center file as a supplement to the original entry.

C. All New Mexico law enforcement agencies are required to enter information about all unidentified human remains of persons found in their jurisdiction into the clearinghouse and the national crime information center unidentified person file, including all available identifying features of the human remains and a description of the clothing found with the human remains. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law enforcement agency is not required to make a direct entry of that information into the clearinghouse."

**The 2007 amendment,** effective July 1, 2007, required law enforcement agencies to determine whether a missing person is an endangered person and if the missing person is an endangered person, to notify the department of public safety.

## 29-15-7.1. Missing child reports; law enforcement agencies; duties; registrar.

A. Upon receiving a report of a child believed to be missing, a law enforcement agency shall:

(1) no later than two hours after receiving the report, enter identifying and descriptive information about the child into the national crime information center computer. Law enforcement agencies having direct access to the national crime information center computer shall enter and retrieve the data directly and shall cooperate in the entry and retrieval of data on behalf of law enforcement agencies that do not have direct access to the system; and

(2) notify the state registrar within twenty-four hours, by telephone, facsimile or electronic transmission, of the missing child. Within three days of this initial notification, the law enforcement agency shall make a written notification in a manner and form prescribed by the state registrar. Both notifications shall include the missing child's name, date of birth and county and state of birth; the mother's maiden name; the name of the noncustodial parent if the parents are not married; the name and telephone number of a contact person at the reporting law enforcement agency; and any other information required by the state registrar.

B. Immediately after a missing child is located, the law enforcement agency that located or returned the missing child shall notify the law enforcement agency having jurisdiction over the investigation, and the originating agency shall clear the entry from the national crime information center computer and shall, within twenty-four hours, notify the state registrar in writing that the missing child has been located.

**History:** 1978 Comp., § 29-15-7.1, as enacted by Laws 2010, ch. 33, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2010, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## 29-15-7.2. Birth records of missing children; state registrar's duties.

A. Upon notification by a law enforcement agency that a child born in the state is missing, the state registrar shall flag the child's birth record in such a manner that whenever a copy of the birth certificate or information concerning the birth record is requested, the state registrar shall be alerted to the fact that the certificate is that of a missing child.

B. Upon notification by a law enforcement agency that a child born outside the state is missing, the state registrar shall notify the corresponding officer in the state where the child was born that the child has been reported missing.

C. In response to any inquiry, the state registrar or any local registrar appointed by the state registrar or any employee of the vital statistics bureau of the health services division of the department of health shall not provide a copy of a birth certificate or information concerning the birth record of any missing child whose birth record is flagged pursuant to this section, except following notification of the law enforcement agency having jurisdiction over the investigation of the missing child. Such inquiries shall be handled in the following manner:

(1) when a copy of the birth certificate of a missing child whose record has been flagged is requested in person, the local registrar or employee accepting the request shall immediately notify that person's supervisor or the state registrar. If

possible, the person making the request shall complete a form supplying the requester's name, address, telephone number and relationship to the missing child and the name, address and birth date of the missing child. The driver's license of the requester, if available, shall be photocopied and returned. The requester shall be informed that a copy of the birth certificate will be mailed to the requester. The local registrar or employee shall note the physical description of the requester, and, upon that requester's departure from the vital statistics bureau office, the supervisor or state registrar shall immediately notify the law enforcement agency having jurisdiction of the request and the information obtained pursuant to this paragraph. The state registrar will retain the form completed by the person making the request; and

(2) when a copy of the birth certificate of a missing child whose birth record has been flagged is requested in writing, the state registrar shall immediately notify the law enforcement agency having jurisdiction of the request and shall provide a copy of the written request. The state registrar shall retain the original written request.

D. Upon notification by a law enforcement agency that a missing child has been recovered, the state registrar shall remove the flag from the child's birth record.

**History:** 1978 Comp., § 29-15-7.2, as enacted by Laws 2010, ch. 33, § 9.

**ANNOTATIONS**

**Cross references.** — For the vital statistics bureau, *see* 24-14-3 NMSA 1978.

**Effective dates.** — Laws 2010, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

## 29-15-8. Release of dental records; immunity.

A. At the time a missing person report is made, the law enforcement agency to which the missing person report is given shall provide a dental record release form conforming to the requirements of the federal Health Insurance Portability and Accountability Act of 1996 to the custodian or immediate family member of the missing person, provided that the custodian or immediate family member is authorized pursuant to that federal act to execute a release on behalf of the missing person. The law enforcement agency shall endorse the dental record release form with a notation that a missing person report has been made in compliance with the provisions of the Missing Persons Information and Reporting Act. When the dental record release form is properly completed by the custodian or immediate family member of the missing person and contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release dental records relating to the missing person to the law enforcement agency.

B. If a release form cannot be executed, the law enforcement agency shall seek disclosure of the dental records of a missing person directly from the records custodian pursuant to the provisions of the federal Health Insurance Portability and Accountability Act of 1996 that allow disclosure of health information for law enforcement purposes.

C. The law enforcement agency shall send the dental records to the clearinghouse.

D. A dentist or physician who releases dental records pursuant to this section is immune from civil liability or criminal prosecution for the release of the dental records.

**History:** Laws 1995, ch. 146, § 8; 2010, ch. 33, § 10.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the first sentence, after "dental record release form", added "conforming to the requirements of the federal Health Insurance Portability and Accountability Act of 1996" and after "family member of the missing person", added "provided that the custodian or immediate family member is authorized pursuant to that federal act to execute a release on behalf of the missing person"; and in the second sentence, after "Missing Persons Information", added "and Reporting"; deleted the former language of Subsection B, which authorized a district court judge to release dental records of a missing person to a law enforcement agency; added the current language of Subsection B; and in Subsection D, after "physician who releases dental records", deleted "to a person presenting a proper release executed or ordered".

## 29-15-9. Cross-checking and matching.

A. The clearinghouse shall cross-check and attempt to match unidentified human remains with descriptions of missing persons. When the clearinghouse discovers a possible match between unidentified human remains and a missing person description, the clearinghouse shall notify the appropriate law enforcement agencies.

B. Law enforcement agencies that receive notice of a possible match shall make arrangements for positive identification. If a positive identification is made, the law enforcement agency shall complete and close the investigation with written notification to the clearinghouse.

C. Law enforcement agencies that receive notice of a possible match between human remains and a missing person description shall notify the office of the state medical investigator.

**History:** Laws 1995, ch. 146, § 9; 2010, ch. 33, § 11.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection A, in the first sentence, after "to match unidentified", deleted "bodies" and added "human remains"; and in the second sentence, after "possible match between unidentified", deleted "body" and added "human remains"; and added Subsection C.

## 29-15-10. Interagency cooperation.

A. State agencies and public and private schools shall cooperate with a law enforcement agency that is investigating a missing person report and shall furnish any information that will assist the law enforcement agency in completing the investigation.

B. Information provided by a state agency or a public or private school shall not be released to any person outside the law enforcement agency or the clearinghouse, except as provided by rule of the department of public safety.

**History:** Laws 1995, ch. 146, § 10; 2010, ch. 33, § 12.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in Subsection B, after "except as provided by", deleted "regulation" and added "rule".

## 29-15-11. Confidentiality of records.

A. The department of public safety shall by rule provide for the classification of information and records as confidential that:

(1) are otherwise confidential under state or federal law or rules adopted pursuant to state or federal law;

(2) are related to the investigation by a law enforcement agency of a missing person or unidentified human remains, if the department of public safety, in consultation with the law enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) are records or notations that the clearinghouse maintains for internal use in matters relating to missing persons and unidentified human remains and the department of public safety determines that release of the internal documents might interfere with an investigation by a law enforcement agency in New Mexico or any other jurisdiction; or

(4) the department of public safety determines might interfere with an investigation or otherwise harm a person, custodian or reporter.

B. The rule may provide for the sharing of confidential information with the custodian or immediate family member of the missing person, except as provided pursuant to Section 29-15-5 NMSA 1978.

**History:** Laws 1995, ch. 146, § 11; 2010, ch. 33, § 13; 2021, ch. 39, § 2.

**ANNOTATIONS**

**The 2021 amendment,** effective June 18, 2021, provided an exception to the provision authorizing the sharing of confidential information with the custodian or immediate family member of a missing person; and in Subsection B, after "missing person", added "except as provided pursuant to Section 29-15-5 NMSA 1978".

**The 2010 amendment,** effective May 19, 2010, in Subsection A, after "public safety shall by", deleted "regulation" and added "rule"; in Paragraph (1) of Subsection A, after "state or federal law or", deleted "regulations" and added "rules"; in Paragraph (2) of Subsection A, after "missing person or unidentified", deleted "body" and added "human remains"; in Paragraph (3) of Subsection A, after "missing persons and unidentified", deleted "bodies" and added "human remains"; and in Subsection B, at the beginning of the sentence, after "The", deleted "regulation" and added "rule".

## 29-15-12. Attorney general to require compliance; removal or discipline.

A. The attorney general shall enforce state agency compliance with the provisions of the Missing Persons Information and Reporting Act as appropriate to assure the immediate response to a report of a missing person.

**History:** Laws 1995, ch. 146, § 12; 2010, ch. 33, § 14.

**ANNOTATIONS**

**The 2010 amendment,** effective May 19, 2010, in the catchline, after "compliance", added "; removal or discipline"; in Subsection A, after "The attorney general shall" deleted "require each law enforcement agency to comply with the provisions of the Missing Persons Information Act and may seek writs of mandamus or other appropriate remedies to enforce the provisions of that act" and added the remainder of the sentence.

## 29-15-13. Missing in New Mexico event.

Each year, the department of public safety, in collaboration with the clearinghouse, shall host a "missing in New Mexico event" in support of all New Mexicans who are searching for missing relatives. The missing in New Mexico event is designated to:

A. provide an opportunity for federal, state, local and tribal governments to come together in one location and virtually to assist families to file missing persons reports, update missing persons reports, submit DNA records or meet with an investigator;

B. provide a network for New Mexicans with missing relatives to heal, access support services and access media outlets to distribute information about missing relatives to the general public; and

C. encourage the department of public safety, local law enforcement agencies, the office of the attorney general, the office of the state medical investigator, the Indian affairs department, the department of health and the behavioral health services and income support divisions of the human services department [health care authority department] to come together to provide support and services for New Mexican families with missing relatives.

**History:** Laws 2022, ch. 3, § 1.

**ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

**Emergency clauses.** — Laws 2022, ch. 3, § 3 contained an emergency clause and was approved February 24, 2022.

# ARTICLE 15A
# AMBER Alert

## 29-15A-1. Short title.

This act [29-15A-1 to 29-15A-5] may be cited as the "AMBER Alert Law".

**History:** Laws 2003, ch. 93, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 93, § 6 made Laws 2003, ch. 93, § 1 effective April 1, 2003.

## 29-15A-2. Definitions.

As used in the AMBER Alert Law:

A. "AMBER alert" means a declaration by the authorized requester that an abduction has occurred and that notifications and broadcasts should be made pursuant to the AMBER alert notification plan;

B. "authorized requester" means the person designated by the chief of the state police to implement the AMBER alert notification plan;

C. "chief of the state police" means the director of the New Mexico state police division of the department of public safety;

D. "lead station" means an AM radio station that has been designated as the "state primary station" by the federal communications commission for the emergency alert system; and

E. "state police" means the New Mexico state police division of the department of public safety.

**History:** Laws 2003, ch. 93, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 93, § 6 made Laws 2003, ch. 93, § 2 effective April 1, 2003.

## 29-15A-3. State police; AMBER alert notification plan; declaration of AMBER alert.

A. The state police shall develop and implement an AMBER alert notification plan for the purpose of disseminating, as rapidly as possible, information about a child abduction so that law enforcement agencies and citizens throughout the state may be aware and vigilant. The plan shall:

(1) provide a procedure for notifying the lead station by the authorized requester that an AMBER alert has been declared. The procedure shall include codes for use by the authorized requester in communicating with the lead station to prevent false alerts;

(2) provide a procedure in which other state and private print, radio, television or other media may alert the members of the public of the abduction;

(3) include a procedure for notifying the department of information technology that an AMBER alert has been declared. The department of information technology shall immediately transmit the notification and related information to all state field operations employees so that they may be aware and vigilant in the course of their regular activities;

(4) include a procedure for notifying a representative of each cellular service company and paging service company operating in New Mexico so that a text message may be sent to the company's customers at no additional expense to the recipient or to any service that accepts the information from the authorized requester and delivers it to the cellular service or paging service company;

(5) include a procedure for notifying all local and federal law enforcement agencies that an AMBER alert has been declared; and

(6) provide for dissemination of information about a child or a child's abductor to the lead station, the department of information technology and local law enforcement agencies when an AMBER alert has been declared.

B. The state police shall distribute the AMBER alert notification plan to all local law enforcement agencies and provide such training and other assistance as is necessary to ensure that the plan can be properly implemented.

C. The authorized requester may declare an AMBER alert when the requester has reason to believe that:

(1) a child under the age of eighteen has been abducted;

(2) the child is in imminent danger of serious bodily harm or death; and

(3) there is specific information available about the child or the child's abductor that may assist in an expedient and successful end to the abduction.

D. Once an AMBER alert has been declared, only the authorized requester may terminate the AMBER alert.

**History:** Laws 2003, ch. 93, § 3; 2005, ch. 142, § 1; 2007, ch. 290, § 24; 2013, ch. 51, § 1.

## ANNOTATIONS

**The 2013 amendment,** effective June 14, 2013, expanded the reasons for declaring an AMBER alert to include abduction by a person related to the child; and in Paragraph (1) of Subsection C, after "has been abducted", deleted "by an unrelated person".

**The 2007 amendment,** effective July 1, 2007, required the AMBER alert notification plan to provide for notification to and transmission of information by the department of information technology.

**The 2005 amendment,** effective July 1, 2005, added Subsection A(4) to require that the AMBER notification plan include a procedure for notifying each cellular and paging service company in New Mexico so that a message may be sent to the company’s

customers at no additional expense to the person who accepts the information and delivers it to the cellular or paging service company.

## 29-15A-4. AMBER alert; initiation by other law enforcement agencies.

A. The procedures for initiating an AMBER alert pursuant to the AMBER Alert Law are available to all law enforcement agencies in New Mexico; provided that nothing in that law prohibits a local law enforcement agency from developing and implementing its own similar notification plan; provided further that nothing in that act supercedes a provision or procedure in such a local notification plan.

B. If a law enforcement agency that has not developed and implemented its own similar plan desires that an AMBER alert be declared, it shall notify the authorized requester. The authorized requester shall declare an AMBER alert if, after evaluating the information, the authorized requester believes that the criteria for declaring an alert has been satisfied.

C. If an AMBER alert is initiated and there is information that the child's abductor may be traveling or has traveled across state lines, the authorized requester shall notify the other states or the Republic of Mexico in order for those governments to issue an alert. The state police shall work with all bordering states and the Republic of Mexico in order to establish agreements to carry out regional alerts.

**History:** Laws 2003, ch. 93, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 93, § 6 made Laws 2003, ch. 93, § 4 effective April 1, 2003.

## 29-15A-5. Submission of false information; penalty.

A person who knowingly submits false information to a law enforcement agency regarding a child abduction is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

**History:** Laws 2003, ch. 93, § 5.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 93, § 6 made Laws 2003, ch. 93, § 5 effective April 1, 2003.

# ARTICLE 16
# DNA Identification

## 29-16-1. Short title.

Chapter 29, Article 16 NMSA 1978 may be cited as the "DNA Identification Act".

**History:** Laws 1997, ch. 105, § 1; 2003, ch. 256, § 4.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003 substituted "Chapter 29, Article 16 NMSA 1978" for "This act [29-16-1 to 29-16-13 NMSA 1978]" at the beginning of the section.

**Constitutionality.** — New Mexico's DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is not unconstitutional on its face, because weighing the law enforcement need to identify all persons it has arrested for committing a felony, and the sample's subsequent use in a database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

Where defendant was convicted of multiple counts of first degree criminal sexual penetration and first degree kidnapping involving four separate victims, and where defendant claimed that New Mexico's DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is unconstitutional on its face, defendant's claim was denied, because weighing the law enforcement need to identify all persons it has arrested for committing a felony, and the sample's subsequent use under the combined DNA index system database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

## 29-16-2. Purpose of act.

The purpose of the DNA Identification Act is to:

A. establish a DNA identification system for covered offenders and persons required to provide a DNA sample pursuant to the provisions of Section 1 [29-3-10 NMSA 1978] of this 2006 act;

B. facilitate the use of DNA records by local, state and federal law enforcement agencies in the:

(1) identification, detection or exclusion of persons in connection with criminal investigations; and

(2) registration of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [Chapter 29, Article 11A NMSA 1978];

C. establish a missing persons DNA identification system consisting of the following DNA indexes:

(1) unidentified persons;

(2) unidentified human remains; and

(3) relatives of, or known reference samples from, missing persons; and

D. facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification and location of missing and unidentified persons or human remains.

**History:** Laws 1997, ch. 105, § 2; 2003, ch. 256, § 5; 2005, ch. 279, § 9; 2006, ch. 104, § 2.

## ANNOTATIONS

**The 2006 amendment,** effective January 1, 2007, in Subsection A, added "persons required to provide a DNA sample pursuant to the provisions of Section 1 of this 2006 act".

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2005 amendment,** effective July 1, 2005, added Subsection B(2) to provide that a purpose of the act is to facilitate the use of DNA records in the registration of sex offenders.

**Applicability.** — Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**Constitutionality.** — New Mexico’s DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is not unconstitutional on its face, because weighing the law enforcement need to identify all persons it has arrested for

committing a felony, and the sample's subsequent use in a database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

Where defendant was convicted of multiple counts of first degree criminal sexual penetration and first degree kidnapping involving four separate victims, and where defendant claimed that New Mexico's DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is unconstitutional on its face, defendant's claim was denied, because weighing the law enforcement need to identify all persons it has arrested for committing a felony, and the sample's subsequent use under the combined DNA index system database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

**Entry of a DNA profile generated from a deceased person into the New Mexico DNA identification system.** — The DNA Identification Act (act), 29-16-1 to 29-16-13 NMSA 1978, requires any convicted felon, sex offender, or individual convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code to provide a DNA sample to be entered into the DNA identification system (NMDIS), and, in addition, any individual over the age of eighteen is required to provide a DNA sample upon arrest for a felony, and although the act does not expressly mention deceased individuals with documented felony arrests or convictions, it is likely, in light of the act's purpose of facilitating the use of DNA records by law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations, that a court would conclude that the act permits the entry of a DNA profile generated from a deceased individual with a documented felony arrest or conviction into NMDIS for the purpose of comparison to evidence profiles generated from unsolved criminal cases. *DNA Identification Act* (1/25/21), Att'y Gen. Adv. Ltr. 2021-02.

**The DNA Identification Act does not prohibit a law enforcement agency from conducting DNA searches for the purpose of establishing potential familial matches.** — The DNA Identification Act (act), 29-16-1 to 29-16-13 NMSA 1978, requires any convicted felon, sex offender, or individual convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code to provide a DNA sample to be entered into the DNA identification system (NMDIS), and, in addition, any individual over the age of eighteen is required to provide a DNA sample upon arrest for a felony. Nothing in the act specifies that a DNA search conducted for criminal investigatory purposes may only seek an exact match, or that the identification of a specific individual is the only permissible information that may be conveyed through such a search, and therefore it is likely, notwithstanding certain administrative rules, that in light of the act's purpose of facilitating the use of DNA records by law enforcement agencies in the identification, detection or exclusion of

persons in connection with criminal investigations, that a court would conclude that the act does not prohibit a law enforcement agency from conducting searches for the purpose of establishing potential familial matches. *DNA Identification Act* (1/25/21), Att'y Gen. Adv. Ltr. 2021-02.

## 29-16-3. Definitions.

As used in the DNA Identification Act:

A. "administrative center" means the part of a law enforcement agency crime laboratory that participates in the national DNA index system and that administers and operates the DNA identification system;

B. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

C. "covered offender" means any person:

(1) convicted of a felony offense as an adult pursuant to state, federal or military law;

(2) convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code [Chapter 32A NMSA 1978] or pursuant to comparable or equivalent proceedings under state, federal or military law; or

(3) required to register as a sex offender pursuant to the provisions of the Sex Offender Registration and Notification Act [Chapter 29, Article 11A NMSA 1978];

D. "department" means the department of public safety;

E. "DNA" means deoxyribonucleic acid as the basis of human heredity;

F. "DNA identification system" means the DNA identification system established pursuant to the DNA Identification Act;

G. "DNA oversight committee" means the DNA identification system oversight committee;

H. "DNA records" means the results of DNA testing and related information;

I. "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples;

J. "fund" means the DNA identification system fund;

K. "missing persons DNA identification system" means the missing persons DNA identification system established by the DNA Identification Act;

L. "sample" means a sample of biological material sufficient for DNA testing; and

M. "sex offender DNA identification system" means the sex offender DNA identification system established by the DNA Identification Act.

**History:** Laws 1997, ch. 105, § 3; 2003, ch. 256, § 6; 2005, ch. 279, § 10; 2009, ch. 24, § 1; 2013, ch. 208, § 1.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, clarified definitions; in Subsection A, after "part of a", added "law enforcement agency crime laboratory that participates in the" and after "index system", deleted "qualified New Mexico crime laboratory"; in Paragraph (2) of Subsection C, after "Children's Code", added "or pursuant to comparable or equivalent proceedings under state, federal or military law" and after "military law; or" deleted "a sex offender", and in Paragraph (3) of Subsection C, after "register", added "as a sex offender".

**The 2009 amendment,** effective June 19, 2009, in Subsection A, added "part of a national DNA index system qualified New Mexico crime laboratory" and deleted former Subsection B, which defined "DNA oversight committee"; in Subsection C, deleted "under the Criminal Code, the Motor Vehicle Code or the constitution of New Mexico" and added "pursuant to state, federal, or military law"; and added Subsection G.

**The 2005 amendment,** effective July 1, 2005, defined "covered offender" in Subsection D to include a sex offender who is required to register; and added Subsection M to define "sex offender DNA identification system".

**Applicability.** — Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**The 2003 amendment,** effective July 1, 2003, added present Subsection K and redesignated former Subsection K as present Subsection L.

## 29-16-4. Administrative center; powers and duties; head; location; written agreement.

A. The administrative center shall:

(1) establish and administer the DNA identification system. The DNA identification system shall provide for collection, storage, DNA testing, maintenance and comparison of samples and DNA records for forensic and humanitarian purposes. Those purposes shall include generation of investigative leads, statistical analysis of DNA profiles and identification of missing persons and unidentified human remains. Procedures used for DNA testing shall be compatible with the procedures the federal bureau of investigation has specified, including comparable test procedures, laboratory equipment, supplies and computer software. Procedures used shall meet or exceed the provisions of the federal DNA Identification Act of 1994 regarding minimum standards for state participation in CODIS, including minimum standards for the acceptance, security and dissemination of DNA records;

(2) coordinate sample collection activities;

(3) perform or contract for DNA testing;

(4) serve as a repository for samples and DNA records;

(5) act as liaison with the federal bureau of investigation for purposes of CODIS;

(6) adopt rules and procedures governing:

(a) sample collection;

(b) DNA testing;

(c) the DNA identification system and DNA records;

(d) the acceptance, security and dissemination of DNA records; and

(e) communication between local, state and federal law enforcement agencies, the corrections department and local jails and detention facilities in order to minimize duplicate sample collections from the same individual;

(7) provide training to jail and detention facility personnel who are required to collect samples pursuant to Section 29-3-10 NMSA 1978;

(8) be reimbursed for, pursuant to the DNA Identification Act, the costs of sample collection and DNA testing of samples taken for the purposes of the identification of missing persons and unidentified human remains;

(9) establish and administer the missing persons DNA identification system as a part of the DNA identification system; and

(10) establish and administer the sex offender DNA identification system as part of the DNA identification system.

B. The chief of the law enforcement agency where the administrative center is located shall select the head of the administrative center with the approval of six members of the DNA oversight committee. The head of the administrative center shall manage the operations of the administrative center and shall have the education and experience to meet or exceed the requirements for a technical leader or a CODIS administrator pursuant to the federal bureau of investigation's quality assurance standards.

C. The administrative center shall be located at the crime laboratory of the law enforcement agency for the largest municipality in a class A county having a population of more than five hundred thousand at the most recent federal decennial census. If a relocation of the administrative center is required for continued compliance with the provisions of the DNA Identification Act, the DNA oversight committee shall designate any future locations of the administrative center upon approval of six voting members of the committee.

D. The DNA oversight committee shall enter into a written agreement with the law enforcement agency where the administrative center is located and may designate the attorney general to enter into the agreement on its behalf and with its approval.

**History:** Laws 1997, ch. 105, § 4; 2003, ch. 256, § 7; 2005, ch. 279, § 11; 2006, ch. 104, § 3; 2009, ch. 24, § 2; 2013, ch. 208, § 2.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, provided for the location and relocation of the administrative center and for the selection of the head of the administrative center; provided for the qualifications of the head of the administrative center; required a written agreement between the committee and the law enforcement agency where the administrative center will be located; in the title, after "duties", deleted "transfer to other law enforcement agency" and added "head; location; written agreement"; deleted former Subsection A, which required the secretary of public safety to designate the unit to which the administrative center would be attached; deleted former Subsections C and D, which authorized the secretary of public safety to designate the location of the administrative center; and added Subsections B through D.

**The 2009 amendment,** effective June 19, 2009, in Subsection A, at the end of the sentence, deleted "part of a crime laboratory" and added "that meets the requirements for participation in the national DNA index system".

**The 2006 amendment,** effective January 1, 2007, added Subparagraph (e) of Paragraph (6) of Subsection B to provide for communication in order to minimize

duplicate sample collections; and added Paragraph (7) of Subsection B to provide for training to personnel to collect samples.

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2005 amendment,** effective July 1, 2005, added Subsection B(9) to provide that the administrative center shall establish and administer the sex offender DNA identification system as part of the DNA identification system.

**Applicability.** — Laws 2005, ch. 279, §14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**Entry of a DNA profile generated from a deceased person into the New Mexico DNA identification system.** — The DNA Identification Act (act), 29-16-1 to 29-16-13 NMSA 1978, requires any convicted felon, sex offender, or individual convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code to provide a DNA sample to be entered into the DNA identification system (NMDIS), and, in addition, any individual over the age of eighteen is required to provide a DNA sample upon arrest for a felony, and although the act does not expressly mention deceased individuals with documented felony arrests or convictions, it is likely, in light of the act's purpose of facilitating the use of DNA records by law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations, that a court would conclude that the act permits the entry of a DNA profile generated from a deceased individual with a documented felony arrest or conviction into NMDIS for the purpose of comparison to evidence profiles generated from unsolved criminal cases. *DNA Identification Act* (1/25/21), Att'y Gen. Adv. Ltr. 2021-02.

**The DNA Identification Act does not prohibit a law enforcement agency from conducting DNA searches for the purpose of establishing potential familial matches.** — The DNA Identification Act (act), 29-16-1 to 29-16-13 NMSA 1978, requires any convicted felon, sex offender, or individual convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code to provide a DNA sample to be entered into the DNA identification system (NMDIS), and, in addition, any individual over the age of eighteen is required to provide a DNA sample upon arrest for a felony. Nothing in the act specifies that a DNA search conducted for criminal investigatory purposes may only seek an exact match, or that the identification of a specific individual is the only permissible information that may be conveyed through such a search, and therefore it is likely, notwithstanding certain administrative rules, that in light of the act's purpose of facilitating the use of DNA records by law enforcement agencies in the identification, detection or exclusion of

persons in connection with criminal investigations, that a court would conclude that the act does not prohibit a law enforcement agency from conducting searches for the purpose of establishing potential familial matches. *DNA Identification Act* (1/25/21), Att'y Gen. Adv. Ltr. 2021-02.

**Permissible types of DNA analysis techniques to be determined by the NMDIS Administrative Center and the FBI.** — The DNA Identification Act (act), 29-16-1 to 29-16-13 NMSA 1978, requires any convicted felon, sex offender, or individual convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code to provide a DNA sample to be entered into the DNA identification system (NMDIS), and, in addition, any individual over the age of eighteen is required to provide a DNA sample upon arrest for a felony. The act vests the NMDIS administrative center with the administrative rulemaking authority to set specific requirements for sample collection and DNA testing, but does not specify which scientific techniques NMDIS may utilize, instead requiring that the techniques utilized be compatible with the procedures the federal bureau of investigation (FBI) has specified, including comparable test procedures, laboratory equipment, supplies and computer software, and therefore the question of whether the use of RAPID DNA analysis techniques is permissible is reserved to the NMDIS administrative center and the FBI. *DNA Identification Act* (1/25/21), Att'y Gen. Adv. Ltr. 2021-02.

## 29-16-5. DNA oversight committee; created; powers and duties.

A. The "DNA identification system oversight committee" is created. The DNA oversight committee shall be composed of nine voting members as follows:

(1) a scientific representative from the department crime laboratory appointed by the secretary of public safety;

(2) a scientific representative from the crime laboratory of the police department for the largest municipality in a class A county having a population of more than two hundred fifty thousand at the most recent federal decennial census;

(3) the secretary of corrections or the secretary's designated representative;

(4) the state medical investigator or the investigator's designated representative;

(5) the attorney general or the attorney general's designated representative;

(6) the president of the district attorneys' association or the president's designated representative;

(7) the chief public defender or the chief public defender's designated representative;

(8) the president of the New Mexico criminal defense lawyers association or the president's designated representative; and

(9) the head of the administrative center or the head's designated representative.

B. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the DNA identification system.

C. The administrative center shall review and make recommendations to the DNA oversight committee regarding rules and procedures for the administration and operation of the DNA identification system.

D. The DNA oversight committee shall oversee the establishment and administration of the missing persons DNA identification system as part of the DNA identification system.

E. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the missing persons DNA identification system as part of the DNA identification system.

F. The DNA oversight committee shall oversee the establishment and administration of the sex offender DNA identification system as part of the DNA identification system.

G. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the sex offender DNA identification system as part of the DNA identification system.

H. The DNA oversight committee shall designate and approve the location of the administrative center as provided in Section 29-16-4 NMSA 1978.

I. The DNA oversight committee may award grants and loans pursuant to Section 29-16-13 NMSA 1978.

**History:** Laws 1997, ch. 105, § 5; 2003, ch. 256, § 8; 2005, ch. 279, § 12; 2009, ch. 24, § 3; 2013, ch. 208, § 3.

## ANNOTATIONS

**The 2013 amendment,** effective July 1, 2013, required that the DNA identification system oversight committee designate and approve the location of the administrative center; and added Subsections H and I.

**The 2009 amendment** made no changes.

**The 2005 amendment,** effective July 1, 2005, added Subsection F to provide for the establishment and administration of the sex offender DNA identification system and added Subsection G to provide for the adoption of rules and procedures regarding the establishment and administration of the sex offender DNA identification system.

**Applicability.** — Laws 2005, ch. 279, § 14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**The 2003 amendment,** effective July 1, 2003 substituted "attorneys" for "attorney's" in Subsection A(6); deleted "regulations" following "adopt rules" near the middle of Subsection B; and deleted "regulations" following "regarding rules" near the middle of Subsection C; and added Subsections D and E.

## 29-16-6. Collection of samples.

A. A covered offender shall provide one or more samples to the administrative center, as follows:

(1) a covered offender convicted on or after July 1, 1997 shall provide a sample immediately upon request to the corrections department as long as the request is made before release from any correctional facility or, if the covered offender is not sentenced to incarceration, before the end of any period of probation or other supervised release;

(2) a covered offender incarcerated on or after July 1, 1997 shall provide a sample immediately upon request to the corrections department as long as the request is made before release from any correctional facility;

(3) a covered offender on probation or other supervised release on or after July 1, 1997 shall provide a sample immediately upon request to the corrections department as long as the request is made before the end of any period of probation or other supervised release; and

(4) a covered offender required to register or renew his registration pursuant to the provisions of the Sex Offender Registration and Notification Act [Chapter 29, Article 11A NMSA 1978] shall provide a sample immediately upon request to the county sheriff located in any county in which the sex offender is required to register, unless the sex offender provided a sample while in the custody of the corrections department or to the county sheriff of another county in New Mexico in which the sex offender is registered.

B. A person eighteen years of age or over who is arrested on or after January 1, 2007 for the commission of a felony as provided in Section 1 [29-3-10 NMSA 1978] of

this 2006 act shall provide a sample immediately upon request to jail or detention facility personnel, unless:

(1) the person has previously provided a sample sufficient for DNA testing pursuant to the provisions of this section;

(2) the sample is in the possession of the administrative center; and

(3) the sample has not been expunged.

C. Samples from unidentified persons or relatives of a missing person shall be provided to the administrative center, as follows:

(1) upon the completion of a permission to search form authorizing the collection of a DNA sample;

(2) upon the receipt of a properly executed search warrant; or

(3) upon the issuance of a court order.

D. Samples from unidentified human remains shall be provided by the state medical investigator.

E. Samples of known reference materials from missing persons shall be provided by the investigating law enforcement agency.

**History:** Laws 1997, ch. 105, § 6; 2003, ch. 256, § 9; 2005, ch. 279, § 13; 2006, ch. 104, § 4.

## ANNOTATIONS

**The 2006 amendment,** effective January 1, 2007, added Subsection B to provide with exception for the collection of samples from persons eighteen years of age or older, who are arrested for a felony.

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2005 amendment,** effective July 1, 2005, added Subsection A(4) to provide that a covered offender shall provide a sample upon request of the sheriff of any county in which the sex offender is required to register, unless the sex offender has given a sample while in custody of the corrections department of a sheriff of another county.

**Applicability.** — Laws 2005, ch. 279, § 14, effective July 1, 2005, provided that Laws 2005, ch. 279, §§ 1 through 13 apply to a person convicted of a sex offense on or after

July 1, 2005 and a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

**Constitutionality.** — New Mexico's DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is not unconstitutional on its face, because weighing the law enforcement need to identify all persons it has arrested for committing a felony, and the sample's subsequent use in a database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

Where defendant was convicted of multiple counts of first degree criminal sexual penetration and first degree kidnapping involving four separate victims, and where defendant claimed that New Mexico's DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is unconstitutional on its face, defendant's claim was denied, because weighing the law enforcement need to identify all persons it has arrested for committing a felony, and the sample's subsequent use under the combined DNA index system database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

**Entry of a DNA profile generated from a deceased person into the New Mexico DNA identification system.** — The DNA Identification Act (act), 29-16-1 to 29-16-13 NMSA 1978, requires any convicted felon, sex offender, or individual convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code to provide a DNA sample to be entered into the DNA identification system (NMDIS), and, in addition, any individual over the age of eighteen is required to provide a DNA sample upon arrest for a felony, and although the act does not expressly mention deceased individuals with documented felony arrests or convictions, it is likely, in light of the act's purpose of facilitating the use of DNA records by law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations, that a court would conclude that the act permits the entry of a DNA profile generated from a deceased individual with a documented felony arrest or conviction into NMDIS for the purpose of comparison to evidence profiles generated from unsolved criminal cases. *DNA Identification Act* (1/25/21), Att'y Gen. Adv. Ltr. 2021-02.

**The DNA Identification Act does not prohibit a law enforcement agency from conducting DNA searches for the purpose of establishing potential familial matches.** — The DNA Identification Act (act), 29-16-1 to 29-16-13 NMSA 1978, requires any convicted felon, sex offender, or individual convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code to provide a DNA sample to be entered into the DNA identification system (NMDIS),

and, in addition, any individual over the age of eighteen is required to provide a DNA sample upon arrest for a felony. Nothing in the act specifies that a DNA search conducted for criminal investigatory purposes may only seek an exact match, or that the identification of a specific individual is the only permissible information that may be conveyed through such a search, and therefore it is likely, notwithstanding certain administrative rules, that in light of the act's purpose of facilitating the use of DNA records by law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations, that a court would conclude that the act does not prohibit a law enforcement agency from conducting searches for the purpose of establishing potential familial matches. *DNA Identification Act* (1/25/21), Att'y Gen. Adv. Ltr. 2021-02.

## 29-16-6.1. Reimbursement of costs.

A. When the DNA testing of samples listed in Section 29-16-6 NMSA 1978 is required, the administrative center shall be reimbursed for the costs of the sample collection and DNA testing:

(1) of unidentified persons by the investigating law enforcement agency;

(2) of unidentified human remains by the state medical investigator or by the investigating law enforcement agency; and

(3) for relatives of, or known reference samples from, a missing person by the relatives of the missing person or by the investigating law enforcement agency.

B. Reimbursements shall be deposited in the fund.

**History:** Laws 2003, ch. 256, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 256, § 12 made Laws 2003, ch. 256, § 2 effective July 1, 2003.

## 29-16-7. Procedures for collection of samples.

A. The collection of samples pursuant to the provisions of Section 29-16-6 NMSA 1978 shall be conducted in a medically approved manner in accordance with rules and procedures adopted by the DNA oversight committee.

B. A person who collects samples shall be trained in procedures that meet the requirements and standards specified in Subsection A of this section.

C. A person authorized to collect samples and his employer shall be immune from liability in any civil or criminal action with regard to the collection of samples, if the

collection is performed without negligence. This subsection shall not be deemed to create any additional liability or waive any immunity of public employees under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

D. Samples shall be stored in accordance with rules and procedures adopted by the administrative center.

E. DNA testing shall be performed by the administrative center or a contract facility it may designate.

F. DNA records and samples shall be securely classified and stored by the administrative center.

**History:** Laws 1997, ch. 105, § 7; 2003, ch. 256, § 10.

**ANNOTATIONS**

**The 2003 amendment,** effective July 1, 2003, deleted "regulations" following "rules" throughout the section; in Subsection A substituted "29-16-6 NMSA 1978" for "6 of the DNA Identification Act" following "provisions of Section" near the beginning; and substituted "by" for "at" near the end of Subsection F.

## 29-16-7.1. Entering DNA into CODIS after death.

The administrative center shall enter the DNA of a person collected pursuant to Section 29-3-10 NMSA 1978 into CODIS upon the death of the person if the person dies before being charged with a felony; provided that, if:

A. the person was not incarcerated at the time of death, the DNA shall be entered only upon a motion by the district attorney and an order from the court with jurisdiction over the felony had charges been filed; and

B. the person was incarcerated at the time of death or had been released prior to July 1, 1997, the DNA shall be entered automatically.

**History:** Laws 2025, ch. 42, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2025, ch. 42 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2025, 90 days after adjournment of the legislature.

## 29-16-8. Confidentiality; disclosure and dissemination of DNA records.

A. DNA records and samples are confidential and shall not be disclosed except as authorized in the DNA Identification Act pursuant to the rules and regulations developed and adopted by the DNA oversight committee.

B. The administrative center shall make DNA records available for identification, comparison and investigative purposes to local, state and federal law enforcement agencies and the state medical investigator pursuant to the rules developed and adopted by the DNA oversight committee. The administrative center may disseminate statistical or research information derived from samples and DNA testing if all personal identification is removed pursuant to the rules developed and adopted by the DNA oversight committee.

C. To minimize duplicate sample collection and testing, the administrative center may make information available, by secure electronic methods, to local, state and federal law enforcement agencies, the corrections department, jails and detention facilities for the purpose of verifying whether a sample has been collected from a specific individual. Information provided under this subsection shall not include DNA testing results.

**History:** Laws 1997, ch. 105, § 8; 2003, ch. 256, § 11; 2006, ch. 104, § 5.

**ANNOTATIONS**

**The 2006 amendment,** effective January 1, 2007, added Subsection C to provide for release of information in order to minimize duplicate sample collection and testing.

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**The 2003 amendment,** effective July 1, 2003, in Subsection B inserted "and the state medical investigator" following "law enforcement agencies" near the middle and deleted "and regulations" following "to the rules" throughout the section.

## 29-16-8.1. DNA searches.

A. Searches of samples collected pursuant to the DNA Identification Act, for purposes of the missing persons DNA identification system, shall be limited to searches against DNA indexes consisting of:

(1) unidentified persons;

(2) unidentified human remains;

(3) relatives of, or known reference samples from, missing persons;

(4) covered offenders as defined by the DNA Identification Act and maintained by the DNA identification system; and

(5) persons arrested for the commission of a felony as provided in Section 1 of this 2006 act [29-3-10 NMSA 1978].

B. Searches of samples collected from unidentified persons or relatives of missing persons pursuant to the DNA Identification Act shall not be performed against DNA indexes consisting of evidentiary samples resulting from criminal investigations.

**History:** Laws 2003, ch. 256, § 3; 2006, ch. 104, § 6.

**ANNOTATIONS**

**The 2006 amendment,** effective January 1, 2007, added Paragraph (5) of Subsection A to add persons arrested for a felony.

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**Constitutionality.** — New Mexico's DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is not unconstitutional on its face, because weighing the law enforcement need to identify all persons it has arrested for committing a felony, and the sample's subsequent use in a database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

Where defendant was convicted of multiple counts of first degree criminal sexual penetration and first degree kidnapping involving four separate victims, and where defendant claimed that New Mexico's DNA Identification Act, which requires all persons arrested for certain crimes to provide a DNA sample, is unconstitutional on its face, defendant's claim was denied, because weighing the law enforcement need to identify all persons it has arrested for committing a felony, and the sample's subsequent use under the combined DNA index system database, against the minimally invasive means for securing the DNA sample from a defendant's cheek weighs in favor of concluding that the search is reasonable under the fourth amendment to the U.S. Constitution and of the N.M. Const., art. II, § 10. *State v. Blea*, 2018-NMCA-052, cert. denied.

## 29-16-9. Enforcement.

A. The attorney general or a district attorney may petition a district court for an order requiring a covered offender or a person required to provide a DNA sample pursuant to the provisions of Section 1 of this 2006 act [29-3-10 NMSA 1978] to:

(1) provide a sample; or

(2) provide a sample by alternative means if the covered offender or person will not cooperate.

B. Nothing in this section shall prevent the collection of samples by order of a court of competent jurisdiction or the collection of samples of covered offenders.

**History:** Laws 1997, ch. 105, § 9; 2006, ch. 104, § 7.

**ANNOTATIONS**

**The 2006 amendment,** effective January 1, 2007, in Subsection A, added a person required to provide a DNA sample pursuant to Section 1 of the 2006 act [29-3-10 NMSA 1978]; and added Subsection B to provide that nothing in this section prevents collection of samples by order or a court or the collection of samples of covered offenders.

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 29-16-10. Expungement of samples and DNA records from the DNA identification system and CODIS.

A. A person may request expungement of the person's sample and DNA records from the DNA identification system on the following grounds:

(1) the conviction that led to the inclusion of the sample has been reversed; or

(2) the arrest that led to the inclusion of the sample has:

(a) resulted in a felony charge that has been resolved by a dismissal, nolle prosequi, successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction or acquittal; or

(b) not resulted in a felony charge within one year of arrest.

B. The administrative center shall expunge a person's sample and DNA records from the DNA identification system when the person provides the administrative center with the following materials:

(1) a written request for expungement of the sample and DNA records; and

(2) a certified copy of a court order that reverses the conviction that led to the inclusion of the sample; or

(3) for samples included pursuant to arrest:

(a) a certified copy of the dismissal, nolle prosequi, successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction or acquittal; or

(b) a sworn affidavit that no felony charges arising out of the arrest have been filed within one year.

C. When a person's sample and DNA records are expunged from the DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS.

D. The administrative center shall not expunge a person's sample and DNA records from the DNA identification system if the person has a prior felony conviction or a pending felony charge for which collection of a sample is authorized pursuant to the provisions of the DNA Identification Act.

**History:** Laws 1997, ch. 105, § 10; 2006, ch. 104, § 8.

**ANNOTATIONS**

**The 2006 amendment,** effective January 1, 2007, in Paragraph (1) of Subsection A, deleted DNA records in the DNA identification system; added Paragraph (2) of Subsection A and Paragraph (3) of Subsection B to provide for expungement based on certain resolutions of an arrest; and added Subsection D to prohibit expungement in certain cases.

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## 29-16-10.1. Expungement of samples and DNA records.

A. A person may request expungement of his sample and DNA records from the missing persons DNA identification system.

B. The administrative center shall expunge a person's sample and DNA records from the missing persons DNA identification system when the person provides the administrative center with the following materials:

(1) a written request for expungement of his sample and DNA records; and

(2) if applicable, a certified copy of a court order that overturns the original search warrant or court order that led to the inclusion of his sample and DNA records in the missing persons DNA identification system.

C. When a person's sample and DNA records are expunged from the missing persons DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS.

**History:** Laws 2003, ch. 256, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 256, § 12 made Laws 2003, ch. 256, § 1 effective July 1, 2003.

## 29-16-11. Assessment; collection; DNA fee.

A. Each time that a covered offender is convicted, the court shall assess a DNA fee of one hundred dollars ($100) in addition to any other fee, restitution or fine. The corrections department shall collect the DNA fee from the covered offender for deposit in the fund.

B. When a covered offender is transferred to New Mexico from another state pursuant to an interstate compact, the corrections department shall assess and collect from the covered offender a DNA fee of one hundred dollars ($100) for deposit in the fund.

**History:** Laws 1997, ch. 105, § 11; 2013, ch. 208, § 4.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, provided for the collection of the DNA fee by the corrections department; in the title, after "assessment", deleted "of" and added "collection; DNA fee"; deleted the former introductory sentence "On and after the effective date of the DNA Identification Act"; in Subsection A, in the first sentence, deleted "When" and added "Each time that" and after "shall assess a", added "DNA", and deleted the former second sentence, which provided that "The fee shall be deposited in the fund" and added the second sentence; and added Subsection B.

## 29-16-12. Penalty.

A. Any person who by virtue of his employment or official position possesses or has access to samples or DNA records and who willfully discloses any of them to any person or in any manner not authorized by the DNA Identification Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. Any person who uses or attempts to use samples or DNA records for a purpose not authorized by the DNA Identification Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Any person who obtains or attempts to obtain samples or DNA records for a purpose not authorized by the DNA Identification Act is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1997, ch. 105, § 12.

## 29-16-13. DNA identification system fund created; purposes.

A. The "DNA identification system fund" is created in the state treasury. The fund shall consist of all money received by appropriation, gift or grant, all DNA fees collected pursuant to Section 29-16-11 NMSA 1978 and all investment income from the fund.

B. Money and investment income in the fund at the end of any fiscal year shall not revert to the general fund but shall remain in the fund. Money and investment income in the fund is appropriated to the administrative center for expenditure in fiscal year 1998 and subsequent fiscal years for the purposes provided in this section.

C. The fund shall be used to implement the purposes of the DNA Identification Act, including paying the expenses incurred by the administrative center and all other reasonable expenses. Money in the fund may be used for loans or grants of money, equipment or personnel to any law enforcement agency, correctional facility, jail, detention facility, judicial agency, the public defender department or the office of the medical investigator, upon approval of the DNA oversight committee.

**History:** Laws 1997, ch. 105, § 13; 2006, ch. 104, § 9; 2013, ch. 208, § 5.

**ANNOTATIONS**

**The 2013 amendment,** effective July 1, 2013, made grammatical changes; in the title, after "DNA", added "identification system" and after "purposes", deleted "procedure; accounting"; in Subsection A, after "gift or grant, all" deleted "money" and added "DNA fees"; in Subsection B, after "for the purposes", deleted "of the fund" and added "provided in this section"; and in Subsection C, in the first sentence, after "shall be used", deleted "for" and added "to implement", in the second sentence, deleted "The administrative center may use", and in the second sentence, after "Money in the fund", added "may be used" and after "medical investigator, upon", deleted "recommendation" and added "approval".

**The 2006 amendment,** effective January 1, 2007, changed "Section 11 of the DNA Identification Act" to "Section 29-16-11 NMSA 1978" in Subsection B; and added "jail, detention facility" in Subsection E.

**Severability.** — Laws 2006, ch. 104, § 11, effective January 1, 2007, provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

# ARTICLE 17
# Criminal Records Screening for Caregivers

## 29-17-1. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 68, § 6, repealed 29-17-1 NMSA 1978, as enacted by Laws 1997, ch. 202, § 1, relating to criminal records screening for caregivers, effective May 20, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

## 29-17-2. Title.

Sections 1 though 5 [29-17-2 to 29-17-5 NMSA 1978] of this act may be cited as the "Caregivers Criminal History Screening Act".

**History:** Laws 1998, ch. 68, § 1.

**ANNOTATIONS**

**Law reviews.** — For note and comment, "Spence v. Health Force, Inc.: One Step Forward, Two Steps Back For New Mexico Tort Jurisprudence?", see 36 N.M.L. Rev. 687 (2006).

## 29-17-3. Purpose.

The purpose of the Caregivers Criminal History Screening Act and its requirement that caregivers undergo a nationwide criminal history screening is to ensure to the highest degree possible the prevention of abuse, neglect or financial exploitation of care recipients.

**History:** Laws 1998, ch. 68, § 2.

## 29-17-4. Definitions.

As used in the Caregivers Criminal History Screening Act:

A. "applicant" means a person who seeks and is offered employment or contractual service as a caregiver or hospital caregiver with a care provider;

B. "caregiver" means a person, not otherwise required to undergo a nationwide criminal history screening by the New Mexico Children's and Juvenile Facility and Program Criminal Records Screening Act [Chapter 32A, Article 15 NMSA 1978], whose

employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient served by that provider;

C. "care provider" or "provider" means a skilled nursing facility; an intermediate care facility; a care facility for individuals with developmental or intellectual disabilities; a general acute care facility; a psychiatric facility; a rehabilitation facility; a home health agency; a homemaker agency; a home for the aged or disabled; a group home; an adult foster care home; a guardian service provider; a case management entity that provides services to people with developmental disabilities; a private residence that provides personal care, adult residential care or nursing care for two or more persons not related by blood or marriage to the facility's operator or owner; an adult daycare center; a boarding home; an adult residential care home; a residential service or habilitation service authorized to be reimbursed by medicaid; any licensed or medicaid-certified entity or any program funded by the aging and long-term services department that provides respite, companion or personal care services; or programs funded by the children, youth and families department that provide homemaker or adult daycare services. "Care provider" or "provider" does not include resident care facilities located at or performing services exclusively for any correctional facility, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings;

D. "care recipient" means any person under the care of a provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

E. "conviction" means a plea, judgment or verdict of guilty, a plea of nolo contendere, an Alford plea or any plea or judgment entered in connection with a suspended sentence, in this state or any other state or jurisdiction;

F. "hospital caregiver" means a person who provides direct unsupervised patient care in an inpatient setting and is not a licensed New Mexico health care professional practicing within the scope of a profession's license;

G. "nationwide criminal history screening" means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints collected by the department of public safety and submitted to the federal bureau of investigation, resulting in generation of a nationwide criminal history record for that applicant, caregiver or hospital caregiver;

H. "nationwide criminal history record" means information concerning a person's arrests, indictments or other formal criminal charges and any dispositions arising therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision, and collected by criminal justice agencies; and

I. "statewide criminal history screening" means a criminal history background investigation of an applicant or caregiver through the comparison of identifying information with the department of public safety's criminal record repository.

**History:** Laws 1998, ch. 68, § 3; 1999, ch. 112, § 1; 2005, ch. 226, § 1; 2023, ch. 113, § 8.

**ANNOTATIONS**

**The 2023 amendment,** effective June 16, 2023, revised the definition of "care provider" or "provider"; in Subsection C, deleted "the mentally retarded" and added "individuals with developmental or intellectual disabilities".

**The 2005 amendment,** effective June 17, 2005, defined "applicant" in Subsection A to include a hospital caregiver; defined "care provider" or "provider" in Subsection C to include a general acute care facility; added the definition of "conviction" in Subsection E; added the definition of "hospital caregiver" in Subsection F; defined "nationwide criminal history screening" in Subsection G to include a hospital caregiver; deleted from the definition of "nationwide criminal history record" in Subsection H information stored in computerized data bases of the federal bureau of investigation, national law enforcement telecommunications system, department of public safety or the repositories of criminal history or other states; and added the definition of "stateside criminal history screening" in Subsection I.

**The 1999 amendment,** effective June 18, 1999, in Subsection B, deleted "(32A-15-1 to 32A-15-4)" following "New Mexico Children's and Juvenile Facility Criminal Records Screening Act," and deleted "or volunteer service" following "contractual service"; in Subsection C, divided the existing provisions into two sentences, and in the first sentence inserted "a guardian service provider; a case management entity that provides services to people with developmental disabilities", deleted "providers" following "habilitation service," substituted "or any program" for "programs" and deleted "however, it" from the end, and in the second sentence inserted "'Careprovider' or 'provider'" at the beginning and added "outpatient treatment facilities . . . group practice settings" to the end; and made stylistic changes throughout the section.

## 29-17-5. Criminal history screening required; regulatory implementation; appeals.

A. The health care authority is authorized to receive an applicant's, caregiver's or hospital caregiver's nationwide criminal history record obtained by the department of public safety as a result of a nationwide criminal history screening pursuant to an applicant's, caregiver's or hospital caregiver's authorization for such nationwide criminal history screening. Providers shall submit a set of fingerprints of applicants, caregivers and hospital caregivers to the health care authority for a nationwide criminal history screening, and the department of public safety shall accept from the health care

authority such fingerprints for the purpose of conducting a nationwide criminal history screening.

B. The health care authority is authorized to promulgate rules to implement the Caregivers Criminal History Screening Act, including rules establishing fingerprint submission procedures; fees; confidentiality; time frames for an applicant's or caregiver's nationwide criminal history screening; procedures for clarifying incomplete or confusing criminal history information; provider sanctions for noncompliance; and employment procedures pending the results of the nationwide criminal history screening relating to applicants and caregivers.

C. No caregiver or hospital caregiver may be employed by a care provider unless the caregiver or hospital caregiver first has submitted to a request for a nationwide criminal history screening prior to beginning employment in accordance with procedures established by rule by the health care authority and department of public safety. A caregiver or hospital caregiver shall apply for statewide criminal history screening when applying for employment with a care provider within twelve months of the caregiver's or hospital caregiver's most recent nationwide criminal history screening.

D. The following felony convictions disqualify an applicant, caregiver or hospital caregiver from employment as a caregiver:

(1) homicide;

(2) trafficking controlled substances;

(3) kidnapping, false imprisonment, aggravated assault or aggravated battery, including aggravated battery of a household member;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses;

(5) crimes involving adult abuse, neglect or financial exploitation;

(6) crimes involving child abuse or neglect;

(7) robbery, larceny, burglary, fraud, extortion, forgery, embezzlement, credit card fraud or receiving stolen property;

(8) an attempt, solicitation or conspiracy involving any of the felonies in this subsection;

(9) human trafficking;

(10) assault of a peace officer;

(11) identity theft; or

(12) cruelty to animals.

E. The health care authority:

(1) may disqualify an applicant, caregiver or hospital caregiver from employment as a caregiver if that applicant, caregiver or hospital caregiver poses an unreasonable risk to care recipients. In determining whether a person poses an unreasonable risk as a caregiver, the health care authority shall assess the totality of the circumstances using reasonably reliable information, such as court records. The health care authority may only find that an applicant, caregiver or hospital caregiver poses an unreasonable risk if the preponderance of the evidence establishes an unreasonable risk due to the applicant, caregiver or hospital caregiver having:

(a) two or more convictions related to abuse, neglect or exploitation within the past ten years, regardless of the degree of the crime; or

(b) a single conviction or pending charges, regardless of the degree of the crime, if the crime is related to: 1) abuse, neglect or exploitation of a care recipient; 2) human trafficking; 3) criminal sexual penetration or related sexual offenses; 4) battery of a household member; or 5) child abuse; and

(2) shall provide an administrative reconsideration process for applicants, caregivers and hospital caregivers who are determined to be an unreasonable risk. The burden of proof is on the health care authority to demonstrate unreasonable risk by a preponderance of the evidence. An applicant, caregiver or hospital caregiver shall have the right to judicial review of any final decision made by the health care authority pursuant to this subsection.

F. Upon receipt by the health care authority of the results of the applicant's, caregiver's or hospital caregiver's nationwide criminal history screening, the authority shall give notice to the submitting care provider whether the applicant or caregiver is disqualified pursuant to Subsection D or E of this section. No other results of the applicant's, caregiver's or hospital caregiver's nationwide criminal history screening shall be provided to the care provider. Except as provided in Subsection G of this section, a care provider shall not employ an applicant or continue to employ a caregiver or hospital caregiver whose nationwide criminal history screening record reflects a disqualifying conviction or an unreasonable risk. When the health care authority provides notice to the care provider of a disqualification pursuant to Subsection D or E of this section, it shall also notify the applicant, caregiver or hospital caregiver, stating with specificity the reasons on which its decision is based and identifying the agency that provided the records.

G. An applicant, caregiver or hospital caregiver whose nationwide criminal history record, obtained through the applicant's, caregiver's or hospital caregiver's nationwide

criminal history screening and other clarifying endeavors of the health care authority, results in a disqualification pursuant to Subsection D or E of this section, may request from the authority an administrative reconsideration. The care provider may, in its discretion, continue to employ such person during the pendency of the reconsideration. A care provider may employ the applicant or caregiver if the reconsideration proceeding results in a reversal of the health care authority's decision.

H. The health care authority is authorized to adopt rules for the administrative reconsideration proceeding available to an applicant or caregiver whose nationwide criminal history record reflects a disqualifying conviction or an unreasonable risk. The rules shall take into account the requirements of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978].

I. A care provider shall maintain records evidencing compliance with the requirements of this section with respect to all applicants and caregivers employed on or after May 20, 1998.

J. All criminal history records obtained pursuant to this section by the health care authority are confidential. No criminal history records obtained pursuant to this section shall be used for any purpose other than determining whether an applicant, caregiver or hospital caregiver is disqualified pursuant to Subsection D or E of this section. Except on court order or with the written consent of the applicant, caregiver or hospital caregiver, criminal records obtained pursuant to this section and the information contained therein shall not be released or otherwise disclosed to any other person or agency. A person who discloses confidential records or information in violation of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Subsection A of Section 31-19-1 NMSA 1978.

K. The health care authority shall maintain a registry of all applicants who are disqualified from employment or contractual service as caregivers or hospital caregivers. An applicant's arrest record information shall not be released except upon request of the applicant as provided in the Arrest Record Information Act [Chapter 29, Article 10 NMSA 1978].

L. A care provider, including its administrators and employees, is not civilly liable to an applicant or a caregiver for a good faith decision to employ, not employ or terminate employment pursuant to the Caregivers Criminal History Screening Act.

M. Failure to comply with the requirements of this section are grounds for the state agency having enforcement authority with respect to the care provider to impose appropriate administrative sanctions and penalties.

N. For the purposes of this section, "unreasonable risk" means a level of risk that a reasonable person would be unwilling to take regarding the safety or welfare of a care recipient.

**History:** Laws 1998, ch. 68, § 4; 1999, ch. 112, § 2; 2005, ch. 226, § 2; 2025, ch. 30, § 1.

## ANNOTATIONS

**The 2025 amendment,** effective July 1, 2025, shifted responsibility for overseeing caregiver background checks from the department of health to the health care authority, added to the list of disqualifying convictions for caregivers, allowed the health care authority to disqualify certain caregivers that pose an unreasonable risk to care recipients, defined "unreasonable risk" for purposes of this section, and made certain technical amendments; substituted the "department of health" with the "health care authority" throughout the section; in Subsection B, after "including rules establishing" deleted "a three-year phased implementation based upon provider type"; in Subsection D, Paragraph D(3), after "aggravated battery" added "including aggravated battery of a household member", and added Paragraphs D(9) through D(12); added a new Subsection E and redesignated former Subsections E through L as Subsections F through M, respectively; in Subsection F, after "applicant or caregiver" deleted "has a disqualifying conviction of a crime specified in Subsection D of this section" and added "is disqualified pursuant to Subsection D or E of this section", after "disqualifying conviction" added "or an unreasonable risk", after "notice to the care provider of a" deleted "disqualifying conviction of a crime specified in Subsection D of this section" and added "disqualification pursuant to Subsection D or E of this section", and after "stating with specificity the" deleted "convictions" and added "reasons"; in Subsection G, after "Subsection D" added "or E" and after "reconsideration proceeding results in a" deleted "determination by the department of health that the applicant's, caregiver's or hospital caregiver's nationwide criminal history record inaccurately reflects a disqualifying conviction of a crime specified in Subsection D of this section or that the employment presents no risk of harm to a care recipient or that the conviction does not directly bear upon the applicant's, caregiver's or hospital caregiver's fitness for the employment" and added "reversal of the health care authority's decision"; in Subsection H, after "disqualifying conviction" added "or an unreasonable risk"; in Subsection J, after "caregiver or hospital caregiver" deleted "has a criminal conviction that would disqualify the applicant, caregiver or hospital caregiver from employment as a caregiver or hospital caregiver" and added "is disqualified pursuant to Subsection D or E of this section"; and added Subsection N.

**Temporary provisions.** — Laws 2025, ch. 30, § 2 provided that on July 1, 2025 all functions, records and equipment related to the oversight of caregiver criminal history records shall be transferred from the department of health to the health care authority.

**The 2005 amendment,** effective June 17, 2005, provided in Subsection A that the department is authorized to receive a hospital caregiver's nationwide criminal history record or a hospital caregiver's authorization for nationwide criminal history screening and requires providers to provide a set of fingerprints of hospital caregivers to the department; changed "regulations" to "rules" in Subsection B; provided that no hospital caregiver may be employed by a care provider unless the hospital caregiver has

submitted a request for a nationwide criminal history screening and provides that a caregiver or hospital caregiver shall apply for a statewide criminal history screening when applying for employment with a care provider within twelve months of the caregiver's or hospital caregiver's most recent nationwide criminal history screening; provided in Subsection D that the listed felony convictions disqualifies a hospital caregiver from employment as a caregiver; added Subsection D(8); provided in Subsection E that the department shall not give the care provider any results of the nationwide criminal screening other than whether the hospital caregiver has a disqualifying conviction, that a care provider shall not employ a hospital caregiver who has a disqualifying conviction, and that the department shall give the hospital caregiver notice of the disqualifying conviction; provided in Subsection F that a hospital caregiver who has a disqualifying conviction may request a reconsideration from the department, that a care provider may employ the ccaregiver if the department determines that the hospital caregiver's record inaccurately reflects a disqualifying conviction or that the conviction does not directly bear on the hospital caregiver's fitness for employment; provided in subsection I that criminal history records shall be used only to determine whether a hospital caregiver has a disqualifying conviction, and that criminal records shall not be released or disclosed unless the hospital caregiver consents; and provided in Subsection J that the department shall maintain a registry of disqualified hospital caregivers.

**The 1999 amendment,** effective June 18, 1999, in Subsection A, in the first sentence, twice deleted "records" preceding "screening", and inserted "nationwide" preceding the second occurrence of "criminal screening"; in the second sentence, substituted "department of health" for "department of public safety", and inserted "from the department of health" preceding "such fingerprints"; and deleted "New Mexico" preceding "department" throughout the subsection; in Subsection B, substituted "the Caregivers Criminal History Screening Act" for "this act", deleted "but not limited to" following "including," and deleted "volunteers" preceding "applicants and caregivers"; inserted Subsection D(7); in Subsection E, twice substituted "screening" for "records" and twice inserted "nationwide" preceding "criminal history"; in Subsection F, in the first sentence, deleted "records" preceding "screening" and inserted "nationwide" preceding "criminal history", and, in the third sentence, substituted "department of health" for "agency on aging"; in Subsection G, deleted "20-2-1- to 20-2-6, NMSA 1978" following "Criminal Offender Employment Act"; in Subsection H, substituted "May 20, 1998" for "the effective date of this act"; in Subsection I, in the second sentence, substituted "has a criminal conviction that would disqualify him" for "has criminal records that disqualify him"; in Subsection K, substituted "the Caregivers Criminal History Screening Act" for "this act"; and made stylistic changes throughout the section.

# ARTICLE 18
# Concealed Handgun Carry (Repealed.)

## 29-18-1 to 29-18-12. Repealed.

**ANNOTATIONS**

**Repeals.** — Laws 2003, ch. 255, § 14 repealed 29-18-1 to 29-18-12 NMSA 1978, as enacted by Laws 2001, ch. 219, the former Concealed Handgun Carry Act, effective July 1, 2003. For provisions of former sections, *see* the 2002 NMSA 1978 on *NMOneSource.com*. For similar present provisions, *see* 29-19-1 NMSA 1978 et seq.

# ARTICLE 19
# Concealed Handgun Carry

## 29-19-1. Short title.

Chapter 29, Article 19 NMSA 1978 may be cited as the "Concealed Handgun Carry Act".

**History:** Laws 2003, ch. 255, § 1; 2005, ch. 242, § 1.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, added the statutory reference to the act.

**Constitutionality of act.** — The Concealed Handgun Carry Act does not violate N.M. Const., art. II, § 6. *State ex rel. N.M. Voices for Children, Inc. v. Denko*, 2004-NMSC-011, 135 N.M. 439, 90 P.3d 458.

**Exception to general prohibition.** — Under Section 30-7-2 NMSA 1978, the Concealed Handgun Carry Act does no more than add another exception to the general prohibition against carrying concealed weapons: carrying with a concealed handgun license. *State ex rel. N.M. Voices for Children, Inc. v. Denko*, 2004-NMSC-011, 135 N.M. 439, 90 P.3d 458.

## 29-19-2. Definitions.

As used in the Concealed Handgun Carry Act:

A. "applicant" means a person seeking a license to carry a concealed handgun;

B. "caliber" means the diameter of the bore of a handgun;

C. "category" means whether a handgun is semiautomatic or not semiautomatic;

D. "concealed handgun" means a loaded handgun that is not visible to the ordinary observations of a reasonable person;

E. "department" means the department of public safety;

F. "handgun" means a firearm that will, is designed to or may readily be converted to expel a projectile by the action of an explosion and the barrel length of which, not including a revolving, detachable or magazine breech, does not exceed twelve inches; and

G. "licensee" means a person holding a valid concealed handgun license issued to him by the department.

**History:** Laws 2003, ch. 255, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 255, § 16 made Laws 2003, ch. 255, § 2 effective July 1, 2003.

## 29-19-3. Date of licensure; period of licensure.

Effective January 1, 2004, the department is authorized to issue concealed handgun licenses to qualified applicants. Original and renewed concealed handgun licenses shall be valid for a period of four years from the date of issuance, unless the license is suspended or revoked.

**History:** Laws 2003, ch. 255, § 3; 2005, ch. 242, § 2.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, increased the period of licensure for original and renewal license from two to four years.

## 29-19-4. Applicant qualifications.

A. The department shall issue a concealed handgun license to an applicant who:

(1) is a citizen of the United States;

(2) is a resident of New Mexico or is a member of the armed forces whose permanent duty station is located in New Mexico or is a dependent of such a member;

(3) is twenty-one years of age or older;

(4) is not a fugitive from justice;

(5) has not been convicted of a felony in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;

(6) is not currently under indictment for a felony criminal offense in New Mexico or any other state or pursuant to the laws of the United States or any other jurisdiction;

(7) is not otherwise prohibited by federal law or the law of any other jurisdiction from purchasing or possessing a firearm;

(8) has not been adjudicated mentally incompetent or committed to a mental institution;

(9) is not addicted to alcohol or controlled substances; and

(10) has satisfactorily completed a firearms training course approved by the department for the category and the largest caliber of handgun that the applicant wants to be licensed to carry as a concealed handgun.

B. The department shall deny a concealed handgun license to an applicant who has:

(1) received a conditional discharge, a diversion or a deferment or has been convicted of, pled guilty to or entered a plea of nolo contendere to a misdemeanor offense involving a crime of violence within ten years immediately preceding the application;

(2) been convicted of a misdemeanor offense involving driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application for a concealed handgun license;

(3) been convicted of a misdemeanor offense involving the possession or abuse of a controlled substance within ten years immediately preceding the application; or

(4) been convicted of a misdemeanor offense involving assault, battery or battery against a household member.

C. Firearms training course instructors who are approved by the department shall not be required to complete a firearms training course pursuant to Paragraph (10) of Subsection A of this section.

**History:** Laws 2003, ch. 255, § 4; 2005, ch. 242, § 3.

## ANNOTATIONS

**The 2005 amendment,** effective June 17, 2005, lowered the minimum age of applicants from 25 to 21 years in Subsection A(3); provided in Subsection A(10) that the applicant complete training for the largest caliber of handgun that will be licensed; provided in

Subsections B(1) and (3) respectively that the department shall deny a license if the offense involved a crime of violence or possession or abuse of a controlled substance within ten years immediately preceding the application; and added Subsection C to provide that firearms training course instructors are not required to complete a firearms training course.

**"Convicted" construed.** — The legislature used the term "convicted" in §§ 29-19-4(A)(5) and (B)(4) NMSA 1978 to mean an adjudication of guilt, regardless of the imposition of a sentence, and because the successful completion of a deferred sentence leaves the underlying conviction intact, the term "convicted" in §§ 29-19-4(A)(5) and (B)(4) applies to defendants whose charges are dismissed following the completion of deferred sentences. *Benns v. N.M. Dep't of Pub. Safety*, 2022-NMCA-050, cert. denied.

**A deferred sentence does not eliminate the underlying criminal conviction for purposes of the Concealed Handgun Carry Act.** — Where the department of public safety (DPS) denied petitioner's application for a concealed handgun license under the Concealed Handgun Carry Act (CHCA), §§ 29-19-1 through 29-19-15 NMSA 1978, concluding that petitioner was disqualified by statute from obtaining a concealed handgun license based on two prior convictions for which he received deferred sentences, and where the district court reversed DPS's denial, concluding that upon successful completion of his deferred sentences, petitioner was no longer "convicted" for purposes of the CHCA, the DPS properly denied petitioner's application for a concealed handgun license and the district court erred in finding that petitioner was no longer "convicted" for purposes of the CHCA, because even though the criminal charge is dismissed after a defendant has completed the period of deferment, the "conviction" remains, and courts have held that while a deferred sentence may remove the criminal liability, the adjudication of guilt remains and may be taken into account for other purposes. *Benns v. N.M. Dep't of Pub. Safety*, 2022-NMCA-050, cert. denied.

**Pardoned felony conviction.** — A pardoned felony conviction is not, itself, sufficient grounds to deny the person convicted on the felony a concealed handgun license and if the person is otherwise qualified, the person may obtain a concealed carry license. 2014 Op. Att'y Gen. No. 14-02.

## 29-19-5. Application form; screening of applicants; fee; limitations on liability.

A. Effective July 1, 2003, applications for concealed handgun licenses shall be made readily available at locations designated by the department. Applications for concealed handgun licenses shall be completed, under penalty of perjury, on a form designed and provided by the department and shall include:

(1) the applicant's name, current address, date of birth, place of birth, social security number, height, weight, gender, hair color, eye color and driver's license number or other state-issued identification number;

(2) a statement that the applicant is aware of, understands and is in compliance with the requirements for licensure set forth in the Concealed Handgun Carry Act;

(3) a statement that the applicant has been furnished a copy of the Concealed Handgun Carry Act and is knowledgeable of its provisions; and

(4) a conspicuous warning that the application form is executed under penalty of perjury and that a materially false answer or the submission of a materially false document to the department may result in denial or revocation of a concealed handgun license and may subject the applicant to criminal prosecution for perjury as provided in Section 30-25-1 NMSA 1978.

B. The applicant shall submit to the department:

(1) a completed application form;

(2) a nonrefundable application fee in an amount not to exceed one hundred dollars ($100);

(3) two full sets of fingerprints;

(4) a certified copy of a certificate of completion for a firearms training course approved by the department;

(5) two color photographs of the applicant;

(6) a certified copy of a birth certificate or proof of United States citizenship, if the applicant was not born in the United States; and

(7) proof of residency in New Mexico.

C. A law enforcement agency may fingerprint an applicant and may charge a reasonable fee.

D. Upon receipt of the items listed in Subsection B of this section, the department shall make a reasonable effort to determine if an applicant is qualified to receive a concealed handgun license. The department shall conduct an appropriate check of available records and shall forward the applicant's fingerprints to the federal bureau of investigation for a national criminal background check. The department shall comply with the license-issuing requirements set forth in Section 29-19-7 NMSA 1978. However, the department shall suspend or revoke a license if the department receives information that would disqualify an applicant from receiving a concealed handgun license after the thirty-day time period has elapsed.

E. A state or local government agency shall comply with a request from the department pursuant to the Concealed Handgun Carry Act within thirty days of the request.

**History:** Laws 2003, ch. 255, § 5; 2005, ch. 242, § 4.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, added Subsection E to provide that every state or local governmental agency shall comply with a request from the department pursuant to the Concealed Handgun Carry Act within thirty days.

## 29-19-6. Appeal; license renewal; refresher firearms training course; suspension or revocation of license.

A. Pursuant to rules adopted by the department, the department, within thirty days after receiving a completed application for a concealed handgun license and the results of a national criminal background check on the applicant, shall:

(1) issue a concealed handgun license to an applicant; or

(2) deny the application on the grounds that the applicant failed to qualify for a concealed handgun license pursuant to the provisions of the Concealed Handgun Carry Act.

B. Information relating to an applicant or to a licensee received by the department or any other law enforcement agency is confidential and exempt from public disclosure unless an order to disclose information is issued by a court of competent jurisdiction. The information shall be made available by the department to a state or local law enforcement agency upon request by the agency.

C. A concealed handgun license issued by the department shall include:

(1) a color photograph of the licensee;

(2) the licensee's name, address and date of birth;

(3) the expiration date of the concealed handgun license; and

(4) the category and the largest caliber of handgun that the licensee is licensed to carry, with a statement that the licensee is licensed to carry smaller caliber handguns but shall carry only one concealed handgun at any given time.

D. A licensee shall notify the department within thirty days regarding a change of the licensee's name or permanent address. A licensee shall notify the department within ten days if the licensee's concealed handgun license is lost, stolen or destroyed.

E. If a concealed handgun license is lost, stolen or destroyed, the license is invalid and the licensee may obtain a duplicate license by furnishing the department a notarized statement that the original license was lost, stolen or destroyed and paying a reasonable fee. If the license is lost or stolen, the licensee shall file a police report with a local law enforcement agency and include the police case number in the notarized statement.

F. A licensee may renew a concealed handgun license by submitting to the department:

(1) a completed renewal form, under penalty of perjury, designed and provided by the department;

(2) a payment of a seventy-five-dollar ($75.00) renewal fee; and

(3) a certificate of completion of a four-hour refresher firearms training course approved by the department.

G. The department shall conduct a national criminal records check of a licensee seeking to renew a license. A concealed handgun license shall not be renewed more than sixty days after it has expired. A licensee who fails to renew a concealed handgun license within sixty days after it has expired may apply for a new concealed handgun license pursuant to the provisions of the Concealed Handgun Carry Act.

H. A licensee shall complete a two-hour refresher firearms training course two years after the issuance of an original or renewed license. The refresher course shall be approved by the department and shall be taken twenty-two to twenty-six months after the issuance of an original or renewed license. A certificate of completion shall be submitted to the department no later than thirty days after completion of the course.

I. The department shall suspend or revoke a concealed handgun license if:

(1) the licensee provided the department with false information on the application form or renewal form for a concealed handgun license;

(2) the licensee did not satisfy the criteria for issuance of a concealed handgun license at the time the license was issued; or

(3) subsequent to receiving a concealed handgun license, the licensee violated a provision of the Concealed Handgun Carry Act.

**History:** Laws 2003, ch. 255, § 6; 2005, ch. 242, § 5.

## ANNOTATIONS

**The 2005 amendment,** effective June 17, 2005, provided in Subsection C(4) that a license shall include the largest caliber of handgun that is licensed and a statement that the licensee is licensed to carry smaller caliber handguns, but shall carry only one handgun at a time; provided in Subsection E that if a license is lost or stolen, the licensee shall file a police report and include the police case number in the notarized statement; increased the renewal fee from $50 to $75 in Subsection F(2); required that a certificate of completion of a training course approved by the department be submitted with a request to renew a license; and added Subsection H to provide that a licensee must complete a refresher course approved by the department two years after licensure.

## 29-19-7. Demonstration of ability and knowledge; course requirement; proprietary interest; exemptions.

A. The department shall prepare and publish minimum standards for approved firearms training courses that teach competency with handguns. A firearms training course shall include classroom instruction and range instruction and an actual demonstration by the applicant of his ability to safely use a handgun. An applicant shall not be licensed unless he demonstrates, at a minimum, his ability to use a handgun of .32 caliber. An approved firearms training course shall be a course that is certified or sponsored by a federal or state law enforcement agency, a college, a firearms training school or a nationally recognized organization, approved by the department, that customarily offers firearms training. The firearms training course shall be not less than fifteen hours in length and shall provide instruction regarding:

(1) knowledge of and safe handling of single- and double-action revolvers and semiautomatic handguns;

(2) safe storage of handguns and child safety;

(3) safe handgun shooting fundamentals;

(4) live shooting of a handgun on a firing range;

(5) identification of ways to develop and maintain handgun shooting skills;

(6) federal, state and local criminal and civil laws pertaining to the purchase, ownership, transportation, use and possession of handguns;

(7) techniques for avoiding a criminal attack and how to control a violent confrontation; and

(8) techniques for nonviolent dispute resolution.

B. Every instructor of an approved firearms training course shall annually file a copy of the course description and proof of certification with the department.

**History:** Laws 2003, ch. 255, § 7.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 255, § 16 made Laws 2003, ch. 255, § 7 effective July 1, 2003.

## 29-19-8. Limitation on license.

A. Nothing in the Concealed Handgun Carry Act shall be construed as allowing a licensee in possession of a valid concealed handgun license to carry a concealed handgun into or on premises where to do so would be in violation of state or federal law.

B. Nothing in the Concealed Handgun Carry Act shall be construed as allowing a licensee in possession of a valid concealed handgun license to carry a concealed handgun on school premises, as provided in Section 30-7-2.1 NMSA 1978.

C. Nothing in the Concealed Handgun Carry Act shall be construed as allowing a licensee in possession of a valid concealed handgun license to carry a concealed handgun on the premises of a preschool.

**History:** Laws 2003, ch. 255, § 8.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 255, § 16 made Laws 2003, ch. 255, § 8 effective July 1, 2003.

## 29-19-9. Possession of license.

A licensee shall have his concealed handgun license in his possession at all times while carrying a concealed handgun.

**History:** Laws 2003, ch. 255, § 9.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 255, § 16 made Laws 2003, ch. 255, § 9 effective July 1, 2003.

## 29-19-10. Validity of license on tribal land.

A concealed handgun license shall not be valid on tribal land, unless authorized by the governing body of an Indian nation, tribe or pueblo.

**History:** Laws 2003, ch. 255, § 10.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 255, § 16 made Laws 2003, ch. 255, § 10 effective July 1, 2003.

## 29-19-11. Validity of license in a courthouse or court facility.

A concealed handgun license shall not be valid in a courthouse or court facility, unless authorized by the presiding judicial officer for that courthouse or court facility.

**History:** Laws 2003, ch. 255, § 11.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 255, § 16 made Laws 2003, ch. 255, § 11 effective July 1, 2003.

## 29-19-12. Rules; department to administer; reciprocal agreements with other states.

The department shall promulgate rules necessary to implement the provisions of the Concealed Handgun Carry Act. The rules shall include:

A. grounds for the suspension and revocation of concealed handgun licenses issued pursuant to the provisions of the Concealed Handgun Carry Act;

B. provision of authority for a law enforcement officer to confiscate a concealed handgun license when a licensee violates the provisions of the Concealed Handgun Carry Act;

C. provision of authority for a private property owner to disallow the carrying of a concealed handgun on the owner's property;

D. creation of a sequential numbering system for all concealed handgun licenses issued by the department and display of numbers on issued concealed handgun licenses; and

E. provision of discretionary state authority for the transfer, recognition or reciprocity of a concealed handgun license issued by another state if the issuing authority for the other state:

(1) includes provisions at least as stringent as or substantially similar to the Concealed Handgun Carry Act;

(2) issues a license or permit with an expiration date printed on the license or permit;

(3) is available to verify the license or permit status for law enforcement purposes within three business days of a request for verification;

(4) has disqualification, suspension and revocation requirements for a concealed handgun license or permit; and

(5) requires that an applicant for a concealed handgun license or permit:

(a) submit to a national criminal history record check;

(b) not be prohibited from possessing firearms pursuant to federal or state law; and

(c) satisfactorily complete a firearms safety program that covers deadly force issues, weapons care and maintenance, safe handling and storage of firearms and marksmanship.

**History:** Laws 2003, ch. 255, § 12; 2005, ch. 242, § 6.

**ANNOTATIONS**

**The 2005 amendment,** effective June 17, 2005, provided in Subsection E that the rules shall include provision of discretionary authority for the recognition or reciprocity of a license issued by another state; and added Subsections E(1) through (5)(c) to provide the criteria for reciprocity with the license issued by an authority of another state.

## 29-19-13. Fund created.

A. The "concealed handgun carry fund" is created in the state treasury.

B. All money received by the department pursuant to the provisions of the Concealed Handgun Carry Act shall be deposited by the state treasurer for credit to the concealed handgun carry fund. The state treasurer shall invest the fund as all other state funds are invested, and income from the investment of the fund shall be credited to the fund. Balances remaining at the end of any fiscal year shall not revert to the general fund and may be used to maintain the state's criminal history database.

C. Money in the concealed handgun carry fund is appropriated to the department to carry out the provisions of the Concealed Handgun Carry Act.

**History:** Laws 2003, ch. 255, § 13.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 255, § 16 made Laws 2003, ch. 255, § 13 effective July 1, 2003.

**Severability.** — Laws 2003, ch. 255, § 15 provided for the severability of the act if any part or application thereof is held invalid.

## 29-19-14. Current and retired law enforcement officers and New Mexico mounted patrol members.

A. An application fee, a renewal fee and a firearms training course are not required for an applicant or licensee who is:

(1) a current or retired certified law enforcement officer pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978]; or

(2) a current member of the New Mexico mounted patrol who has successfully completed a law enforcement academy basic law enforcement training program for New Mexico mounted patrol members pursuant to Section 29-6-4.1 NMSA 1978.

B. A law enforcement officer or New Mexico mounted patrol member shall submit to the department two full sets of fingerprints and a color photograph of the law enforcement officer or New Mexico mounted patrol member. The department shall conduct an appropriate check of available records and shall forward the fingerprints to the federal bureau of investigation for a national criminal background check.

C. A retired law enforcement officer is not required to submit an application fee or a renewal fee if:

(1) the officer was a certified law enforcement officer pursuant to the Law Enforcement Training Act for at least fifteen years prior to retirement; and

(2) the retirement is in good standing as shown by a letter from the agency from which the officer retired.

D. A retired law enforcement officer who has been retired ten years or less is not required to complete a firearms training course.

E. A retired law enforcement officer who has been retired for more than ten years shall be required to complete a firearms training course. The officer shall be allowed to attend any local law enforcement agency's firearms qualification course; provided that the officer supplies the officer's own ammunition, handgun, targets and range equipment. A local law enforcement agency shall not be liable under the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978] for providing a firearms training course to a retired law enforcement officer pursuant to this subsection.

F. A retired law enforcement officer's concealed handgun license shall have printed on the license "retired police officer" and shall be valid for a period of five years.

**History:** Laws 2005, ch. 242, § 7; 2015, ch. 157, § 1.

**ANNOTATIONS**

**The 2015 amendment,** effective June 19, 2015, provided an exception to the fee and firearms training course requirements of the Concealed Handgun Carry Act for certain certified law enforcement officers and New Mexico mounted patrol members, and required the department of public safety to obtain fingerprints and available records and forward fingerprints to the FBI for a national criminal background check; in the catchline, added "and New Mexico mounted patrol members"; in Subsection A, after "licensee who is", added the paragraph designation "(1)", in new Paragraph (1) of Subsection A, added "current or retired", and after the semicolon, added "or"; added new Paragraph (2) of Subsection A; and added new Subsection B and redesignated the succeeding subsections accordingly.

## 29-19-15. Military service persons; requirements.

A. For a concealed handgun license applicant or licensee who submits with a concealed handgun license application documentation satisfactory to the department that the applicant is a military service person as defined in Subsection E of this section, an application fee or renewal fee is not required. For a military service person discharged from military service within twenty years of the application for a license or renewal of a license, a firearms training course or refresher firearms training course is not required.

B. A military service person shall submit to the department two full sets of fingerprints and a color photograph of the military service person. The department shall conduct an appropriate check of available records and shall forward the fingerprints to the federal bureau of investigation for a national criminal background check.

C. A military service person's concealed handgun carry license shall have printed on the license "military service person" and shall be valid for a period of five years.

D. The department shall suspend or revoke a military service person's concealed handgun license if:

(1) the military service person provided the department with false information on the application form or renewal form;

(2) the military service person did not satisfy the criteria for issuance of a concealed handgun license at the time the license was issued; or

(3) subsequent to receiving a concealed handgun license, the military service person violated a provision of the Concealed Handgun Carry Act.

E. As used in this section, "military service person" means a person who was accepted into the United States armed forces and:

(1) is on active duty with the United States armed forces;

(2) is on reserve or guard duty with the United States armed forces; or

(3) is a veteran or a retiree who received an honorable discharge as indicated on a United States department of defense form 214.

**History:** Laws 2015, ch. 157, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 157 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2015, 90 days after the adjournment of the legislature.

# ARTICLE 20
# Law Enforcement Safe Pursuit

## 29-20-1. Short title.

Sections 1 through 4 [29-20-1 to 29-20-4 NMSA 1978] of this act may be cited as the "Law Enforcement Safe Pursuit Act".

**History:** Laws 2003, ch. 260, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 260, § 6 made Laws 2003, ch. 260, § 1 effective July 1, 2003.

## 29-20-2. Definition.

As used in the Law Enforcement Safe Pursuit Act, "high speed pursuit" means an attempt by a law enforcement officer in an authorized emergency vehicle to apprehend an occupant of a motor vehicle, the driver of which is actively attempting to avoid apprehension by exceeding the speed limit.

**History:** Laws 2003, ch. 260, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 260, § 6 made Laws 2003, ch. 260, § 2 effective July 1, 2003.

## 29-20-3. Police training.

A. No later than December 31, 2004, the New Mexico law enforcement academy board shall develop and incorporate into the basic law enforcement training required pursuant to the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978] a course of instruction of at least sixteen hours concerning the safe initiation and conduct of high speed pursuits.

B. The course of instruction shall emphasize the importance of protecting the public at all times and the need to balance the known offense and risk posed by a fleeing suspect against the danger to law enforcement officers and other people by initiating a high speed pursuit.

C. The course of instruction shall include adequate consideration of each of the following subjects:

(1) when to initiate a high speed pursuit;

(2) when to terminate a high speed pursuit;

(3) evaluating risks due to conditions of the vehicle, driver, roadway, weather and traffic during a high speed pursuit;

(4) evaluating dangers to uninvolved motorists and bystanders during a high speed pursuit;

(5) the number of law enforcement units permitted to participate in the high speed pursuit;

(6) the responsibilities of primary, secondary and supervisory law enforcement units during a high speed pursuit;

(7) proper communication and coordination procedures when a high speed pursuit enters another law enforcement agency's jurisdiction, including a tribal jurisdiction;

(8) driving tactics during a high speed pursuit;

(9) communications during a high speed pursuit;

(10) capture of suspects following a high speed pursuit;

(11) supervisory responsibilities during a high speed pursuit;

(12) use of blocking, ramming, boxing and roadblocks as high speed pursuit tactics;

(13) use of alternative methods and technologies for apprehending suspects during a high speed pursuit; and

(14) preparing a report and evaluation and analysis of a high speed pursuit after it has concluded.

D. The New Mexico law enforcement academy board shall develop the program of instruction, learning and performance objectives and standards for training in conjunction with appropriate groups and individuals that have an interest in and expertise regarding high speed pursuits, including law enforcement agencies, law enforcement academy instructors, experts on the subject and members of the public.

E. In-service law enforcement training, as required pursuant to Section 29-7-7.1 NMSA 1978, shall include at least four hours of instruction that conform with the requirements set forth in Subsection C of this section.

F. Each certified regional law enforcement training facility shall incorporate into its basic law enforcement training and in-service law enforcement training a course of training in the safe initiation and conduct of high speed pursuits that is comparable to or exceeds the standards of the course of instruction developed by the New Mexico law enforcement academy board.

**History:** Laws 2003, ch. 260, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2003, ch. 260, § 6 made Laws 2003, ch. 260, § 3 effective July 1, 2003.

## 29-20-4. Pursuit policies.

A. The chief law enforcement officer of every state, county and municipal law enforcement agency shall establish and enforce a written policy governing the conduct of law enforcement officers employed by the agency who are involved in high speed pursuits. A copy of the written policy shall be submitted to the director of the New Mexico law enforcement academy and the traffic safety bureau of the state highway and transportation department.

B. The policy shall specify, at a minimum:

(1) the conditions under which a law enforcement officer may engage in a high speed pursuit and the conditions when the officer shall terminate a high speed pursuit;

(2) measures other than a high speed pursuit that may be employed to apprehend a suspect in a fleeing motor vehicle or to impede the movement of the vehicle;

(3) the coordination and responsibility, including control over the high speed pursuit, of supervisory personnel and the law enforcement officers engaged in the pursuit; and

(4) the procedures to be followed to notify and coordinate high speed pursuits with law enforcement agencies in other jurisdictions, including tribal jurisdictions.

C. The written policy shall, at a minimum, require that:

(1) a law enforcement officer may initiate a high speed pursuit to apprehend a suspect who the officer has reasonable grounds to believe poses a clear and immediate threat of death or serious injury to others or who the officer has probable cause to believe poses a clear and immediate threat to the safety of others that is ongoing and that existed prior to the high speed pursuit;

(2) a law enforcement officer shall not initiate or continue a high speed pursuit when the immediate danger to the officer and the public created by the high speed pursuit exceeds the immediate danger to the public if the occupants of the motor vehicle being pursued remain at large;

(3) when deciding whether to initiate or continue a high speed pursuit, the following factors, at a minimum, shall be taken into consideration:

(a) the seriousness of the offense for which the high speed pursuit was initiated;

(b) whether a suspect poses a clear and immediate threat of death or serious injury to others;

(c) road, weather, environmental and vehicle conditions;

(d) the amount of motor vehicle and pedestrian traffic; and

(e) knowledge of the suspect's identity, possible destination and previous activities that may make apprehension at a later time feasible; and

(4) no more than two law enforcement vehicles shall become actively involved in a high speed pursuit, unless specifically authorized by a supervisor.

**History:** Laws 2003, ch. 260, § 4.

## ANNOTATIONS

**Effective dates.** — Laws 2003, ch. 260, § 6 made Laws 2003, ch. 260, § 4 effective July 1, 2003.

# ARTICLE 21
# Prohibition of Profiling Practices

## 29-21-1. Short title.

This act [29-21-1 to 29-21-4 NMSA 1978] may be cited as the "Prohibition of Profiling Practices Act".

**History:** Laws 2009, ch. 177, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 177, § 1 was effective June 19, 2009.

## 29-21-2. Profiling practices prohibited.

A. In conducting a routine or spontaneous investigatory activity, including an interview, a detention, a traffic stop, a pedestrian stop, a frisk or other type of bodily search or a search of personal or real property, or in determining the scope, substance or duration of the routine or spontaneous investigatory activity, a law enforcement agency or a law enforcement officer shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition, except in a specific suspect description related to a criminal incident or suspected criminal activity, to select a person for or subject a person to the routine or spontaneous investigatory activity.

B. In conducting an investigatory activity in connection with an investigation, a law enforcement agency or a law enforcement officer shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition, except to the extent that credible information, relevant to the locality or time frame, links a person with those identifying characteristics to an identified criminal incident or criminal activity.

**History:** Laws 2009, ch. 177, § 2.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 177, § 2 was effective June 19, 2009.

## 29-21-3. Policies and procedures; required.

A. A law enforcement agency shall:

(1) maintain written policies and procedures designed to eliminate practices by its law enforcement officers that violate the provisions of Section 2 [29-21-2 NMSA 1978] of the Prohibition of Profiling Practices Act; and

(2) provide training to its law enforcement officers, during orientation and at least once every two years, that the law enforcement agency determines will assist its law enforcement officers in adhering to the applicable provisions of the Prohibition of Profiling Practices Act and to the law enforcement agency's policies and procedures.

B. As part of a law enforcement agency's administrative complaint procedures, the law enforcement agency shall, at a minimum:

(1) investigate a complaint alleging its law enforcement officer violated the provisions of Section 2 of the Prohibition of Profiling Practices Act;

(2) take appropriate measures to discipline a law enforcement officer, including facilitating mediation or other restorative justice measures, when it is determined that the law enforcement officer violated the provisions of Section 2 of the Prohibition of Profiling Practices Act;

(3) provide appropriate forms for submitting the complaint against its law enforcement officer;

(4) publish the policies and procedures designed to eliminate practices that violate the provisions of Section 2 of the Prohibition of Profiling Practices Act; and

(5) submit a redacted copy of the complaint and the disposition to the attorney general, which shall disclose the nature and disposition of the complaint but shall not disclose personal identifying information of a law enforcement officer or complainant.

C. A law enforcement agency shall establish a time frame within which a complaint alleging a violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act may be made; provided that in no event shall the time frame be less than ninety days or exceed one hundred eighty days after the commission of the alleged violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act. A law enforcement agency shall allow a complaint alleging a violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act by its law enforcement officer to be made:

(1) in person or in writing sent by mail, facsimile or electronic mail and signed by the complainant; or

(2) by telephone, anonymously or by a third party; provided that the law enforcement agency shall determine the complaint to be valid before taking appropriate measures pursuant to Paragraph (2) of Subsection B of this section and shall comply with the provisions of Section 29-14-4 NMSA 1978.

**History:** Laws 2009, ch. 177, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 177, § 5 made Laws 2009, ch. 177, § 3 effective December 31, 2009.

## 29-21-4. Independent oversight; complaints; confidentiality.

The attorney general shall establish independent procedures for receiving, and for maintaining a record of, complaints alleging profiling by a law enforcement officer or agency. The attorney general may initiate an investigation of a complaint alleging a violation, or a systematic pattern of violations, of the provisions of Section 2 [29-21-2 NMSA 1978] of the Prohibition of Profiling Practices Act and take necessary actions as the attorney general deems appropriate. The attorney general may publish a report or summary of the attorney general's findings regarding violations of the provisions of the Prohibition of Profiling Practices Act; provided that personal and identifying information shall not be published or released to the public.

**History:** Laws 2009, ch. 177, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2009, ch. 177, § 5 made Laws 2009, ch. 177, § 4 effective December 31, 2009.

# ARTICLE 22
# Driver Privacy and Safety

## 29-22-1. Short title.

This act [29-22-1 to 29-22-5 NMSA 1978] may be cited as the "Driver Privacy and Safety Act".

**History:** Laws 2026, ch. 20, § 1.

**ANNOTATIONS**

**Effective dates.** — Laws 2026, ch. 20, § 6 made Laws 2026, ch. 20, § 1 effective July 1, 2026.

## 29-22-2. Definitions.

As used in the Driver Privacy and Safety Act:

A. "automated license plate reader" means an electronic device that is capable of recording data on or taking a photograph of a vehicle or the vehicle's license plate and comparing the collected data and photographs to existing law enforcement databases for investigative purposes and includes a device that is owned or operated by a person or an entity other than a law enforcement agency;

B. "automated license plate reader information" means information gathered by an automated license plate reader or created from the analysis of data generated by an automated license plate reader, excluding information used for the purpose of auditing an automated license plate reader;

C. "automated license plate reader user" means a person or an entity that owns or operates an automated license plate reader or has access to automated license plate reader information;

D. "law enforcement agency" means a state or local agency, political subdivision of the state or private entity that employs certified law enforcement officers or that is charged with the enforcement of state, county or municipal laws or with managing custody of detained persons in any state or jurisdiction, including the police department of a municipality, the sheriff's office of a county, the New Mexico state police division of the department of public safety, the department of public safety or the police department of an Indian nation, tribe or pueblo that has entered into an agreement with the department of public safety pursuant to Section 29-1-11 NMSA 1978; and

E. "protected health care activity" means:

(1) seeking, providing or receiving reproductive or gender-affirming health care; or

(2) assisting an individual who is seeking, receiving or providing reproductive or gender-affirming health care, including providing:

(a) information;

(b) transportation;

(c) lodging; or

(d) material support.

**History:** Laws 2026, ch. 20, § 2.

## ANNOTATIONS

**Effective dates.** — Laws 2026, ch. 20, § 6 made Laws 2026, ch. 20, § 2 effective July 1, 2026.

## 29-22-3. Automated license plate readers; limitations on sharing.

A. An automated license plate reader user shall not sell, share, allow access to or transfer automated license plate reader information if the automated license plate reader user has reasonable belief that the automated license plate reader information may be used for the purpose of:

(1) investigating or otherwise assisting in immigration enforcement;

(2) investigating or prosecuting a protected health care activity; or

(3) efforts to identify or impose civil or criminal liability upon a person or an entity based solely on the person's or entity's participation in activities protected by the United States constitution or the constitution of New Mexico, including assembly, petitioning and speech.

B. An automated license plate reader user in New Mexico that uses automated license plate reader systems shall not allow access to automated license plate reader information by an out-of-state third party or a non-New Mexico law enforcement agency without first obtaining from that party a written declaration that the party expressly affirms that automated license plate reader information obtained shall not be used in a manner that would constitute a violation of Subsection A of this section. If a written declaration of affirmation is not executed, the automated license plate reader user shall not share the automated license plate reader information with the third party.

C. An automated license plate reader user shall not sell, share, allow access to, transfer or otherwise make available automated license plate reader information to non-law enforcement officers or agencies. However, a user may make available automated license plate reader information to the user's automated license plate reader vendor for the purpose of providing the automated license plate reader service to the user.

D. Automated license plate reader information is confidential and not considered a public record for the purposes of the Inspection of Public Records Act [14-2-1 to 14-2-12 NMSA 1978].

E. Privately captured automated license plate reader information may only be sold, shared, transferred or released with the express consent of the private entity or pursuant to a valid court order.

**History:** Laws 2026, ch. 20, § 3.

**ANNOTATIONS**

**Effective dates.** — Laws 2026, ch. 20, § 6 made Laws 2026, ch. 20, § 3 effective July 1, 2026.

## 29-22-4. Automated license plate readers; reporting.

A. A law enforcement agency that uses an automated license plate reader system shall report to the department of public safety by April 1 of each year regarding the preceding calendar year. The report shall include:

(1) the total number of cameras owned or leased, categorized by mobile or stationary placement;

(2) a list of all state and federal databases with which the system data was compared;

(3) the total number of times the system was queried, including the purposes for the queries;

(4) a list of other law enforcement agencies granted access to the system data;

(5) the number of identified instances of unauthorized use or access to the system as determined by the respective agency's audit policy;

(6) the number of subpoenas, search warrants and third-party requests received for system data or audit trails, including whether data was provided;

(7) the number of requests for automated license plate reader information from out-of-state third parties; and

(8) a list of all out-of-state agencies that queried automated license plate reader data.

B. The department of public safety shall aggregate reporting data and make that data publicly available by July 1 of each year.

**History:** Laws 2026, ch. 20, § 4.

**ANNOTATIONS**

**Effective dates.** — Laws 2026, ch. 20, § 6 made Laws 2026, ch. 20, § 4 effective July 1, 2026.

## 29-22-5. Enforcement; penalties.

A. The attorney general or a district attorney is authorized to enforce the provisions of the Driver Privacy and Safety Act.

B. In an action to enforce the Driver Privacy and Safety Act, the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief. The court may also assess a civil penalty for an intentional violation of Section 3 [29-22-3 NMSA 1978] of the Driver Privacy and Safety Act in the amount of ten thousand dollars ($10,000) or actual damages resulting from each violation, whichever is greater.

C. The department of public safety is authorized to enforce the provisions of the Driver Privacy and Safety Act.

D. A law enforcement agency that fails to comply with the Driver Privacy and Safety Act may have that law enforcement agency's automated license plate reader data sharing privileges revoked and access to the state-managed automated license plate reader systems restricted.

E. A vendor of automated license plate readers that fails to comply with the Driver Privacy and Safety Act or department of public safety rules may be subject to corrective action, suspension of authorization or termination of access.

**History:** Laws 2026, ch. 20, § 5.

## ANNOTATIONS

**Effective dates.** — Laws 2026, ch. 20, § 6 made Laws 2026, ch. 20, § 5 effective July 1, 2026.