

# 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.

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

For sheriffs, election and duties, see 4-41-1 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.

As to 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 Act, see 43-2-16 NMSA 1978 et seq.

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

For Snowmobile Act, enforcement, see 66-9-12 NMSA 1978.

For cattle sanitary board, sheriffs and constables to execute orders of, see 77-3-2, 77-3-10 NMSA 1978.

**Plainclothes officer can intrude where 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, after reaching truck after it has stopped, has observed that occupant appeared incoherent and lacked understanding of request to roll down window, since such facts warranted the officer, as person of reasonable caution, in opening the pickup door. *State v. Ray*, 91 N.M. 67, 570 P.2d 605 (Ct. App.), cert. denied, 91 N.M. 4, 569 P.2d 413 (1977).

**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. 1939-40 Op. Att'y Gen. 98.

**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. 1953-54 Op. Att'y Gen. No. 5669.

**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 County Comm'rs*, 101 N.M. 671, 687 P.2d 728 (1984).

**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*, 80 N.M. 412, 456 P.2d 886 (Ct. App. 1969).

**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 41-4-12 NMSA 1978 waives sovereign immunity. *California First Bank v. State*, 111 N.M. 64, 801 P.2d 646 (1990).

**Constables may carry firearms** because they are peace officers. 1963-64 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.

**Law reviews.** - For annual survey of New Mexico criminal procedure, see 16 N.M.L. Rev. 25 (1986).

For 1986-88 survey of New Mexico law of real property, 19 N.M.L. Rev. 751 (1990).

For annual survey of New Mexico law of torts, see 16 N.M.L. Rev. 85 (1986).

**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.

Municipal liability for personal injuries resulting from police officer's use of excessive force in performance of duty, 8 A.L.R.2d 1330.

Liability of sheriff for arrest under warrant by deputy where action is based on mistake as to identity of person arrested, 12 A.L.R.2d 752.

Malicious prosecution, civil liability of law enforcement officers for, 28 A.L.R.2d 646.

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

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.

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.

**Cross-references.** - For sanitary 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 §§ 35 to 42, 49.

### **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.

**Cross-references.** - As to 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 § 49.

#### **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.

**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, Cors. Dep't*, 103 N.M. 526, 710 P.2d 93 (Ct. App. 1985), overruled on other grounds *Silva v. State*, 106 N.M. 472, 745 P.2d 380 (1987).

#### **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.

**Bracketed material.** - The bracketed word "magistrate" in this section was inserted by the compiler. The office of justice of the peace has been abolished, and the jurisdiction, powers and duties have been transferred to the magistrate court. See 35-1-38 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

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

### **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.

**Bracketed material.** - See same catchline in notes to 29-1-5 NMSA 1978.

**Compiler's note.** - 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. As to disposition of fines and penalties, see N.M. Const., art. XII, § 4.

### **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.

**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 court], 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.

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

**Bracketed material.** - See same catchline in notes to 29-1-5 NMSA 1978.

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

No sheriff of a county, mayor of a city, or other person authorized by law to appoint special deputy sheriffs, special constables, marshals, policemen 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, special constable, marshal, policeman or other peace officer, any person who shall not be a citizen of the state of New Mexico, and no person shall assume or exercise the functions, powers, duties and privileges, incident and belonging to the office of special deputy sheriff, special constable, marshal or policeman or other peace officer without first having received his appointment in writing from the lawfully constituted authorities of the state of New Mexico; provided, that nothing in this section shall apply to lawfully appointed United States marshals or to deputies of any such marshals or to railroad peace officers appointed pursuant to Section 63-2-18 NMSA 1978, in the performance of their duties as peace officers.

This section shall not apply to 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; Laws 1979, ch. 98, § 1.

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

**Compiler's note.** - The first paragraph of this section derives from Laws 1891, ch. 60, § 1, and the second paragraph was a proviso clause of § 2 of the same act. The first part of Laws 1891, ch. 60, § 2, relating to impersonating a peace officer, formerly compiled as 40-16-1, 1953 Comp., was repealed by Laws 1963, ch. 303, § 30-1.

The provision that deputy sheriffs shall be legally qualified voters of the county (4-41-10 NMSA 1978) is a constitutional law, and was passed in 1901 long before adoption of the state constitution.

**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 10-1-5 NMSA 1978 (repealed) over all public employees, and in this section and 4-41-10 NMSA 1978, additional requirements are stated for deputy sheriffs and other peace officers. 1959-60 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. 1957-58 Op. Att'y Gen. No. 57-83.

**Whom sheriff can commission.** - 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 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. 1957-58 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. 1959-60 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 sheriff for term commencing at or after expiration of term of appointing officer or body, 75 A.L.R.2d 1287.

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

62 C.J.S. Municipal Corporations § 571; 80 C.J.S. Sheriffs and Constables §§ 6, 14, 24.

## **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.

**Federal Law Enforcement Assistance Act of 1965.** - The Federal Law Enforcement Assistance Act of 1965 is compiled as 18 U.S.C. § 3001 et seq.

### **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.

**Tariff Act.** - Section 1616 of 19 U.S.C., referred to in this section, was repealed in 1986.

### **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 commissioning.**

A. All persons who are duly commissioned officers of the police or sheriff's department of any New Mexico Indian 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 but not limited to 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 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 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 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 which 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 his discretion;

(4) if any provision of the agreement is violated by the 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 reoccur;

(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 which that 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 tribe 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 Indian reservation intersects the western right-of-way line of US 666, and running thence; southerly along the western right-of-way line of US 666 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 Indian reservation; thence, westerly along the southerly boundary of the Jicarilla Apache Indian 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 Indian reservation; thence, along the eastern and southerly borders of the Navajo Indian 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 under 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 Tribe 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 666 and ending where state road 264 intersects the Arizona-New Mexico state line; and

(9) the chief of the New Mexico state police, or his designee, and the 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 tribes and pueblos of Indians 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 marshalls service; postal inspection service; and other appropriate federal officers as designated by the chief of the New Mexico state police, who are assigned in New Mexico, 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. 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.

**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.

**Authority of noncross-commissioned officers.** - A noncross-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*, 98 N.M. 316, 648 P.2d 774 (1982).

A noncross-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*, 98 N.M. 453, 649 P.2d 756 (Ct. App.), *aff'd*, 98 N.M. 316, 648 P.2d 774 (1982).

**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*, 98 N.M. 453, 649 P.2d 756 (Ct. App.), *aff'd*, 98 N.M. 316, 648 P.2d 774 (1982).

**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 fire fighting 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:** 1978 Comp., § 29-1-13, enacted by Laws 1983, ch. 50, § 1.

**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 the state, county, municipality or peace officer for more than ninety days shall be sold at public sale. Firearms shall be sold only to licensed dealers or licensed collectors as defined in the Gun Control Act of 1968.

B. The peace officer 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 or owners, 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 peace officer.

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 the state, county, municipality or peace officer 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 the state, county, municipality or peace officer for more than ninety days may be destroyed or may be utilized by the scientific laboratory division of the health and environment department [department of health] for educational or scientific purposes.

H. This section shall not apply to deadly weapons, except for firearms 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 the state, county, municipality or peace officer and has been in possession for more than ninety days. Once it is determined by the peace officer 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, he may apply to the district court, ex parte and without notice, for an order authorizing destruction or other disposition of the property. 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 31-24-3 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.

**Bracketed material.** - The bracketed reference in Subsection G was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the department of health and environment, and enacts a new 9-7-4 NMSA 1978, relating to the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**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.

**Gun Control Act.** - The Gun Control Act of 1968, referred to in the second sentence in Subsection A, appears as various sections throughout 18 U.S.C., including § 921 et seq., and throughout 26 U.S.C., including § 5801 et seq.

**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. 1955-56 Op. Att'y Gen. No. 6357.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 549.

63 C.J.S. Municipal Corporations § 962.

## **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:** 1978 Comp., § 29-1-15, enacted by Laws 1983, ch. 50, § 3.

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

## **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.

**Cross-references.** - For radio communication property, ownership transferred to the communications division of the department of finance and administration, see 15-2-5 NMSA 1978.

As to 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;
- E. "New Mexico law enforcement academy" or "academy" means a bureau of the training and recruiting division of the department of public safety;
- F. "New Mexico state police" means the New Mexico state police division of the department;
- G. "New Mexico state police board" or "board" means the secretary of public safety; and
- H. "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.

**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 repeals 29-2-2 NMSA 1978, as amended by Laws 1979, ch. 202, § 13, relating to police board composition, effective July 1, 1987. For provisions of former section, see 1984 Replacement Pamphlet.

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

The New Mexico state police shall consist of a chief, such patrolmen, sergeants, lieutenants and captains as the New Mexico state police board may deem advisable within the limits of the funds appropriated for the New Mexico state police; provided, however, 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 of the criminal justice department.

**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.

**Criminal justice department.** - 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.

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

The chief of the New Mexico state police shall be appointed by the New Mexico state police board; all patrolmen, 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.

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

As to 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 29-7-8 NMSA 1978.

**Compiler's note.** - Although "removal" was added to the catchline, no provisions relevant to removal were added to this section by the 1979 amendment.

### **29-2-4.1. Rules and regulations.**

The New Mexico state police board shall promulgate rules and regulations 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.

**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 repeals 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. For provisions of former section, see 1984 Replacement Pamphlet.

### **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;
- (2) at the time of their appointment, have reached age of majority and be not more than thirty-five years of age;
- (3) have at least a high school education or its equivalent;
- (4) be of good moral character and not have been convicted of a felony or any infamous crime in the courts of this state or any other state or country or in the federal courts; and
- (5) successfully pass any physical examination the New Mexico state police may require.

B. Members of the New Mexico state police, including the chief, shall not be over sixty-one years of age.

C. No person shall be commissioned a member of the New Mexico state police who is related by blood or marriage within the fourth degree to any member of the New Mexico state police board.

**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.

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

**Where fully qualified individual is 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. 1961-62 Op. Att'y Gen. No. 62-120 (opinion rendered prior to 1963 and 1967 amendments).

**Discretion to terminate officer for not passing physical.** - The board 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. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

**Notice and hearing required.** - While the board 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 without prior notice and a hearing. *Tafoya v. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

**Subsection B means that member shall not have reached his sixty-second birthday.** 1973 Op. Att'y Gen. No. 73-5.

**Nepotism provision controls over general statute.** - The general state statute pertaining to nepotism (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. 1963-64 Op. Att'y Gen. No. 63-114 (decided prior to 1979 amendment).

**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. 1957-58 Op. Att'y Gen. No. 58-170.

**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. 1957-58 Op. Att'y Gen. No. 58-170.

**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 such forms as the board shall prescribe, and the board shall cause an investigation to be made of all applicants, subsequent to their taking the examination hereinafter referred to, for the purpose of determining the moral character, general reputation and fitness of any applicant, and any such applicant who is found unfit as a result of such investigation shall be disqualified for employment. The board shall by rule prescribe the physical qualifications of applicants and shall require each applicant to submit to a physical examination by such doctors as the board shall designate, and any applicant who does not meet the physical requirements prescribed by the board 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.

### **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, and no applicant shall be appointed a member of the New Mexico state police other than the chief, until he shall have passed such written examination with a grade of not less than seventy-two percent.

**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.

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

All new appointments as members of the New Mexico state police shall be for a probationary period of two years. During such probationary period such new members may be removed or suspended at the discretion of the chief of the New Mexico state police. At the end of two years of satisfactory service and upon recommendation of the chief and with concurrence of the New Mexico state police board, 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 board.

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

**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.

### **29-2-10. Promotions.**

All promotions in the New Mexico state police to the rank of sergeant shall be made after written examinations; provided, however, that on such examination for the rank of sergeant, the record of the party seeking promotion as a member of the New Mexico state police and his length of service shall be given a weight of forty percent in such examination. All promotions above the rank of sergeant shall be made by the chief after concurrence and approval by the New Mexico state police board. The ranks of sergeant, lieutenant and captain shall be permanent unless established as an exempt rank by the chief with the concurrence of the board. All promotions above the rank of captain are by executive appointment of the chief with concurrence of the board and such persons shall serve at the pleasure of the chief with the concurrence of the board.

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

### **29-2-11. Disciplinary proceedings.**

No officer of the New Mexico state police holding a permanent commission shall 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. The secretary may suspend an officer for disciplinary reasons for not more than thirty days in accordance with New Mexico state police regulation. Any officer holding a permanent commission who is suspended by the secretary has the right to have the suspension reviewed by the commission, but without further review or appeal. In the event the officer is to be removed from office, demoted

or suspended for a period of more than thirty days, specific written charges shall be filed with the commission. Timely and adequate notice of the charges to the person charged shall be provided and a prompt hearing on the charges shall be held by the commission. The person so charged has the right to be represented by counsel of his own choice and at his own expense at the hearings. A complete record of the hearing shall be made and, upon request, a copy of it shall be furnished to the person charged. The person may require that the hearing be public. In the event the commission finds that the person charged shall be removed, demoted or suspended for a period in excess of thirty days, the person may appeal from the decision of the commission to the district court of Santa Fe county. The appeal shall be filed within twenty days after the decision of the commission is rendered, and the court shall determine promptly whether there is substantial evidence to support the commission's action and dispose of the appeal accordingly. The determination shall be made on the basis of the record except that, for cause shown, the court shall permit either the secretary or the person charged to introduce new evidence.

**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.

**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. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

**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 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. New Mexico State Police Bd.*, 82 N.M. 787, 487 P.2d 489 (1971).

**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. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

**Transcript expense may be incurred by board.** - Such expense as is necessary may be incurred to enable the board to make a factual determination in a disciplinary proceeding. It would be absurd to vest disciplinary power in the board and then hamstring such proceedings by refusing to pay the necessary expenses thereof. For this reason, if in their discretion the board feels a copy of the transcript is necessary, such expenditure is permissible. 1957-58 Op. Att'y Gen. No. 58-212.

**No moneys expended for transcript expense in appeal.** - If a transcript is necessary for the board to weigh disciplinary action, the transcript expense would be expendable in the same fashion as the board might incur a different type of expense for the same purpose. On the other hand, if the expense of the transcript is to be incurred wholly or partially to assist in the appeal of a judgment rendered personally against a state policeman, then and in that event such moneys cannot be expended either from the budgeted line item of "professional services" or from any other public moneys appropriated to the department. 1957-58 Op. Att'y Gen. No. 58-212.

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

**Where 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. New Mexico State Police Bd.*, 81 N.M. 710, 472 P.2d 973 (1970).

**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 permanent 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. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

**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 New Mexico state police board 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.

**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.

**The 1989 amendment,** effective July 1, 1989, substituted "secretary" for "board" in the catchline 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.

**Legislative intent to repeal \$10.00 allowance.** - The intention of the legislature to effect repeal of the \$10.00 per month clause of this section is clearly manifested through its enactment of the 1951 appropriation act authorizing a \$20.00 allowance. 1951-52 Op. Att'y Gen. No. 5389 (opinion rendered under former law).

**But 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 (rendered prior to 1989 amendment).

### **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 New Mexico state police board, 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 board, 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.

**Cross-references.** - As to impersonating peace officer, see 30-27-2 NMSA 1978.

### **29-2-15. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 254, § 27 repeals 29-2-15 NMSA 1978, as enacted by Laws 1941, ch. 147, § 14, relating to division of state police, effective July 1, 1987. For provisions of former section, see 1984 Replacement Pamphlet.

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

A. Before entering upon his duties, every appointee to the New Mexico state police shall be required to attend for a period of at least ninety days a school of instruction approved by the New Mexico state police board. 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 which the appointee may be called on to enforce and other instruction as the New Mexico state police board 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 board 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. The compensation allowed for each trainee, excluding room and board for a thirty-day period, shall be in the amount set by the legislature in the general appropriations act.

**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.

## **29-2-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 202, § 53, repeals 29-2-17 NMSA 1978, relating to the state police reserve, effective July 1, 1979. For provisions of former section, see 1978 original pamphlet.

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

The chief and other members of the New Mexico state police, who, 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 perform the following duties:

A. they shall be 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;

B. they shall be 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;

C. they shall be charged with the enforcement of all laws of New Mexico regulating the use of highways; and

D. upon request of any officer or agency of the state, charged with the duty of enforcing any law of the state, made to the New Mexico state police board, 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.

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

For Snowmobile Act, enforcement, see 66-9-12 NMSA 1978.

**May arrest persons charged with violating state gambling laws.** 1943-44 Op. Att'y Gen. No. 4616.

**As well as 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*, 90 N.M. 192, 561 P.2d 465 (1977).

**But 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*, 66 N.M. 170, 344 P.2d 478 (1959).

**State police and county sheriffs have concurrent authority within county** and each has the duty and authority of enforcing the state's laws. 1943-44 Op. Att'y Gen. No. 4252.

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

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

B. The chief shall serve at the pleasure of the New Mexico state police board.

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

D. The chief shall maintain his 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.

**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 above section.

## **29-2-20. Districts.**

The New Mexico state police chief, subject to the control of the New Mexico state police board, 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.

## **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. Rule-making power; rules to establish standards of conduct.**

The New Mexico state police board shall have 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 New Mexico state police board shall establish by rules, from time to time, standards of conduct for members of the New Mexico state police and a copy thereof shall be delivered to each such member and displayed at each station of the department. Such rules shall be filed pursuant to the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 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.

**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. New Mexico State Police Bd.*, 80 N.M. 310, 454 P.2d 967 (1969).

**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. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972).

**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. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

**As well as 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. New Mexico State Police Bd.*, 83 N.M. 757, 497 P.2d 968 (1972) (decided under former law).

**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. New Mexico State Police Bd.*, 103 N.M. 270, 705 P.2d 676 (1985).

**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 retirement by age 61 requirement of 29-2-6B NMSA 1978. 1967 Op. Att'y Gen. No. 67-72.

**And such 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. New Mexico State Police Bd.*, 80 N.M. 310, 454 P.2d 967 (1969).

**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. New Mexico State Police Bd.*, 82 N.M. 787, 487 P.2d 489 (1971).

## **29-2-23. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 202, § 53, repeals 29-2-23 NMSA 1978, 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. For provisions of former section, see 1978 original pamphlet.

## **29-2-24. Waiver.**

The provisions of Sections 29-2-6 through 29-2-8 NMSA 1978 may be waived by the unanimous vote of all members of the New Mexico state police board with regard to plainclothesmen 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.

## **29-2-25. Accident reports.**

When any member of the New Mexico state police shall investigate a motor vehicle accident, he shall make a written report of his findings on appropriate forms furnished by the New Mexico state police, the original of which report and of all reports of motor vehicle accidents heretofore made 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 New Mexico state police board for the photostat 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.

**Accident report not confidential.** - Reports made by police officers regarding an accident would not be considered confidential under 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. 1953-54 Op. Att'y Gen. 5840 (opinion rendered under former law).

**No conflict between Arrest Record Information Act and section** where accident falls within exemption of former 39-10-8 D, 1953 Comp. (repealed and reenacted as 29-10-7 NMSA 1978), where the information on the accident report is the same as that information on the initial record of entry, or where 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).

## **29-2-26. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 202, § 53, repeals 29-2-26 NMSA 1978, relating to the representation of the state police board and police officers by the attorney general, effective July 1, 1979. For provisions of former section, see 1978 original pamphlet.

## **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.

**Cross-references.** - 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 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 shall be 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, such 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 hereafter 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: illegally carrying, concealing or possessing a pistol or any other dangerous weapon; buying or receiving stolen property; unlawful entry of a building; escaping or aiding an escape from prison; making or possessing a fraudulent or forged check or draft; petit larceny; and unlawfully possessing or distributing habit-forming narcotic 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.

**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.

**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, Cors. Dep't*, 103 N.M. 526, 710 P.2d 93 (Ct. App. 1985), overruled on other grounds *Silva v. State*, 106 N.M. 472, 745 P.2d 380 (1987).

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

It shall be the duty of the university of New Mexico, the human services department, the health and environment department and all other state departments, 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.

**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.

**Health and environment department.** - Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, referred to in this section, and enacts a new 9-7-4 NMSA 1978, creating the department of health. Laws 1991, ch. 25, § 4 creates the department of environment. Under 9-7-5 NMSA 1978 the administrative head of the department of health is the secretary of health. Under 9-7A-5 NMSA 1978 the administrative head of the department of environment is the secretary of environment.

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

#### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 202, § 53, repeals 29-3-5 to 29-3-7 NMSA 1978, relating to supplies, quarters and reports of the technical services bureau of the criminal justice support division, criminal justice department, effective July 1, 1979. For provisions of former sections, see 1978 original pamphlet.

### **29-3-8. Fingerprinting of persons arrested; disposition.**

A. Any person arrested for the commission of any criminal offense amounting to a felony under the laws of this state or any other jurisdiction shall be required by the arresting peace officer to make fingerprint impressions.

B. Any person arrested for the commission of any criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of this state or any political subdivision shall be required to make fingerprint impressions.

C. Fingerprint impressions shall be made pursuant to rules adopted by the New Mexico state police board, and all felony arrest fingerprints shall be made in duplicate, one copy shall be forwarded to the New Mexico state police and one copy shall be forwarded to the federal bureau of investigation in Washington, D.C.

D. One copy of the fingerprint impressions of each person arrested under the provisions of Subsection B of this section shall be forwarded to the New Mexico state police. A copy may be sent to the FBI in Washington, D.C., if:

(1) there is a question of identity;

- (2) a check of FBI files is considered necessary for investigative purposes; or
- (3) the individual is suspected of being a fugitive.

**History:** 1953 Comp., § 39-3-8, enacted by Laws 1978, ch. 87, § 1; 1979, ch. 202, § 40.

**Repeals and reenactments.** - Laws 1977, ch. 364, § 1, repealed a 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.

### **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.

## **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.

**Cross-references.** - For membership in public employees' retirement association of New Mexico, see 10-11-9 NMSA 1978.

**Bracketed material.** - The bracketed language "secretary of public safety" in this section was inserted by the compiler. 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 New Mexico state police. 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. 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. The bracketed language was not enacted by the legislature and is not part of the law.

**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.]**

All moneys 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.

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

**Bracketed material.** - See same catchline in notes following 29-4-1 NMSA 1978.

**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.

**Repeals and reenactments.** - Laws 1980, ch. 8, § 1, repeals former 29-4-4 NMSA 1978, relating to state appropriations to the state police pension trust fund and supplementary trust fund, and enacts the above 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.

**Bracketed material.** - See same catchline in notes following 29-4-1 NMSA 1978.

#### **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.

**Bracketed material.** - The bracketed language "director of the New Mexico state police division of the department" in this section was inserted by the compiler. 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.

As to the bracketed language "secretary of public safety", see 29-4-1 NMSA 1978 and notes thereto.

### **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.

**Bracketed material.** - 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. The word was not enacted by the legislature and is not part of the law.

**Law reviews.** - For article, "Attachment in New Mexico - Part II," see 2 Nat. Resources 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.

**Bracketed material.** - See same catchline in notes following 29-4-1 NMSA 1978.

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

## **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.

**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 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 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.

**The 1989 amendment**, effective March 16, 1989, deleted "within metropolitan court districts" following "institutions" in the catchline; 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 such boundaries. 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 him by the board of regents; or

(2) a distinctive uniform prescribed and issued to him by the board of regents.

**History:** 1953 Comp., § 39-5-2, enacted by Laws 1968, ch. 62, § 154; 1975, ch. 22, § 1.

**Generally.** - 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 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.

**And 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 35-14-2 NMSA 1978. 1969 Op. Att'y Gen. No. 69-48.

## **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.

**Bracketed material.** - See 29-4-8 NMSA 1978 and notes thereto.

### **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.

**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. 1957-58 Op. Att'y Gen. No. 57-41.

**Generally, 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. 1955-56 Op. Att'y Gen. No. 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. 1955-56 Op. Att'y Gen. No. 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. 1957-58 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.

**Cross-references.** - As to law enforcement training, see Article 7 of this chapter.

#### **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 Compensation Act [Article 1 of Chapter 52] 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 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 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 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.

**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. 1959-60 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. 1959-60 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. 1959-60 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. 1957-58 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 is

classified as a unit or group under 59-18-16 NMSA 1978. 1957-58 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.**

Sections 29-7-1 through 29-7-11 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.

### **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.

**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 academy board.**

A. There is created the "New Mexico law enforcement academy board".

B. The New Mexico law enforcement academy shall be controlled and supervised by policy set by the board. The board shall be composed of the attorney general, who shall serve automatically by reason of his office and serve as chairman of the board, and six members who are qualified electors to be appointed by the governor not later than July 1, 1983 and confirmed by the senate. An appointed board 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.

C. The appointed members of the first board shall be appointed for staggered terms, one ending on July 1, 1980 and one on July 1 of each of the following three years. The governor shall, on or before July 1, 1983, appoint two additional members to the board; one shall be a district attorney and one shall be a certified police chief of a New Mexico Indian tribe or pueblo. The two additional members shall be appointed for staggered terms, one ending on July 1, 1986 and one ending on July 1, 1987. Thereafter, all appointments shall be for terms of four years or less made in such manner that the terms of not more than two members expire on July 1 of each year. At all times the board shall have represented on it, as members, one municipal police chief, one sheriff, one state police officer, one district attorney, one certified police chief of a New Mexico Indian tribe or pueblo and one citizen-at-large member. Vacancies shall be filled by the governor for the unexpired term.

D. 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 [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.

**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.

#### **29-7-4. Powers and duties of board.**

The board shall:

A. approve or disapprove the appointment of the director of the academy by the secretary of public safety;

B. develop and implement a planned program of basic law enforcement training and in-service law enforcement training, a portion of which may be conducted on a regional basis;

C. prescribe qualifications for instructors and prescribe courses of instruction for basic law enforcement training and in-service law enforcement training;

D. report annually to the governor;

E. 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;

F. promulgate rules concerning the operation of the academy; and

G. perform all other acts appropriate to the development and operation of the academy.

**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.

**Board is authorized to set qualifications for instructors at the academy.** 1982 Op. Att'y Gen. No. 82-10.

**But not 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. Where 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, where 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.

### **29-7-5. Powers and duties of the director.**

The director shall:

A. be the chief executive officer of the academy and as such employ necessary personnel;

B. certify graduates of approved basic law enforcement training programs in accordance with Section 29-7-8 NMSA 1978;

C. issue appropriate certifications to graduates of the academy programs;

D. perform all other acts necessary and appropriate to the carrying out of his duties;

E. act as executive secretary to the board;

F. carry out the policy as set by the board; and

G. 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.

### **29-7-5.1. Removal of director.**

The director of the New Mexico law enforcement academy may be removed by the New Mexico law enforcement academy board 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 Section 29-2-11 NMSA 1978, the words "New Mexico state police board" or "board" shall be construed to mean the New Mexico law enforcement academy board.

**History:** 1978 Comp., § 29-7-5.1, enacted by Laws 1979, ch. 202, § 45.

### **29-7-6. Qualifications for certification.**

The director shall determine that all applicants for certification:

- A. are citizens of the United States and have reached the age of majority;
- B. hold high school diplomas or the equivalent;
- C. hold valid New Mexico driver's licenses;
- D. have 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 their 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 have not been released or discharged under any other than an honorable discharge from any of the armed forces of the United States;
- E. be found, after examination by a licensed physician, to be free of any physical condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act [29-7-1 to 29-7-11 NMSA 1978];
- F. be found, after examination by a certified psychologist, to be free of any emotional or mental condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act; and
- G. have met any other certification requirements as may be prescribed by the board.

**History:** 1953 Comp., § 39-6-8, enacted by Laws 1969, ch. 264, § 8; 1973, ch. 37, § 2; 1979, ch. 202, § 46; 1981, ch. 114, § 5; 1988, ch. 58, § 1.

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

**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.

**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.

62 C.J.S. Municipal Corporations § 571.

## **29-7-7. Definitions.**

For the purpose of the Law Enforcement Training Act [29-7-1 to 29-7-11 NMSA 1978]:

- 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 this act;
- C. "board" means the New Mexico law enforcement academy board;
- D. "director" means the director of the New Mexico law enforcement academy;
- E. "in-service law enforcement training" means a course of instruction 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;

F. "police officer" means any commissioned employee of a law enforcement agency which 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 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 state; and

G. "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, which offers basic law enforcement training and in-service law enforcement training which 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.

**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.

**Meaning of "this act".** - The term "this act," referred to in Subsection B, means Laws 1988, Chapter 58, which appears as 29-7-6, 29-7-7, 29-7-7.2, 29-7-8, and 29-7-11 NMSA 1978. The reference probably should read " this article", being Article 7 of Chapter 29.

**"Police officer."** - The motor transport division of the department of transportation is a law enforcement agency, and its inspectors fall within the definition of "police officer" in this section. 1987 Op. Att'y Gen. No. 87-25 (rendered prior to 1988 amendment, which rewrote Subsection F).

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 (rendered prior to 1988 amendment, which rewrote Subsection F).

### **29-7-7.1. In-service law enforcement training; requirements; eligibility.**

A. In-service law enforcement training shall consist of at least forty hours of academic instruction for each police officer during each twenty-four month period of employment or service with a political subdivision for a period of not less than ten years. The first training course may commence no later than twelve months after graduation from the basic law enforcement training program.

B. All police officers who are eligible for in-service law enforcement training need not have attended the basic law enforcement training program, provided a prior basic instruction certificate is accepted by the director. The director, with the approval of the board, may waive the time limitation for in-service law enforcement training upon receipt from a police officer's chief or sheriff that it is necessary that the individual receive an in-service law enforcement training course.

**History:** 1978 Comp., § 29-7-7.1, enacted by Laws 1981, ch. 114, § 7.

**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.

### **29-7-7.2. Reports.**

Every law enforcement agency within the state shall submit quarterly a report to the director 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 director.

**History:** 1978 Comp., § 29-7-7.2, enacted by Laws 1981, ch. 114, § 8; 1988, ch. 58, § 3.

**The 1988 amendment,** effective July 1, 1988, added the second sentence.

### **29-7-8. Prerequisites for permanent appointment and continued employment as a police officer.**

A. Notwithstanding any provisions of any general, special or local law to the contrary, no person shall receive an original appointment on a permanent basis as a police officer to any law enforcement agency in this state unless he:

(1) is a citizen of the United States and has reached the age of majority;

(2) holds a high school diploma or the equivalent;

(3) holds a valid New Mexico driver's license;

(4) is found, after examination by a licensed physician, to be free of any physical condition which might adversely affect his performance as a police officer and is found, after examination by a certified psychologist, to be free of any emotional or mental condition which might adversely affect his performance as a police officer;

(5) 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 his 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 any other than an honorable discharge from any of the armed forces of the United States;

(6) has met other requirements as may be prescribed by the board; and

(7) has previously been awarded a certificate by the director attesting to his satisfactory completion of an approved basic law enforcement training program.

B. Every person who is employed on a temporary basis by any law enforcement agency in this state shall forfeit his position as such unless, within twelve months from the date of his employment, he satisfactorily completes a basic law enforcement training program and is awarded a certificate attesting thereto.

C. Every county sheriff, except for those county sheriffs who have been awarded a certificate attesting to satisfactory completion of a basic law enforcement training program, shall satisfactorily complete an administrative law enforcement training program and be awarded a certificate attesting thereto prior to taking office or no later than twelve months from the date he assumes his office as county sheriff.

(1) The director of the training division of the public safety department shall establish and implement the administrative law enforcement training program for county sheriffs pursuant to the review and approval of the executive committee of the sheriffs' affiliate of the New Mexico association of counties.

(2) The per diem and mileage expenses and tuition costs for the administrative law enforcement training program shall be paid for by the county government the sheriff serves.

**History:** 1978 Comp., § 29-7-8, enacted by Laws 1979, ch. 202, § 48; 1981, ch. 114, § 9; 1988, ch. 58, § 4; 1989, ch. 194, § 1.

**Repeals and reenactments.** - Laws 1979, ch. 202, § 48, repealed former 29-7-8 NMSA 1978, relating to prerequisites for permanent appointment as a police officer, and enacted a new 29-7-9 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, added Subsection C.

**Undersheriffs must comply with this section's certification requirements.** 1988 Op. Att'y Gen. No. 88-09.

**Inspectors of the motor transportation division of the New Mexico department of transportation** are required to attend a New Mexico law enforcement academy

approved course and receive certification from the academy. 1987 Op. Att'y Gen. No. 87-25.

**Officers of livestock board.** - The livestock board in its capacity of enforcing the law is a "law enforcement agency" and its officers are "police officers" for purposes of § 29-7-7, 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 (rendered prior to 1988 amendment of 29-7-7F NMSA 1978).

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

**Candidate who received general discharge from military.** - 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.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 Am. Jur. 2d Sheriffs, Police, and Constables § 10.

62 C.J.S. Municipal Corporations § 571.

## **29-7-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1988, ch. 58, § 7 repeals 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 provisions of former section, see 1984 Replacement Pamphlet.

## **29-7-10. Certification by waiver.**

A. The director shall, with the approval of the board, 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 must meet the requirements set out in the Law Enforcement Training Act [29-7-1 to 29-7-11 NMSA 1978], and this section shall not be construed to exempt them from such 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.

**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**

**Temporary provisions.** - Laws 1991, ch. 44, § 2, effective July 1, 1991, provides that on July 1, 1991, any balance remaining in the emergency response fund or law enforcement training center fund shall be transferred to the general fund.

**Repeals.** - Laws 1991, ch. 44, § 3 repeals 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 1990 Replacement Pamphlet.

## **29-7-12. Charges.**

The New Mexico law enforcement academy 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 [29-7-1 to 29-7-11 NMSA 1978]. 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.

## **ARTICLE 7A RADIO DISPATCHER TRAINING PROGRAM**

### **29-7A-1. Short title.**

This act [29-7A-1 to 29-7A-7 NMSA 1978] may be cited as the "Police Radio Dispatcher Training Act".

**History:** 1979, ch. 228, § 1.

## **29-7A-2. Qualifications for admission to the training and education bureau.**

The chief [director of New Mexico law enforcement academy] shall determine that all applicants for admission to the radio dispatcher training program of the training and education bureau of the criminal justice department:

- A. are citizens of the United States and have reached the age of majority;
- B. hold high school diplomas or the equivalent;
- C. have not been convicted of a felony or other crime involving moral turpitude as determined by submission of the applicant's fingerprints to the technical services bureau of the criminal justice department and to the FBI identification division, and by such other investigations as required by the applicant's place of employment; and
- D. are free of any physical, emotional or mental condition which might adversely affect their performance.

**History:** Laws 1979, ch. 228, § 2.

**Bracketed material.** - The bracketed material in the introductory paragraph was inserted by the compiler, as Laws 1979, ch. 202, § 3, amended 29-7-4 NMSA 1978, substituting the appointment of a director of New Mexico law enforcement agency for the appointment of a chief of the training and education bureau. The bracketed material was not enacted by the legislature and is not part of the law.

**Training and education bureau.** - Laws 1979, ch. 202, amended 9-3-7, 29-7-4 and 29-7-5 NMSA 1978 and repealed and reenacted 29-7-3 NMSA 1978, deleting references to the training and education bureau and substituting, in ch. 29, seemingly corresponding provisions relating to the law enforcement academy. See 29-7-1 NMSA 1978 et seq.

**Technical services bureau.** - Laws 1979, ch. 202, § 4, amended 9-3-7 NMSA 1978 and deleted the provision specifically creating the technical services bureau. The fingerprint system is presently under the authority of the New Mexico state police. See 29-3-1 and 29-3-8 NMSA 1978.

**Criminal justice department.** - 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.

## **29-7A-3. Basic course minimum requirements.**

The basic course offered by the training and education bureau shall consist of not less than forty hours of instruction and training and shall consist of subjects appropriate for

the basic training of police radio dispatchers in techniques of law enforcement communications, as recommended by the majority of the participating law enforcement agencies.

**History:** Laws 1979, ch. 228, § 3.

**Training and education bureau.** - See same catchline in notes to 29-7A-2 NMSA 1978.

#### **29-7A-4. Prerequisites for permanent appointment as a police radio dispatcher.**

A. Notwithstanding any provisions of any general, special or local law to the contrary, no person shall receive an original appointment on a permanent basis as a police radio dispatcher to any law enforcement agency in this state unless such person has previously been awarded a certificate by the chief of the training and education bureau [director of New Mexico law enforcement academy] attesting to such person's satisfactory completion of an approved police radio dispatcher basic training program; and every person who is employed, after the effective date of the Police Radio Dispatcher Training Act, as a police radio dispatcher by any law enforcement unit in this state shall forfeit his position as such unless within twelve months from the date of his employment he satisfactorily completes a police radio dispatcher basic training program and is awarded a certificate attesting thereto. The chief of the training and education bureau [director of New Mexico law enforcement academy] shall waive the above training requirements for all police radio dispatchers who are serving full time on the effective date of the Police Radio Dispatcher Training Act and shall award each such police radio dispatcher a certificate.

B. For the purposes of the Police Radio Dispatcher Training Act [29-7A-1 to 29-7A-7 NMSA 1978], "police radio dispatcher" means any full-time employee, sworn or civilian, who is employed to dispatch police units by means of radio communications which is part of or administered by the state or any political subdivision.

**History:** Laws 1979, ch. 228, § 4.

**Bracketed material.** - See same catchline in notes following 29-7A-2 NMSA 1978.

**Training and education bureau.** - See same catchline in notes following 29-7A-2 NMSA 1978.

#### **29-7A-5. Certification by waiver.**

The chief of the training and education bureau [director of New Mexico law enforcement academy] shall, with approval of the secretary of criminal justice, waive the basic police radio dispatcher training program and certify applicants who furnish evidence of satisfactory completion of a basic police radio dispatcher training program which, in the

chief's [director's] opinion, is comparable to that of the police radio dispatcher training program offered by the training and education bureau [New Mexico law enforcement academy].

**History:** Laws 1979, ch. 228, § 5.

**Bracketed material.** - See same catchline in notes following 29-7A-2 NMSA 1978.

**Training and education bureau.** - See same catchline in notes following 29-7A-2 NMSA 1978.

### **29-7A-6. Correspondence course.**

The chief [director of New Mexico law enforcement academy] shall develop a correspondence course for those applicants which due to severe handicap cannot attend the program offered by the training and education bureau.

**History:** Laws 1979, ch. 228, § 6.

**Bracketed material.** - See same catchline in notes following 29-7A-2 NMSA 1978.

**Training and education bureau.** - See same catchline in notes following 29-7A-2 NMSA 1978.

### **29-7A-7. Rosters.**

The chief of the training and education bureau [director of New Mexico law enforcement academy] shall maintain a roster of all certified police radio dispatchers.

**History:** Laws 1979, ch. 228, § 7.

**Bracketed material.** - See same catchline in notes following 29-7A-2 NMSA 1978.

## **ARTICLE 8 MUTUAL AID ACT**

### **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 [29-8-1 to 29-8-3 NMSA 1978], "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 [29-8-1 to 29-8-3 NMSA 1978], 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.

**Deputization of city or county officials by state agency.** - The Environmental Improvement Division (EID) may seek assistance from city and county law enforcement agencies to enforce asbestos disposal regulations pursuant to the Mutual Aid Act, §§ 29-8-1 through 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 ACT**

### **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.

**Compiler's note.** - Laws 1981, ch. 234, § 2, repeals 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 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, 91 N.M. 516, 577 P.2d 414 (1978).

**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, 91 N.M. 516, 577 P.2d 414 (1978).

**Law reviews.** - For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

## **29-9-2. Definitions.**

As used in the Organized Crime Act [29-9-1 to 29-9-17 NMSA 1978];

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.

**Cross-references.** - As to administrative attachment to the criminal justice department, see 9-3-11 NMSA 1978.

**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, 91 N.M. 516, 577 P.2d 414 (1978)(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, 91 N.M. 516, 577 P.2d 414 (1978)(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 (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, 91 N.M. 516, 577 P.2d 414 (1978)(decided before 1979 amendment).

## **29-9-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1989, ch. 204, § 26 repeals 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 1984 Replacement Pamphlet.

## **29-9-7. Construction.**

Nothing contained in the Organized Crime Act [29-9-1 to 29-9-17 NMSA 1978] 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 [14-3-1 to 14-3-16, 14-3-18 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.

**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, 94 N.M. 1, 606 P.2d 539 (1980).

**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, 94 N.M. 1, 606 P.2d 539 (1980).

**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 SCRA 1986, 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, 94 N.M. 1, 606 P.2d 539 (1980).

**Law reviews.** - For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

## **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 [29-9-1 to 29-9-17 NMSA 1978], 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.

**Repeals and reenactments.** - Laws 1977, ch. 215, § 6, repeals 20-9-8, 1953 Comp., relating to immunity from prosecution, and enacts the above section.

**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, 93 N.M. 525, 602 P.2d 622 (1979).

### **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. Oversight committee created.**

There is created the legislative oversight committee which shall be composed of the president pro tempore of the senate, the speaker of the house of representatives and the minority leader of the senate.

**History:** 1953 Comp., § 39-9-11, enacted by Laws 1975, ch. 230, § 1.

### **29-9-13. Powers and duties.**

A. The legislative oversight committee shall:

- (1) maintain continuous review and appraisal of the activities of the governor's organized crime prevention commission and the investigations of its staff; and
- (2) make reports to the legislature on the results of its review and appraisal.

B. The legislative oversight committee may:

- (1) attend meetings of the governor's organized crime prevention commission;
- (2) require special briefings to be made to it by the commission and its staff regarding the commission's activities and expenditures;
- (3) require the assistance of any other agency of state government which it deems necessary in order to perform its functions; and
- (4) exercise any other powers deemed necessary to carry out the provisions of this act [29-9-12 to 29-9-16 NMSA 1978].

C. The legislative oversight committee shall not have access to the files of the organized crime commission without the express permission of the commission.

**History:** 1953 Comp., § 39-9-12, enacted by Laws 1975, ch. 230, § 2.

### **29-9-14. Agency cooperation.**

The governor's organized crime prevention commission and its staff and any other state agency shall cooperate fully with the legislative oversight committee in the performance of its duties.

**History:** 1953 Comp., § 39-9-13, enacted by Laws 1975, ch. 230, § 3.

### **29-9-15. Confidentiality.**

Members of the legislative oversight committee shall be bound fully by the same restrictions as placed by law upon the members of the governor's organized crime prevention commission regarding the confidentiality of information contained in the records, reports and files of the commission or obtained in private hearing.

**History:** 1953 Comp., § 39-9-14, enacted by Laws 1975, ch. 230, § 4.

### **29-9-16. Per diem and mileage.**

The per diem and mileage of the members of the legislative oversight committee shall be paid upon voucher signed by the director of the legislative council service from funds appropriated for travel expenses of legislative council members.

**History:** 1953 Comp., § 39-9-15, enacted by Laws 1975, ch. 230, § 5.

### **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 [29-9-1 to 29-9-17 NMSA 1978], 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.

**Compiler's note.** - Laws 1981, ch. 234, § 2, repeals Laws 1977, ch. 215, § 9, which had provided that the act shall terminate on July 1, 1981.

### **29-9-18. Task force.**

On July 1, 1981 there shall be created a task force to be composed of the governor, the chief justice of the supreme court, the president pro tempore of the senate and the speaker of the house of representatives, or their designated appointees. The task force shall study and report its findings and recommendations to the second session of the

thirty-seventh legislature as to the future and the function [functions], powers and duties of the governor's organized crime prevention commission.

**History:** 1978 Comp., § 29-9-18, enacted by Laws 1981, ch. 234, § 1.

## **ARTICLE 10**

# **ARREST RECORD INFORMATION ACT**

### **29-10-1. Short title.**

This act [29-10-1 to 29-10-8 NMSA 1978] may be cited as the "Arrest Record Information Act".

**History:** 1953 Comp., § 39-10-1, enacted by Laws 1975, ch. 260, § 1.

**Cross-references.** - For right to inspect public records, see 14-2-1 NMSA 1978.

For children's code, inspection of social and legal records, see 32-1-44 NMSA 1978.

**Generally.** - The 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. 78-9.

**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 [29-10-1 to 29-10-8 NMSA 1978] is for the purpose of protecting those rights.

**History:** 1953 Comp., § 39-10-2, enacted by Laws 1975, ch. 260, § 2.

**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. 78-9). See notes to 29-10-3 NMSA 1978.

**Release of juvenile's arrest information.** - A law enforcement agency is not prohibited by the Children's Code, 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. Definitions.**

As used in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978]:

A. "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 which resulted in a negative disposition; and

B. "negative disposition" means that:

(1) criminal proceedings have been concluded and the defendant was found not guilty;

(2) a prosecutor has elected not to refer a matter for prosecution; or

(3) criminal proceedings have been indefinitely postponed, and includes but is not limited to acquittal, case continued without finding, charge dismissed, charge dismissed due to insanity or mental incompetence, charge still pending due to insanity or mental incompetence, nolle prosequi, deceased, deferred disposition, pardoned, extradition proceedings have been concluded and mistrial-defendant discharged.

**History:** 1953 Comp., § 39-10-3, enacted by Laws 1975, ch. 260, § 3; 1977, ch. 339, § 1.

**Section A includes both felony and misdemeanor arrest records.** 1975 Op. Att'y Gen. No. 75-37 (opinion superseded by 1978 Op. Att'y Gen. No. 78-9).

**Definition of "arrest record information" does not include investigative reports.** 1978 Op. Att'y Gen. No. 78-9.

**Application of statute.** - The Arrest Record Information Act does not come into play until after the filing of a "formal criminal charge" or the "arrest" of an individual, followed by a "negative disposition" of the charges. 1978 Op. Att'y Gen. No. 78-9.

Only those notations of an arrest or detention or formal criminal charge filed by a law enforcement agency which result in dispositions which are included in Subsection B are subject to the confidentiality provisions of the Arrest Record Information Act. 1978 Op. Att'y Gen. No. 78-9.

**Disclosure proper where no negative disposition results.** - The records of an adult charged with an offense which does not result in a "negative disposition" would be disclosable, as those records would not constitute "arrest record information" as defined by this section. 1978 Op. Att'y Gen. No. 78-9.

**What legislature intended by term "negative disposition"** is a disposition which is either not favorable to the state, favorable to the individual charged or inconclusive. 1978 Op. Att'y Gen. No. 78-9.

#### **29-10-4. Confidentiality of arrest records.**

The arrest record information maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime shall be confidential and dissemination or the revealing the contents thereof, except as provided in the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978], is unlawful.

**History:** 1953 Comp., § 39-10-4, enacted by Laws 1975, ch. 260, § 4.

**Cross-references.** - For crimes defined and classified, see 30-1-4 to 30-1-6 NMSA 1978.

**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. 78-9.

**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 [29-10-1 to 29-10-8 NMSA 1978] 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. The provisions of the Arrest Record Information Act [29-10-1 to 29-10-8 NMSA 1978] do not apply to criminal history record information contained in:

(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 such 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 in this act [29-10-1 to 29-10-8 NMSA 1978] 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. Nor is a law enforcement agency 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.

**Repeals and reenactments.** - Laws 1977, ch. 339, § 4, repeals 39-10-8, 1953 Comp., relating to the application of the Arrest Record Information Act, and enacts the above section.

**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. 78-9).

**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. 78-9.

**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. 78-9.

## **29-10-8. Review of arrest record information.**

A person who believes that arrest record information concerning him is inaccurate or incomplete shall, upon satisfactory verification of his identity, be entitled to review such 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 shall be entitled to petition the district court to correct such information.

**History:** 1953 Comp., § 39-10-9, enacted by Laws 1977, ch. 339, § 5.

**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 ACT**

### **29-11-1. Short title.**

This act [29-11-1 to 29-11-6 NMSA 1978] may be cited as the "Sexual Crimes Prosecution and Treatment Act".

**History:** 1978 Comp., § 29-11-1, enacted by Laws 1978, ch. 27, § 1.

### **29-11-2. Purpose.**

The purpose of the Sexual Crimes Prosecution and Treatment Act [29-11-1 to 29-11-6 NMSA 1978] 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 [29-11-1 to 29-11-6 NMSA 1978]:

A. "administrator" means the director of the behavioral health services division of the health and environment department [secretary 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, such 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.

**Bracketed material.** - The bracketed reference to the secretary of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978 and enacts a new 9-7-4 NMSA 1978, relating to the department of health. Laws 1991, ch. 25, § 17 amends 9-7-5 NMSA 1978 to provide that the administrative head of the department of health is the secretary of health. The bracketed material was not enacted by the legislature and is not part of the law.

#### **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 [29-11-1 to 29-11-6 NMSA 1978].

B. The funds 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 [29-11-1 to 29-11-6 NMSA 1978].

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.

**Bracketed material.** - 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.

## **ARTICLE 12 CRIME STOPPERS COMMISSION**

### **29-12-1. Commission; creation; composition; vacancies; salaries. (Effective until July 1, 2000.)**

A. There is created the "crime stoppers commission". The commission shall consist of ten members, six of whom shall be appointed from local crime stopper programs and four of whom shall be members at large. All members of the crime stoppers commission shall be appointed by the governor for two-year terms. The commission shall elect from among its members a chairman and any other officers it deems necessary.

B. 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.

C. 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.

**History:** Laws 1979, ch. 142, § 1.

**Delayed repeals.** - Laws 1990, ch. 17, § 1 repeals 29-12-1 NMSA 1978, as enacted by Laws 1979, ch. 142, § 1, effective July 1, 2000.

### **29-12-2. Purpose of commission. (Effective until July 1, 2000.)**

The purpose of the commission is to assist in the creation and maintenance of local crime stopper programs and in their promotion and exposure through the media, and to help law enforcement agencies detect and combat crime, by increasing the flow of information to law enforcement agencies and by stimulating and encouraging such flow between and among law enforcement agencies and personnel.

**History:** Laws 1979, ch. 142, § 2.

**Delayed repeals.** - Laws 1990, ch. 17, § 1 repeals 29-12-2 NMSA 1978, as enacted by Laws 1979, ch. 142, § 2, effective July 1, 2000.

### **29-12-3. Powers and duties of commission; surety bonds. (Effective until July 1, 2000.)**

A. The powers and duties of the crime stoppers commission are to:

- (1) formulate, approve and adopt policies and rules under which it will carry out its purpose;
- (2) appoint, with the approval of the governor, an executive director who shall be the chief executive and administrative officer of the commission;
- (3) advise and assist in the creation and maintenance of local crime stopper programs;
- (4) foster the detection of crime and encourage the citizenry, through a reward program or otherwise, to come forward with information which will promote the prosecution of criminal activity;
- (5) encourage the media of this state to promote the functions of state and local crime stopper programs;
- (6) arrange for the channeling of information collected through the various crime stopper programs to proper law enforcement agencies and personnel; and

(7) accept contributions made pursuant to court order, gifts, endowments or bequests. Funds received pursuant to this paragraph may be deposited in one or more banks and expended by checks drawn by the executive director with the approval of the commission. Funds received pursuant to this paragraph may be expended without submission of vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978. The funds are not subject to audit or to the provisions of the Procurement Code [13-1-28 to 13-1-117, and 13-1-118 to 13-1-199 NMSA 1978].

B. Each member, officer and employee of the commission shall give bond as provided in the Surety Bond Act [10-2-13 through 10-2-16 NMSA 1978]. The commission shall pay the costs of the bonds.

**History:** Laws 1979, ch. 142, § 3; 1987, ch. 139, § 1.

**Delayed repeals.** - Laws 1990, ch. 17, § 1 repeals 29-12-3 NMSA 1978, as amended by Law 1987, ch. 139, § 1, effective July 1, 2000.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 67 Am. Jur. 2d Rewards § 1 et seq.

77 C.J.S. Rewards § 1 et seq.

#### **29-12-4. Confidentiality; penalty. (Effective until July 1, 2000.)**

A. It is unlawful for any member, officer or employee of the commission, except in furtherance of its purpose, to reveal to any individual, other than the proper law enforcement agencies, any information of a criminal nature gained through the commission's activities.

B. Any member, officer or employee of the commission who reveals to another individual any information which he is prohibited from lawfully revealing by provision of Subsection A of this section is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

C. The records, reports and files of the commission are not subject to the provisions of the Public Records Act [14-3-1 to 14-3-16, 14-3-18 NMSA 1978] or Sections 10-15-1 through 10-15-4 NMSA 1978.

D. The records, reports and files of the commission shall not be subject to subpoena except by order of the supreme court of New Mexico.

**History:** Laws 1979, ch. 142, § 4.

**Delayed repeals.** - Laws 1990, ch. 17, § 1 repeals 29-12-4 NMSA 1978, as enacted by Laws 1979, ch. 142, § 4, effective July 1, 2000.

## **ARTICLE 13**

### **LAW ENFORCEMENT PROTECTION FUND**

#### **29-13-1. Short title.**

The provisions of Sections 1 through 9 [29-13-1 to 29-13-9 NMSA 1978] of this act may be cited as the "Law Enforcement Protection Fund Act".

**History:** Laws 1983, ch. 289, § 1.

#### **29-13-2. Purpose of act.**

The purpose of the Law Enforcement Protection Fund Act [29-13-1 to 29-13-9 NMSA 1978] is to provide for the equitable distribution of funds to municipal and county police and sheriff departments for use in the maintenance and improvement of those departments in order to enhance the efficiency and effectiveness of law enforcement services.

**History:** Laws 1983, ch. 289, § 2.

#### **29-13-3. Distribution of certain insurance department 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, penalties and taxes from life, general casualty and title insurance business pursuant to the New Mexico Insurance Code [Chapter 59A NMSA 1978] shall be paid daily to the state treasurer and by him credited to the law enforcement protection fund. On or before June 30 of each year, the state treasurer shall transfer to the general fund any balance not obligated in the law enforcement protection fund in excess of the amount certified by the local government division of the department of finance and administration to be distributed from that fund and in excess of one hundred thousand dollars (\$100,000).

**History:** Laws 1983, ch. 289, § 3; 1985, ch. 29, § 1; 1988, ch. 96, § 1.

**Cross-references.** - As to the general fund, see 6-4-2 NMSA 1978.

#### **29-13-4. Determination of needs.**

A. Annually on or before April 15, the local government division of the department of finance and administration shall consider and determine the relative needs as requested

by municipal and county police and sheriff departments for money in the law enforcement protection fund pursuant to the provisions of Subsection B of this section. The local government division shall certify that determination, or an adjusted determination pursuant to the provisions of Section 29-13-5 NMSA 1978, to the state treasurer no later than June 30 of each year.

B. The local government division shall determine the qualification of all municipal and county police and sheriff departments for money in the law enforcement protection fund as follows:

(1) all municipal and county police and sheriff departments shall be rated by class pursuant to this paragraph in accordance with populations established by the most recent federal census, provided that the population of a county shall not include the population of any municipality within that county which has a municipal police department, and shall be entitled to the following amounts:

CLASS AMOUNT -----	POPULATION -----
1 20,000	0 - \$17,000
2 160,000	20,001 - 30,000
3 1,280,000	160,001 - 40,000

(2) municipal and county police and sheriff departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Paragraph (3) of this subsection and subject to available funds, to three hundred dollars (\$300) for each police officer employed full-time by their department who has been certified by the New Mexico law enforcement academy pursuant to the provisions of Section 29-7-8 NMSA 1978 or has been authorized to act as a New Mexico peace officer pursuant to the provisions of Section 29-1-11 NMSA 1978; and

(3) after disbursements are made in accordance with Paragraph (1) of this subsection and if the balance in the law enforcement protection fund is insufficient to permit the allocation provided by Paragraph (2) of this subsection, the local government division shall reduce that allocation to the maximum amount permitted by available funds.

**History:** Laws 1983, ch. 289, § 4; 1988, ch. 96, § 2.

### **29-13-5. Determination of needs; review.**

No later than May 1 of each year, the local government division of the department of finance and administration shall notify in writing each affected municipal and county police and sheriff department of its determination of funds to be distributed pursuant to the provisions of Section 29-13-4 NMSA 1978, and any affected department 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 lodged, the secretary of finance and administration shall review the determination of the local government 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 lodged, the original determination of the local government division shall be final and binding and not subject to further review.

**History:** Laws 1983, ch. 289, § 5; 1988, ch. 96, § 3.

### **29-13-6. Distribution of law enforcement protection fund.**

Annually on or before July 31, the state treasurer shall distribute from the law enforcement protection fund the amounts certified by the local government division of the department of finance and administration to be distributed to municipalities and counties. Payments shall be made to the treasurer of the appropriate governmental entity.

**History:** Laws 1983, ch. 289, § 6.

### **29-13-7. Expenditure limitation; control.**

A. Amounts distributed from the law enforcement protection fund shall be expended only for the following:

- (1) the repair and purchase of law enforcement apparatus and equipment which meet minimum nationally recognized standards;
- (2) expenses associated with advanced law enforcement planning and training;
- (3) complying with match or contribution requirements for the receipt of federal funds relating to criminal justice programs; and
- (4) no more than fifty percent of the replacement salaries of municipal and county law enforcement personnel of municipalities or counties rated as Class 1 in Paragraph (1) of Subsection B of Section 29-13-4 NMSA 1978 participating in basic law enforcement training.

B. Amounts distributed from the law enforcement protection 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.

### **29-13-8. Rules and regulations.**

The local government division of the department of finance and administration shall promulgate necessary rules and regulations to administer the provisions of the Law Enforcement Protection Fund Act [29-13-1 to 29-13-9 NMSA 1978].

**History:** Laws 1983, ch. 289, § 8.

### **29-13-9. Expenditures of money distributed from the law enforcement protection fund; wrongful expenditure.**

A. Amounts distributed from the law enforcement protection fund shall be expended only for the specific purposes for which they are distributed and shall not be distributed for accumulation.

B. Any person who expends or directs or permits the expenditure of any money distributed from the law enforcement protection fund for purposes other than those expressly authorized by the Law Enforcement Protection Fund Act [29-13-1 to 29-13-9 NMSA 1978] 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.

## **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

## **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 [29-14-1 to 29-14-11 NMSA 1978] 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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

## **29-14-3. Definition.**

As used in the Peace Officer's Employer-Employee Relations Act [29-14-1 to 29-14-11 NMSA 1978], "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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

## **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

### **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

### **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

### **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

### **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

### **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

### **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.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.

### **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 [29-14-1 to 29-14-11 NMSA 1978].

**History:** Laws 1991, ch. 117, § 11.

**Effective dates.** - Laws 1991, ch. 117, § 12 makes the act effective on July 1, 1991.