

# **CHAPTER 20**

## **Military Affairs**

### **ARTICLE 1**

#### **General Provisions**

##### **20-1-1. New Mexico Military Code; regulations.**

The New Mexico Military Code shall consist of:

A. the constitution of the United States of America, including:

- (1) Article 1, Section 8 (the militia clause);
- (2) Article 2, Section 2 (powers of the president);
- (3) Amendment 2 (right to keep and bear arms);
- (4) Amendment 5 (rights of accused in criminal proceedings); and
- (5) Amendment 10 (powers reserved to states or people);

B. the constitution of New Mexico:

- (1) Article 2, Section 9 (military power subordinate; quartering of soldiers);
- (2) Article 2, Section 14 (indictment and information; grand juries; rights of accused);
- (3) Article 5, Section 4 (governor's executive power; commander of militia);
- (4) Article 9, Section 7 (state indebtedness; purposes); and
- (5) Article 18 (militia); and

C. Chapter 20 NMSA 1978.

The New Mexico Military Code shall be published, maintained and disseminated by the adjutant general. It may be implemented by executive orders or proclamations or by orders, rules or regulations of the adjutant general, consistent with the constitutions and laws of the state and of the United States, so as to achieve its intended effects and purposes. When attested by the adjutant general as issued by command of the governor, regulations shall have full force and effect upon publication. They are exempt

from the requirements of filing of the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** 1978 Comp., § 20-1-1, enacted by Laws 1987, ch. 318, § 1.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-1-1 NMSA 1978, as amended by Laws 1977, ch. 258, § 10, relating to the office of military affairs, and enacted a new section, effective April 10, 1987.

**Cross references.** — For tuition payments for residents conscripted into military service, see 21-1-4.1 NMSA 1978.

### 20-1-2. Laws to conform to United States regulations.

The intent of the New Mexico Military Code and all laws and regulations of the state affecting the military forces is to reasonably conform to all laws and regulations of the United States affecting the same subjects, except as otherwise expressly provided with respect to military justice.

**History:** 1978 Comp., § 20-1-2, enacted by Laws 1987, ch. 318, § 2.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-1-2 NMSA 1978, as amended by Laws 1977, ch. 258, § 11, relating to the adjutant general as director, and enacted a new section, effective April 10, 1987.

**Sovereign immunity barred USERRA claim against the state.** — Article I, Section 8, Clause 11 of the United States Constitution, known as the war powers clause, does not authorize congress to subject the state to private suits for damages in state courts pursuant to the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, absent the state's consent and the legislature has not waived the state's constitutional immunity to private USERRA suits for damages. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd by* 2016-NMSC-016.

Where plaintiff, who was a member of the New Mexico national guard, was employed by the department; plaintiff was deployed to Iraq; upon plaintiff's return from active duty, plaintiff was reemployed by the department in plaintiff's previous position; plaintiff's working relations with plaintiff's supervisors deteriorated and plaintiff's employment was terminated; and filed a suit under Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, alleging that the department discriminated against plaintiff and terminated plaintiff because of plaintiff's military service, plaintiff's claim was barred by state sovereign immunity. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev'd by* 2016-NMSC-016.

### **20-1-3. Armed forces regulations to govern.**

All matters relating to the organization, discipline and government of the military forces, not otherwise provided for in the New Mexico Military Code, shall be decided by the custom, regulations and usage of the armed forces of the United States.

**History:** 1978 Comp., § 20-1-3, enacted by Laws 1987, ch. 318, § 3.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-1-3 NMSA 1978, as enacted by Laws 1977, ch. 258, § 12, relating to the military division, and enacted a new section, effective April 10, 1987.

### **20-1-4. Governor to be commander-in-chief; enforcement of New Mexico Military Code.**

A. The governor shall be the commander-in-chief of the military forces, except so much thereof as may be in the actual service of the United States, and may employ the military forces for the defense or relief of the state, the enforcement of its law and the protection of life and property therein.

B. The adjutant general shall be the commanding general of New Mexico, and the deputy adjutant general shall be the deputy commanding general of New Mexico.

C. Whenever the governor or acting governor is unable to personally perform the duties of commander-in-chief or whenever the governor so directs, the adjutant general or, in the adjutant general's absence, the senior line officer of the national guard present for duty with the troops shall command the military forces.

D. The governor may appoint a staff consisting of the adjutant general and aides-de-camp of field grade or higher who shall be detailed from the national guard or the state defense force. The governor may designate honorarily other persons as colonels aide-de-camp.

E. The governor may, by executive orders, proclamations or regulations not inconsistent with law, enforce all the provisions of the New Mexico Military Code.

**History:** 1978 Comp., § 20-1-4, enacted by Laws 1987, ch. 318, § 4; 2021, ch. 55, § 1.

#### **ANNOTATIONS**

**Cross references.** — For governor as commander in chief of national guard, see N.M. Const., art. XVIII, § 1.

**The 2021 amendment**, effective June 18, 2021, provided that the adjutant general is the commanding general of New Mexico and that the deputy adjutant general is the deputy commanding general of New Mexico; added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively; and in Subsection E, added "New Mexico" preceding "Military Code".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.

6 C.J.S. Armed Services § 289.

## **20-1-5. Adjutant general; appointment, powers and duties.**

In case of a vacancy, the governor shall appoint as the adjutant general of New Mexico for a term of five years an officer who for three years immediately preceding the appointment as the adjutant general of New Mexico has been federally recognized as an officer in the national guard of New Mexico and who during service in the national guard of New Mexico has received federal recognition in the rank of colonel or higher. The adjutant general shall not be removed from office during the term for which appointed, except for cause to be determined by a court-martial or efficiency board legally convened for that purpose in the manner prescribed by the national guard regulations of the United States department of defense. The adjutant general shall have the military grade of major general and shall receive the same pay and allowances as is prescribed by federal law and regulations for members of the active military in the grade of major general, unless a different rate of pay and allowances is specified in the annual appropriations bill. The adjutant general may promulgate rules for the conduct of courts-martial and punishments under the Code of Military Justice [Chapter 20, Article 12 NMSA 1978]. Such procedural rules shall be consistent with and carry into effect the New Mexico Military Code and afford reasonable due process to criminal defendants. The adjutant general shall:

A. prepare and publish, by order of the governor, such orders, rules and regulations, consistent with law, as are necessary to maintain the military forces in a state of efficiency in conformity with the needs of the state and the federal defense requirements;

B. supervise the receipt, preservation, repair, distribution, issue and collection of all arms and military equipment of the state;

C. supervise all personnel, organizations, facilities, equipment, supplies and funds of the military forces;

D. maintain records of all members of the military forces and keep on file in the adjutant general's offices copies of all orders, reports, regulations and communications received and issued by the adjutant general;

- E. perform such other duties as may be required by the commander-in-chief; and
- F. have a seal of office.

**History:** 1978 Comp., § 20-1-5, enacted by Laws 1987, ch. 318, § 5; 2018, ch. 6, § 1; 2021, ch. 55, § 2.

## ANNOTATIONS

**The 2021 amendment**, effective June 18, 2021, authorized the adjutant general to promulgate rules for the conduct of courts-martial and punishments under the Code of Military Justice; after "appointment", added "powers"; and added "The adjutant general may promulgate rules for the conduct of courts-martial and punishments under the Code of Military Justice. Such procedural rules shall be consistent with and carry into effect the New Mexico Military Code and afford reasonable due process to criminal defendants."

**The 2018 amendment**, effective July 1, 2018, increased the rank required to be appointed adjutant general; in the introductory paragraph, after "recognition in the rank of", deleted "major" and added "colonel"; and in Subsection D, after "on file in", deleted "his" and added "adjutant general's", and after "issued by", deleted "him" and added "the adjutant general".

**Offices of adjutant general.** — The adjutant general of state holds two offices, one a civil office and the other that of brigadier general (now major general) of the national guard of the state, and when ordered to duty as national guard officer he is entitled to pay in both capacities. 1934 Op. Att'y Gen. No. 34-805.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Incompatibility of offices of judge and national guard officer, 26 A.L.R. 142, 132 A.L.R. 254, 147 A.L.R. 1419, 148 A.L.R. 1399, 150 A.L.R. 1444.

Incompatibility of offices or positions in the military, and in the civil service, 132 A.L.R. 254, 147 A.L.R. 1419, 148 A.L.R. 1399, 150 A.L.R. 1444.

6 C.J.S. Armed Services § 291.

### **20-1-6. Payments by state treasurer; certificates of indebtedness.**

A. All compensation of personnel and all the necessary expenses incurred in quartering, housing, caring for, subsisting, protecting, equipping, warning for duty and transporting such officers and members and their equipment, including the purchase or lease of any articles of material, equipment or supplies reasonably required, designed or needed to accomplish the purpose or results desired by the governor or specified in the governor's call for such troops into service of the state, shall be paid by the state. The state treasurer, upon presentation to the state treasurer of vouchers and payrolls

for such compensation, expenses, supplies and materials, certified by the officers commanding such forces and approved by the adjutant general, shall pay the vouchers and payrolls out of any money available in the state treasury not otherwise appropriated; provided that the vouchers and payrolls for such service, supplies and materials do not exceed one million dollars (\$1,000,000) in any one fiscal year.

B. If there is no money available in the state treasury that is not otherwise appropriated or if the vouchers and payrolls for such service, material and supplies approach the amount of one million dollars (\$1,000,000) in any one fiscal year, the state treasurer shall certify such facts to the governor who shall inquire into and make an estimate of the total probable cost necessary to be incurred for all purposes in connection with or to accomplish the purpose for which such troops were called into active service. If the governor deems it necessary and prudent in order to provide for the public defense that such expenses be incurred and that it is necessary to create an indebtedness for the purpose of paying the expenses, the governor shall by proclamation declare an emergency to exist requiring the creation of an indebtedness under Article 9, Section 7 of the constitution of New Mexico in order to suppress insurrection or to provide for the public defense. The governor shall order the issuance of certificates of indebtedness in such amount as the governor deems required or necessary to provide funds for the payment of expenses and costs incident to or connected with the emergency.

C. The certificates of indebtedness shall be approved as to form by the attorney general. They shall be dated the day of their issuance and the state board of finance shall by proper resolutions prescribe the denominations of the certificates, the maturity dates thereof, the rate of interest they shall bear payable semiannually, the time and place of payment of both principal and interest and the amount of the certificates that shall be issued from time to time. The certificates shall be signed by the secretary of the state board of finance and the state treasurer and the coupons attached thereto shall have the engraved lithographed facsimile of the signature of the state treasurer thereon; provided, however, that certificates purchased by the state treasurer may be issued without coupons. The certificates shall be sold by the state board of finance from time to time in such amounts as it deems advisable, at not less than par and accrued interest to date of delivery, after advertisement for a period of two weeks immediately prior to the sale in one daily newspaper in the state and in some financial journal in the city and state of New York; provided, however, that the state treasurer may purchase the certificates as an investment of any funds in the state treasurer's hands available for investment and in the event of any such purchase by the state treasurer, no advertisement shall be required. The proceeds of certificates so sold shall be by the state treasurer covered into a fund known as the "adjutant general emergency public defense fund" and shall be expended and disbursed only in the manner and for the purposes specified and provided for in Chapter 20, Article 1 NMSA 1978.

D. A fund to be known as the "adjutant general emergency public defense certificates fund" to provide for the payment of interest and principal on the foregoing certificates is established and, beginning with the tax levy for the year following the

issuance of the certificates, a tax shall be levied annually in the same manner as other ad valorem taxes are levied on all taxable property in the state, not to exceed one-half mill on the dollar of valuation, sufficient to produce the amount required to pay interest on the certificates and the principal thereof at maturity, for each year prior to the maturity of the certificates, which taxes when collected shall be credited to the adjutant general emergency public defense certificates fund. The state auditor shall each year prior to August 1 certify to the property tax division of the taxation and revenue department the amount necessary to meet all payments of principal and interest due on the certificates during the year ending June 30 following the date of the certificates.

E. On or before the twentieth legislative day of the next legislative session following the expenditures of the sums provided for in this section, the governor shall file a written report with the presiding officer of each house of the legislature setting forth the purpose and the amounts of money expended as provided in this section.

F. The provisions of this section may be used for the operation of the national guard or the state defense force when on militia duty.

**History:** 1978 Comp., § 20-1-6, enacted by Laws 1987, ch. 318, § 6; 1999, ch. 52, § 1; 2009, ch. 17, § 1.

## ANNOTATIONS

**Cross references.** — For \$200,000 limitation on state borrowing to meet deficits, see N.M. Const., art. IX, § 7.

**The 2009 amendment,** effective June 19, 2009, in Subsections A and B, increased the funding cap for supplies, materials and supplies from \$250,000 to \$1,000,000.

**The 1999 amendment,** effective March 17, 1999, substituted "two hundred fifty thousand dollars (\$250,000)" for "one hundred thousand dollars (\$100,000)" in the last sentence of Subsection A and in the first sentence of Subsection B, updated a statutory reference at the end of the last sentence of Subsection C, and deleted "foregoing" preceding "provisions" in Subsection F.

**Where issuance of certificates mandated.** — State was liable for expense of converting cavalry unit into an anti-aircraft artillery, under order of governor to conform the militia and equipment to the organization and equipment of the regular army of the United States, and issuance of certificates of indebtedness therefor was mandated. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Legislative intent.** — The intent of the legislature in this section is that the governor has been given the discretion to decide what is an emergency, and if he deems it necessary and prudent in order to provide for the public defense that such expenses be incurred in order to protect the lives or the property of the citizens, he may without issuing a certificate of indebtedness, if funds are available in the general fund, expend

additional sums to pay for the maintaining of the militia. 1956 Op. Att'y Gen. No. 56-6479.

**Where section does not conflict.** — This section does not interfere with the governor's power to call out the militia and does not conflict with N.M. Const., art. V, § 4. 1951 Op. Att'y Gen. No. 51-5438.

**Scope of expenses for transportation.** — If the adjutant general does not have sufficient transportation for the national guard, he may rent trucks for such purpose, since expenses for transportation would include and permit the renting of trucks. It would also include the repair and maintenance of state trucks, provided such repairs were incident to maintenance and not permanent in nature. 1938 Op. Att'y Gen. No. 38-1968.

**Where indebtedness less than \$1,000,000.** — Where the indebtedness created is less than \$5000 (now \$1,000,000), it is to be paid out of moneys available in the state treasury not otherwise appropriated, and no certificate is to be issued in such instance unless there are no moneys available in the state treasury not otherwise appropriated. 1954 Op. Att'y Gen. No. 54-5986.

**Exceptions to limitation on borrowing.** — Limitation on the state's borrowing to meet casual deficits or failure in revenue, or for necessary expenses, does not apply to debts contracted to suppress insurrection or to provide for the public defense. 1951 Op. Att'y Gen. No. 51-5438.

## **20-1-7. Reference to gender.**

In Chapter 20 NMSA 1978, the use of the male pronoun shall be construed to include the female equivalent unless specifically stated to the contrary.

**History:** 1978 Comp., § 20-1-7, enacted by Laws 1987, ch. 318, § 7.

## **20-1-8. State benefits for members of armed forces called to active duty and deployed; benefits for surviving children of a member killed in the line of duty.**

A. A New Mexico resident who is a member of the New Mexico national guard or of a branch of the federal armed forces and who is called to active duty and is deployed and serves during the period beginning on the effective date of this section and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated is entitled to the following benefits, notwithstanding any provision of law to the contrary:

(1) a free game hunting and fishing license for the year following the year of the member's deactivation and return to the state;



(2) an extension of one year after the return of the member to the state of the date the member is required to file a state personal income tax return if the filing date occurs while the member is on active duty and deployed;

(3) an extension for one month after the member's return to the state of the date to renew a driver's license if the renewal date occurs while the member is on active duty and deployed; and

(4) a refund or credit of tuition paid to a state post-secondary educational institution for attendance during a period when the attendance of the member was interrupted by activation and deployment.

B. The surviving children of a New Mexico resident who was a member of the New Mexico national guard or of a branch of the federal armed forces and who was killed in the line of duty after being called to active duty and deployed during the period beginning on April 3, 2003 and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated are entitled to waivers of tuition for four consecutive years at a state post-secondary educational institution, notwithstanding any provision of law to the contrary.

**History:** Laws 2003, ch. 136, § 1; 2011, ch. 186, § 7.

## **ANNOTATIONS**

**The 2011 amendment**, effective April 1, 2012, eliminated the category of general hunting license.

### **20-1-8.1. Military deployment; municipal or county services and utilities discontinued.**

A. When a resident is a member of a branch of the United States armed forces, the reserves or the New Mexico national guard and is deployed or on temporary duty assignment outside the resident's community for more than thirty days, the resident may suspend some or all municipal or county services, public utilities or telecommunications services provided by persons whose rates are regulated by the municipality, the county or the public regulation commission for the home of the resident without a penalty. The resident shall certify to the municipality, county or other service providers that:

(1) the resident has orders to deploy or to be temporarily assigned outside the resident's community;

(2) the service is in the resident's name;

(3) the resident owns the home or has a lease that does not preclude suspension of municipal or county services or utilities; and

(4) family members or other persons will not be staying in the home during the time the resident is deployed or temporarily assigned.

B. Upon return from deployment or temporary duty assignment, the resident shall be allowed to reconnect the suspended municipal or county services, public utilities or telecommunications services without having to pay a reconnection fee. Except for new equipment or installation of equipment, the resident may establish new service at a new address without paying a connection fee.

**History:** Laws 2013, ch. 35, § 1 and Laws 2013, ch. 193, § 1.

### ANNOTATIONS

**Compiler's notes.** — Laws 2013, ch. 35, § 1 and Laws 2013, ch. 193, § 1, both effective June 14, 2013, enacted identical new sections. The section was set out as enacted by Laws 2013, ch. 193, § 1. See 12-1-8 NMSA 1978.

### **20-1-9. Onate training center complex; morale, welfare and recreation facility; establishment; powers and duties; proceeds; audits.**

A. As used in this section:

(1) "department" means the department of military affairs; and

(2) "facilities" means a post exchange, canteen, barber shop, fitness center, snack bar, transient housing, billeting operation, laundry or similar facility, the purpose of which is to enhance the morale and welfare of military personnel.

B. The department may establish "morale, welfare and recreation facilities" at the Onate training center complex in Santa Fe for use by:

(1) active and reserve component members of the armed forces of the United States;

(2) persons retired from the armed forces of the United States; and

(3) state and federal civilian employees assigned to the department.

C. The facilities shall be established in accordance with rules of the federal departments of the army and air force and the national guard governing nonappropriated fund morale, welfare and recreation activities. The department of military affairs shall adopt and promulgate rules to carry out the provisions of this section.

D. The facilities shall be:

(1) separate and apart from the state; and

(2) self-sufficient and shall not receive any appropriations from the legislature.

E. The department shall establish a system of bookkeeping and accounting for the proper handling of money derived from the operation of the facilities. The department shall establish bank accounts as necessary for the deposit of revenue from operation of the facilities. Money derived from operation of the facilities is not state money and shall not be commingled with money received by the department from state sources.

F. The department may contract for the operation of the facilities. Employees of the facilities are not state employees for any purpose.

G. No obligations or contracts of the facilities shall be considered to be obligations or contracts of the state.

H. The department shall require an annual independent audit each year of the facilities' operations and may require other audits as necessary. Audits shall be submitted to the state auditor and the legislative finance committee within ten days of receipt by the department.

I. Money derived from the operation of the facilities is appropriated to the department for the continued operation of the facilities and for the general welfare of members of the New Mexico national guard.

**History:** Laws 2007, ch. 84, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 2007, ch. 84, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

## **ARTICLE 2**

### **Militia**

#### **20-2-1. Definitions and principles.**

A. "Militia" means all the military forces of this state, organized and unorganized, whether active or inactive; but excludes the regularly organized police forces of the state or its political subdivisions and excludes the civil air patrol division.

B. "National guard" means the New Mexico army national guard and the New Mexico air national guard. The national guard is federally recognized and has a dual

state and federal character and mission. When used in Chapter 20 NMSA 1978 national guard shall refer to the national guard of New Mexico unless otherwise stated.

C. "New Mexico state defense force" means that part of the militia of the state which is not federally recognized. It is exclusively a state entity. Its standing cadre is a component of the organized militia; its ranks are filled upon order of the governor from the unorganized militia. When used in Chapter 20 NMSA 1978, state defense force shall refer to the New Mexico state defense force.

**History:** 1978 Comp., § 20-2-1, enacted by Laws 1987, ch. 318, § 8.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-1 NMSA 1978, as enacted by Laws 1925, ch. 113, § 1, relating to the National Defense Act, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 28, 29.

6 C.J.S. Armed Services § 288.

### **20-2-2. Militia composition.**

The militia is composed of the organized and the unorganized militia.

A. The organized militia is the national guard and the standing cadre of the state defense force and such parts of the unorganized militia when and as may be activated, enrolled or enlisted into the national guard or into the state defense force.

B. The unorganized militia is comprised of all able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intentions to become citizens of the United States and are residents of the state who are not less than eighteen or more than forty-five years of age, but who shall not be more than sixty-four years of age if they shall have earlier served in or retired from the national guard; subject to the following exceptions:

(1) persons exempted by the laws of the United States from federal military service;

(2) persons who are engaged in civilian occupations which are deemed by the governor to be of greater public service or necessity than would be their service in the militia if called into active service of the state;

(3) persons who have received dismissal, a dishonorable discharge, a bad conduct discharge, an undesirable discharge or a discharge under other than honorable conditions from any military component; and

(4) persons in active federal military service or retired military members subject to federal recall to active military service.

C. The adjutant general may prescribe plans by regulation for the orderly activating and detailing of the unorganized militia and its members, to include mission analysis and personnel classification. Enrollment or enlistment of members of the unorganized militia may be into the national guard, subject to federal criteria, or into the state defense force, as determined by the governor.

D. The governor may authorize the voluntary appointment or voluntary enlistment of female citizens of the state into any military occupational specialty or career field of the branches and services of the organized militia that is consistent with current federal department of defense policy and while so serving they shall have the same status as male members.

**History:** 1978 Comp., § 20-2-2, enacted by Laws 1987, ch. 318, § 9; 2017, ch. 43, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-2 NMSA 1978, as enacted by Laws 1925, ch. 113, § 2, and enacted a new section, effective April 10, 1987.

**The 2017 amendment,** effective June 16, 2017, authorized women to serve in any position of the organized militia; and in Subsection D, after "female citizens of the state into", deleted "the noncombat" and added "any military occupational specialty or career field of the", and after "services of the organized militia", added "that is consistent with current federal department of defense policy".

**Legislative intent.** — The constitution makers did not say that the legislature should organize the militia, but mandated them to provide for the organization of the militia, and the legislature, by this chapter (Laws 1925, ch. 113), has declared its legislative policy of establishing a militia. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Enlistment generally.** — A voluntary enlistment is a contractual relationship between the person enlisting and the state. It is a contract which, in effect, changes the status of the party enlisting. 1955 Op. Att'y Gen. No. 55-6315.

**When guard part of United States armed forces.** — New Mexico national guard is included as a part of the armed forces of the United States only during a period of federal service. 1959 Op. Att'y Gen. No. 59-18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 7, 29 et seq., 40, 64, 70.

Military service as basis of discrimination as to taxation or licenses, 83 A.L.R. 1231.

Selective training and service acts, 129 A.L.R. 1171, 147 A.L.R. 1313, 148 A.L.R. 1388, 149 A.L.R. 1457, 150 A.L.R. 1420, 151 A.L.R. 1456, 152 A.L.R. 1452, 153 A.L.R. 1422, 154 A.L.R. 1448, 155 A.L.R. 1452, 156 A.L.R. 1450, 157 A.L.R. 1450, 158 A.L.R. 1450.

Soldiers' and sailors' relief acts, 130 A.L.R. 774, 147 A.L.R. 1366, 148 A.L.R. 1395, 149 A.L.R. 1463, 150 A.L.R. 1428, 151 A.L.R. 1460, 152 A.L.R. 1457, 153 A.L.R. 1429, 154 A.L.R. 1455, 155 A.L.R. 1456, 156 A.L.R. 1455, 157 A.L.R. 1454, 158 A.L.R. 1456.

Injury or damage to person or property as result of "black-out," liability for, 136 A.L.R. 1327, 147 A.L.R. 1442, 148 A.L.R. 1401, 150 A.L.R. 1448, 153 A.L.R. 1433, 154 A.L.R. 1459, 155 A.L.R. 1458, 158 A.L.R. 1463.

Minors, enlistment or mustering of, 137 A.L.R. 1467, 147 A.L.R. 1311, 151 A.L.R. 1455, 153 A.L.R. 1420, 155 A.L.R. 1451, 157 A.L.R. 1449.

Civil and criminal liability of soldiers, sailors, and militiamen, 141 A.L.R. 1526.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

Construction and effect of soldiers' bonus laws, 22 A.L.R.2d 1134.

Privacy, right of privacy of military personnel, 57 A.L.R.3d 16.

6 C.J.S. Armed Services § 288 et seq.

### **20-2-3. Governor; power to call out militia.**

A. The governor may, in case of insurrection, invasion, riot or breach of the peace or of imminent danger thereof or in case of other emergency, order into active service of the state the militia or any components or parts thereof that have not been called into federal service. As used in this section, "emergency" includes any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state.

B. The governor may also order any member of the national guard to active state service for a period not to exceed a cumulative total of four months within a calendar year for any individual member for the following reasons:

(1) to protect critical infrastructure in the state from a cybersecurity threat or security vulnerability;

(2) to protect an information system owned or operated by the state from a cybersecurity threat or security vulnerability;

(3) to protect information that is stored on, processed by or transiting on an information system owned or operated by the state from a cybersecurity threat or security vulnerability; or

(4) to identify the source of a cybersecurity threat.

C. A member of the national guard called to active service pursuant to the provisions of Subsection B of this section shall not have any police powers or arrest authority. "Subsection B of Section 20-2-3 NMSA 1978" shall be cited on all orders, vouchers and payroll documents submitted for reimbursement pursuant to Section 20-1-6 NMSA 1978 in support of all actions authorized by Subsection B of this section. In no case shall an activation ordered pursuant to Subsection B of this section be used to incur a debt under Article 9, Section 7 of the constitution of New Mexico.

D. In case of any breach of the peace, tumult, riot or resistance to process of this state or imminent danger thereof, the sheriff of a county may call for aid from the governor as commander-in-chief of the national guard. If it appears to the governor that the power of the county is insufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of the county or to overcome the resistance to process of this state, the governor shall, on application of the sheriff, order out such military force as is necessary.

E. When any portion of the militia is called out for the purpose of suppressing an unlawful or riotous assembly, the commander of the troops shall cooperate with the civil officers to the fullest extent consistent with the accomplishment of the object for which the troops were called. The civil officials may express to the commander of the troops the general or specific objective that the civil officials desire to accomplish, but the tactical direction of the troops, the kind and extent of force to be used and the particular means to be employed to accomplish the object specified by the civil officers shall be left solely to the commander of the troops present on duty.

F. When any portion of the militia is ordered into active service pursuant to this section in case of an emergency, the militia may provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control, including the provision, on a temporary, emergency basis, for lodging, sheltering, health care, food and any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare.

G. In the event of the exercise by the governor of the powers under this section, the governor shall first utilize the personnel and assets of the national guard and only in their absence or insufficiency utilize the personnel and assets of the state defense force.

**History:** 1978 Comp., § 20-2-3, enacted by Laws 1987, ch. 318, § 10; 1999, ch. 140, § 3; 2017, ch. 93, § 1.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-3 NMSA 1978, as enacted by Laws 1943, ch. 29, § 1, relating to the definition of militia, and enacted a new section, effective April 10, 1987.

**Cross references.** — For constitutional power of governor to call out militia, see N.M. Const., art. V, § 4.

**The 2017 amendment,** effective April 6, 2017, authorized the activation of the national guard in the case of cybersecurity threats, placed limits on the authority exercised pursuant to such activation, and prohibited the incurrence of debt for such activations; added new Subsections B and C, and redesignated the succeeding subsections accordingly; and in Subsection F, after "health care, food", added "and".

**The 1999 amendment,** effective June 18, 1999, added the last sentence in Subsection A, added Subsection D, redesignated former Subsection D as Subsection E and made minor stylistic changes.

**Generally.** — When acting within the power vested in him by N.M. Const., art. V, § 4 and this section, the governor may order into active service the militia of the state and may direct locality of operations. He is made the sole judge of the facts that may seem to demand the assistance of the military forces of the state. The presumption of course is that he will not exercise this power unless it becomes necessary. To his good judgment and sound discretion, the law has left the final decision as to whether the military arm of the state shall be ordered into active service. There is no power in the courts to control or restrain his acts. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Effects of using militia.** — Where the governor of the state, seeking to quell insurrection, calls out the militia by executive process and puts them in charge, such military forces do not act as sheriffs or deputy sheriffs, but their power supersedes the civil authorities; the courts may not, under writs of habeas corpus, interfere with their arrests made during insurrection. *State ex rel. Roberts v. Swope*, 1933-NMSC-097, 38 N.M. 53, 28 P.2d 4.

**Quartering of men and equipment.** — Governor may expend money to quarter men and equipment of national guard, although men and equipment are not engaged in active duty. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Converting and quartering of cavalry.** — Governor may convert cavalry into a mechanized unit in an emergency to provide better for the public defense, and may



order armories altered to quarter same. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Enlistment generally.** — A voluntary enlistment is a contractual relationship between the person enlisting and the state. It is a contract which, in effect, changes the status of the party enlisting. 1955 Op. Att'y Gen. No. 55-6315.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.

Constitutionality of statute providing for payments to public officers or employees who enter military service of the United States or their dependents, 145 A.L.R. 1156.

Workmen's compensation: person in military or naval service, 150 A.L.R. 1456.

6 C.J.S. Armed Services § 295.

## **20-2-4. Governor; proclamation of a state of insurrection.**

Whenever any portion of the militia is in active service of the state in aid of civil authority, the governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare a specified area in which the troops are serving to be in a state of insurrection and may declare martial law therein.

**History:** 1978 Comp., § 20-2-4, enacted by Laws 1987, ch. 318, § 11.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-4 NMSA 1978, as enacted by Laws 1925, ch. 113, § 3, relating to the classification of militia, and enacted a new section, effective April 10, 1987.

**Cross references.** — For constitutional power of governor to call out militia, see N.M. Const., art. V, § 4.

**Declaration conclusive.** — The governor need not set out in his proclamation why martial law is declared and his declaration is conclusive. 1943 Op. Att'y Gen. No. 43-4252.

**Effects of using militia.** — Where the governor of the state, seeking to quell insurrection, calls out the militia by executive process and puts them in charge, such military forces do not act as sheriffs or deputy sheriffs, but their power supersedes the civil authorities; the courts may not, under writs of habeas corpus, interfere with their arrests made during insurrection. *State ex rel. Roberts v. Swope*, 1933-NMSC-097, 38 N.M. 53, 28 P.2d 4.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.

### **20-2-5. Fresh pursuit.**

A. In case the United States is at war or in case of any other emergency declared by the president or the congress of the United States or by the governor or the legislature of this state, any organization, unit or detachment of the military forces of this state by direction of the governor and upon order of the officer in immediate command thereof may continue in fresh pursuit of insurrectionists, saboteurs, perpetrators of felony, enemies or enemy forces beyond the borders of this state into another state of the United States until they are apprehended or captured by such organization, unit or detachment or until the military or police forces of such other state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture the persons pursued, provided such other state shall have given authority by law for such pursuit by such forces of this state. Except as otherwise provided by law, any person who shall be apprehended or captured in another state of the United States by any of the forces of this state shall without unnecessary delay be surrendered to the military or police forces of the state in which he is taken or to the United States, but such surrender shall not constitute a waiver by this state of its right to extradite or prosecute such person for any crime committed in this state.

B. Military forces of other states of the United States may enter this state. Any military forces of another state of the United States who are in fresh pursuit of insurrectionists, saboteurs, perpetrators of felony, enemies or enemy forces may continue such pursuit into this state until the military or police forces of this state or the forces of the United States have had a reasonable opportunity to take up the pursuit or to apprehend or capture the persons pursued and the pursuing forces may arrest or capture such persons within this state while in fresh pursuit. Any such person who shall be captured or arrested by the military forces of such other state while in this state shall without unnecessary delay be surrendered to the military or police forces of this state to be dealt with according to law.

C. This section shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful or to repeal or prevent the application of any of the provisions of the Uniform Act on Fresh Pursuit [31-2-1 to 31-2-7 NMSA 1978].

**History:** 1978 Comp., § 20-2-5, enacted by Laws 1987, ch. 318, § 12.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-5 NMSA 1978, as enacted by Laws 1925, ch. 113, § 4, relating to proclamation of insurrection, and enacted a new section, effective April 10, 1987.

### **20-2-6. Governor; call for federal or state service; powers.**

A. When the national guard or a part thereof is called or ordered into active federal service under the constitution and laws of the United States and the numbers or composition of the national guard forces are insufficient to meet such call or order, the governor may order out and cause through the adjutant general to be enrolled into the organized militia such persons as may be required and expected to reasonably meet the federal call or order.

B. The governor may order out the organized militia when:

(1) the national guard or any significant portion thereof is called or ordered into active federal service and the remaining national guard forces are insufficient for the needs of the state; or

(2) the governor deems it necessary to meet a major disaster, experienced or anticipated. The governor is authorized to call into active state service the state defense force or any portion thereof as may be necessary for the protection and well being of the state. If the numbers or composition of the state defense force is inadequate to meet the need, the governor may call out and cause through the adjutant general to be enrolled from the unorganized militia such persons as are required to bring the organized militia up to strength.

**History:** 1978 Comp., § 20-2-6, enacted by Laws 1987, ch. 318, § 13; 2021, ch. 55, § 3.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-6 NMSA 1978, as enacted by Laws 1925, ch. 113, § 5, and enacted a new section, effective April 10, 1987.

**The 2021 amendment**, effective June 18, 2021, authorized the governor to order out the organized militia, which may be formed when the numbers or composition of the national guard forces are insufficient, when the governor deems it necessary, and removed a provision that authorized the governor to call out the organized militia when the total strength or composition of the national guard is deemed by the governor to be insufficient; and in Subsection B, Paragraph B(2), after the first occurrence of "the", deleted "total strength or composition of the national guard within the state is deemed by the governor to be insufficient" and added "governor deems it necessary".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 295.

## 20-2-7. Miscellaneous provisions.

A. The composition, uniform, equipment and location of all units of the militia shall be prescribed by the governor consistent with the laws and regulations of the United States.

B. The designation of organizations of the national guard shall not be given to any new organization during their absence from the state.

**History:** 1978 Comp., § 20-2-7, enacted by Laws 1987, ch. 318, § 14.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-7 NMSA 1978, as enacted by Laws 1925, ch. 113, § 6, relating to oaths, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 288 et seq.

### **20-2-8. Honorary promotion upon retirement.**

Members of the organized militia may be promoted by the governor to the next higher grade on the occasion of their retirement from service under the following conditions:

A. that the member has honorably served either a total of thirty years in the federal military or organized militia combined or a minimum of twenty years in the organized militia, provided that no period of less than ten years in the state defense force shall be credited toward either of these requirements; and

B. that the honorary promotion be requested by the member and be favorably recommended by the adjutant general.

**History:** 1978 Comp., § 20-2-8, enacted by Laws 1987, ch. 318, § 15.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-2-8 NMSA 1978, as enacted by Laws 1925, ch. 113, § 7, relating to enrolling officers, and enacted a new section, effective April 10, 1987.

### **20-2-9 to 20-2-18. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-2-9 to 20-2-18 NMSA 1978, as enacted by Laws 1925, ch. 113, §§ 8 to 20, relating to assignment of county quotas, appointment of officers, draft, reports, call-up for federal service, process and service, and composition and location of units, effective April 10, 1987.

## ARTICLE 3

### Department of Military Affairs

#### 20-3-1. Department of military affairs [created].

There is created the "department of military affairs" which shall act on behalf of the governor to exercise organizational, operational and administrative command and control of the military forces of the state and to direct and coordinate the functions, efforts and activities of the civil air patrol division for the well being of the state.

**History:** 1978 Comp., § 20-3-1, enacted by Laws 1987, ch. 318, § 16; 1989, ch. 204, § 20; 1989, ch. 337, § 1.

#### ANNOTATIONS

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

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-3-1 NMSA 1978, as enacted by Laws 1925, ch. 113, § 21, relating to the commander-in-chief, and enacted a new section, effective April 10, 1987.

**Cross references.** — For the Military Affairs Act, see 9-9-1 NMSA 1978 et seq.

**The 1989 amendment,** effective June 16, 1989, deleted "civil emergency preparedness division and the" preceding "civil air patrol division".

Laws 1989, ch. 204, § 20, effective July 1, 1989, and Laws 1989, ch. 337, § 1, effective June 16, 1989, enacted identical amendments to this section. The section was set out as amended by Laws 1989, ch. 337, § 1. See 12-1-8 NMSA 1978.

#### 20-3-2. Department structure; authority of adjutant general.

A. The department of military affairs consists of:

- (1) the office of the adjutant general;
- (2) three subordinate military divisions:
  - (a) the army national guard division;
  - (b) the air national guard division; and
  - (c) the state defense force division; and

(3) five subordinate civil divisions:

(a) the selective service office;

(b) the state armory board;

(c) the civil air patrol division;

(d) the state programs division; and

(e) the United States property and fiscal office and such other agencies, administrative staffs and clerical staffs necessary for departmental operation that the adjutant general may by regulation prescribe.

B. The adjutant general is the military chief of staff to the governor and is the head of the department of military affairs.

C. The adjutant general shall prescribe policies, rules and procedures for the orderly functioning of the department of military affairs, which may include subordinate organizational structures and lines of authority.

D. The adjutant general may employ such administrative, technical, clerical and other personnel as the adjutant general deems necessary and may fix the compensation of exempt personnel subject to the concurrence of the department of finance and administration.

E. The adjutant general may make expenditures from appropriations or from other funds available to the adjutant general for all purposes within Chapter 20 NMSA 1978.

F. The adjutant general is authorized to accept through the United States property and fiscal officer such equipment, supplies, arms, facilities and personnel support funding as may be authorized and appropriated by federal law.

G. The adjutant general shall be furnished suitable buildings, facilities, supplies and equipment for conducting the business of the department of military affairs to include the proper storage, repair and issuance of military property.

H. The adjutant general may appoint as assistant adjutants general one officer from each of the three military divisions in the department of military affairs. The officers appointed shall hold the rank of brigadier general during such appointment. The qualifications of each person so appointed shall meet the specific standards required for such appointment within Chapter 20 NMSA 1978 and any applicable federal standards or requirements. Once appointed, the assistant adjutants general shall serve at the pleasure of the adjutant general; their performance will be reviewed annually, in January, by the adjutant general; and if relieved, an assistant adjutant general shall revert to the rank previously held or to such higher rank to which promoted and federally

recognized while serving as assistant adjutant general. The adjutant general may designate one federally recognized assistant adjutant general as deputy adjutant general. The deputy adjutant general shall serve on full-time active status for the state. In the incapacity or absence from the state of the adjutant general, the deputy adjutant general shall act in the adjutant general's stead. In the incapacity or absence from the state of both the adjutant general and the deputy adjutant general, the governor may call any assistant adjutant general to active service for the state. The assistant adjutants general shall perform all duties that may be required of them by the adjutant general. The adjutant general may delegate in writing to any of the assistant adjutants general such authorities and responsibilities as the adjutant general deems appropriate, consistent with the constitutions, laws and regulations of the state and of the United States. Assistant adjutants general, when on active status for the state, shall receive the same pay and allowances as are prescribed by federal law and regulations for members of the active military in the grade of brigadier general, unless a different rate of pay and allowances are specified in a general appropriation act of the New Mexico legislature.

I. The adjutant general shall appoint individuals to serve as directors of the five subordinate civil divisions, except as stated in Section 20-9-1 NMSA 1978. The qualifications of each person so appointed shall meet the specific standards required for such appointment within Chapter 20 NMSA 1978 and any applicable federal standards or requirements.

J. There shall be allowed to the adjutant general a contingent and entertainment fund of two thousand five hundred dollars (\$2,500) annually, plus such additional appropriations for carrying out the functions of the office as the legislature shall deem proper.

**History:** 1978 Comp., § 20-3-2, enacted by Laws 1987, ch. 318, § 17; 2018, ch. 6, § 2; 2021, ch. 55, § 4.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-3-2 NMSA 1978, as enacted by Laws 1961, ch. 198, § 3, relating to staff officers and aides-de-camp, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, revised the composition of the department of military affairs; in Subsection A, deleted former Paragraph A(3), which stated "one subordinate civil division, the civil air patrol division", and redesignated former Paragraph A(4) as Paragraph A(3), in Paragraph A(3), changed "four" to "five", and after "subordinate", deleted "support agencies" and added "civil divisions", added a new Subparagraph A(3)(c) and redesignated former Subparagraphs A(3)(c) and A(3)(d) as Subparagraphs A(3)(d) and A(3)(e), respectively, and in Subparagraph A(3)(d), after "state programs", deleted "office" and added "division"; and in Subsection I, after

"directors of the", deleted "one civil division and as head of each of the four support agencies" and added "five subordinate civil divisions".

**The 2018 amendment**, effective July 1, 2018, removed the position of vice-deputy adjutant general, authorized the governor to call any assistant adjutant general to active service for the state, changed "he" and "him" to "the adjutant general" throughout, and made technical revisions; at the end of Paragraph A(3), added "and"; in Subsection H, after the first occurrence of "deputy adjutant general", deleted "and another federally recognized assistant adjutant general as vice-deputy adjutant general", and after "the governor may call", deleted "the vice-deputy" and added "any assistant"; and in Subsection J, after "entertainment fund of", deleted "twenty-five hundred dollars (\$2,500)" and added "two thousand five hundred dollars (\$2,500)".

### **20-3-3 to 20-3-10. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-3-3 to 20-3-10 NMSA 1978, as enacted by Laws 1925, ch. 113, §§ 18, 23, 25, 26, 38 and Laws 1961, ch. 198, §§ 7 and 8, relating to salaries, officers, promotions, retirement and call to active duty, effective April 10, 1987.

## **ARTICLE 4**

### **National Guard**

#### **20-4-1. Standards for appointment, promotion, termination.**

A. The standards for commissioning, warranting, enlisting; for promotion and demotion in grade or rank; and for assignment, transfer, discharge and retirement of members of the national guard shall be established by regulations promulgated by the adjutant general. Such regulations shall substantially conform these requirements to the laws and regulations of the United States relating to the national guard of the United States.

B. The regulations concerning discharge shall include a provision that a commissioned or warrant officer can be discharged only:

- (1) upon removal of federal recognition by the national guard bureau;
- (2) upon transfer by request of the officer to another military reserve component of the United States;
- (3) upon resignation duly accepted by the governor;
- (4) for absence without leave for more than ninety days;



(5) upon recommendation of a federal recognition board or other state efficiency board approved by the governor; or

(6) after a court-martial imposing a sentence of dismissal, if the sentence of dismissal is approved by the governor.

C. Discharge certificates shall reflect the character of the member's service. They shall conform as closely as practicable to discharge certificates of the United States military forces.

**History:** 1978 Comp., § 20-4-1, enacted by Laws 1987, ch. 318, § 18.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-4-1 NMSA 1978, as enacted by Laws 1961, ch. 198, § 11, relating to accountability for money and property, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What circumstances constitute laches barring federal judicial review of allegedly wrongful discharge from military service, 100 A.L.R. Fed. 821.

### **20-4-2. Administration of oaths.**

All commissioned and warrant officers of the national guard and of the active and reserve military forces of the United States are hereby authorized and empowered to administer oaths and affirmations when directed by proper authority in all matters pertaining to and concerning the national guard, including the administration of oaths and affirmations in the enlistment of soldiers therefor.

**History:** 1978 Comp., § 20-4-2, enacted by Laws 1987, ch. 318, § 19.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-4-2 NMSA 1978, as enacted by Laws 1961, ch. 198, § 12, relating to organization funds, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense § 7.

Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

6 C.J.S. Armed Services § 290.

### **20-4-3. Pay and allowances.**

A. Members of the national guard, when on state-ordered duty for any period, shall receive the same basic pay and allowances as are prescribed by federal laws and regulations for members of the national guard on active federal service of like grade and length of service. Notwithstanding the provisions of this subsection, enlisted members of the national guard in the pay grades of E1 through E5, when on state-ordered duty for any period, shall receive not less than the minimum daily rate of pay received by a pay grade of E6 on active military service in the armed forces of the United States.

B. Members of the national guard who are on full-time active status for the state as adjutant general or as members of his staff may enter upon periods of active duty for training in the armed forces of the United States without loss of state pay, seniority or other employment benefits, when such active duty for training has been approved by the governor as commander-in-chief.

**History:** 1978 Comp., § 20-4-3, enacted by Laws 1987, ch. 318, § 20; 2001, ch. 268, § 1; 2001, ch. 271, § 1.

## ANNOTATIONS

**The 2001 amendment,** effective July 1, 2001, inserted the last sentence of Subsection A.

Laws 2001, ch 268, § 1 and Laws 2001, ch. 271, § 1, both effective July 1, 2001, enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 271, § 1. See 12-1-8 NMSA 1978.

**Scope of state's power for public defense.** — The state's power to provide for the public defense embraces consideration of preparedness as well as execution, and the governor may authorize money to equip and quarter the national guard. *State ex rel. Charlton v. French*, 1940-NMSC-010, 44 N.M. 169, 99 P.2d 715.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense § 169 et seq.

Constitutionality of statute providing for payments to public officers or employees who enter military service of the United States or their dependents, 145 A.L.R. 1156.

Workmen's compensation: person in military or naval service, 150 A.L.R. 1456.

6 C.J.S. Armed Services § 293.

### **20-4-4. Members not liable for acts in performance of duty.**

Whenever a member of the national guard is on state-ordered active duty or while on other state duty reasonably requested by competent military authority, he shall not incur personal civil liability for acts performed in the line of the duty, and the state shall

defend and indemnify against any such claims as are brought, and the state shall be substituted as a party defendant for the member.

**History:** 1978 Comp., § 20-4-4, enacted by Laws 1987, ch. 318, § 21.

### **20-4-5. Workmen's compensation.**

Whenever a member of the national guard is on state-ordered duty or while on other state duty reasonably requested by competent military authority or while traveling directly to or from said duty, he is a workman under the Workmen's Compensation Act and the department of military affairs is his employer. The average weekly wage of a member of the national guard shall be computed as seven times the daily pay and allowances and the value of rations and quarters supplied him while on state duty.

**History:** 1978 Comp., § 20-4-5, enacted by Laws 1987, ch. 318, § 22.

### **ANNOTATIONS**

**Compiler's notes.** — Laws 1987, ch. 235, § 1 amended 52-1-1 NMSA 1978, formerly the short title of the Workmen's Compensation Act, to read: "Chapter 52, Article 1 NMSA 1978 shall be known and may be cited as the 'Workers' Compensation Act'".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense § 169 et seq.

Workmen's compensation: person in military or naval service, 150 A.L.R. 1456.

6 C.J.S. Armed Services § 293.

### **20-4-6. Discrimination prohibited; penalty.**

No employer or agent thereof shall refuse to hire or penalize or discharge from employment any person because of membership in the national guard or prevent the member from performing any military service he may be called upon to perform by proper authority. Willful violation of this section shall be a misdemeanor.

**History:** 1978 Comp., § 20-4-6, enacted by Laws 1987, ch. 318, § 23.

### **ANNOTATIONS**

**Cross references.** — For penalty provision, see 20-11-6 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

## **20-4-7. Military leave for national guard and reserves.**

All state, county, municipal, school district and other public employees who are members of organized units of the army or air national guard or army, air force, navy, marine or coast guard reserves shall be given not to exceed fifteen working days' military leave with pay per federal fiscal year when they are ordered to duty for training, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled. The governor may grant any member of the national guard or reserves who is a state employee additional military leave with pay in excess of that allowed above, not to exceed fifteen working days per federal fiscal year, for periods of active duty for training when he deems that such training will benefit the state by enabling that employee to better perform the duties required in his state occupation.

**History:** 1978 Comp., § 20-4-7, enacted by Laws 1987, ch. 318, § 24.

### **ANNOTATIONS**

**Temporary provisions.** — Laws 1992, ch. 7, §§ 1 and 2, effective May 20, 1992, recognized the service of school district employees called to active duty by the New Mexico national guard or the United States armed forces reserves to serve in the Persian Gulf War and provided for employment compensation for those who served.

**Legislative objective.** — The legislative objective in enacting this section was to insure that public employees who were members of organized military reserve units should not be deprived of the annual leave to which they were otherwise entitled, by reason of their absence under orders on military training. 1958 Op. Att'y Gen. No. 58-173.

**Employee members of organized units eligible.** — All state, county and municipal employees who are members of organized units are eligible for the additional military leave provided in this section. 1953 Op. Att'y Gen. No. 53-5762.

**Effect on employees of conservancy district.** — Employees of a conservancy district are entitled to up to 15 days military leave and pay each year. 1959 Op. Att'y Gen. No. 59-54.

**On permanent employees.** — Regardless of the duration of employment, permanent employees are entitled to such military leave with pay. 1960 Op. Att'y Gen. No. 60-196.

**No restriction is placed upon the time of service** rendered by permanent employees before this leave accrues. 1960 Op. Att'y Gen. No. 60-196.

**Temporary employees not eligible.** — A temporary employee of the state is not entitled to military training leave provided by statute. 1958 Op. Att'y Gen. No. 58-173.

**Pay entitled to.** — A permanent employee is entitled to pay for his active military duty in addition to that for his vacation. 1960 Op. Att'y Gen. No. 60-196.

**Full salary required.** — This section requires that the governmental unit pay the full salary to the employee regardless of the amount of money drawn by him while on active military duty. Thus, it would be illegal for a governmental unit to pay an employee only the difference between his military pay and the top limits of pay which he regularly draws from the military unit. 1953 Op. Att'y Gen. No. 53-5762.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

### **20-4-7.1. Servicemembers Civil Relief Act benefits; Uniformed Services Employment and Reemployment Rights Act; federal or state active duty.**

A. The rights, benefits and protections of the federal Servicemembers Civil Relief Act shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to state active duty for a period of thirty or more consecutive state duty days or to any federally funded duty performed in an operational role for homeland security in accordance with 32 U.S.C. 502. The federally funded duty is in addition to and different from any federally funded unit training, assembly or drill pursuant to Section 20-4-7 NMSA 1978.

B. The rights, benefits and protections of the federal Uniformed Services Employment and Reemployment Rights Act of 1994 shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to federal or state active duty.

**History:** Laws 2004, ch. 37, § 1; 2017, ch. 26, § 1.

### **ANNOTATIONS**

**Cross references.** — For the federal Servicemembers Civil Relief Act, see 50 U.S.C. App. §571.

For the federal Uniformed Services Employment and Reemployment Rights Act, see 38 U.S.C.S. § 4301 et seq.

**The 2017 amendment**, effective July 1, 2017, extended the benefits of both the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act to members of the national guard in this state or any other state or territory of the United States, and removed the requirement of thirty or more consecutive days of service to qualify for the Uniformed Services Employment and Reemployment Rights Act, and changed "Servicemember's" to "Servicemembers"; in Subsections A and B, added "of this state or any other state or territory of the United States"; and in Subsection B, after "state active duty", deleted "for a period of thirty or more consecutive days".

**The New Mexico legislature has waived sovereign immunity with respect to federal USERRA claims against the state.** — The legislature may waive New Mexico’s immunity to federal causes of action that congress creates through the exercise of its Article I powers. By enacting 20-4-7.1 NMSA 1978, the legislature clearly and unambiguously indicated its intent to make state entities amenable to suits asserting claims under the federal Uniformed Services Employment and Reemployment Rights Act in state courts. *Ramirez v. CYFD*, 2016-NMSC-016, *rev’g* 2014-NMCA-057, 326 P.3d 474.

Where plaintiff was terminated from a state agency after resuming employment with the state agency following a deployment to Iraq with the New Mexico national guard, plaintiff was not barred by state sovereign immunity from bringing a suit against the state under the federal Uniformed Services Employment and Reemployment Rights Act, because in enacting 20-4-7.1(B) NMSA 1978, the legislature guaranteed both the substantive antidiscrimination right and the right of action against a state employer to members of the national guard ordered to federal or state active duty for a period of thirty or more consecutive days, and in so doing, waived New Mexico’s immunity to suit. *Ramirez v. CYFD*, 2016-NMSC-016, *rev’g* 2014-NMCA-057, 326 P.3d 474.

**Sovereign immunity barred USERRA claim against the state.** — Article I, Section 8, Clause 11 of the United States Constitution, known as the War Powers Clause, does not authorize Congress to subject the state to private suits for damages in state courts pursuant to the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, absent the state’s consent and the legislature has not waived the state’s constitutional immunity to private USERRA suits for damages. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev’d by* 2016-NMSC-016.

Where plaintiff, who was a member of the New Mexico national guard, was employed by the department; plaintiff was deployed to Iraq; upon plaintiff’s return from active duty, plaintiff was reemployed by the department in plaintiff’s previous position; plaintiff’s working relations with plaintiff’s supervisors deteriorated and plaintiff’s employment was terminated; and filed a suit under Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 to 4335, alleging that the department discriminated against plaintiff and terminated plaintiff because of plaintiff’s military service, plaintiff’s claim was barred by state sovereign immunity. *Ramirez v. State ex rel. CYFD*, 2014-NMCA-057, *rev’d by* 2016-NMSC-016.

## **20-4-7.2. Legislative findings and purpose.**

A. The legislature finds that:

(1) the national guard has a proud tradition of military service with thousands of New Mexicans having answered the call of the nation and served in the national guard;

(2) there have been instances in which the dependents of members of the national guard have been left without adequate financial resources when a national guard member has been killed while on active duty;

(3) members of the national guard are now being asked to serve extended periods of active duty in combat areas;

(4) members of the national guard are eligible for life insurance policies up to the maximum amount allowable through the federal servicemembers' group life insurance program; and

(5) members of the national guard provide New Mexico and its citizens valuable benefits through their service inside this state and through their recently extended periods of active duty in combat areas outside of New Mexico, and in exchange for these extended periods of active duty they should receive assistance with their premiums for the federal servicemembers' group life insurance program.

B. The purpose of creating and funding the service members' life insurance reimbursement fund is to provide a benefit to members of the national guard in exchange for and in recognition of their assumption of extended periods of active duty in combat areas, in addition to their increased contributions to the safety and welfare of the citizens of the state of New Mexico.

**History:** Laws 2005, ch. 2, § 1; 2015, ch. 149, § 1.

### **ANNOTATIONS**

**The 2015 amendment**, effective April 10, 2015, made members of the New Mexico national guard eligible for life insurance policies "for up to the maximum amount allowable" through the federal servicemembers' group life insurance program; deleted "New Mexico" throughout the section; and in Subsection A, Paragraph (4), after "insurance policies", deleted "that are currently limited" and added "up", and after "to", deleted "two hundred fifty thousand dollars (\$250,000)" and added "the maximum amount allowable".

**Applicability.** — Laws 2005, ch. 2, § 4 made the provisions of Laws 2005, ch. 2, § 1 applicable to premiums paid on or after February 2, 2005.

### **20-4-7.3. Service members' life insurance reimbursement fund created; purpose; appropriation.**

A. The "service members' life insurance reimbursement fund" is created as a nonreverting fund in the state treasury. The fund shall consist of legislative appropriations to the fund; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Expenditures from the fund shall be made on warrants

drawn by the secretary of finance and administration signed by the adjutant general of the department of military affairs or the adjutant general's authorized representative.

B. The fund shall be administered by the department of military affairs, and money in the fund is appropriated to the department of military affairs for the purpose of reimbursing eligible members of the New Mexico national guard for premiums paid for benefits under the servicemembers' group life insurance program pursuant to 38 U.S.C. Section 1965 et seq., as amended.

C. The department of military affairs shall adopt rules necessary to determine eligibility for reimbursement from the service members' life insurance reimbursement fund and to implement a reimbursement program.

D. Nothing in this section is intended to alter, amend or change the eligibility or applicability of the servicemembers' group life insurance program pursuant to 38 U.S.C. Section 1965 et seq., as amended, or any rights, responsibilities or benefits thereunder.

**History:** Laws 2005, ch. 2, § 2; 2007, ch. 197, § 1.

#### **ANNOTATIONS**

**The 2007 amendment,** effective June 15, 2007, made the service members' life insurance reimbursement fund a nonreverting fund.

**Applicability.** — Laws 2005, ch. 2, § 4 made the provisions of Laws 2005, ch. 2, § 2 applicable to premiums paid on or after February 2, 2005.

#### **20-4-8. Exemptions; jury duty and civil process; equipment.**

A. Members of the national guard shall not be subject to misdemeanor arrest, jury duty or to other civil process while going to, remaining at or returning from any place at which the member is required to perform military duty. This exemption shall not preclude the proper issuance of traffic citations, or temporary delays which do not materially impede the timely performance of military duty, or arrest for driving while intoxicated.

B. Uniforms, arms and equipment required by law or regulations to be owned by members of the national guard and all uniforms, arms, equipment or other property of the state or the United States issued to members of the national guard shall be exempt from all suits, distresses, executions or sales for debt or payment of taxes.

**History:** 1978 Comp., § 20-4-8, enacted by Laws 1987, ch. 318, § 25.

#### **ANNOTATIONS**



**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 377 et seq.

Public policy as grounds for exemptions from service of process, 85 A.L.R. 1340, 94 A.L.R. 1475.

Exemption of members of armed forces from service of civil process, 137 A.L.R. 1372, 149 A.L.R. 1455, 150 A.L.R. 1419, 151 A.L.R. 1454, 153 A.L.R. 1419, 156 A.L.R. 1449, 158 A.L.R. 1450.

6 C.J.S. Armed Services § 293.

### **20-4-9. Members of the national guard, state hiring preference.**

While serving in the national guard, applicants for state employment shall be awarded veterans' preference status and points to the same extent as discharged veterans of federal military service.

**History:** 1978 Comp., § 20-4-9, enacted by Laws 1987, ch. 318, § 26.

### **20-4-10. Members of the national guard considered state employees.**

Members of the national guard shall be considered to be state employees for the purpose of eligibility to purchase and participate in group insurance coverages afforded other state employees.

**History:** 1978 Comp., § 20-4-10, enacted by Laws 1987, ch. 318, § 27.

### **20-4-11. Survivors' benefit; tuition payment.**

The surviving spouse and all surviving minor children of a member of the national guard who dies in line of duty while serving on state military status shall be provided free tuition up to one baccalaureate degree or similar vocational certification at any state-sponsored university, college or institute of learning.

**History:** 1978 Comp., § 20-4-11, enacted by Laws 1987, ch. 318, § 28.

### **20-4-12. Repealed.**

**History:** 1978 Comp., § 20-4-12, enacted by Laws 1987, ch. 318, § 29; repealed by Laws 2021, ch. 55, § 12.

## **ANNOTATIONS**

**Repeals.** — Laws 2021, ch. 55, § 12 repealed 20-4-12 NMSA 1978, as enacted by Laws 1987, ch. 318, § 29, relating to military last will and testament for national guard and reserves, effective June 18, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

### **20-4-13. National guard scholarship fund.**

The adjutant general shall maintain and administer a scholarship fund for the benefit of enlisted members of the national guard who have demonstrated potential to become commissioned officers. The fund shall consist of such money and assets as the legislature shall appropriate and as shall be donated from private sources. No less than half of the annual expenditures of the fund shall be for the benefit of national guard enlisted members enrolled in a commissioning program at the New Mexico Military Institute and the remainder in such programs at other educational institutions within the state.

**History:** 1978 Comp., § 20-4-13, enacted by Laws 1987, ch. 318, § 30.

#### **ANNOTATIONS**

**Cross references.** — For the New Mexico military institute, see 21-12-1 NMSA 1978 et seq.

### **20-4-14. Resident tuition.**

An active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning.

**History:** 1978 Comp., § 20-4-14, enacted by Laws 1987, ch. 318, § 31; 2005, ch. 168, § 2.

#### **ANNOTATIONS**

**Cross references.** — For resident tuition of members of armed forces, see 21-4-4.5 NMSA 1978.

**The 2005 amendment**, effective June 17, 2005, provided that the spouse and children of a member of the national guard shall be deemed in-state residents.

## **ARTICLE 5**

### **State Defense Force**

## **20-5-1. New Mexico state defense force established; not in federal service; definitions.**

A. The "New Mexico state defense force" is established as an element of the militia in the department of military affairs. The members and organizations of the former New Mexico state guard are transferred to the New Mexico state defense force on April 10, 1987.

B. Nothing in Chapter 20 NMSA 1978 shall be construed as authorizing the New Mexico state defense force or any part thereof to be called, ordered or in any manner drafted by federal authorities into the military service of the United States, but no person by reason of the person's enlistment or appointment in the state defense force shall be exempted from military service under any law of the United States.

C. The following definitions apply to the duty statuses under which members of the state defense force serve:

(1) "militia duty" means the performance of actual military service for the state in time of need when called by the governor or adjutant general following mobilization of the national guard. It may be performed by the standing cadre of the state defense force at any time so ordered upon mobilization of the national guard. It may be performed by the unorganized militia following its call by the governor pursuant to Subsection B of Section 20-2-6 NMSA 1978, in which case it shall include the post-call training of the New Mexico state defense force pursuant thereto; and

(2) "cadre duty" means the normal service and training performed by the standing cadre of the state defense force in anticipation and support of militia duty, including organization, administration and other pre-call matters.

**History:** 1978 Comp., § 20-5-1, enacted by Laws 1987, ch. 318, § 32; 2021, ch. 55, § 5.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-1 NMSA 1978, as enacted by Laws 1925, ch. 113, § 53, relating to exemption from arrest, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, in Subsection A, after "defense force on", changed "the effective date of this act" to "April 10, 1987".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 7, 29 et seq., 40, 64, 70.

6 C.J.S. Armed Services § 288 et seq.

## **20-5-2. Regulations.**

The adjutant general shall prescribe regulations governing the recruiting, organization, administration, equipment, facilities, training and discipline of the state defense force. Such regulations shall, to the extent practicable, conform to regulations governing the army national guard and shall be consistent with federal law and regulations pertaining to state defense forces.

**History:** 1978 Comp., § 20-5-2, enacted by Laws 1987, ch. 318, § 33.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-2 NMSA 1978, as enacted by Laws 1925, ch. 113, § 55, relating to exemption from execution, and enacted a new section, effective April 10, 1987.

### **20-5-3. Composition; enlistment; appointment.**

A. The state defense force shall consist of persons eighteen years or older voluntarily appointed or voluntarily enlisted therein and such additional members of the unorganized militia as therein may be appointed, enlisted, enrolled or inducted as provided by law.

B. The officers of the state defense force shall be appointed by the governor and serve at the governor's pleasure. They shall be chosen from the public and private leadership bases within local communities so as to best enable the community to efficiently muster and lead its people and protect its assets and well-being.

**History:** 1978 Comp., § 20-5-3, enacted by Laws 1987, ch. 318, § 34; 2021, ch. 55, § 6.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-3 NMSA 1978, as enacted by Laws 1925, ch. 113, § 56, relating to right-of-way on streets or highways, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, removed the maximum age of volunteers to serve on the state defense force; and in Subsection A, after "consist of persons", deleted "between the ages of", after "eighteen", deleted "and sixty-four", after "years", added "or older", and deleted "Volunteer members may be retained beyond age sixty-four with their consent by direction of the adjutant general".

**State representative serving in force.** — A New Mexico state representative may not serve in the New Mexico State Defense Force, because the offices of legislator and state defense force member are incompatible; service in both capacities would create a conflict of interest. 1988 Op. Att'y Gen. No. 88-71.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military and Civil Defense §§ 3, 7, 29 et seq., 40, 64, 70.

6 C.J.S. Armed Services § 288 et seq.

#### **20-5-4. Administration of oaths.**

All commissioned officers of the national guard and of the state defense force, and such other persons or officials as the adjutant general shall prescribe, are hereby authorized and empowered to administer oaths and affirmations in all matters pertaining to and concerning the state defense force and to administer oaths and affirmations in the enlistment of soldiers therefor.

**History:** 1978 Comp., § 20-5-4, enacted by Laws 1987, ch. 318, § 35.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-4 NMSA 1978, as enacted by Laws 1925, ch. 113, § 57, relating to exemption from tolls, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity of governmental requirement of oath of allegiance or loyalty, 18 A.L.R.2d 268.

6 C.J.S. Armed Services § 290.

#### **20-5-5. Standing cadre; composition of units.**

A standing cadre of officers and enlisted members is authorized. The composition of units and force structure shall be as recommended by the adjutant general and approved by the governor.

**History:** 1978 Comp., § 20-5-5, enacted by Laws 1987, ch. 318, § 36.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-5 NMSA 1978, as enacted by Laws 1925, ch. 113, § 58, relating to exemption from jury duty, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 Am. Jur. 2d Military, and Civil Defense §§ 3, 32.

6 C.J.S. Armed Services § 288 et seq.

#### **20-5-6. Uniform; rank precedence and command.**

A. The state defense force shall be uniformed. The adjutant general shall by regulation prescribe the uniform and insignia of the state defense force, which uniform and insignia shall include distinctive devices identifying it as the uniform of the state defense force and distinguishing it from the national guard. When in uniform, members of the state defense force will reasonably conform to the dress and appearance standards of the national guard. The wearing of permanent military decorations earlier awarded is authorized.

B. The grade structure of the state defense force shall to the extent practicable be the same as that prescribed for the army national guard.

C. The senior line officer without distinction as to component present in any organization or formation of the state defense force shall command, unless the adjutant general shall designate otherwise.

**History:** 1978 Comp., § 20-5-6, enacted by Laws 1987, ch. 318, § 37; 2021, ch. 55, § 7.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-5-6 NMSA 1978, as enacted by Laws 1972, ch. 42, § 1, relating to duty as workman, and enacted a new section, effective April 10, 1987.

**The 2021 amendment,** effective June 18, 2021, removed from the governor the duty to prescribe the uniform and insignia of the state defense force, and required the adjutant general to do so by regulation; and in Subsection A, after the second occurrence of "The", changed "governor" to "adjutant general".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 289.

### **20-5-7. Discipline.**

A. The discipline of the state defense force shall, to the extent practicable, conform to that of the army national guard.

B. When performing militia duty, members of the state defense force are subject to the Code of Military Justice, Chapter 20, Article 12 NMSA 1978.

C. Standards of conduct applicable to the army national guard are applicable to members of the state defense force when performing militia duty or cadre duty.

**History:** 1978 Comp., § 20-5-7, enacted by Laws 1987, ch. 318, § 38.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 250 et seq.

6 C.J.S. Armed Services § 295.

### **20-5-8. Discharge; dismissal.**

A. Upon expiration of the term of service for which appointed or enlisted, a member of the state defense force shall be entitled to a discharge; provided that no member shall be discharged by reason of expiration of his term of service while in the active service of the state.

B. A member of the state defense force may be dismissed or discharged prior to the expiration of his term of service by sentence of a court-martial or for misconduct, inefficiency, unsatisfactory participation, personal hardship; or for such other cause as the adjutant general finds and the governor approves. Discharge proceedings shall, as nearly as practicable, follow the laws, rules and procedures prescribed for the army national guard.

C. Discharge certificates shall reflect the character of the member's service. They shall conform as closely as practicable to discharge certificates of the army national guard.

**History:** 1978 Comp., § 20-5-8, enacted by Laws 1987, ch. 318, § 39.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What circumstances constitute laches barring federal judicial review of allegedly wrongful discharge from military service, 100 A.L.R. Fed. 821.

### **20-5-9. Arms and equipment; facilities.**

A. The state defense force, to the extent practicable, shall be equipped as needed for training and for actual state service.

B. To the extent available and permitted by federal law, armories and other facilities of the national guard and other state facilities may be utilized for the storage and maintenance of arms, equipment and supplies of the state defense force and for the assembly, drill and instruction of its members.

**History:** 1978 Comp., § 20-5-9, enacted by Laws 1987, ch. 318, § 40.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 296.

## **20-5-10. Training.**

A. The adjutant general shall promulgate regulations governing the training of the state defense force, including its standing cadre.

B. To the extent permitted by law, officers and members of the national guard may be detailed to train and instruct the standing cadre of the state defense force. Members of its standing cadre may attend service schools and other courses of training or instruction conducted by state or federal agencies in cadre duty status. Such training shall be paid for only to the extent allowed in Subsection B of Section 20-5-9 NMSA 1978.

**History:** 1978 Comp., § 20-5-10, enacted by Laws 1987, ch. 318, § 41; 1989, ch. 337, § 2.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, deleted "and may coordinate and train with the civil emergency preparedness division of the department of military affairs" following "federal agencies" in the second sentence of Subsection B.

## **20-5-11. Members not liable for acts in performance of duty.**

Members of the state defense force shall not incur personal civil liability for acts performed in the line of militia duty or cadre duty or in travel directly to or from said duty, and the state shall defend and indemnify against any such claims as are brought, and the state shall be substituted as a party defendant for the member.

**History:** 1978 Comp., § 20-5-11, enacted by Laws 1987, ch. 318, § 42.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 362 et seq.

Officers or privates in military service as "officers" or "employees" within statute waiving state's immunity from liability for torts, 129 A.L.R. 911.

Civil and criminal liability of militiamen, 135 A.L.R. 10, 147 A.L.R. 1429, 151 A.L.R. 1463, 153 A.L.R. 1432, 154 A.L.R. 1457, 158 A.L.R. 1462.

Service of civil process, exemption of members of armed forces from, 137 A.L.R. 1372, 149 A.L.R. 1455, 150 A.L.R. 1419, 151 A.L.R. 1454, 153 A.L.R. 1419, 156 A.L.R. 1449, 158 A.L.R. 1450.



Service of process on person in military service by serving person at civilian abode or residence, or leaving copy there, 46 A.L.R.2d 1239.

6 C.J.S. Armed Services §§ 297, 298.

## **20-5-12. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1993, ch. 193, § 14 repealed 20-5-12 NMSA 1978, as enacted by Laws 1987, ch. 318, § 43, relating to workmen's compensation for members of the state defense force, effective June 18, 1993. For provisions of former section, see the 1992 NMSA 1978 on *NMOneSource.com*.

## **20-5-13. Discrimination prohibited; penalty.**

No employer or agent thereof shall refuse to hire, penalize or discharge from employment any person because of membership in the state defense force or prevent the member from performing any duty he may be called upon to perform by proper authority. Willful violation of this section shall be a misdemeanor.

**History:** 1978 Comp., § 20-5-13, enacted by Laws 1987, ch. 318, § 44.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

## **20-5-14. Military leave.**

All state, county, municipal, school district and other public employees who are members of the state defense force shall be given not to exceed fifteen working days military leave with pay per federal fiscal year when they are ordered by the adjutant general to cadre duty with such organized units, such leave to be in addition to other leave or vacation time with pay to which such employees are otherwise entitled. The governor may grant any member of the state defense force who is a state employee additional military leave with pay, in excess of that allowed above, not to exceed fifteen working days per year for periods of cadre duty for training when he deems that such training will benefit the state by enabling that employee to better perform the duties required in his state occupation.

**History:** 1978 Comp., § 20-5-14, enacted by Laws 1987, ch. 318, § 45.

### **ANNOTATIONS**

**Cross references.** — For penalty provision, see 20-11-6 NMSA 1978.

**Legislative objective.** — The legislative objective in enacting this section was to insure that public employees who were members of organized military reserve units should not be deprived of the annual leave to which they were otherwise entitled, by reason of their absence under orders on military training. 1958 Op. Att'y Gen. No. 58-173.

**Employee members of organized units eligible.** — All state, county and municipal employees who are members of organized units are eligible for the additional military leave provided in this section. 1953 Op. Att'y Gen. No. 53-5762.

**Effect on employees of conservancy district.** — Employees of a conservancy district are entitled to up to 15 days military leave and pay each year. 1959 Op. Att'y Gen. No. 59-54.

**On permanent employees.** — Regardless of the duration of employment, permanent employees are entitled to such military leave with pay. 1960 Op. Att'y Gen. No. 60-196.

**No restriction is placed upon the time of service** rendered by permanent employees before this leave accrues. 1960 Op. Att'y Gen. No. 60-196.

**Temporary employees not eligible.** — A temporary employee of the state is not entitled to military training leave provided by statute. 1958 Op. Att'y Gen. No. 58-173.

**Pay entitled to.** — A permanent employee is entitled to pay for his active military duty in addition to that for his vacation. 1960 Op. Att'y Gen. No. 60-196.

**Full salary required.** — This section requires that the governmental unit pay the full salary to the employee regardless of the amount of money drawn by him while on active military duty. Thus, it would be illegal for a governmental unit to pay an employee only the difference between his military pay and the top limits of pay which he regularly draws from the military unit. 1953 Op. Att'y Gen. No. 53-5762.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

## **20-5-15. Exemptions; process; uniforms and equipment.**

A. Members of the state defense force shall not be subject to misdemeanor arrest, jury duty or to other civil process while going to, remaining at or returning from any place at which the member is required to perform militia duty. This exemption shall not preclude the proper issuance of traffic citations, or temporary delays which do not materially impede the timely performance of militia duty, or arrest for driving while intoxicated.

B. Uniforms, arms and equipment required by law or regulations to be owned by members of the state defense force and all uniforms, equipment or other property of the state or the United States issued to members of the state defense force shall be exempt from all suits, distresses, executions or sales for debt or payment of taxes.

**History:** 1978 Comp., § 20-5-15, enacted by Laws 1987, ch. 318, § 46.

## **20-5-16. State defense force; workers' compensation; cadre duty.**

A. When a member of the state defense force is on state-ordered militia duty, the member is a worker under the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978] and the department of military affairs is the member's employer.

B. Members of the state defense force, while performing cadre duty, may be utilized by the adjutant general to assist the national guard with training exercises or other cadre duties.

C. The average weekly wage of a member of the state defense force shall be computed at the pay earned in the member's civilian capacity. Disability benefits to a member of the state defense force shall be limited to medical benefits and two-thirds of the member's civilian pay if the member is unable to work.

D. A member of the state defense force shall not be considered a worker under the Workers' Compensation Act when performing cadre duty.

E. As used in this section:

(1) "cadre duty" means the normal service and training of the standing cadre of the state defense force in anticipation and support of militia duty, including organization, administration and other pre-call matters; and

(2) "militia duty" means the performance of actual military service for the state in time of need when called by the governor or adjutant general following mobilization of the national guard. If performed by the unorganized militia following its call by the governor pursuant to Section 20-2-6 NMSA 1978, it shall include the post-call training of the New Mexico state defense force as required by that call.

**History:** Laws 2003, ch. 111, § 1; 2021, ch. 55, § 8.

### **ANNOTATIONS**

**The 2021 amendment**, effective June 18, 2021, authorized members of the state defense force to be utilized by the adjutant general to assist the national guard with training exercises or other cadre duties; added "cadre duty"; and added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively.

## **ARTICLE 6**

### **Reserved (Repealed.)**

#### **20-6-1, 20-6-2. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-6-1 and 20-6-2 NMSA 1978, as enacted by Laws 1925, ch. 113, §§ 75 and 76, relating to payments and allowances to national guard, effective April 10, 1987.

## **ARTICLE 7**

### **Civil Air Patrol**

#### **20-7-1. Creation of civil air patrol division.**

There is created the civil air patrol division within the department of military affairs. The director of the civil air patrol division shall be the duly appointed commanding officer of the civil air patrol, New Mexico wing, who shall assist the adjutant general.

**History:** 1978 Comp., § 20-7-1, enacted by Laws 1987, ch. 318, § 47.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-1 NMSA 1978, as enacted by Laws 1953, ch. 86, § 1, relating to short title of State Armory Board Act, and enacted a new section, effective April 10, 1987.

#### **20-7-2. Budget.**

The civil air patrol division shall submit its budget requests to the adjutant general.

**History:** 1978 Comp., § 20-7-2, enacted by Laws 1987, ch. 318, § 48.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-2 NMSA 1978, as amended by Laws 1953, ch. 86, § 2, relating to construction and operation of facilities, and enacted a new section, effective April 10, 1987.

#### **20-7-3. Regulations.**

The adjutant general may prescribe regulations for the civil air patrol division.

**History:** 1978 Comp., § 20-7-3, enacted by Laws 1987, ch. 318, § 49.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-3 NMSA 1978, as amended by Laws 1953, ch. 86, § 3, relating to state armory board, and enacted a new section, effective April 10, 1987.

#### **20-7-4. Cooperation with other agencies authorized.**

The civil air patrol division is authorized to fully cooperate with any department or agency of the United States government or any department or agency of the state in order that the objectives of the civil air patrol division may be more fully realized.

**History:** 1978 Comp., § 20-7-4, enacted by Laws 1987, ch. 318, § 50.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-4 NMSA 1978, as amended by Laws 1953, ch. 86, § 4, relating to local armory boards, and enacted a new section, effective April 10, 1987.

#### **20-7-5. Military leave.**

Members of the civil air patrol shall be permitted military leave pursuant to Section 20-4-7 NMSA 1978 not to exceed fifteen working days per year for official duties as assigned by the director of the civil air patrol division of the department of military affairs or an incident commander of an active mission.

**History:** 1978 Comp., § 20-7-5, enacted by Laws 1987, ch. 318, § 51; 2020, ch. 56 § 1.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-7-5 NMSA 1978, as amended by Laws 1953, ch. 86, § 5, relating to local armory boards, and enacted a new section, effective April 10, 1987.

**The 2020 amendment**, effective July 1, 2020, authorized members of the Civil Air Patrol to use military leave for official duties as assigned by the director of the civil air patrol or an incident commander of an active mission, instead of strictly for search and rescue missions; and after "fifteen working days per year for", deleted "search and rescue missions" and added "official duties as assigned by the director of the civil air patrol division of the department of military affairs or an incident commander of an active mission".

**Legislative objective.** — The legislative objective in enacting this section was to insure that public employees who were members of organized military reserve units should not be deprived of the annual leave to which they were otherwise entitled, by reason of their absence under orders on military training. 1958 Op. Att'y Gen. No. 58-173.

**Employee members of organized units eligible.** — All state, county and municipal employees who are members of organized units are eligible for the additional military leave provided in this section. 1953 Op. Att'y Gen. No. 53-5762.

**Effect on employees of conservancy district.** — Employees of a conservancy district are entitled to up to 15 days military leave and pay each year. 1959 Op. Att'y Gen. No. 59-54.

**On permanent employees.** — Regardless of the duration of employment, permanent employees are entitled to such military leave with pay. 1960 Op. Att'y Gen. No. 60-196.

**No restriction is placed upon the time of service** rendered by permanent employees before this leave accrues. 1960 Op. Att'y Gen. No. 60-196.

**Temporary employees not eligible.** — A temporary employee of the state is not entitled to military training leave provided by statute. 1958 Op. Att'y Gen. No. 58-173.

**Pay entitled to.** — A permanent employee is entitled to pay for his active military duty in addition to that for his vacation. 1960 Op. Att'y Gen. No. 60-196.

**Full salary required.** — This section requires that the governmental unit pay the full salary to the employee regardless of the amount of money drawn by him while on active military duty. Thus, it would be illegal for a governmental unit to pay an employee only the difference between his military pay and the top limits of pay which he regularly draws from the military unit. 1953 Op. Att'y Gen. No. 53-5762.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of state statutes requiring employers to compensate employees for absences occasioned by military service, 8 A.L.R.4th 704.

**20-7-6 to 20-7-23. Repealed.**

## ANNOTATIONS

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-7-6 to 20-7-23 NMSA 1978, as enacted by Laws 1925, ch. 113, §§ 87 to 89; and Laws 1953, ch. 86, §§ 8 to 22, relating to bonds, reports, leases, board fund, and employees and expenses, effective April 10, 1987.

# ARTICLE 8

## Armories

### 20-8-1. Creation; composition.

There is created the state armory board, a body corporate, whose members shall be appointed within thirty days of the effective date of the New Mexico Military Code. The members of the board shall be the adjutant general, as chairman; the director of the state programs office of the department of military affairs, as executive director; one commissioned officer of the army national guard; the command sergeant major of the army national guard; and three members-at-large who shall not be members of the national guard. Discretionary appointments to the board and designation of one appointed member as its secretary-treasurer shall be made by the adjutant general with the concurrence of the governor and shall be for a term of two years, except that two initial appointments shall be for three years. Members shall serve without compensation but shall be paid 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., § 20-8-1, enacted by Laws 1987, ch. 318, § 52.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, ch. 318, § 52 repealed former 20-8-1 NMSA 1978, as enacted by Laws 1931, ch. 123, § 1, relating to distinguished service medal, and enacted a new section, effective April 10, 1987.

**Compiler's notes.** — The phrase "effective date of the New Mexico Military Code" means April 10, 1987, the effective date of Laws 1987, Chapter 318.

### 20-8-2. Definitions.

A. "Armory" means any building, training area, warehouse, vehicle storage compound, organizational maintenance shop or other facility and the lands appurtenant thereto used by the national guard for the storage and maintenance of arms or military equipment or the administration or training of the national guard and state defense force personnel.

B. "Armory rental" means the casual rental of all or part of an armory facility to an individual or organization for a limited and specified purpose, duration and fee, which use is not in conflict with the ongoing occupancy and use of the armory by the national guard or state defense force.

C. "Local armory" means a particular armory by the name designation of the municipality or county commonly associated with it, including the armory building proper and any appurtenant facilities co-located with it.

D. "Armory board council" means the advisory body comprised of the chairmen of all local armory boards, serving ex officio, and of the members of the state armory board, chaired by the adjutant general, and convened semi-annually by the call of the state armory board to aid and advise that board in the formation of its regulations and policies.

**History:** 1978 Comp., § 20-8-2, enacted by Laws 1987, ch. 318, § 53; 1989, ch. 337, § 3.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-2 NMSA 1978, as enacted by Laws 1931, ch. 123, § 2, relating to long service medal, and enacted a new 20-8-2 NMSA 1978, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, deleted "army" preceding "national guard" in two places.

### **20-8-3. Powers and responsibilities.**

The state armory board shall be empowered to:

- A. act on behalf of the state in the exercise of its powers and responsibilities;
- B. hold title to armories in its name on behalf of the state;
- C. employ and maintain or retain technical, legal, administrative and clerical personnel, including an architect or engineer, a construction manager and a finance manager as deemed necessary by the board within its appropriated budget or federal reimbursement funds, as approved by itself and the department of finance and administration;
- D. have control and supervision over the acquisition, construction, replacement, repair, alteration, improvement, furnishing, equipping, maintenance and operation of all armories and over all funds appropriated or obtained for those purposes;
- E. acquire property deemed necessary for military purposes by purchase, exchange, lease, grant, gift or condemnation;
- F. disregard the requirements of Sections 13-6-3, 15-3-20 and 15-3-23 NMSA 1978;
- G. borrow money for acquiring, constructing, replacing, repairing, altering, improving, furnishing, equipping and operating armories, as provided in Chapter 20, Article 8 NMSA 1978;



H. enter into contracts on behalf of the state with the United States or any of its agencies for the purpose of participating in any joint federal-state military construction for the purpose of receiving federal funds for military construction;

I. sell or exchange armory property when it determines the property is no longer necessary or suitable for military purposes; lease the property if its non-necessity or nonsuitability is determined to be temporary, but that any such lease shall be revocable at will should the adjutant general determine and declare military necessity and suitability, without liability against the state or the board being occasioned by the revocation; or to donate all or part of an armory property to the state, to a county or to a municipality pursuant to new or replacement armory acquisition or construction in the state;

J. guide, direct and supervise the local armory boards, the armory board council and the state armory board fund;

K. delegate to local armory boards such powers as it deems appropriate, retaining the responsibility for proper supervision and accountability of the delegated powers;

L. regulate and audit armory rentals contracted by local armory boards;

M. submit an annual report to the governor accounting for all state appropriated funds received and disbursed by it; and

N. meet quarterly, or at the more frequent call of the adjutant general. The adjutant general shall prescribe and issue regulations which he and the board deem appropriate for the operations of armories and for the exercise of powers by and the fulfillment of responsibilities of the board stated in Chapter 20, Article 8 NMSA 1978.

**History:** 1978 Comp., § 20-8-3, enacted by Laws 1987, ch. 318, § 54; 1989, ch. 337, § 4.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-3 NMSA 1978, as enacted by Laws 1931, ch. 123, § 3, relating to 100% drill attendance medal, and enacted a new 20-8-3 NMSA 1978, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, corrected the misspelling of "responsibilities" and, in Subsection C, substituted "the department of finance and administration" for "the legislative finance committee".

**Legislative intent.** — The legislature intends that the maintenance of buildings should be controlled by the state armory board, which, in turn, applies to the legislature for the necessary funds by appropriation. 1957 Op. Att'y Gen. No. 57-155.

**Generally.** — The state armory board may own (in the name of the state), rent or lease facilities necessary for the conduct of training and the storage of national guard property. Further, the board may acquire property in the name of the state "by purchase, grant, gift or condemnation, and is authorized to sell or exchange such property when said board determines it to be no longer necessary or suitable for military purchases." 1957 Op. Att'y Gen. No. 57-156.

**Authority to lease.** — The state armory board has statutory authority to lease property for its statutory purposes. The governing statute clearly contemplates control by the board of property "rented or leased by the state"; and the authority "to acquire property deemed necessary for military purposes . . . by purchase, grant, gift or condemnation" is not to be read as excluding the exercise of the lesser power to lease. 1958 Op. Att'y Gen. No. 58-231.

**Extent of authority.** — In any case where authority is granted for the leasing or renting of property, it may be logically implied that such authority extends to the ordinary requirements for maintaining the premises in a condition not different from that appreciated at the time of taking possession. 1957 Op. Att'y Gen. No. 57-156.

**Federal and state construction and use of armory permissible.** — The state armory board may lawfully contract with the United States for the construction of an armory at the expense of the state and federal government jointly, the armory to be used jointly by the New Mexico national guard and other components of the armed forces reserves. 1958 Op. Att'y Gen. No. 58-235.

**Property not subject to paving assessment.** — Real property owned by the state armory board is not subject to a paving assessment by a municipality for a street paving project adjoining such property. 1959 Op. Att'y Gen. No. 59-161.

**Authorization as state contracting officer.** — The state armory board is authorized to act, or appoint someone to act, as a state contracting officer. 1956 Op. Att'y Gen. No. 56-6547.

**Control where joint utilization.** — An armory was built for joint utilization by the New Mexico national guard and reserve components of the armed forces pursuant to 10 U.S.C. § 2231 et seq., and the control over such armory would be vested in the state armory board. 1959 Op. Att'y Gen. No. 59-166.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 288 et seq.

## **20-8-4. Local armory boards; members.**

There are created local armory boards for each local armory. The management and control of each local armory shall be the responsibility of its local armory board subject to the guidance, direction and supervision of the state armory board. The senior commander of the national guard units occupying the armory, as chairman; one enlisted

member serving in the armory as secretary-treasurer; and one resident of the locality who is not a member of the national guard, shall constitute the board for that locality. Discretionary appointments to each board shall be made by the adjutant general and shall be for a term of two years. Members shall serve without compensation but shall be paid per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978]. Each local armory board shall:

- A. manage and control its local armory subject to the guidance, supervision and direction of the state armory board and such regulations as the state armory board may promulgate;
- B. maintain a local checking account;
- C. administer and contract for armory rentals as it deems appropriate within regulations promulgated by the state armory board;
- D. administer and account to the state armory board for all revenues therefrom;
- E. transmit all revenues, less actual and reasonable expenses of the board and operations costs of its armory rentals, to the state armory board fund quarterly or more frequently;
- F. report to the adjutant general annually, in September, on the physical condition of its local armory including recommendations for improvements, repair and maintenance; and
- G. participate in the semi-annual meeting of the armory board council.

**History:** 1978 Comp., § 20-8-4, enacted by Laws 1987, ch. 318, § 55.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-4 NMSA 1978, as enacted by Laws 1963, ch. 69, § 1, relating to medal of valor, and enacted a new section, effective April 10, 1987.

### **20-8-5. State armory board fund.**

A. All net revenues derived from any armory rentals shall be deposited quarterly or more frequently by all local armory boards with the state armory board which shall keep such money on deposit with the state treasurer in a separate fund to be known as the "state armory board fund". Money deposited in this fund is appropriated for the use of the state armory board in carrying out the purposes of Chapter 20, Article 8 NMSA 1978. All expenditures by the state armory board shall be upon vouchers signed by the secretary-treasurer of the board and paid out of the fund upon warrants drawn by the secretary of finance and administration.

B. The state armory board fund shall also be the repository for all money and interest received by the state armory board in the exercise of its powers and responsibilities as stated in Chapter 20, Article 8 NMSA 1978.

**History:** 1978 Comp., § 20-8-5, enacted by Laws 1987, ch. 318, § 56; 1989, ch. 337, § 5.

## ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-5 NMSA 1978, as enacted by Laws 1963, ch. 69, § 2, relating to medal of merit, and enacted a new section, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, added the Subsection A designation, inserted "state armory" in the last sentence of Subsection A, and added Subsection B.

### **20-8-6. State armory board building and improvement bonds.**

A. For the purpose of erecting, altering, improving, furnishing and equipping any necessary buildings or structures or acquiring any necessary lands, as provided by Chapter 20, Article 8 NMSA 1978, the state armory board is authorized to borrow money as provided in this section.

B. Whenever the state armory board, by the affirmative vote of the majority of its members duly entered in the minutes of the board, determines by resolution that it is necessary to acquire, construct, replace, repair, alter, improve, furnish or equip any armory and the resolution has been submitted to and approved by the state board of finance, the state armory board is empowered and authorized to issue and sell state armory board building and improvement bonds subject to the terms of Chapter 20, Article 8 NMSA 1978.

C. The bonds shall be in such form and denominations as the state armory board shall determine, due and payable not later than twenty years from date of issue. The bonds shall be payable in consecutive order commencing not later than two years from date of issue.

D. The bonds may be sold at public or private sale at the discretion of the state armory board; provided, however, that no sale shall be made for less than the par value of the bonds plus accrued interest from the last preceding interest date to the date of delivery of the bonds. Before delivery of the bonds to the purchaser, all matured interest coupons shall be detached and canceled. The state treasurer may, with the approval of the state board of finance and other officials whose approval may be required by law for the investment of public funds, purchase the bonds at par and accrued interest to date of delivery of the investment. The bonds may be accepted at their par value by all public officials in this state as security for the repayment of all deposits of public money of this state, or of any county, municipality or public institution thereof, and as security for the

faithful performance of any obligations or duty, to guarantee the performance of which the officials are authorized by law to accept a deposit of the bonds of this state or of the United States.

E. Proceeds from the sale of the bonds shall be paid to the state treasurer and shall be placed by the state treasurer in a separate fund to be known as the "state armory board building and improvement fund". This fund shall be used and paid out only for the specific purposes in Chapter 20, Article 8 NMSA 1978 upon order of the state armory board or upon vouchers signed by the secretary-treasurer of the board and paid out upon warrants issued by the secretary of finance and administration, except such portion thereof as may have been received on account of accrued interest on the bonds to date of delivery, which amount shall be placed in the "state armory board interest and retirement fund" for the liquidation of the bonds as provided in Chapter 20, Article 8 NMSA 1978. The cost of preparing, advertising and selling bonds, including any necessary expense for legal opinions thereon, shall be paid out of the proceeds of the sale of the bonds.

F. Upon issuance of these bonds by the state armory board, the state treasurer shall establish, for the payment of the principal and interest thereof, a fund to be known as the "state armory board interest and retirement fund", into which fund the state armory board shall cause to be placed a sum not less than the amount necessary to pay the interest and maturing principal of the bonds for the ensuing twelve months and annually thereafter shall continue to place in the fund a sufficient amount to pay principal and interest maturing in the succeeding twelve months.

G. For the faithful and prompt payment of all interest and principal of these bonds as and when they shall mature according to the tenor thereof, the issue thereof shall constitute an irrevocable pledge by the state armory board of so much of each year's income from the buildings, lands and properties under the control of the board, in the hands of the state treasurer or from the state armory board fund, as shall be needed to provide the state armory board interest and retirement fund for the ensuing year and at all times fully and faithfully to keep the fund in not less than the amount necessary to pay the interest and principal maturing as provided in this section. In addition, the issue of the bonds shall constitute an irrevocable pledge by the state armory board of so much of each year's income from those buildings, lands and other facilities as may be necessary to fully protect the state armory board interest and retirement fund for the ensuing year and keep the fund at all times in proper amount as provided in this section.

H. It is the duty of the state treasurer, where bonds have been issued pursuant to Chapter 20, Article 8 NMSA 1978, to forward to the bank at which the bonds are payable, prior to the date on which any coupons or any principal amount of any bonds shall mature, out of the state armory board interest and retirement fund a sufficient sum of money to meet the coupons and maturing bonds as they become due, plus any service which the bank shall be entitled to receive for its services unless the state armory board shall have forwarded those funds from the state armory board fund.

I. In the event the state armory board should find it advisable to issue bonds under Chapter 20, Article 8 NMSA 1978 in more than one series or at different times for any of the purposes set forth in that article, in each series of bonds, the bonds shall be designated by the letters "A", "B" or in some other designation to the end that each series shall be kept separate, and all of the requirements of that article shall apply to and be faithfully followed, done and carried out as to each series. The state armory board has no power to issue bonds under Chapter 20, Article 8 NMSA 1978 when the aggregate interest and principal requirements for any year, together with the aggregate interest and principal requirements for all outstanding bonds of the state armory board for each year, exceeds the amount of the income from the buildings, lands and facilities under the board's control received by the board and deposited with the state treasurer for the fiscal year next preceding the fiscal year in which any bonds of the state armory board are authorized to be issued by resolution of the board adopted pursuant to Chapter 20, Article 8 NMSA 1978.

J. Bonds issued under the provisions of Chapter 20, Article 8 NMSA 1978 and the income thereupon, being for the sole purposes specified in that article, shall forever be and remain free and exempt from taxation by the state or any subdivision thereof.

K. None of the funds derived from the sale of bonds issued under the provisions of Chapter 20, Article 8 NMSA 1978, except so much thereof as shall be necessary to defray the costs of the issuance of the bonds and the accrued interest from the date thereof to the time of delivery, shall ever be used or expended for any purpose other than those for which the authority to issue the bonds is given by that article.

L. No bonds shall be finally issued and sold under the provisions of Chapter 20, Article 8 NMSA 1978 until approval of the issue has been given by the state board of finance in a regular or called meeting.

M. All bonds of the same issue under Chapter 20, Article 8 NMSA 1978 shall have a prior and paramount lien upon the income from the buildings, lands and facilities under the control of the state armory board, over and ahead of all bonds or any securities secured by a pledge of that income which may be subsequently authorized and over and ahead of any claims or other obligations of any nature against that income subsequently arising or subsequently incurred. All bonds of the same series issued under Chapter 20, Article 8 NMSA 1978 shall be equally and rateably secured without priority by reason of number, date of bonds, sale, execution or delivery by lien on that income and the state armory board interest and retirement fund in accordance with the terms of Chapter 20, Article 8 NMSA 1978.

**History:** 1978 Comp., § 20-8-6, enacted by Laws 1987, ch. 318, § 57; 1989, ch. 337, § 6.

## **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-8-6 NMSA 1978, as enacted by Laws 1973, ch. 120, § 1, relating to good conduct medal, and enacted a new section, effective April 10, 1987.

**The 1989 amendment,** effective June 16, 1989, in Subsection A, deleted "hereby" preceding "authorized" and substituted "as provided in this section" for "as hereinafter provided"; in Subsection G, inserted "or from the state armory board fund" in the first sentence; in Subsection H, added "unless the state armory board shall have forwarded those funds from the state armory board fund"; in Subsection M, inserted "state armory board" near the end of the second sentence; and made minor stylistic changes.

## **20-8-7 to 20-8-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-8-7 to 20-8-11 NMSA 1978, as enacted by Laws 1945, ch. 115, § 2, Laws 1973, ch. 120, §§ 2 to 4, and Laws 1979, ch. 129, § 1, relating to medals and citations, effective April 10, 1987.

## **ARTICLE 9 Property and Funds**

### **20-9-1. Property and fiscal officer.**

In the event of a vacancy, the governor shall nominate, with the advice of the adjutant general, a United States property and fiscal officer from the New Mexico national guard whose appointment shall be made by the chief of the national guard bureau or other authority charged with responsibility for such approval under the laws of the United States. His duties shall be the superintendence of all funds and property of the United States entrusted or allotted to the militia or national guard as required of him by the laws of the United States relating to the militia or national guard or regulations promulgated thereunder, together with such additional related duties as the governor or adjutant general may require of him by appropriate regulations or orders. His military salary, allowances and maximum rank shall be in accordance with the regulations of the appropriate authorities of the United States and the laws of the United States relating to the militia or national guard and the appointment of such officers.

**History:** 1978 Comp., § 20-9-1, enacted by Laws 1987, ch. 318, § 58.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-1 NMSA 1978, as enacted by Laws 1925, ch. 113, § 79, relating to unauthorized disposition of military property, and enacted a new section, effective April 10, 1987.

**Generally.** — The property and fiscal officers not only protect the federal government's interests, but also aid the states in disbursing to them the allocations of the federal government to state national guards. 1964 Op. Att'y Gen. No. 64-69.

**Payment of officer.** — The property and fiscal officer appointed pursuant to this section must be paid by this state or by the United States from funds allocated to the national guard of this state. 1964 Op. Att'y Gen. No. 64-69.

**Control of officer.** — There can be no doubt of the control over the officer by the state executive. 1964 Op. Att'y Gen. No. 64-69.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 291.

## **20-9-2. Accountability for money and property.**

The adjutant general, with the concurrence of the governor as commander in chief, shall promulgate such regulations as are necessary to provide for the accountability of state and federal property which shall provide procedures and standards for ascertaining individual pecuniary liability for restitution and for hardship remission of indebtedness where appropriate. Proceeds collected therefrom shall be paid over to the adjutant general for distribution as may be required by appropriate state or federal law or regulation. When loss or damage occurs and a determination of no pecuniary liability is made, the authority making the determination will direct a settlement of accounts without penalty or assessment. The adjutant general may accomplish the settlement of accounts for lost money or lost or damaged property of the United States allotted or entrusted to the militia or national guard by payment from the funds appropriated to the adjutant general when such a settlement cannot be accomplished by other means within a reasonable time so as not to jeopardize the national guard's entitlement to continue to receive allotments of federal funds, equipment, or supplies.

**History:** 1978 Comp., § 20-9-2, enacted by Laws 1987, ch. 318, § 59.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-2 NMSA 1978, as enacted by Laws 1925, ch. 113, § 78, relating to arrest of officers and men, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 291.

## **20-9-3. Unit funds.**

Each unit or detachment of the national guard shall keep a unit general welfare fund composed of any funds earned by the unit or its members, funds contributed to the unit or to its welfare fund or fines or forfeitures imposed under the Code of Military Justice [Chapter 20, Article 12 NMSA 1978] against unit members when allocated to the fund



by the adjutant general. Each unit general welfare fund shall be held in a local commercial bank account and shall be expended for the general welfare of the members of the unit. Accountability for general welfare funds shall be in accordance with regulations to be prescribed by the adjutant general. The unit general welfare fund shall be separate and apart from any other fund maintained by the unit which is funded by allocations from federal sources. In the event of reorganization, deactivation, redesignation or reassignment of units, the adjutant general shall order such disposition of that unit's general welfare fund as will best benefit the members or former members of the unit so affected.

**History:** 1978 Comp., § 20-9-3, enacted by Laws 1987, ch. 318, § 60.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-3 NMSA 1978, as enacted by Laws 1925, ch. 113, § 80, relating to authority of post commanders, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 291.

### **20-9-4. Recovery of property; criminal and civil liability.**

Any person who retains, after written demand by the United States property and fiscal officer or his designee, any arms, uniforms, equipment or other military property which belongs to the state or the United States or who thereafter possesses, purchases, sells, pawns or pledges such property shall be guilty of a misdemeanor and shall be civilly liable to the United States property and fiscal officer for three times the original value of the property in damages. The attorney general or his designee shall prosecute all such matters referred to him on a sworn statement of charges by the United States property and fiscal officer. Money recovered shall be deposited by the United States property and fiscal officer to the appropriate fund or account for the purchase of similar replacement property.

**History:** 1978 Comp., § 20-9-4, enacted by Laws 1987, ch. 318, § 61.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-4 NMSA 1978, as enacted by Laws 1925, ch. 113, § 90, relating to suppression of unlawful assembly, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 362 et seq.

6 C.J.S. Armed Services § 297.

## **20-9-5. Security for property.**

The adjutant general may prescribe regulations for the obtaining of collateral to guarantee the return of arms, uniforms, equipment or other military property issued to members of the national guard or the state defense force in an amount at least equal to the value of the property issued and for such duration as is deemed appropriate. Such collateral may include cash, surety bonds, certificates of title or other good and valuable consideration. Property with investment value shall be deposited at interest, that interest to be paid to the member with return of the collateral upon proper return of the property in serviceable condition, fair wear and tear excepted.

**History:** 1978 Comp., § 20-9-5, enacted by Laws 1987, ch. 318, § 62.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-9-5 NMSA 1978, as enacted by Laws 1925, ch. 113, § 91, relating to bond premium payments, and enacted a new section, effective April 10, 1987.

## **20-9-6 to 20-9-8. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-9-6 to 20-9-8 NMSA 1978, as enacted by Laws 1921, ch. 128, §§ 1 and 2 and Laws 1953, ch. 70, relating to prohibition on discharge of employees or preventing performance of military duties and training leave for public employees, effective April 10, 1987.

## **ARTICLE 10**

### **Awards, Medals and Ribbons**

#### **20-10-1. Awards authorized.**

There are established and authorized within Chapter 20, Article 10 NMSA 1978 awards for presentation to units and members of the national guard and the New Mexico state defense force and, where indicated, for presentation to other persons for recognized service to the national guard or New Mexico state defense force, to the state or to the United States.

**History:** 1978 Comp., § 20-10-1, enacted by Laws 1987, ch. 318, § 63.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-1 NMSA 1978, as enacted by Laws 1941, ch. 9, § 16, relating to short title of State Guard Act, and enacted a new section, effective April 10, 1987.

## **20-10-2. Awards boards.**

A. The adjutant general shall appoint the members of awards boards for the army national guard and the air national guard, which shall each meet not less than quarterly to review recommendations for state and federal awards and decorations submitted by their respective unit commanders and others. The army national guard awards board shall also review and act on recommendations for such awards and decorations relating to the state defense force and shall include one or more members of the state defense force appointed by the adjutant general whenever considering such matters.

B. The adjutant general may by regulation delegate award authority to battalion commanders, group commanders, or equivalent, of the national guard, for members of their command, for the following awards and their subsequent devices:

- (1) such United States awards and decorations as are permitted to be so delegated in United States military regulations;
- (2) the outstanding service medal;
- (3) the long service medal;
- (4) the good conduct medal; and
- (5) the perfect attendance ribbon.

**History:** 1978 Comp., § 20-10-2, enacted by Laws 1987, ch. 318, § 64.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-2 NMSA 1978, as enacted by Laws 1941, ch. 9, § 1, relating to authority and name of guard, and enacted a new section, effective April 10, 1987.

## **20-10-3. Awards fund.**

There is established an awards fund which shall be under the control of the adjutant general, the military personnel officers of the army and air national guard, and the director of the state programs office of the department of military affairs. The awards fund shall promptly arrange for suitable presentations to award recipients. The fund is authorized to make such reasonable expenditures from sources provided or authorized so as to procure and distribute state medals, ribbons and devices consistent with Chapter 20, Article 10 NMSA 1978. The fund shall procure sufficient quantities

[quantities] of awards to allow recipients to purchase from the board replacements for lost or soiled awards. The fund may charge a reasonable sum for replacement or miniature awards, with proceeds being retained in the awards fund for future procurement of awards. Moneys in the awards fund shall be maintained in a checking account and shall not revert annually to the state treasury.

**History:** 1978 Comp., § 20-10-3, enacted by Laws 1987, ch. 318, § 65.

### ANNOTATIONS

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

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-3 NMSA 1978, as enacted by Laws 1941, ch. 9, § 2, relating to organization of guard, and enacted a new section, effective April 10, 1987.

#### **20-10-4. Order of precedence.**

The rank order of precedence of awards is their order of appearance in Chapter 20, Article 10 NMSA 1978. In the wearing or display of awards, the precedence afforded the awards and decorations of the United States, of other nations and of state national guards will be observed; military awards of other states may be worn commensurate with those authorized in Chapter 20, Article 10 NMSA 1978, in reasonable order of precedence.

**History:** 1978 Comp., § 20-10-4, enacted by Laws 1987, ch. 318, § 66.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-4 NMSA 1978, as enacted by Laws 1941, ch. 9, § 3, relating to pay and allowances, and enacted a new section, effective April 10, 1987.

#### **20-10-5. Medal of valor with palm.**

The governor may award a medal of valor with palm and with accompanying ribbon to any member of the national guard or state defense force who distinguishes himself by an extraordinary act of personal bravery and heroism, at the risk of his own life, above and beyond the call of duty.

**History:** 1978 Comp., § 20-10-5, enacted by Laws 1987, ch. 318, § 67.

### ANNOTATIONS

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-5 NMSA 1978, as enacted by Laws 1941, ch. 9, § 4, relating to requisitions and buildings, and enacted a new section, effective April 10, 1987.

### **20-10-6. Medal of valor.**

The governor may award a medal of valor with accompanying ribbon to any member of the national guard or state defense force who distinguishes himself by an uncommon act of valor, not necessarily at the risk of his own life, under circumstances where refraining from so acting would not have subjected the recipient to criticism.

**History:** 1978 Comp., § 20-10-6, enacted by Laws 1987, ch. 318, § 68.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-6 NMSA 1978, as enacted by Laws 1941, ch. 9, § 5, relating to use outside state, and enacted a new section, effective April 10, 1987.

### **20-10-7. Special MacArthur service medal.**

The special MacArthur service medal has been given with appreciation to known members or their survivors of the 200th coast artillery who were residents of the state at the time they entered the services of the United States and served under General Douglas MacArthur in the Philippine islands. It may be awarded to later-discovered eligible veterans or their survivors by the adjutant general.

**History:** 1978 Comp., § 20-10-7, enacted by Laws 1987, ch. 318, § 69.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-7 NMSA 1978, as enacted by Laws 1941, ch. 9, § 6, relating to permission to forces of other states, and enacted a new section, effective April 10, 1987.

### **20-10-8. Distinguished service medal.**

The governor may award a distinguished service medal with accompanying ribbon to any member of the national guard or state defense force who distinguishes himself by an unselfish, untiring and exceptionally meritorious period of service or act resulting in extraordinary benefit to the state or to the United States.

**History:** 1978 Comp., § 20-10-8, enacted by Laws 1987, ch. 318, § 70.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-8 NMSA 1978, as enacted by Laws 1941, ch. 9, § 7, relating to federal service, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 293.

### **20-10-9. Medal of merit.**

The adjutant general may award a medal of merit with accompanying ribbon to any person who, while serving in any capacity with or in the national guard or state defense force, shall render prolonged and meritorious service to the state or the United States.

**History:** 1978 Comp., § 20-10-9, enacted by Laws 1987, ch. 318, § 71.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-9 NMSA 1978, as enacted by Laws 1941, ch. 9, § 8, relating to civil groups, and enacted a new section, effective April 10, 1987.

### **20-10-9.1. Cold war medal.**

The New Mexico state defense force commander may award the New Mexico state defense force cold war medal to a member of the state defense force who has received a cold war recognition certificate. The cold war recognition certificate recognizes all members of the armed forces and qualified federal government civilian personnel who faithfully and honorably served the United States during the cold war era from September 2, 1945 to December 26, 1991.

**History:** 1978 Comp., § 20-10-9.1, enacted by Laws 2016, ch. 6, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **20-10-9.2. Outstanding enlisted leader of the year ribbon.**

The adjutant general may award the outstanding enlisted leader of the year ribbon to a member of the national guard of New Mexico who has been officially selected as the New Mexico outstanding soldier of the year, airman of the year or first sergeant of the year. This ribbon is established to recognize those members who have performed above and beyond their peer group in their profession, on- or off-duty, and in their communities, reflecting great credit upon themselves and the national guard within the calendar year of the award.

**History:** 1978 Comp., § 20-10-9.2, enacted by Laws 2016, ch. 6, § 2.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **20-10-10. Outstanding service medal.**

The adjutant general may award an outstanding service medal with accompanying ribbon to any person who, while serving in any capacity with or as a member of the national guard or state defense force, performs the service required or requested of him through the exertion of extra effort and in a manner that brings credit to himself, to his unit and to the state, either over a period of time or on a specific occasion.

**History:** 1978 Comp., § 20-10-10, enacted by Laws 1987, ch. 318, § 72.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-10 NMSA 1978, as enacted by Laws 1941, ch. 9, § 9, relating to disqualifications, and enacted a new section, effective April 10, 1987.

#### **20-10-11. Outstanding unit citation.**

The governor may award an outstanding unit citation of appropriate design with accompanying individual ribbon to any recognized unit of the national guard or state defense force which, through outstanding effort of all its members, has excelled in the performance of its duty and mission for a period of service in a manner that clearly exceeds that of other units, within or without the state, similar in composition or mission. In extraordinary circumstances a "V" device may be awarded to denote valor exemplified by the unit.

**History:** 1978 Comp., § 20-10-11, enacted by Laws 1987, ch. 318, § 73.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-11 NMSA 1978, as enacted by Laws 1941, ch. 9, § 10, relating to officers, and enacted a new section, effective April 10, 1987.

#### **20-10-12. Recompiled.**

**History:** 1978 Comp., § 20-10-12, enacted by Laws 1987, ch. 318, § 74; recompiled as 20-10-12.5 by Laws 2016, ch. 6, § 6.

## ANNOTATIONS

**Recompilations.** — Laws 2016, ch. 6, § 6 recompiled former 20-10-12 NMSA 1978 as 20-10-12.5 NMSA 1978, effective May 18, 2016.

### **20-10-12.1. Emergency service ribbon.**

The adjutant general shall award the emergency service ribbon to any member of the New Mexico national guard who, after January 1, 2000, honorably performs duty when an emergency situation has been declared by the governor. The duty must be in direct support of the declared state of emergency and the guardmember must be in duty status, on orders in either pay or non-pay status, at the time the service is rendered.

**History:** Laws 2002, ch. 44, § 1.

## ANNOTATIONS

**Effective dates.** — Laws 2002, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 15, 2002, 90 days after adjournment of the legislature.

### **20-10-12.2. Counter-drug service ribbon.**

The adjutant general may award the counter-drug service ribbon to recognize soldiers and airmen of the national guard of New Mexico who have provided outstanding support to state, local and federal law enforcement officers on counter-drug operations in New Mexico since August 1989 and have served a minimum of ninety consecutive days performing counter-drug support missions in accordance with national guard regulations.

**History:** 1978 Comp., § 20-10-12.2, enacted by Laws 2016, ch. 6, § 3.

## ANNOTATIONS

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

### **20-10-12.3. Community service ribbon.**

The adjutant general may award the community service ribbon to a member of the national guard of New Mexico or New Mexico state defense force for substantial or particularly meaningful community service above and beyond the duties required. A member's community service must contribute to the well-being of the civilian community, including the military family community. Service must be significant in nature and produce tangible results. There is not a specific time period of community



service that must be performed to qualify for the award. Actions performed in accordance with regular duty requirements are not to be considered for the award. Community service may not result in a personal gain for the service member.

**History:** 1978 Comp., § 20-10-12.3, enacted by Laws 2016, ch. 6, § 4.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **20-10-12.4. Physical fitness ribbon.**

A. The adjutant general may present a physical fitness ribbon to a currently assigned member of the national guard of New Mexico who:

(1) scores two hundred seventy or above for three consecutive years when taking all components of the army physical fitness training and meets the body fat standards for official record; or

(2) scores ninety or above for three consecutive years when taking all components of the air force fitness assessment for official record.

B. Subsequent three-year periods of service shall be acknowledged by the presentation and wearing of an affixed device signifying in arabic numerals the number of such awards to the member.

**History:** 1978 Comp., § 20-10-12.4, enacted by Laws 2016, ch. 6, § 5.

### **ANNOTATIONS**

**Effective dates.** — Laws 2016, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

#### **20-10-12.5. Service ribbon and long-service medal.**

A. The adjutant general shall present a service ribbon to those members of the national guard and state defense force who have completed five years of honorable service in the national guard or state defense force. This service ribbon shall be of identical design to the ribbon of the long service medal.

B. The adjutant general shall present a long service medal to those members of the national guard and state defense force who have completed ten years of honorable service in either the national guard or the state defense force. The medal and

accompanying ribbon shall have an appropriate numeral device affixed signifying total years of service beyond ten in increments of five.

**History:** 1978 Comp., § 20-10-12, enacted by Laws 1987, ch. 318, § 74; recompiled as § 20-10-12.5 by Laws 2016, ch. 6, § 6.

#### **ANNOTATIONS**

**Recompilations.** — Laws 2016, ch. 6, § 6 recompiled former 20-10-12 NMSA 1978 as 20-10-12.5 NMSA 1978, effective May 18, 2016.

#### **20-10-13. Good conduct medal.**

The adjutant general may award a good conduct medal with accompanying ribbon to any enlisted member of the national guard or state defense force who completes a three-year period of service free from unauthorized absence, reprimand, court-martial or other disciplinary action and free from any civilian conviction. Subsequent three-year periods of service shall be acknowledged by the presentation and wearing of an affixed device signifying in arabic numerals the number of such awards to the member.

**History:** 1978 Comp., § 20-10-13, enacted by Laws 1987, ch. 318, § 75.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-13 NMSA 1978, as enacted by Laws 1941, ch. 9, § 12, relating to freedom from arrest and process, and enacted a new section, effective April 10, 1987.

#### **20-10-14. Perfect attendance ribbon.**

The adjutant general may present a perfect attendance ribbon to those members commissioned, warranted and enlisted of the national guard or state defense force who for the calendar year have had a perfect drill and annual training attendance. Unit commanders shall forward a list of all qualifying nominees to the awards board each January for the preceding calendar year. Subsequent annual periods of service shall be acknowledged by the presentation and wearing of an affixed device signifying in arabic numerals the number of such awards to the member.

**History:** 1978 Comp., § 20-10-14, enacted by Laws 1987, ch. 318, § 76.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-14 NMSA 1978, as enacted by Laws 1941, ch. 9, § 13, relating to labor clause, and enacted a new section, effective April 10, 1987.

## **20-10-15. Academy service ribbon.**

The adjutant general may present an academy service ribbon to those enlisted members of the national guard or state defense force who have successfully completed a noncommissioned officer educational system course or noncommissioned officer academy. An arabic numeral shall reflect successful completion of higher level courses.

**History:** 1978 Comp., § 20-10-15, enacted by Laws 1987, ch. 318, § 77.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-15 NMSA 1978, as enacted by Laws 1941, ch. 9, § 18, relating to exemption from jury duty, and enacted a new section, effective April 10, 1987.

## **20-10-16. Devices.**

A. Except as specifically stated above, the second and subsequent award of any medal shall be noted by written citation and by presentation and wearing of a bronze oak leaf cluster in lieu of a second or subsequent medal. A silver oak leaf cluster shall substitute for five bronze oak leaf clusters.

B. All medals awarded may be worn on military ceremonial or mess uniforms in miniature format, which shall be procured by the awards fund and shall be available for purchase by recipients.

**History:** 1978 Comp., § 20-10-16, enacted by Laws 1987, ch. 318, § 78.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-10-16 NMSA 1978, as enacted by Laws 1941, ch. 9, § 19, relating to powers of governor, and enacted a new section, effective April 10, 1987.

## **20-10-17 to 20-10-42. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-10-17 to 20-10-42 NMSA 1978, as enacted by Laws 1941, ch. 9, §§ 20 to 45, relating to cooperation with civil authority, organization and training, officers, and discipline and court-martial, effective April 10, 1987.

# **ARTICLE 11**

## **Offenses**

## **20-11-1. Failure to appear; penalty.**

A. Any person in the unorganized militia ordered by the governor into active service in the national guard or state defense force pursuant to the powers enumerated in Chapter 20 NMSA 1978 and notified of the order to service who fails to appear without justification within the time prescribed in the notice to the place which ordered, shall be guilty of a misdemeanor.

B. Any person failing to appear as stated in Subsection A of this section and whose failure to appear is willful and with the intent to avoid or evade military service shall be guilty of a fourth degree felony.

**History:** 1978 Comp., § 20-11-1, enacted by Laws 1987, ch. 318, § 79.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-1 NMSA 1978, as enacted by Laws 1975, ch. 269, § 1, relating to short title of Code of Military Justice, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services §§ 295, 298.

## **20-11-2. Hindering national guard; penalty.**

The commanding officer of any part of the national guard or state defense force called into the active service of the state, when performing any military duty in any street or highway, may require any persons to yield the right-of-way to the national guard or state defense force provided that the carriage of United States mail, the legitimate functions of the police and the progress and operations of ambulances, fire engines and emergency vehicles shall not be interfered with. All persons who hinder, delay or obstruct the national guard or state defense force in the active service of the state or who attempt to do so, are guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-2, enacted by Laws 1987, ch. 318, § 80.

### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-2 NMSA 1978, as enacted by Laws 1975, ch. 269, § 2, relating to definitions, and enacted a new section, effective April 10, 1987.

## **20-11-3. Interference with enrolling officer; penalty.**

Any person who shall wilfully obstruct an enrolling or enlisting officer in the performance of his duty is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-3, enacted by Laws 1987, ch. 318, § 81.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-3 NMSA 1978, as enacted by Laws 1975, ch. 269, § 3, relating to persons subject to Code, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services §§ 295, 298.

#### **20-11-4. Wrongful possession of military property; penalty.**

Any person who commits the offense described in Section 20-9-4 NMSA 1978 is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-4, enacted by Laws 1987, ch. 318, § 82.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-4 NMSA 1978, as enacted by Laws 1975, ch. 269, § 4, relating to jurisdiction, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 298.

#### **20-11-5. Wrongful wearing of uniform; penalty.**

Any unauthorized person wearing a military uniform or facsimile thereof with the intent to impersonate a person with military authority is guilty of a misdemeanor; but if this offense is committed in time of war or following a declaration of martial law, the offender shall be guilty of a fourth degree felony.

**History:** 1978 Comp., § 20-11-5, enacted by Laws 1987, ch. 318, § 83.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-5 NMSA 1978, as enacted by Laws 1975, ch. 269, § 5, relating to applicability of Code, and enacted a new section, effective April 10, 1987.

#### **20-11-5.1. Misrepresentation of military service; penalty.**

Misrepresentation of military service consists of a person misrepresenting that person's self as having served or currently serving in the United States armed forces for the intentional taking of anything of value based on the person's military service. Whoever commits misrepresentation of military service is guilty of a misdemeanor.

**History:** Laws 2018, ch. 5, § 1.

#### **ANNOTATIONS**

**Effective date.** — Laws 2018, ch. 5, § 2 made Laws 2018, ch. 5, § 1 effective July 1, 2018.

#### **20-11-6. Employment discrimination prohibited; penalty.**

Any person who wilfully violates Section 20-4-6 or Section 20-5-14 NMSA 1978 is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-6, enacted by Laws 1987, ch. 318, § 84.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-6 NMSA 1978, as enacted by Laws 1975, ch. 269, § 6, relating to judge advocates and legal officers, and enacted a new section, effective April 10, 1987.

#### **20-11-7. Peace officers' neglect or refusal to act; penalty.**

Any peace officer who neglects or refuses to obey, execute or return the process of a military court or the order of a commanding officer pursuant to Section 20-12-12 NMSA 1978 or makes a false return on such process or order is guilty of a misdemeanor.

**History:** 1978 Comp., § 20-11-7, enacted by Laws 1987, ch. 318, § 85.

#### **ANNOTATIONS**

**Repeals and reenactments.** — Laws 1987, Chapter 318 repealed former 20-11-7 NMSA 1978, as enacted by Laws 1975, ch. 269, § 7, relating to apprehension, and enacted a new section, effective April 10, 1987.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 6 C.J.S. Armed Services § 298.

#### **20-11-8 to 20-11-120. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1987, ch. 318, § 98A repealed 20-11-8 to 20-11-120 NMSA 1978, as enacted by Laws 1975, ch. 269, §§ 8 to 20, relating to Code of Military Justice, effective April 10, 1987.

# **ARTICLE 12**

## **Code of Military Justice**

### **20-12-1. Short title.**

Chapter 20, Article 12 NMSA 1978 may be cited as the "Code of Military Justice".

**History:** 1978 Comp., § 20-12-1, enacted by Laws 1987, ch. 318, § 86.

### **20-12-2. Adoption of Uniform Code of Military Justice; Manual for Courts-Martial, United States, 1984; United States military regulations and directives; decisions of United States court of military appeals and courts of military review; limitations and exceptions.**

The Uniform Code of Military Justice, Title 10, Chapter 47, United States Code; the Manual for Courts-Martial, United States, 1984, (Executive Order No. 12437 (13 April 1984), as amended); the regulations and directives of the United States military forces made applicable to the national guard; and the decisions of the United States court of military appeals and of the armed services courts of military review are adopted as the Code of Military Justice, the Manual for Courts-Martial, the regulations and the precedential case law of this state on military justice matters, respectively, except as hereinafter limited or stated within Chapter 20, Article 12 NMSA 1978. These documents shall be reasonably construed and applied so as to achieve and effect the high level of order and discipline necessary for the military forces of the state. Time standards other than periods of limitations and pretrial confinement may be waived by convening authorities or military judges where such standards would be impracticable within the traditional operations of militia forces. Where regulations and procedures for the United States army differ from those of the United States air force, the army national guard and the state defense force shall observe the regulations and procedures of the United States army and the air national guard shall observe the regulations and procedures of the United States air force. References therein and in Sections 20-12-13 through 20-12-73 NMSA 1978 to "the United States" shall mean "the state" where such meaning has reasonable application. References to "the president" or to "the secretary" (meaning the secretary of the army or the secretary of the air force) shall mean "the governor". The adjutant general may by regulation prescribe practical changes or variances from the procedural provisions of the Uniform Code of Military Justice, from the Manual for Courts-Martial or from service regulations subservient thereto.

**History:** 1978 Comp., § 20-12-2, enacted by Laws 1987, ch. 318, § 87; 1989, ch. 337, § 7.

## **ANNOTATIONS**

**Cross references.** — For the Uniform Code of Military Justice, see 10 U.S.C. § 801 et seq.

**The 1989 amendment**, effective June 16, 1989, in the third sentence from the end, inserted "and in Sections 20-12-13 through 20-12-73 NMSA 1978"; and added the last two sentences.

### **20-12-3. Persons subject to the code; applicability of the code.**

The Code of Military Justice applies to all members of the national guard when not in federal service under Title 10, United States Code and to all members of the state defense force when performing militia duty. The code has territorial applicability both within and without the state. The code has applicability at all times, provided that either the member is in a duty status or, if not in a duty status, that there is a connection between the act or omission constituting the offense and the efficient functioning of the military forces; however, this grant of military jurisdiction shall not preclude or limit civilian jurisdiction over an offense, which is limited only by the prohibition of double jeopardy.

**History:** 1978 Comp., § 20-12-3, enacted by Laws 1987, ch. 318, § 88; 1989, ch. 337, § 8.

### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, inserted "either the member is in a duty status or, if not in a duty status, that" in the last sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military and Civil Defense §§ 283 et seq., 289.

Civilian offenses: comment note on courts-martial jurisdiction over members of armed forces for "civilian" offenses, 14 A.L.R. Fed. 152.

6 C.J.S. Armed Services § 288.

### **20-12-4. Convening authorities; nonjudicial punishment authorities.**

A. A general, special or summary court-martial may be convened by the governor or by the adjutant general.

B. A special or summary court-martial may be convened by the assistant adjutant general of the army national guard, as to all members of the army national guard; by the land component commander, as to members of the land component commander's command; by the commanding officer of any brigade-level headquarters, as to members of the commanding officer's command; by the assistant adjutant general of the air national guard, as to all members of the air national guard; by the assistant



adjutant general of the state defense force, as to all members of the state defense force; and to the commanders of such equivalent level commands as may be organized in the future.

C. A summary court-martial may be convened by a battalion commander, group commander or equivalent, as to all members of the commander's command.

D. Nonjudicial punishment authority is conferred upon all general, special or summary court-martial convening authorities and upon company, battery and squadron commanders or equivalent, as to members of their command.

**History:** 1978 Comp., § 20-12-4, enacted by Laws 1987, ch. 318, § 89; 2018, ch. 6, § 3; 2021, ch. 55, § 9.

## ANNOTATIONS

**The 2021 amendment**, effective June 18, 2021, authorized the land component commander to convene a special or summary court-martial as to members of the state defense force under the command of the land component commander; and in Subsection B, after "army national guard", added "by the land component commander, as to members of the land component commander's command", after the first occurrence of "commanding", deleted "general" and added "officer", and after the second occurrence of "commanding", deleted "general's" and added "officer's".

**The 2018 amendment**, effective July 1, 2018, updated the designation of special or summary court-martial convening authorities; in Subsection B, after "by the commanding general of", deleted "the 111th air defense artillery brigade" and added "any brigade-level headquarters", after "as to members of", deleted "his" and added "the commanding general's", and after "command", deleted "by the commanding officer of troop command, as to all members of his command"; and in Subsection C, after "all members of", deleted "his" and added "the commander's".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense § 260 et seq.

6 C.J.S. Armed Services §§ 295, 298.

### **20-12-5. Judge advocates.**

A. The adjutant general may appoint commissioned officers of the national guard and of the state defense force who are members of the bar of the supreme court of New Mexico as judge advocates. One judge advocate shall be designated by the adjutant general as the state judge advocate. The remaining senior judge advocate of each of the army national guard, the 111th air defense artillery brigade, the air national guard and the state defense force shall be designated as the staff judge advocate for their respective component, but this designation shall not preclude their assignment as

military judge, trial counsel or defense counsel to other components in individual cases where they have not earlier participated. All other judge advocates shall be designated as assistant staff judge advocates. Designation as a judge advocate may be as a primary military specialty or as an additional duty, with their concurrence, for line officers who are members of the bar of the supreme court of New Mexico.

B. Judge advocates shall make frequent inspections in the field in supervision of the administration of military justice. Judge advocates of one component may participate in the administration of military justice in other components. Appointment as a judge advocate by the adjutant general shall substitute for Article 27(b)(2), Uniform Code of Military Justice certification.

C. The adjutant general, with the concurrence of the state judge advocate, shall appoint one military judge from the army national guard and one military judge from the air national guard. To the extent practicable, military judges will hear cases from components other than their own. Appointment as military judge shall not preclude assignment of judge advocate duties which are not in conflict with those of a military judge. A judge advocate's performance of duty as a military judge shall not be the subject of comment in any effectiveness, fitness or efficiency report beyond a statement that the officer is designated as military judge.

D. Federally recognized judge advocates of other active and reserve military components may, with their concurrence, serve as judge advocates for national guard and the state defense force when so requested and detailed by the state judge advocate.

**History:** 1978 Comp., § 20-12-5, enacted by Laws 1987, ch. 318, § 90.

## ANNOTATIONS

**Cross references.** — For Article 27(b)(2) of the Uniform Code of Military Justice, see 10 U.S.C. § 827(b)(2).

**Qualifications of this article do not apply for military judges in national guard;** no special qualifications are required for a military judge in the New Mexico national guard other than being appointed a judge advocate, which requires only membership in the New Mexico bar and an officer's commission in the national guard. *State v. Baca*, 1993-NMCA-084, 116 N.M. 19, 859 P.2d 487.

### **20-12-6. Limitation on punishments.**

A. Except when the militia is in actual service in time of war or public danger, no punishment imposed by court martial shall exceed that prescribed for a misdemeanor. Imposition of a punitive discharge or a forfeiture of pay or a fine in addition to confinement shall not be deemed to make the offense a felony.

B. Subject to the limitation in Subsection A of this section and the jurisdictional punishment limitation for a special or a summary court-martial, the Maximum Punishment Chart, Manual for Courts-Martial, United States, 1984, Appendix 12, shall establish the maximum punishment for a specific offense.

**History:** 1978 Comp., § 20-12-6, enacted by Laws 1987, ch. 318, § 91; 1989, ch. 337, § 9.

### ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, substituted "danger" for "damage" in the first sentence of Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — What circumstances constitute laches barring federal judicial review of allegedly wrongful discharge from military service, 100 A.L.R. Fed. 821.

### **20-12-7. Advice; reviews and appeals; extraordinary writs.**

A. The advice of the staff judge advocate prescribed by Article 34, Uniform Code of Military Justice and the review required by Article 64, Uniform Code of Military Justice shall be accomplished by the state judge advocate or his designee.

B. Appeals shall be taken according to the rules of appellate procedure applying to criminal cases tried in the district courts.

C. The action of the convening authority as to an approved sentence shall continue in effect while an appeal is pending.

D. Extraordinary writs may issue from the New Mexico supreme court upon such grounds as the United States court of military appeals may similarly act in federal courts-martial, following the New Mexico rules of appellate procedures applicable thereto.

**History:** 1978 Comp., § 20-12-7, enacted by Laws 1987, ch. 318, § 92; 1989, ch. 337, § 10.

### ANNOTATIONS

**Cross references.** — For Articles 34 and 64 of the Uniform Code of Military Justice, referred to in Subsection A, see 10 U.S.C. §§ 834 and 864, respectively.

**The 1989 amendment,** effective June 16, 1989, in the catchline, added "extraordinary writs"; in Subsection A, added "or his designee"; substituted present Subsection B for the provisions of former Subsections B to E, which specified review procedures; and added Subsections C and D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military, and Civil Defense §§ 269, 270, 338.

### **20-12-8. Confinement.**

In a sentence which includes confinement, the convening authority shall prescribe the place of confinement which may be a federal military confinement facility, the county correctional facility where the accused's unit is headquartered or where the accused resides or to the state commissioner of corrections. The confinement facility shall bear the costs of confinement from general appropriations made for confinement of state prisoners.

**History:** 1978 Comp., § 20-12-8, enacted by Laws 1987, ch. 318, § 93.

### **20-12-9. Reductions in grade.**

In a sentence or approved nonjudicial punishment which includes a reduction in enlisted grade or a suspended reduction in enlisted grade, the imposing authority need not have promotion authority to the grade from which the accused is reduced.

**History:** 1978 Comp., § 20-12-9, enacted by Laws 1987, ch. 318, § 94.

### **20-12-10. Forfeitures or fines.**

In a sentence or approved nonjudicial punishment which includes forfeiture of pay or a fine, the adjutant general shall designate the military purpose to which the funds may be applied which may include the state armory board fund, a local armory board fund or the awards fund. A cash collection may be substituted for a forfeiture of pay with the consent of the accused.

**History:** 1978 Comp., § 20-12-10, enacted by Laws 1987, ch. 318, § 95.

### **20-12-11. Nonjudicial punishment.**

A. The rules and procedures for the imposition of nonjudicial punishment shall be as prescribed in Article 15, Uniform Code of Military Justice and in the Manual for Courts-Martial, United States, 1984, Part V, except as stated to the contrary in Subsection D of Section 20-12-4 NMSA 1978 and as follows in this section.

B. Cognizance of and punishment for unexcused absence from unit training assembly, drill or annual training at the prescribed times by an enlisted member following a first such offense with documented warning may be punished nonjudicially as follows:

(1) the accused's unit commander shall inform the accused of his intent to impose the punishment prescribed herein by personal service or by certified United States mail, return receipt requested, to the accused's last address of military record;

(2) the accused may not refuse nonjudicial punishment or demand trial by court-martial but may submit matters in defense, extenuation or mitigation, may request a hearing before the commander and may appeal the punishment imposed; and

(3) the punishment imposed shall be limited to a reduction of one grade or a suspended reduction of one grade. If the punishment is suspended, the suspension may be vacated and the punishment ordered executed by personal service or by certified United States mail, return receipt requested, to the accused's last known address of military record.

C. In any nonjudicial punishment action, a fine may be substituted for the equivalent forfeiture.

**History:** 1978 Comp., § 20-12-11, enacted by Laws 1987, ch. 318, § 96; 1989, ch. 337, § 11.

## ANNOTATIONS

**Cross references.** — For Article 15 of the Uniform Code of Military Justice, see 10 U.S.C. § 815.

**The 1989 amendment,** effective June 16, 1989, in Subsection B, added the second sentence in Paragraph (3); and added Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53A Am. Jur. 2d Military and Civil Defense §§ 257, 258, 259.

6 C.J.S. Armed Services §§ 295, 298.

### **20-12-12. Absence without leave; confinement during period of duty.**

Any member of the national guard who fails to either report for or remain present for unit training assembly, drill, or annual training when so ordered shall be subject to confinement for the duration of that training assembly or annual training to include nights between days of training. The sheriff or any other peace officer of the county in which the unit is training or where the absent national guard member resides or is found shall, upon request of the unit commander, arrest the absent member and confine him in a suitable facility at county expense until the conclusion of the training period or until the member agrees to present himself for duty. Neglect or unjustified refusal of a requested sheriff or other peace officer to so act shall render the sheriff or peace officer guilty of a misdemeanor in accordance with Section 20-11-7 NMSA 1978.

**History:** 1978 Comp., § 20-12-12, enacted by Laws 1987, ch. 318, § 97.

### **20-12-13. Accessory after the fact.**

Any person subject to Chapter 20 NMSA 1978 who, knowing that an offense punishable by that chapter has been committed, receives, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-13, enacted by Laws 1989, ch. 337, § 12.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-14. Conviction of lesser included offense.**

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

**History:** 1978 Comp., § 20-12-14, enacted by Laws 1989, ch. 337, § 13.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — When should jury's deliberation proceed from charged offense to lesser-included offense, 26 A.L.R.5th 603.

### **20-12-15. Attempts.**

A. An act, done with specific intent to commit an offense under Chapter 20 NMSA 1978, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

B. Any person subject to Chapter 20 NMSA 1978 who attempts to commit any offense punishable by that chapter shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

C. Any person subject to Chapter 20 NMSA 1978 may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

**History:** 1978 Comp., § 20-12-15, enacted by Laws 1989, ch. 337, § 14.

## ANNOTATIONS

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-16. Conspiracy.**

Any person subject to Chapter 20 NMSA 1978 who conspires with any other person to commit an offense under that chapter shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-16, enacted by Laws 1989, ch. 337, § 15.

## ANNOTATIONS

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-17. Solicitation.**

Any person subject to Chapter 20 NMSA 1978 who solicits or advises another or others to desert in violation of Section 20-12-20 NMSA 1978 or mutiny in violation of Section 20-12-29 NMSA 1978 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

Any person subject to this chapter who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Section 20-12-34 NMSA 1978 or sedition in violation of Section 20-12-29 NMSA 1978 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-17, enacted by Laws 1989, ch. 337, § 16.

## ANNOTATIONS

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-18. Fraudulent enlistment, appointment or separation.**

Any person who procures his own enlistment or appointment in the armed forces by knowingly false representation or deliberate concealment as to his qualifications for the enlistment or appointment and receives pay or allowances thereunder or procures his

own separation from the armed forces by knowingly false representation or deliberate concealment as to his eligibility for that separation shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-18, enacted by Laws 1989, ch. 337, § 17.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-19. Unlawful enlistment, appointment or separation.**

Any person subject to Chapter 20 NMSA 1978 who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for that enlistment, appointment or separation because it is prohibited by law, regulation or order shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-19, enacted by Laws 1989, ch. 337, § 18.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-20. Desertion.**

A. Any member of the armed forces who:

(1) without authority goes or remains absent from his unit, organization or place of duty with intent to remain away therefrom permanently;

(2) quits his unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact that he has not been regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

B. Any commissioned officer of the armed forces who, after tender of his resignation and before notice of its acceptance, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.



C. Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

**History:** 1978 Comp., § 20-12-20, enacted by Laws 1989, ch. 337, § 19.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-21. Absence without leave.**

Any member of the armed forces who without authority:

A. fails to go to his appointed place of duty at the time prescribed;

B. goes from that place; or

C. absents himself or remains absent from his unit, organization or place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-21, enacted by Laws 1989, ch. 337, § 20.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-22. Missing movement.**

Any person subject to Chapter 20 NMSA 1978 who through neglect or design misses the movement of a ship, aircraft or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-22, enacted by Laws 1989, ch. 337, § 21.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-23. Contempt toward officials.**

Any commissioned officer who uses contemptuous words against the president of the United States, the vice president of the United States, a member of congress, the United States secretary of defense, the secretary of a military department, the secretary of the United States department of transportation or the governor or legislature of any state, territory, commonwealth or possession in which he is on duty or present shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-23, enacted by Laws 1989, ch. 337, § 22.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-24. Disrespect toward superior commissioned officer.**

Any person subject to Chapter 20 NMSA 1978 who behaves with disrespect toward his superior commissioned officer shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-24, enacted by Laws 1989, ch. 337, § 23.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-25. Assaulting or willfully disobeying superior commissioned officer.**

Any person subject to Chapter 20 NMSA 1978 who strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office or willfully disobeys a lawful command of his superior commissioned officer shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by punishment, other than death, as a court-martial may direct.

**History:** 1978 Comp., § 20-12-25, enacted by Laws 1989, ch. 337, § 24.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-26. Insubordinate conduct toward warrant officer, noncommissioned officer or petty officer.**

Any warrant officer or enlisted member who:

A. strikes or assaults a warrant officer, noncommissioned officer or petty officer while that officer is in the execution of his office;

B. willfully disobeys the lawful order of a warrant officer, noncommissioned officer or petty officer; or

C. treats with contempt or is disrespectful in language or deportment toward a warrant officer, noncommissioned officer or petty officer while that officer is in the execution of his office;

shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-26, enacted by Laws 1989, ch. 337, § 25.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-27. Failure to obey order or regulation.**

Any person subject to Chapter 20 NMSA 1978 who:

A. violates or fails to obey any lawful general order or regulation;

B. having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the order; or

C. is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-27, enacted by Laws 1989, ch. 337, § 26.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-28. Cruelty and maltreatment.**

Any person subject to Chapter 20 NMSA 1978 who is guilty of cruelty toward or oppression or maltreatment of any person subject to his orders shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-28, enacted by Laws 1989, ch. 337, § 27.

### ANNOTATIONS

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-29. Mutiny or sedition.**

A. Any person subject to Chapter 20 NMSA 1978 who:

(1) with intent to usurp or override lawful military authority, refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence or other disturbance against that authority is guilty of sedition; or

(3) fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place;

is guilty of a failure to suppress or report a mutiny or sedition.

B. A person who is found guilty of attempted mutiny, mutiny, sedition or failure to suppress or report a mutiny or sedition shall be punished by death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-29, enacted by Laws 1989, ch. 337, § 28.

### ANNOTATIONS

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-30. Resistance, breach of arrest and escape.**

Any person subject to Chapter 20 NMSA 1978 who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-30, enacted by Laws 1989, ch. 337, § 29.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-31. Releasing prisoner without proper authority.**

Any person subject to Chapter 20 NMSA 1978 who, without proper authority, releases any prisoner committed to his charge or who through neglect or design suffers any such prisoner to escape shall be punished as a court-martial may direct, whether or not the prisoner was committed in strict compliance with law.

**History:** 1978 Comp., § 20-12-31, enacted by Laws 1989, ch. 337, § 30.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-32. Unlawful detention.**

Any person subject to Chapter 20 NMSA 1978 who, except as provided by law, apprehends, arrests or confines any person shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-32, enacted by Laws 1989, ch. 337, § 31.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-33. Noncompliance with procedural rules.**

Any person subject to Chapter 20 NMSA 1978 who is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under that chapter or who knowingly and intentionally fails to enforce or comply with any provision of that chapter regulating the proceedings before, during or after trial of an accused shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-33, enacted by Laws 1989, ch. 337, § 32.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-34. Misbehavior before the enemy.**

Any person subject to Chapter 20 NMSA 1978 who before or in the presence of the enemy:

- A. runs away;
- B. shamefully abandons, surrenders or delivers up any command, unit, place or military property which it is his duty to defend;
- C. through disobedience, neglect or intentional misconduct endangers the safety of any such command, unit, place or military property;
- D. casts away his arms or ammunition;
- E. is guilty of cowardly conduct;
- F. quits his place of duty to plunder or pillage;
- G. causes false alarms in any command, unit or place under control of the armed forces;
- H. willfully fails to do his utmost to encounter, engage, capture or destroy any enemy troops, combatants, vessels, aircraft or any other thing, which it is his duty so to encounter, engage, capture or destroy; or
- I. does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

shall be punished by death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-34, enacted by Laws 1989, ch. 337, § 33.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-35. Subordinate compelling surrender.**

Any person subject to Chapter 20 NMSA 1978 who compels or attempts to compel the commander of any place, vessel, aircraft or other military property, or of any body of

members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to any enemy without proper authority, shall be punished by death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-35, enacted by Laws 1989, ch. 337, § 34.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-36. Improper use of countersign.**

Any person subject to Chapter 20 NMSA 1978 who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give shall be punished by death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-36, enacted by Laws 1989, ch. 337, § 35.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-37. Forcing a safeguard.**

Any person subject to Chapter 20 NMSA 1978 who forces a safeguard shall suffer death or other punishment as a court-martial may direct.

**History:** 1978 Comp., § 20-12-37, enacted by Laws 1989, ch. 337, § 36.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-38. Captured or abandoned property.**

A. All persons subject to Chapter 20 NMSA 1978 shall secure all public property taken from the enemy for the service of the United States and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

B. Any person subject to Chapter 20 NMSA 1978 who:

(1) fails to carry out the duties prescribed in Subsection A of this section;

(2) buys, sells, trades or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-38, enacted by Laws 1989, ch. 337, § 37.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-39. Aiding the enemy.**

Any person who aids or attempts to aid the enemy with arms, ammunition, supplies, money or other things or without proper authority, who knowingly harbors or protects or gives intelligence to or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly, shall suffer death or other punishment as a court-martial or military commission may direct.

**History:** 1978 Comp., § 20-12-39, enacted by Laws 1989, ch. 337, § 38.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-40. Misconduct as prisoner.**

Any person subject to Chapter 20 NMSA 1978 who, while in the hands of the enemy in time of war, for the purpose of securing favorable treatment by his captors, acts without proper authority in a manner contrary to law, custom or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners or while in a position of authority over such persons, maltreats them without justifiable cause shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-40, enacted by Laws 1989, ch. 337, § 39.

#### **ANNOTATIONS**



**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-41. Spies.**

Any person who in time of war is found lurking as a spy or acting as a spy in or about any place, vessel or aircraft, within the control or jurisdiction of any of the armed forces, or in or about any shipyard, any manufacturing or industrial plant or any other place or institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

**History:** 1978 Comp., § 20-12-41, enacted by Laws 1989, ch. 337, § 40.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-42. Espionage.**

A. Any person subject to Chapter 20 NMSA 1978 who, with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign nation, communicates, delivers or transmits, or attempts to communicate, deliver or transmit, to any entity described in Subsection B of this section, either directly or indirectly, any thing described in Subsection C of this section shall be punished as a court-martial may direct, except that if the accused is found guilty of an offense that directly concerns nuclear weaponry, military spacecraft or satellites, early warning systems or other means of defense or retaliation against large scale attack, war plans, communications intelligence or cryptographic information or any other major weapons system or major element of defense strategy, the accused shall be punished by death or other punishment as a court-martial may direct.

B. An "entity" referred to in Subsection A of this section is:

- (1) a foreign government;
- (2) a faction or party or military or naval force within a foreign country, whether recognized or unrecognized by the United States; or
- (3) a representative, officer, agent, employee, subject or citizen of such a government, faction, party or force.

C. A "thing" referred to in Subsection A of this section is a document, writing, code book, signal book, sketch, photograph, photographic negative, blueprint, plan, map, model, note, instrument, appliance or information relating to the national defense.

D. No person may be sentenced by court-martial to suffer death for an offense under this section unless:

(1) the members of the court-martial unanimously find at least one of the aggravating factors set out in Subsection G of this section; and

(2) the members unanimously determine that any extenuating or mitigating circumstances are substantially outweighed by any aggravating circumstances, including the aggravating factors set out under Subsection G of this section.

E. Findings under this subsection may be based on:

(1) evidence introduced on the issue of guilt or innocence;

(2) evidence introduced during the sentencing proceeding; or

(3) all such evidence.

F. The accused shall be given broad latitude to present matters in extenuation and mitigation.

G. A sentence of death may be adjudged by a court-martial for an offense under this section only if the members unanimously find, beyond a reasonable doubt, one or more of the following aggravating factors:

(1) the accused has been convicted of another offense involving espionage or treason for which either a sentence of death or imprisonment for life was authorized by statute;

(2) in the commission of the offense, the accused knowingly created a grave risk of substantial damage to the national security;

(3) in the commission of the offense, the accused knowingly created a grave risk of death to another person; or

(4) any other factor that may be prescribed by the president of the United States by regulations.

**History:** 1978 Comp., § 20-12-42, enacted by Laws 1989, ch. 337, § 41.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**20-12-43. False official statements.**

Any person subject to Chapter 20 NMSA 1978 who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-43, enacted by Laws 1989, ch. 337, § 42.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-44. Military property of the United States; loss, damage, destruction or wrongful disposition.**

Any person subject to Chapter 20 NMSA 1978 who, without proper authority:

A. sells or otherwise disposes of;

B. willfully or through neglect damages, destroys or loses; or

C. willfully or through neglect suffers to be lost, damaged, sold or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-44, enacted by Laws 1989, ch. 337, § 43.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-45. Property other than military property of United States; waste, spoilage or destruction.**

Any person subject to Chapter 20 NMSA 1978 who willfully or recklessly wastes, spoils or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-45, enacted by Laws 1989, ch. 337, § 44.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-46. Improper hazarding of vessel.**

A. Any person subject to Chapter 20 NMSA 1978 who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or punishment as a court-martial may direct.

B. Any person subject to Chapter 20 NMSA 1978 who negligently hazards or suffers to be hazarded any vessel of the armed forces shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-46, enacted by Laws 1989, ch. 337, § 45.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-47. Drunken or reckless driving.**

Any person subject to Chapter 20 NMSA 1978 who operates any vehicle while drunk, or in a reckless or wanton manner, or while impaired by a substance described in Section 20-12-66 NMSA 1978 shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-47, enacted by Laws 1989, ch. 337, § 46.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-48. Drunk on duty.**

Any person subject to Chapter 20 NMSA 1978 other than a sentinel or look-out who is found drunk on duty shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-48, enacted by Laws 1989, ch. 337, § 47.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-49. Murder.**

Any person subject to Chapter 20 NMSA 1978 who, without justification or excuse, unlawfully kills a human being, when he:

A. has a premeditated design to kill;

B. intends to kill or inflict great bodily harm;

C. is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or

D. is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery or aggravated arson;

is guilty of murder, and shall suffer punishment as a court-martial may direct, except that if found guilty under Subsection A or D of this section, he shall suffer death or imprisonment for life as a court-martial may direct.

**History:** 1978 Comp., § 20-12-49, enacted by Laws 1989, ch. 337, § 48.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity and construction of "extreme indifference" murder statute, 7 A.L.R.5th 758.

## **20-12-50. Manslaughter.**

A. Any person subject to Chapter 20 NMSA 1978 who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

B. Any person subject to Chapter 20 NMSA 1978 who, without an intent to kill or inflict great bodily harm, unlawfully kills a human being:

(1) by culpable negligence; or

(2) while perpetrating or attempting to perpetrate an offense, other than those named in Subsection D of Section 20-12-49 NMSA 1978, directly affecting the person;

is guilty of involuntary manslaughter and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-50, enacted by Laws 1989, ch. 337, § 49.

## **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-51. Rape and other sex crimes.**

A. Any person subject to Chapter 20 NMSA 1978 is guilty of rape and shall be punished as a court-martial may direct if the person commits a sexual act upon another person by:

- (1) using unlawful force against that other person;
- (2) using force causing or likely to cause death or grievous bodily harm to any person;
- (3) threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm or kidnapping;
- (4) first rendering that other person unconscious; or
- (5) administering to that other person by force or threat of force, or without the knowledge or consent of that person, a drug, intoxicant or other similar substance and thereby substantially impairing the ability of that other person to appraise or control conduct.

B. Any person subject to Chapter 20 NMSA 1978 is guilty of sexual assault and shall be punished as a court-martial may direct if the person commits a sexual act upon another person:

- (1) by threatening or placing that other person in fear;
- (2) by making a fraudulent representation that the sexual act serves a professional purpose;
- (3) by inducing a belief by any artifice, pretense or concealment that the person is another person;
- (4) without the consent of the other person;
- (5) when the person knows or reasonably should know that the other person is asleep, unconscious or otherwise unaware that the sexual act is occurring; or

(6) when the other person is incapable of consenting to the sexual act due to:  
1) impairment by any drug, intoxicant or other similar substance, and that condition is known or reasonably should be known by the person; or 2) a mental disease or defect or physical disability, and that condition is known or reasonably should be known by the person.

C. Any person subject to Chapter 20 NMSA 1978 is guilty of aggravated sexual contact and shall be punished as a court-martial may direct if the person commits or causes sexual contact upon or by another person if to do so would violate Subsection A of this section had the sexual contact been a sexual act.

D. Any person subject to Chapter 20 NMSA 1978 is guilty of abusive sexual contact and shall be punished as a court-martial may direct if the person commits or causes sexual contact upon or by another person if to do so would violate Subsection B of this section had the sexual contact been a sexual act.

E. In a prosecution under this section, in proving that a person made a threat, it need not be proven that the person actually intended to carry out the threat or had the ability to carry out the threat.

F. An accused may raise any applicable defenses available under Chapter 20 NMSA 1978 or the rules for court-martial. Marriage is not a defense for any conduct at issue in any prosecution under this section.

G. An expression of lack of consent through words or conduct means that there is no consent. Lack of verbal or physical resistance does not constitute consent. Submission resulting from the use of force, threat of force or placing another person in fear also does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue does not constitute consent. A sleeping, unconscious or incompetent person cannot consent. A person cannot consent to force causing or likely to cause death or grievous bodily harm or to being rendered unconscious. A person cannot consent while under threat or in fear or under the circumstances described in Subsection B of this section. All the surrounding circumstances are to be considered in determining whether a person gave consent.

H. As used in this section:

(1) "consent" means a freely given agreement to the conduct at issue by a competent person;

(2) "force" means:

(a) the use of a weapon;

(b) the use of such physical strength or violence as is sufficient to overcome, restrain or injure a person; or

(c) inflicting physical harm sufficient to coerce or compel submission by the victim;

(3) "grievous bodily harm" means serious bodily injury. Grievous bodily harm includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose;

(4) "incapable of consenting" means the person is:

(a) incapable of appraising the nature of the conduct at issue; or

(b) physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue;

(5) "sexual act" means:

(a) the penetration, however slight, of the penis into the vulva, anus or mouth;

(b) contact between the mouth and the penis, vulva, scrotum or anus; or

(c) the penetration, however slight, of the vulva or penis or anus of another by any part of the body or any object, with an intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person;

(6) "sexual contact" means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh or buttocks of any person, with an intent to abuse, humiliate, harass or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object;

(7) "threatening or placing that other person in fear" means a communication or action that is of sufficient consequence to cause a reasonable fear that noncompliance will result in the victim or another person being subjected to the wrongful action contemplated by the communication or action; and

(8) "unlawful force" means an act of force done without legal justification or excuse.

**History:** 1978 Comp., § 20-12-51, enacted by Laws 1989, ch. 337, § 50; 2021, ch. 67, § 1.

## ANNOTATIONS



**The 2021 amendment**, effective June 18, 2021, amended the elements and definitions of certain sex crimes, removed certain marriage exceptions to certain sex crimes, and specifically provided that marriage is not a defense for any conduct at issue in any prosecution under this section; in the heading, after "Rape and", deleted "carnal knowledge" and added "other sex crimes"; in Subsection A, after "Chapter 20 NMSA 1978", deleted "who commits an act of sexual intercourse with a female not his wife, by force and without her consent", after "shall be punished", deleted "by death or other punishment", and after "may direct", added "if the person commits a sexual act upon another person by", and added Paragraphs A(1) through A(5); in Subsection B, after "Chapter 20 NMSA 1978", deleted "who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years is guilty of carnal knowledge" and added "is guilty of sexual assault", after "may direct", added "if the person commits a sexual act upon another person", and added Paragraphs B(1) through B(6); and deleted former Subsection C and added new Subsections C through H.

## **20-12-52. Larceny and wrongful appropriation.**

A. Any person subject to Chapter 20 NMSA 1978 who wrongfully takes, obtains or withholds, by any means, from the possession of the owner or of any other person any money, personal property or article of value of any kind:

(1) with intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner;

is guilty of wrongful appropriation.

B. Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-52, enacted by Laws 1989, ch. 337, § 51.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-53. Robbery.**

Any person subject to Chapter 20 NMSA 1978 who with intent to steal takes anything of value from the person or in the presence of another, against his will, by

means of force or violence or fear of immediate or future injury to his person or property or to the person or property of a relative or member of his family or of anyone in his company at the time of the robbery is guilty of robbery and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-53, enacted by Laws 1989, ch. 337, § 52.

### ANNOTATIONS

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-54. Forgery.**

Any person subject to Chapter 20 NMSA 1978 who, with intent to defraud:

A. falsely makes or alters any signature, to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

B. utters, offers, issues or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-54, enacted by Laws 1989, ch. 337, § 53.

### ANNOTATIONS

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-55. Making, drawing or uttering check, draft or order without sufficient funds.**

Any person subject to Chapter 20 NMSA 1978 who:

A. for the procurement of any article or thing of value, with intent to defraud; or

B. for the payment of any past due obligation, or for any other purpose, with intent to deceive;

makes, draws, utters or delivers any check, draft or order for the payment of money upon any bank or other depository, knowing at the time that the maker or drawer has not or will not have sufficient funds in, or credit with, the bank or other depository for the payment of that check, draft or order in full upon its presentment, shall be punished as a

court-martial may direct. The making, drawing, uttering or delivering by a maker or drawer of a check, draft or order, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in the drawee's possession or control, is prima facie evidence of his intent to defraud or deceive and of his knowledge of insufficient funds in, or credit with, that bank or other depository, unless the maker or drawer pays the holder the amount due within five days after receiving notice, orally or in writing, that the check, draft or order was not paid on presentment. In this section, the word "credit" means an arrangement or understanding, express or implied, with the bank or other depository for the payment of that check, draft or order.

**History:** 1978 Comp., § 20-12-55, enacted by Laws 1989, ch. 337, § 54.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-56. Maiming.**

Any person subject to Chapter 20 NMSA 1978 who, with intent to injure, disfigure or disable, inflicts upon the person of another an injury which:

- A. seriously disfigures his person by a mutilation thereof;
- B. destroys or disables any member or organ of his body; or
- C. seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-56, enacted by Laws 1989, ch. 337, § 55.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-57. Repealed.**

**History:** 1978 Comp., § 20-12-57, enacted by Laws 1989, ch. 337, § 56; repealed by Laws 2021, ch. 55, § 12.

### **ANNOTATIONS**

**Repeals.** — Laws 2021, ch. 55, § 12 repealed 20-12-57 NMSA 1978, as enacted by Laws 1989, ch. 337, § 56, relating to sodomy, effective June 18, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

## **20-12-58. Arson.**

A. Any person subject to Chapter 20 NMSA 1978 who willfully and maliciously burns or sets on fire an inhabited dwelling or any other structure, movable or immovable, wherein to the knowledge of the offender there is at the time a human being, is guilty of aggravated arson and shall be punished as a court-martial may direct.

B. Any person subject to Chapter 20 NMSA 1978 who willfully and maliciously burns or sets fire to the property of another, except as provided in Subsection A of this section, is guilty of simple arson and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-58, enacted by Laws 1989, ch. 337, § 57.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-59. Assault.**

A. Any person subject to Chapter 20 NMSA 1978 who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

B. Any person subject to Chapter 20 NMSA 1978 who:

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-59, enacted by Laws 1989, ch. 337, § 58.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-60. Extortion.**

Any person subject to Chapter 20 NMSA 1978 who communicates threats to another person with the intention thereby to obtain anything of value or any acquittance, advantage or immunity is guilty of extortion and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-60, enacted by Laws 1989, ch. 337, § 59.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-61. Burglary.**

Any person subject to Chapter 20 NMSA 1978 who, with intent to commit an offense punishable under Sections 20-12-49 through 20-12-60 NMSA 1978 breaks and enters, in the nighttime, the dwelling house of another, is guilty of burglary and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-61, enacted by Laws 1989, ch. 337, § 60.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-62. Housebreaking.**

Any person subject to Chapter 20 NMSA 1978 who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-62, enacted by Laws 1989, ch. 337, § 61.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

## **20-12-63. Perjury.**

Any person subject to Chapter 20 NMSA 1978 who in a judicial proceeding or in a course of justice willfully and corruptly:

A. upon a lawful oath or in any form allowed by law to be substituted for an oath, gives any false testimony material to the issue or matter of inquiry; or

B. in any declaration, certificate, verification or statement under penalty or perjury as permitted under Section 1746 of Title 28, United States Code, subscribes any false statement material to the issue or matter of inquiry;

is guilty of perjury and shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-63, enacted by Laws 1989, ch. 337, § 62.

### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

### **20-12-64. Frauds against the United States.**

Any person subject to Chapter 20 NMSA 1978:

A. who, knowing it to be false or fraudulent:

(1) makes any claim against the United States or any officer thereof; or

(2) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof;

B. who, for the purpose of obtaining the approval, allowance or payment of any claim against the United States or any officer thereof:

(1) makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(2) makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(3) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

C. who, having charge, possession, custody or control of any money, or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which he receives a certificate of receipt; or

D. who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces thereof, makes

or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States, shall, upon conviction, be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-64, enacted by Laws 1989, ch. 337, § 63.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-65. Conduct unbecoming an officer and a gentleman.**

Any commissioned officer, cadet or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-65, enacted by Laws 1989, ch. 337, § 64.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-66. Wrongful use and possession of controlled substances.**

A. Any person subject to Chapter 20 NMSA 1978 who wrongfully uses, possesses, manufactures, distributes, imports into the customs territory of the United States, exports from the United States or introduces into an installation, vessel, vehicle or aircraft used by or under the control of the armed forces a substance described in Subsection B of this section shall be punished as a court-martial may direct.

B. The substances referred to in Subsection A of this section are the following:

(1) opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid and marijuana and any compound or derivative of any such substance;

(2) any substance not specified in Paragraph (1) of this subsection that is listed on a schedule of controlled substances prescribed by the president of the United States for the purposes of this section; and

(3) any other substance not specified in Paragraph (1) of this subsection or contained on a list prescribed by the president under Paragraph (2) of this subsection that is listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812).

**History:** 1978 Comp., § 20-12-66, enacted by Laws 1989, ch. 337, § 65.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Validity, construction and application of state or local law prohibiting maintenance of vehicle for purpose of keeping or selling controlled substances, 31 A.L.R.5th 760.

#### **20-12-67. Misbehavior of sentinel.**

Any sentinel or look-out who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved, shall be punished, if the offense is committed in time of war, by death or other punishment as a court-martial may direct, but if the offense is committed at any other time, by punishment other than death as a court-martial may direct.

**History:** 1978 Comp., § 20-12-67, enacted by Laws 1989, ch. 337, § 66.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-68. Repealed.**

**History:** 1978 Comp., § 20-12-68, enacted by Laws 1989, ch. 337, § 67; repealed by Laws 2021, ch. 55, § 12.

#### **ANNOTATIONS**

**Repeals.** — Laws 2021, ch. 55, § 12 repealed 20-12-68 NMSA 1978, as enacted by Laws 1989, ch. 337, § 67, relating to dueling, effective June 18, 2021. For provisions of former section, see the 2020 NMSA 1978 on *NMOneSource.com*.

#### **20-12-69. Malingering.**

Any person subject to Chapter 20 NMSA 1978 who for the purpose of avoiding work, duty or service:

- A. feigns illness, physical disablement, mental lapse or derangement; or
- B. intentionally inflicts self-injury;



shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-69, enacted by Laws 1989, ch. 337, § 68.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-70. Riot or breach of peace.**

Any person subject to Chapter 20 NMSA 1978 who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-70, enacted by Laws 1989, ch. 337, § 69.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-71. Provoking speeches or gestures.**

Any person subject to Chapter 20 NMSA 1978 who uses provoking or reproachful words or gestures toward any other person subject to that chapter shall be punished as a court-martial may direct.

**History:** 1978 Comp., § 20-12-71, enacted by Laws 1989, ch. 337, § 70.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-72. Principals.**

Any person subject to Chapter 20 NMSA 1978 who:

A. commits an offense punishable by Chapter 20 NMSA 1978 or aids, abets, counsels or procures its commission; or

B. causes an act to be done which if directly performed by him would be punishable by Chapter 20 NMSA 1978;

is a principal.

**History:** 1978 Comp., § 20-12-72, enacted by Laws 1989, ch. 337, § 71.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-73. General article.**

Though not specifically mentioned in Chapter 20 NMSA 1978, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces and crimes and offenses not capital, of which persons subject to Chapter 20 NMSA 1978 may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

**History:** 1978 Comp., § 20-12-73, enacted by Laws 1989, ch. 337, § 72.

#### **ANNOTATIONS**

**Effective dates.** — Laws 1989, ch. 337 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 1989.

#### **20-12-74. Prohibited activities with military recruit or trainee by person in position of special trust; consent not a defense.**

A. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

- (1) is an officer or noncommissioned officer;
- (2) is in a training leadership position with respect to a specially protected junior member of the armed forces; and
- (3) knew, or reasonably should have known, that the person was engaged in prohibited sexual activity with a specially protected junior member of the armed forces.

B. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person is a military recruiter and knew, or reasonably should have known, that the person was engaged in prohibited sexual activity with:

- (1) an applicant for military service; or
- (2) a specially protected junior member of the armed forces who is enlisted under a delayed entry program.

C. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

- (1) is a commissioned, warrant or noncommissioned officer;
- (2) is in a training leadership position with respect to a specially protected member of the armed forces; and
- (3) engaged in prohibited sexual activity with a person that the person knew, or reasonably should have known, was a specially protected junior member of the armed forces.

D. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

- (1) is a commissioned, warrant or noncommissioned officer;
- (2) is performing duties as a military recruiter; and
- (3) engaged in prohibited sexual activity with a person that the person knew, or reasonably should have known, was an applicant for military service; or
- (4) engaged in prohibited sexual activity with a person that the person knew, or reasonably should have known, was a specially protected junior member of the armed forces who is enlisted under a delayed entry program.

E. Consent is not a defense to prosecution pursuant to this section.

F. The maximum punishment of prosecution pursuant to this section shall be a dishonorable discharge, forfeiture of all pay and allowances received on or after the effective date of the sentence and confinement for less than one year.

G. As used in this section:

- (1) "applicant for military service" means a person who, under regulations prescribed by the secretary concerned, is an applicant for original enlistment or appointment in the armed forces;
- (2) "military recruiter" means a person who, under regulations prescribed by the secretary concerned, has the primary duty to recruit persons for military service;
- (3) "prohibited sexual activity" means, as specified in regulations prescribed by the secretary concerned, inappropriate physical intimacy under circumstances described in such regulations;

(4) "regulations prescribed by the secretary concerned" means rules, regulations, instructions and procedures prescribed by the secretary of the army or secretary of the air force with respect to soldiers or airmen of the national guard;

(5) "specially protected junior member of the armed forces" means a member of the armed forces who is:

(a) assigned to, or is awaiting assignment to, basic training or other initial active duty for training, including a member who is enlisted under a delayed entry program;

(b) a cadet, an officer candidate or a student in any other officer qualification program; or

(c) in any program that, by regulation prescribed by the secretary concerned, is identified as a training program for initial career qualification; and

(6) "training leadership position" means, with respect to a specially protected junior member of the armed forces, any drill instructor position or other leadership position in a basic training program, an officer candidate school, a reserve officers' training corps unit, a training program for entry into the armed forces or any program that, by regulation prescribed by the secretary concerned, is identified as a training program for initial career qualification.

**History:** Laws 2021, ch. 55, § 10.

## ANNOTATIONS

**Effective dates.** — Laws 2021, ch. 55 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

### **20-12-75. Wearing unauthorized insignia, decoration, badge, ribbon, device or lapel button.**

A. Any person subject to Chapter 20 NMSA 1978 shall be punished as a court-martial may direct if the person:

(1) is not authorized to wear an insignia, decoration, badge, ribbon, device or lapel button; and

(2) wrongfully wears such insignia, decoration, badge, ribbon, device or lapel button upon the person's uniform or civilian clothing.

B. The maximum punishment of prosecution pursuant to this section shall be:

(1) for the wrongful wearing of the medal of honor, distinguished service cross, navy cross, air force cross, silver star, purple heart or a valor device on any personal award, a dishonorable discharge, forfeiture of all pay and allowances received on or after the effective date of the sentence and confinement for less than one year; or

(2) for all other violations of this section, a bad conduct discharge, forfeiture of all pay and allowances and confinement for no more than six months.

C. As used in this section, "wrongful" means that the conduct is done without legal justification or excuse. Actual knowledge that the person was or is not authorized to wear the item in question is required. Knowledge may be proved by circumstantial evidence.

**History:** Laws 2021, ch. 55, § 11.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2021, ch. 55 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 2021, 90 days after adjournment of the legislature.

## **ARTICLE 13**

# **Senior Master Sergeant Jessey Baca Military Airborne Hazards and Open Burn Pit Registry**

### **20-13-1. Short title.**

This act may be cited as the "Senior Master Sergeant Jessey Baca Military Airborne Hazards and Open Burn Pit Registry Act".

**History:** Laws 2015, ch. 94, § 1.

#### **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 94, § 3 made Laws 2015, ch. 94, § 1 effective July 1, 2015.

### **20-13-2. Military airborne hazards and open burn pit registry; creation; duties.**

For the purposes of outreach, education and advocacy for New Mexico service members and veterans who have been exposed to open burn pit smoke or other airborne hazards during their service in operation Iraqi freedom, operation enduring

freedom, operation new dawn, the Gulf War 1990-1991 or other conflicts or theaters that may subsequently be identified, the secretary of veterans' services shall:

A. identify a subject-matter expert at the United States department of veterans affairs who has the ability and capacity to assist veterans seeking medical care or assistance with the department of veterans affairs' claims process;

B. make available to veterans the most current medical studies and recommendations with regards to inhalation of toxic substances due to exposure to open burn pits; and

C. establish and maintain a public information program to educate and inform service members, veterans and their families regarding:

(1) how to sign up and use the United States department of veterans affairs burn pit registry and information regarding the veterans health administration's presumptive conditions or diseases believed to have been caused by exposure to open burn pits;

(2) the types of treatment offered by the veterans health administration that are available for any conditions or diseases caused by exposure to open burn pits and care offered outside the veterans health administration that have been approved for medical use;

(3) how to document medical conditions that may be related to exposure to open burn pits and how to apply for a service-connected disability through the United States department of veterans affairs; and

(4) appealing an existing disability rating decision or requesting an upgrade in disability rating from the United States department of veterans affairs.

**History:** Laws 2015, ch. 94, § 2.

## **ANNOTATIONS**

**Effective dates.** — Laws 2015, ch. 94, § 3 made Laws 2015, ch. 94, § 2 effective July 1, 2015.