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|  <p>CD-035000</p> | <p>NEW MEXICO CORRECTIONS DEPARTMENT</p> <p><i>"We commit to the safety and well-being of the people of New Mexico by doing the right thing, always."</i> Courage Responsibility Ethics Dedication - CREDibly serving the public safety of New Mexico</p> | |
| | <p>ISSUE DATE: 04/14/90</p> | <p>REVIEW/REVISED: 03/04/15</p> |
| | <p>EFFECTIVE DATE: 04/14/90</p> | |
| <p>TITLE: Law Enforcement Commissions for Certain Corrections Department Employees</p> | | |

AUTHORITY:

NMSA 1978, Sections 9-3-5, 33-1-6 and 33-1-10, as amended; The Law Enforcement Training Act, Sections 29-7-1 through 29-7-13, as amended.

REFERENCE:

- A. CD-031800, Personnel Investigations.
- B. NMSA 1978, Sections 30-7-2, as amended.
- C. NMSA 1978, Section 33-1-10.
- D. CD-050200, PPD Use of Force and Related Equipment
- E. Brady Act, 18 U.S.C. §922

PURPOSE:

Establish and maintain uniform qualifications and procedures for Special Agents and other Department employees desiring law enforcement commissions to qualify for, apply for, receive and maintain said commissions.

APPLICABILITY:

All employees of the New Mexico Corrections Department, as further defined by Divisional policies and procedures not inconsistent with this policy and procedure.

DEFINITIONS:

- A. Acting as a Peace Officer: A Department employee who, consistent with NMSA 1978, Section 33-1-10, at the particular time, has a principal duty to hold in custody or supervise any person accused or convicted of a criminal offense or placed in the legal custody or supervision of the Corrections Department.

Such an employee has the power to “keep the peace” or to act as a peace officer, i.e., make arrests and enforce the laws of New Mexico, under the following limited circumstances: when on the premises of a New Mexico correctional facility; while transporting and or providing NMCD security related duties of a person committed to or under the supervision of the Department (inmates, parolees and probationers); when supervising any person committed to or under the supervision of the Department (inmates, parolees and probationers) anywhere in the state; or when engaged in any effort to pursue or apprehend any such person.

“Supervising” as used herein includes the performance of the following official duties by an employee:

- Field investigations;
 - Surveillance;
 - Searches and seizures conducted alone or in cooperation with a state or local law enforcement agency; and
 - Security during the course of a probation or parole revocation hearing or proceeding or any other hearing or appearance required by law.
- B. Commission: The written authority or instruction given to Department employees by the Secretary of Corrections under which that employee may carry a concealed weapon in the performance of certain law enforcement duties (while acting as peace officers), in accordance with the procedures contained in this Policy and the accompanying Procedures.
- C. Non-commissioned Enforcement Officer: Any Department employee who does not have a commission from the Secretary of Corrections to carry a concealed weapon and who lack the authority and thus does not carry concealed weapons in the performance of his or her duties. Such employees, when authorized by the Department, may act as a peace officer in strict accordance with NMSA 1978, Section 33-1-10, but must not carry any concealed weapons in the performance of their assigned duties.
- D. Concealed Weapon: Any loaded firearm or loaded weapon carried by a commissioned Department employee (acting as a peace officer) that is not readily observable by others, such as when a firearm is worn underneath a jacket or other article of clothing.
- E. Employee: Any person employed by the Corrections Department in an emergency, temporary, full time, part time, probationary or career status, but excludes any person providing services to the Department under the provisions of a professional services contract.

POLICY:

The Corrections Department shall endeavor to fulfill its duties and obligations under the Corrections Act and the Corrections Department Act in an orderly, efficient fashion. The Secretary of Corrections has the discretion and authority to grant commissions to qualified employees to carry concealed weapons in the performance of their duties when it is in the best interest of the Department.

However, the Department, while fulfilling its duties and obligations, also shall endeavor to take responsible steps to help ensure the safety and security of inmates, staff and the public at large. Therefore, the Department or Secretary will only commission those employees who meet all qualifications for such commissions and who follow all applicable procedures contained in this policy and the accompanying procedures



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

03/04/15

Date

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PROCEDURES:

- A. In order for the Secretary of Corrections to grant a law enforcement commission to carry a concealed weapon to any Department employee, that employee must first meet all qualifications for certification as a law enforcement officer as contained in NMSA, 1978 §29-7-6 of the Law Enforcement Training Act.
1. Provide satisfactory evidence that he or she:
 - a. Is a citizen of the United States and has reached the age of majority;
 - b. Holds a high school diploma or the equivalent;
 - c. Holds a valid driver's license;
 - d. Has not been convicted of or pled guilty to or entered a plea or nolo contendere to any felony charge, negligent use of a firearm, or illegal carrying of a firearm, misdemeanor domestic violence conviction or, within the three-year period immediately preceding his or her application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;
 2. After examination by a licensed physician the employee shall be free of any physical condition that might adversely affect his performance as a peace officer or prohibit him from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;

3. After examination by a certified psychologist, the employee shall be free of any emotional or mental condition that might adversely affect his performance as a peace officer or prohibit him from successfully completing a prescribed basic law enforcement training required by the Law Enforcement Training Act;
 4. Is of good moral character;
 5. Has met any other requirements for certification prescribed by the New Mexico law enforcement academy board pursuant to regulations adopted by the board; and
 6. Has previously been awarded a certificate of completion by the Director of the New Mexico Law Enforcement Academy attesting to the applicant's or employee's completion of an approved law enforcement-training program (consisting or not less than four hundred hours of instruction in basic law enforcement training as required by the Law Enforcement Training Act).
 7. In addition to the qualifications contained in the Law Enforcement Training Act, all employees must also be in compliance with the Brady Act, 18 U.S.C. §922. Pursuant to the Brady Act, all persons convicted of a crime punishable for a term exceeding one year or pursuant to Pub.L. 104-208, 18 U.S.C. § 922(g) (9) an amendment to the Omnibus Consolidated Appropriations Act of 1997 that all persons convicted of a misdemeanor crime of domestic violence are prohibited from carrying or possessing any firearms. Such convicted employees are also subject to disciplinary action, up to and including dismissal.
- B. All individuals allowed a waiver under this section must meet the requirements set out in the Law Enforcement Training Act [Chapter 29, Article 7 NMSA 1978], and this section shall not be construed to exempt them from such requirements in any manner.
- C. The Secretary of Corrections may waive the provisions set forth upon evidence provided completion of a basic law enforcement training program and certify applicants who have been employed as full-time police officers, federal agents and who furnish evidence of satisfactory completion of a basic law enforcement training program which is comparable to or exceeds the standards of the programs of the State Police Academy as determined under NMSA 1978, Section 29-7-10, Certification by waiver and or authorized to carry a firearm under the provisions provided within federal statute 18 USC 926C- Carrying of Concealed Firearm by Qualified Retired Law Enforcement Officers.

- D. Upon providing the Secretary of Corrections with satisfactory evidence of completion of all certification requirements contained in the Law Enforcement Training Act (and as delineated in section II.A of this Procedure), the Secretary may, when he deems it appropriate, issue a written commission in letter or other written form to the employee, granting the applicable employee the authority to carry a weapon in the performance of certain law enforcement powers while acting as a peace officer as defined in NMSA 1978, Section 33-1-10.
- E. Any commissioned Department employee must immediately supply a copy of his or her written commission to the appropriate personnel officer so that a copy of his commission will be placed in his or her personnel file.
- F. Any commissioned Department employee must also immediately inform the Director of the Adult Prisons Division, who will then inform each Deputy Secretary, the Director of the Probation and Parole Division, each Warden of all Department prisons and each Region Manager of the Probation and Parole Division of the receipt of his or her written commission. The Secretary of Corrections shall determine the exact scope and extent of each commissioned employee's law enforcement duties, including whether or not that employee will be authorized to carry a concealed weapon. No commissioned employee will perform any law enforcement duties involving carrying a concealed weapon until the Secretary of Corrections and the employee's Division Director and immediate supervisor have defined the exact scope and extent of that employee's authorization to carry a concealed weapon in the performance of his or her law enforcement duties.
- G. Any Department employee commissioned by the Secretary of Corrections to carry a concealed weapon and any Department employee, who is a noncommissioned enforcement officer, must still **only** exercise his or her law enforcement powers under the following specific circumstances:
1. When, in strict accordance with NMSA 1978, Section 33-1-10 the employee at that particular time has a principal duty to hold in custody or supervise any person accused or convicted of a criminal offense or placed in the legal custody or supervision of the Corrections Department; then that employee has the power to "keep the peace" or act as a peace officer, i.e., make arrests and enforce the laws of New Mexico under the following circumstances: when on the premises of a New Mexico correctional facility; while transporting a person committed to or providing NMCD security related duties or under the supervision of the Department (inmates, parolees and probationers); when supervising any person committed to or under the supervision of the Department (inmates, parolees and probationers) anywhere in the state; or when engaged in any effort to pursue or apprehend any such person.

2. It is a violation of this Policy and Procedure for any commissioned Department employee to exceed the scope and extent of his law enforcement duties as defined and given to him or her by the appropriate supervisor (as outlined in II.D. above). Any commissioned employee who commits this violation is subject to disciplinary action, up to and including dismissal.
- F. Commissioned departmental employees may be allowed to carry concealed weapons while off duty, but only with the express permission of the applicable Division Director.
- G. After a Department employee has become certified under the Law Enforcement Training Act as a law enforcement officer, and has received his/her commission to carry a firearm from the Secretary of Corrections, the employee must do the following in order to maintain his or her commission:
1. In accordance with NMSA, 1978 Section 29-7-7.1 of the Law Enforcement Training Act, complete at least forty hours of in-service law enforcement training, which is academic training approved by the New Mexico Law Enforcement Academy Board, during each twenty-four month period of service with the Department. The first such training courses shall be commenced no later than twelve months after completing or graduating from an approved basic law enforcement training program. Each Division may promulgate more stringent in-service requirements for its commissioned employees, if those requirements are consistent with this policy and procedure.
 2. All applicable employees must provide the Secretary of Corrections and the director of the New Mexico Law Enforcement Academy with proof of completion of the in-service law enforcement training requirements no later than March of the year in which the requirements must be met.
 3. Failure to complete the in-service law enforcement training requirements may be grounds for suspension of the employee's certification under the Law Enforcement Training Act, and is grounds for the Secretary of Corrections to terminate that employee's law enforcement commission.
 4. Any employee who fails to complete the in-service requirement and yet continues to carry a concealed weapon is subject to disciplinary action, up to and including dismissal. However, employees may, without being subject to disciplinary action, decide not to complete their in-service requirements or otherwise decide to relinquish their commission as long as they give advance notice to their immediate supervisor and Division Director.

- H. In accordance with NMSA, 1978 Section 4-41-10, any sheriff is hereby authorized at any time to appoint respectable and orderly persons as special deputies to serve any particular order, writ or process or when in the opinion of any sheriff the appointment of special deputies is necessary and required for the purpose of preserving the peace, and it shall not be necessary to give or file any notice of such special appointment; however, the provision authorizing the carrying of concealed arms shall not apply to such persons, provided, no person shall be eligible to appointment as a deputy sheriff unless he is a citizen of the United States of America. There shall be no additional fees or per diem paid by the counties for any additional deputies other than as provided by law.
- I. In accordance with NMSA, 1978 Section 29-1-9, no sheriff of a county, mayor of a city or other person authorized by law to appoint special deputy sheriffs, marshals, policemen or other peace officers in the state of New Mexico, to preserve the public peace and to prevent and quell public disturbances, shall appoint as such special deputy sheriff, marshal, policeman or other peace officer, any person who shall not be a citizen of the United States of America. No person shall assume or exercise the functions, powers, duties and privileges, incident and belonging to the office of special deputy sheriff, marshal or policeman or other peace officer without first having received an appointment in writing from the lawfully constituted authorities of the state of New Mexico.
1. Such appointment of Corrections Department employees must be approved in advance and in writing by the Secretary of Corrections. As a general rule, such appointments will be limited to Corrections Department Specialty Units such as; Security Threat Intelligence Unit Staff and Emergency Response Team Members. Approval for appointment of other Corrections Department staff is at the discretion of the Secretary of Corrections.
 2. This section shall not apply to times of riot or unusual disturbance and when so declared by public proclamation of the governor of the state.



Gregg Marcantel, Secretary of Corrections
New Mexico Corrections Department

03/04/15

Date