

New Mexico State Personnel Board

State Personnel Office


Michelle Lujan Grisham
Governor

Ricky Serna
Acting Director

State Personnel Board
Laura A. Liswood, Chair
Jerry Manzagol, Member
Carol A. Parker, Member
David F. Cunningham, Member

Informational Memorandum

To: Cabinet Secretaries, Agency Heads, Human Resource Managers

From: Ricky Serna, Acting Director 

Date: June 29, 2021

Subject: Amendments to the Criminal Offender Employment Act

!! Please be advised that recent changes to the Criminal Offender Employment Act may affect State Agency hiring practices !!

!! If your Agency has any policies addressing the type of criminal convictions that may be considered during the hiring process and used to deny employment, please review and ensure those policies comport with the amendments to the Criminal Offender Employment Act ("COEA") !!

For convenience, the table below identifies the relevant **changes** (and non-changes) to the statute going into effect June 29, 2021:

EXISTING COEA	AMENDED COEA
In determining eligibility for employment, a Department or Agency may take into consideration a criminal conviction, but the conviction shall not operate as an automatic bar to obtaining public employment. <i>Section 28-2-3(A) NMSA 1978</i>	No change.
A Department or Agency shall make no inquiry regarding a conviction on an initial application for employment and shall only take a conviction into consideration after the applicant has been selected as a finalist for the position. <i>Section 28-2-3(A) NMSA 1978</i>	No change.

<p>The following criminal records shall not be used, distributed or disseminated in connection with an application for any public employment:</p> <ul style="list-style-type: none"> (1) records of arrest not followed by a valid conviction; and (2) misdemeanor convictions not involving moral turpitude. <p><i>Section 28-2-3(B) NMSA 1978</i></p>	<p>The following criminal records shall not be used, distributed or disseminated in connection with any application for any public employment:</p> <ul style="list-style-type: none"> (1) records of arrest not followed by a valid conviction; (2) convictions that have been sealed, dismissed, expunged or pardoned; (3) juvenile adjudications; or (4) convictions for a crime that is not job-related for the position in question and consistent with job necessity. <p><i>Section 28-2-3(B) NMSA 1978</i></p>
<p>Agencies may refuse to grant or renew or may suspend or revoke any public employment for one or any combination of the following causes:</p> <ul style="list-style-type: none"> (1) where the applicant or employee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to the particular employment; (2) where the applicant or employee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to the particular employment, if the Agency determines after investigation that the convicted person has not been sufficiently rehabilitated to warrant the public trust; (3) where the applicant or employee has been convicted of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant or employee has applied for reinstatement or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation. <p><i>Section 28-2-4(A) NMSA 1978</i></p>	<p>Agencies may refuse to grant or renew or may suspend or revoke any public employment for one or any combination of the following causes:</p> <ul style="list-style-type: none"> (1) where the applicant or employee has been convicted of a felony and the criminal conviction directly relates to the particular employment; and (2) where the applicant or employee has been convicted of homicide, kidnapping, human trafficking, trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse and the applicant or employee has applied for reinstatement, renewal or issuance of a teaching certificate, a license to operate a child-care facility or employment at a child-care facility, regardless of rehabilitation. <p><i>Section 28-2-4(A) NMSA 1978</i></p>

<p>The COEA is not applicable to any law enforcement agency however, nothing precludes a law enforcement agency in its discretion from adopting the policy set forth in the COEA. <i>Section 28-2-5 NMSA 1978</i></p>	<p>No change.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------