

HOUSE BILL 428

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO RULEMAKING; AMENDING THE DEFINITION OF "RULE" IN THE ADMINISTRATIVE PROCEDURES ACT AND THE STATE RULES ACT REGARDING THE RULES CONCERNING THE RELEASE OF INMATES OF PENAL OR CORRECTIONAL INSTITUTIONS; REQUIRING THE CORRECTIONS DEPARTMENT TO PROVIDE FOR NOTICE OF ADOPTION OF RULES PERTAINING TO INMATES, PROBATIONERS AND PAROLEES; REQUIRING THE CORRECTIONS DEPARTMENT TO PROVIDE FOR PUBLIC COMMENT AND PUBLISH A NOTICE OF ADOPTION OF RULES IN CERTAIN NEWS OUTLETS

.230635.1AIC March 9, 2025 (12:03pm)

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HJC→; PROVIDING THAT A RULE SHALL NOT INCLUDE INTERNAL SECURITY PROCEDURES←HJC .

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 12-8-2 NMSA 1978 (being Laws 1969, Chapter 252, Section 2) is amended to read:

"12-8-2. DEFINITIONS.--As used in the Administrative Procedures Act:

A. "agency" means any state board, commission, department or officer that is authorized by law to make rules, conduct adjudicatory proceedings, make determinations, grant licenses, impose sanctions, grant or withhold relief or perform other actions or duties delegated by law and ~~[which]~~ that is specifically placed by law under the Administrative Procedures Act;

B. "adjudicatory proceeding" means a proceeding before an agency, including but not limited to ratemaking and licensing, in which legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a trial-type hearing; but does not include a mere rulemaking proceeding as provided in Section ~~[3 of the Administrative Procedures Act]~~ 12-8-3 NMSA 1978. It also includes the formation and issuance of any order, the imposition or withholding of any sanction and the granting or withholding of any relief, as well as any of the foregoing types of determinations or actions wherein no procedure or

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hearing provision has been otherwise provided for or required by law;

C. "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption or other form of permission required by law;

D. "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, amendment, limiting, modifying or conditioning of a license;

E. "party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, whether for general or limited purposes;

F. "person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;

G. "rule" includes the whole or any part of every regulation, standard, statement or other requirement of general or particular application adopted by an agency to implement, interpret or prescribe law or policy enforced or administered by an agency, if the adoption or issuance of such rules is specifically authorized by the law giving the agency jurisdiction over such matters. It also includes any statement of procedure or practice requirements specifically authorized

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by the Administrative Procedures Act or other law, but it does not include:

(1) advisory rulings issued under Section [9 of the Administrative Procedures Act] 12-8-9 NMSA 1978;

(2) regulations concerning only the internal management or discipline of the adopting agency or any other agency and not affecting the rights of, or the procedures available to, the public or any person except an agency's members, officers or employees in their capacity as such member, officer or employee;

(3) regulations concerning only the management, confinement, discipline or release of inmates of state [~~penal, correctional~~] public health or mental institutions;

(4) regulations relating to the use of highways or streets when the substance of the regulations is indicated to the public by means of signs or signals; or

(5) decisions issued or actions taken or denied in adjudicatory proceedings;

H. "rulemaking" means any agency process for the formation, amendment or repeal of a rule;

I. "order" means the whole or any part of the final or interim disposition, whether affirmative, negative, injunctive or declaratory in form, by an agency in any matter other than rulemaking but including licensing;

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J. "sanction" includes the whole or part of any agency:

(1) prohibition, requirement, limitation or other condition affecting the freedom of any person or ~~his~~ the person's property;

(2) withholding of relief;

(3) imposition of any form of penalty;

(4) destruction, taking, seizure or withholding of property;

(5) assessment of damages, reimbursement, restitution, compensation, taxation, costs, charges or fees;

(6) requirement, revocation, amendment, limitation or suspension of a license; or

(7) taking or withholding of other compulsory, restrictive or discretionary action;

K. "relief" includes the whole or part of any agency:

(1) grant of money, assistance, license, authority, exemption, exception, privilege or remedy;

(2) recognition of any claim, right, interest, immunity, privilege, exemption or exception; or

(3) taking of any other action upon the application or petition of, and beneficial to, any person;

L. "agency proceedings" means any agency process in connection with rulemaking, orders, adjudication, licensing,

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imposition or withholding of sanctions or the granting or withholding of relief; and

M. "agency action" includes the whole or part of every agency rule, order, license, sanction or relief, or the equivalent or denial thereof, or failure to act."

SECTION 2. Section 14-4-2 NMSA 1978 (being Laws 1967, Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;

B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;

C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;

D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal and for which there is specific legal authority authorizing the proposed rule;

E. "provide to the public" means for an agency to distribute rulemaking information by:

- (1) posting it on the agency website, if any;

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- (2) posting it on the sunshine portal;
- (3) making it available in the agency's district, field and regional offices, if any;
- (4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;
- (5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;
- (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and
- (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any agency and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, including affecting persons served by the agency. An order or

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decision or other document issued or promulgated in connection with the disposition of any case or agency decision upon a particular matter as applied to a specific set of facts shall not be deemed such a rule, nor shall it constitute specific adoption thereof by the agency. "Rule" does not include rules relating to the management, confinement, discipline or release of ~~[inmates of any penal or]~~ a person housed at any charitable institution, the New Mexico boys' school, the girls' welfare home or any hospital; rules made relating to the management of any particular educational institution, whether elementary or otherwise; or rules made relating to admissions, discipline, supervision, expulsion or graduation of students from any educational institution; and

G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule."

SECTION 3. Section 33-2-1 NMSA 1978 (being Laws 1955, Chapter 149, Section 1, as amended) is amended to read:

"33-2-1. ADOPTION OF RULES HJC→EXEMPTIONS←HJC .--

A. The corrections ~~[division]~~ department shall adopt such rules concerning ~~[all prisoners committed to the penitentiary]~~ New Mexico inmates, probationers and parolees under the supervision of the corrections department as shall best accomplish their confinement and rehabilitation.

B. Prior to the adoption, amendment or repeal of

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such rules, the corrections department shall:

(1) provide HJC→forty-five←HJC
HJC→thirty←HJC days for public comment; and

(2) publish notice of the proposed action in a newspaper or trade, industrial or professional publications as will reasonably give the public notice to interested persons, as well as in all corrections facilities. HJC→"←HJC

HJC→C. As used in this section, a rule shall not include internal security procedures related to:

- (1) inmate escape;
- (2) hostage and riot response;
- (3) crisis negotiation response teams;
- (4) correctional emergency response teams;
- (5) emergency preparedness management unit;
- (6) security threat intelligence units;
- (7) facility design;
- (8) perimeter security, including towers, rovers, vehicle controls, traffic and gate controls; or
- (9) the management of a correctional facility's schedules, transport details, command center, master control or housing unit controls and their functions."←HJC

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.