AN ACT

RELATING TO MILITARY AFFAIRS; AMENDING THE POWERS OF THE
ADJUTANT GENERAL; AUTHORIZING ACTIVATION OF THE NATIONAL
GUARD AND THE STATE DEFENSE FORCE IN THE CASE OF CERTAIN
EVENTS; ESTABLISHING THE NEW MEXICO STATE DEFENSE FORCE;
AMENDING, REPEALING AND ENACTING SECTIONS OF THE NEW MEXICO
MILITARY CODE.

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

SECTION 1. Section 20-1-4 NMSA 1978 (being Laws 1987,
Chapter 318, Section 4) is amended to read:

"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."

SECTION 2. Section 20-1-5 NMSA 1978 (being Laws 1987,
Chapter 318, Section 5, as amended) is amended to read:

"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. 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."

SECTION 3. Section 20-2-6 NMSA 1978 (being Laws 1987,
Chapter 318, Section 13) is amended to read:

"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."

SECTION 4. Section 20-3-2 NMSA 1978 (being Laws 1987,
Chapter 318, Section 17, as amended) is amended to read:

"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
adjutant generals 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."

SECTION 5. Section 20-5-1 NMSA 1978 (being Laws 1987,
Chapter 318, Section 32) is amended to read:

"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."

SECTION 6. Section 20-5-3 NMSA 1978 (being Laws 1987, Chapter 318, Section 34) is amended to read:

"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."

SECTION 7. Section 20-5-6 NMSA 1978 (being Laws 1987,
Chapter 318, Section 37) is amended to read:

"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."

SECTION 8. Section 20-5-16 NMSA 1978 (being Laws 2003,
Chapter 111, Section 1) is amended to read:

"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 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."

SECTION 9. Section 20-12-4 NMSA 1978 (being Laws 1987,
Chapter 318, Section 89, as amended) is amended to read:

"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."

SECTION 10. A new section of the Code of Military
Justice is enacted to read:

"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."
SECTION 11. A new section of the Code of Military Justice is enacted to read:

"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."

SECTION 12. REPEAL.--Sections 20-4-12, 20-12-57 and 20-12-68 NMSA 1978 (being Laws 1987, Chapter 318, Section 29 and Laws 1989, Chapter 337, Sections 56 and 67) are repealed.