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**MANUAL FOR
MUNICIPAL
POLICE
DEPARTMENTS
IN NEW MEXICO**

This Manual for Municipal Police Departments in New Mexico has been prepared by Lorna M. Dailey for the New Mexico Municipal League, under grant numbers 77-B-1-S-NP, 78-B-1-1-NP, and 79-B-1-1-NP(S-1), from the Law Enforcement Assistance Administration, awarded by the Criminal Justice Department, Santa Fe, New Mexico.

Copies are available without charge while supplies last. Inquiries, suggestions, or requests for copies should be addressed to:

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ASSIGNMENT OF MANUAL

This manual has been assigned to _____
(name)
on _____
(date). It shall be kept in good order with
amendments or other orders added, as issued by the police depart-
ment. The manual remains the property of _____
(police department) and upon termination of employment,
it shall be returned to _____
(police chief, clerk)

**ACKNOWLEDGMENT OF RECEIPT OF,
AND COMPLIANCE WITH, MANUAL**

I, _____, acknowledge
(name)
that I have read, understand, and will comply with all legal and
proper rules of conduct and procedures set out in this manual.

(signature of employee)

(date)

(Signed form should be retained in the employee's personnel file.)

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METHOD FOR REVIEW OF MANUAL AND ADOPTION AS REGULATIONS OR AS A RESOLUTION

This personnel manual has been designed for municipal police departments of ten officers or less in New Mexico. It has been prepared by the New Mexico Municipal League to assist those police departments who do not currently have written personnel rules. We hope that the distribution of this manual will encourage discussion, among the mayor, governing body, police chief, and manager or clerk, of how their police department is operating and how they would like it to operate.

Upon receiving this manual, we suggest that the following procedures be taken:

1. The mayor, police chief, each councilmember, and the manager or clerk should review the contents and make a comparison with the personnel procedures now in use for their police department.
2. They should decide whether revised procedures are desirable for their police department. If they are satisfied with the procedures that exist, then no further action needs to be taken.
3. If they decide that revised procedures are desirable, then a review committee including the police chief should be appointed to review this manual carefully, paragraph by paragraph, to decide whether they want these particular rules used in their police department. Each review committee can choose to omit any rules which they think are not applicable, change the wording to make the rule more or less inclusive, or add other rules, providing that any changes are legal.
4. One of the major items for the review committee to decide is the disciplinary action they wish to impose for violation of each rule of conduct. A blank space has been left for insertion of the action (e.g. oral reprimand, written reprimand, suspension, demotion, dismissal) after each rule. Larger departments may wish to print a list of paragraph numbers and disciplinary actions for violation separately, if it is more convenient. Some of the violations which usually require dismissal are noted in Paragraph 507F.
5. This manual has used "mayor and governing body" and "police chief" throughout for simplicity. In some municipalities, certain functions of the mayor and governing body may be designated for the manager, or some of the functions of the police chief designated for various supervisory officers in the police department. These paragraphs should be amended if necessary. "Police department" or "municipality" is sometimes used to mean whichever person handles that particular issue.

6. This manual has been reviewed by the law firm of Sutin, Thayer & Browne, legal counsel to the New Mexico Municipal League. Our legal counsel cautions that the appropriateness and validity of these rules and regulations in many cases depends on the particular circumstances existing in the municipality. It is recommended that each municipality have its legal counsel review the manual prior to adoption.
7. The review committee should decide if they wish to recommend adoption of the manual, with any amendments or deletions, as Regulations under an existing Personnel Ordinance or as a Resolution.
8. The governing body can then take action on the recommendation of the review committee.
9. After adoption, the police chief should review the manual with all employees of the police department. Extra copies have been printed with LEAA funds. Any small municipality in New Mexico which decides to adopt the manual may request additional copies for each member of the police department, from the New Mexico Municipal League, while supplies last.
10. If the officials of any municipality would like to have a meeting with Lorna Dailey, who prepared the manual, or other staff of the Municipal League, to discuss the manual, please let us know. Comments and suggestions for future improvements will be solicited on an evaluation form to be sent out a few weeks after the initial distribution of the manual.

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Lorna M. Dailey

LAW ENFORCEMENT CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example for all; maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of duty.

I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession — law enforcement.

100 AUTHORITY AND RESPONSIBILITIES

Public Respect

- 101 The conduct of police officers, dispatchers, and other employees of the police department in dealing with the general public is expected and required to be in accordance with the high level of public trust placed upon the law enforcement profession. Any public action, inaction, attitude or opinion of police personnel which can be interpreted as unprofessional or unworthy of the public trust in law enforcement officials, tends to undermine and detract from the public respect of law enforcement officers individually and collectively. Without this public respect, the police officer's job becomes extremely difficult, if not impossible. This respect, however, cannot be legislated by any authority. Public respect must be earned by exemplary conduct in the performance of duties.

Relationship of Mayor, Governing Body, Police Department and Citizens

- 102 In order to promote good relationships between the mayor, governing body, police department and citizens of a municipality, there are three important issues to be considered:
- a) The mayor and governing body must be informed as to what constitutes good police service and endeavor to achieve it for their community.
 - b) The police chief and police officers must know within what guidelines they are required to operate and strive to provide the best police service within their capabilities.
 - c) The citizens must know what they can expect from their police department and what cooperation they must give to the police department if it is to be effective.

Duties and Responsibilities of the Mayor and Governing Body

- 103 The major responsibilities of the mayor and governing body, with respect to the police department, are described below in Paragraphs 103A to 103L.

COMMENTARY: Municipalities which have a manager may want to amend some of the following Paragraphs to make them consistent with the duties of the manager.

Policy Making

- 103A** The mayor and governing body, with the advice of the police chief, shall formulate and adopt policy for the administration of the police department. This shall include salary and benefits, working conditions, personnel regulations, rules of conduct, disciplinary action, and guidelines for the enforcement of laws and municipal ordinances.

COMMENTARY: Each Paragraph uses "shall" so that if a municipality chooses to adopt these procedures, they will then be mandatory.

Statutory Authority to Appoint and Discharge Employees

- 103B** The authority of the mayor and governing body to appoint and discharge municipal employees is defined in Section 3-11-6 NMSA 1978*, as follows:

"Mayor; authority to appoint, to supervise and discharge employees.

A. Subject to the approval of a majority of all members of the governing body, the mayor shall:

- (1) appoint all officers and employees except those holding elective office; and
- (2) designate an employee to perform any service authorized by the governing body.

B. The mayor may appoint temporary employees as required for the proper administration of municipal affairs. The employee shall serve only until the next regular meeting of the governing body at which a quorum is present. The temporary employment shall cease and the employee shall not be reappointed unless his appointment is confirmed by the governing body. A temporary employee is entitled to the usual, ordinary and reasonable compensation for services rendered to the municipality.

C. The mayor shall:

- (1) supervise the employees of the municipality;
- (2) examine the grounds of reasonable complaint made against the employees; and
- (3) cause any violations or neglect of the employees' duties to be corrected promptly or reported to the proper authority for correction and punishment.

D. Subject to the limitation of a merit system ordinance adopted as authorized in Section 3-13-4 NMSA 1978:

- (1) the governing body may discharge an appointed official or employee by a majority of all members of the governing body;

* All Section numbers refer to New Mexico Statutes Annotated 1978.

(2) the mayor may discharge an appointed official or employee upon the approval of a majority of all members of the governing body; or

(3) the mayor may suspend an appointed official or employee until the next regular meeting of the governing body at which time the suspension shall be approved or disapproved by a majority of all the members of the governing body. If the suspension of the appointed official or employee is disapproved by the governing body, the suspended appointed official or employee shall be paid the compensation he was entitled to receive during the time of his suspension.

E. Any appointed official or employee who is discharged shall:

(1) upon his request, be given, by the mayor in writing, a list of reasons for his discharge; and

(2) be paid any vacation pay which he may have accrued."

Selection of the Police Chief

103C The mayor and governing body shall select and appoint a police chief in whom they have confidence that he/she will administer the police department in accordance with policy adopted by the governing body and in accordance with the best police practices.

Appointments with Recommendation from Police Chief

103D Upon recommendation from the police chief and subject to the approval of a majority of all members of the governing body, the mayor shall appoint all employees of the police department to their positions.

COMMENTARY: Although the mayor and governing body have the statutory authority to appoint anyone they wish, it would be inappropriate for any person to be appointed to the police department who was not selected, or approved of, by the police chief.

Delegation of Supervision to the Police Chief

103E The mayor shall delegate day-to-day supervision of the police department and its employees to the police chief, who shall operate the police department within the policies adopted by the governing body.

COMMENTARY: The mayor has the statutory authority to supervise all municipal employees, but it would be inappropriate to give instructions to any employee of the police department directly, except the police chief. Any informa-

tion from the mayor or governing body should be directed to the police chief to be distributed to other employees, as necessary.

Disciplinary Action

- 103F** Delegation of supervision to the police chief shall include the authority for the police chief to recommend suspension, demotion, or dismissal of employees of the police department, to the mayor and governing body, in accordance with previously adopted policies. The mayor and governing body shall generally accept the police chief's recommendation and act on it accordingly, unless a grave injustice would result, or unless it appears necessary to hold a personnel hearing for investigation of the case. If a personnel hearing is held, the mayor and governing body have the responsibility of reviewing the facts, calling all witnesses, and making a fair decision within the policy for disciplinary action. Procedures for disciplinary action are described in Chapter 500.

COMMENTARY: Although the mayor and governing body have the statutory authority to suspend, demote, or dismiss any employee without the concurrence of the police chief, it should not be done except in unusual circumstances. Otherwise, the police chief loses the authority necessary to administer the police department. The mayor and governing body should not appoint someone as police chief whom they do not think is capable of making decisions concerning personnel.

Regular Meetings with Police Chief

- 103G** The mayor and governing body shall initiate regular meetings with the police chief to discuss the operation of the police department. This is to allow all parties an opportunity to question procedures, resolve minor issues, discuss new policy, and take any action necessary to promote efficient service from the police department and good relations among all participants. The governing body may require such reports on the operations of the police department as are legal and seem necessary.

Citizen Report Procedure

- 103H** Any complaints or commendations from citizens about the police department, which are addressed to the mayor, members of the governing body, or other municipal employees, shall be directed to the police chief for investigation according to procedures outlined in Chapter 600. The

mayor, members of the governing body, or other municipal employees shall only promise a citizen to have the matter investigated. They shall refrain from promising to have the matter resolved in the citizen's favor without an investigation. The mayor shall have the responsibility of investigating any reports concerning the police chief personally.

Support of the Police Department

- 103I** The mayor and governing body shall demonstrate public support for the police chief and employees of the police department in order to set a good example for the community. If they cannot do this, they shall take steps to resolve the problems according to proper procedures.

COMMENTARY: Community support is necessary in order for police officers to perform effectively, and also so that the municipality can retain good officers. The mayor and members of the governing body must refrain from undermining the authority of police officers by interfering with, or by improper challenges to, legitimate police action.

No Access to Police Records

- 103J** The mayor and members of the governing body do not have any privileged access to police records and must abide by the Arrest Record Information Act (Secs. 29-10-1 through 29-10-8 NMSA 1978), quoted in Paragraph 452.

No Authority for Police Action

- 103K** The mayor and members of the governing body, including a designated Police Commissioner (if any), do not have any authority to take police action, since they do not have a formal "commission" as a police officer of the municipality. It would be an incompatibility of office if they did have such a "commission" (see Paragraph 463).

COMMENTARY: In New Mexico, some municipalities have designated one member of the governing body as Police Commissioner. The function of a Police Commissioner is only to act as liaison between the elected officials and the police chief. It does not give the Police Commissioner any direct authority over the police department. Regular meetings between the police chief, mayor and members of the governing body would also accomplish the objective of communication. In smaller municipalities which have a manager, the manager often assumes the liaison function.

Tort Liability

- 103L** The mayor and governing body should be aware of the possible liability of the municipality, under the Tort Claims

Act (Secs. 41-4-1 through 41-4-25 NMSA 1978), for actions of police officers. All possible action to reduce or eliminate situations which might cause liability for the municipality should be taken by the mayor and governing body. Section 41-4-4 NMSA 1978 states the general immunity to tort liability, as follows:

“Granting immunity from tort liability; authorizing exceptions (Sec. 41-4-4)

A. A governmental entity and any public employee while acting within the scope of duty are granted immunity from liability for any tort except as provided in the Tort Claims Act (41-4-1 to 41-4-25 NMSA 1978).

B. Except as provided in Section 41-4-12 NMSA 1978, public employees are personally liable for malicious or fraudulent torts when committed while acting within the scope of their duties. A governmental entity is immune from liability for such torts committed by public employees.

C. When liability is alleged against any public employee for any torts alleged to have been committed within the scope of his duty, or for a violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico, the governmental entity shall provide a defense and pay any settlement or judgment. If an insurance carrier provides a defense to any public employee sued, the duty to defend imposed by this subsection shall be deemed to have been satisfied.

D. The duty to defend and to pay any tort claim or judgment as provided in Subsection C of this section shall continue after employment with the governmental entity has been terminated, if the occurrence for which liability is alleged happened within the scope of duty while the public employee was in the employ of the governmental entity.”

However, Section 41-4-12 NMSA 1978 states that this immunity does not apply to various actions of law enforcement officers, acting within the scope of their duties, as follows:

“Liability; law enforcement officers (Sec. 41-4-12).

The immunity granted pursuant to Subsection A of Section 41-4-4 NMSA 1978 does not apply to liability for personal injury, bodily injury, wrongful death or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges or immunities

secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties.”

Duties and Responsibilities of the Police Chief

- 104** The duties and responsibilities of the police chief shall include those stated below in Paragraphs 104A to 104U.

Supervision

- 104A** Supervision of the police department and its employees within the policies adopted by the mayor and governing body.

Training

- 104B** Through training of all police officers, dispatchers, and other employees for their duties. This includes sending uncertified officers and dispatchers to the New Mexico Law Enforcement Academy for required training as soon as possible, and all officers for advanced training as necessary. Supervised in-service training shall be provided for all new officers and dispatchers before they assume duty alone. All employees shall receive continuing advice and training to upgrade their skills and performance.

Firearms Qualification

- 104C** Supervision of regular firearms qualification for all officers.

Enforcement of Laws

- 104D** Enforcement of United States and New Mexico constitutions and laws and municipal ordinances in a manner consistent with good police practices. Knowledge of new laws and court rulings in order to inform officers and to adapt police practices accordingly.

Investigation

- 104E** Supervision of the investigation procedures and the preparation of testimony for court for all cases.

Selection of Personnel

- 104F** Interviewing and selection of personnel for the police department and recommendation to the mayor and governing body for their appointment.

Discipline

- 104G** Discipline of all employees of the police department and recommendation to the mayor and governing body for ac-

tion to be taken as necessary, according to the procedures adopted by the municipality

Performance Evaluation

- 104H** Administration of an effective system of performance evaluation for all employees.

Public Relations

- 104I** Public support of the mayor and governing body and promotion of harmonious relationships with employees, citizens, and municipal officials.

Citizen Reports

- 104J** Acceptance and handling of all reports from citizens concerning the action of employees or procedures of the police department in accordance with the procedures outlined in Chapter 600.

Improvement of Procedures

- 104K** Initiation of procedures to provide better police service, including procedures to handle various types of emergencies (e.g. natural disasters, hostages, etc.)

Budget

- 104L** Preparation of the annual budget for the police department and submission of it to the person responsible for budget preparation for the municipality.

Expenditures

- 104M** Authorization of expenditures for the police department within the approved budget.

Reports

- 104N** Preparation of reports as required by the mayor and governing body or other agencies.

Records System

- 104O** Maintenance of an efficient records system for calls, arrests, citizen reports, and other information required to be kept by law enforcement agencies. This system must be permanent enough to be transferred to the next administration. Records no longer legally required or useful may be destroyed according to established procedures.

Internal Communications

- 104P** Maintenance of an efficient system of internal communications to inform all police department employees of regulations, procedures or new developments (e.g. passbook, memoranda, special orders, personnel manual, operational procedures manual, etc.)

Equipment Inventory

- 104Q** Maintenance of an inventory system of all equipment belonging to the police department, including its purchase, maintenance, loss, damage, or disposal. The system should provide for the replacement or reimbursement to the department of items lost or damaged due to the negligence of individual employees. The police chief is responsible for accounting for all equipment at the end of his administration.

Duty Schedule

- 104R** Preparation of the duty and on-call schedule in order to provide adequate police coverage at all times.

Paid Time Off

- 104S** Authorization of time off, vacation, pay for sick leave for all employees of the police department.

Designation of Patrol Areas

- 104T** Designation of areas for regular or special patrol by officers.

Patrol Duties

- 104U** Patrol duties, as necessary, depending on the size of the department.

COMMENTARY: Some of these duties may be delegated to supervisory officers with the police chief retaining responsibility for their efficient performance.

Duties and Responsibilities of a Police Officer

- 105** The duties and responsibilities of a police officer shall include those stated in Paragraphs 105A to 105N.

Public Peace

- 105A** Preservation of peace within the municipality.

Life and Property

- 105B** Protection of life and property.

Laws and Ordinances

- 105C** Knowledge of United States and New Mexico constitutions and laws and municipal ordinances and enforcement in a manner consistent with good police practice.

Regulations and Rules of Conduct

- 105D** Knowledge and observance of all police department regulations and rules of conduct.

Patrol

- 105E** Regular and thorough patrol of assigned beat and attention to any matter requiring police action.

Response to Calls

- 105F** Prompt response to calls from the dispatcher or orders from the police chief or supervisory officers.

Assistance

- 105G** Assistance to persons in need of aid (e.g. lost children, persons needing medical attention, directions, etc.)

Traffic Duties

- 105H** Traffic direction, enforcement of Motor Vehicle Code, promotion of traffic safety.

Maintenance of Order

- 105I** Control of crowd and maintenance of order at scene of traffic accident, fire or other emergency.

Court Appearance

- 105J** Preparation of testimony for cases and appearance in court as witness when summoned.

Warrants

- 105K** Serving of warrants and summonses.

Reports

- 105L** Preparation of complete, accurate reports on all police action taken.

Geographic Knowledge

- 105M** Knowledge of all streets, highways, businesses, hospitals, government offices, and residences within the municipality in order to respond to calls and give accurate directions.

Cooperation

- 105N** Cooperation with other law enforcement agencies, the attorney general, district attorney or other prosecutor, as necessary for the effective conduct of police business.

COMMENTARY: Duties of a police officer are covered by two sections of the Statutes. Section 29-1-1 NMSA 1978 states:

"That it is hereby declared to be the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state of New Mexico which are called to the attention of any such officer or of which he is aware, and it is also declared the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken, and it is also declared his duty to cooperate with and assist the attorney general, district attorney or other prosecutor, if any, in all reasonable ways. Failure to perform his duty in any material way shall subject such officer so failing, to removal from office and payment of all costs of prosecution."

Section 3-13-2 NMSA 1978 (New Mexico Municipal Code) requires that a police officer of a municipality shall:

- "1) execute and return all writs and processes as directed by the municipal judge;*
- 2) serve criminal writs and processes in any part of the county wherein the municipality is situated; and*
- 3) within the municipality,*
 - a) suppress all riots, disturbances and breaches of the peace;*
 - b) apprehend all disorderly persons;*
 - c) pursue and arrest any person fleeing from justice; and*
 - d) apprehend any person in the act of violating the laws of the state or the ordinances of the municipality and bring him before competent authority for examination and trial."*

Duties and Responsibilities of a Police Radio Dispatcher

- 106** The duties and responsibilities of a police radio dispatcher shall include those stated below in Paragraphs 106A to 106G.

Response

- 106A** Prompt, courteous response to calls for police assistance, weather and highway information. Relay of requests from officers for ambulance, towing service, and other support.

Dispatch

- 106B** Dispatch of all calls for assistance to a police officer immediately. Broadcast of information to and from other police agencies.

FCC Regulations

- 106C** Observance of FCC regulations for the use of the police radio.

Radio Log

- 106D** Maintenance of the daily radio log.

Record Keeping

- 106E** Clerical and record keeping duties as required.

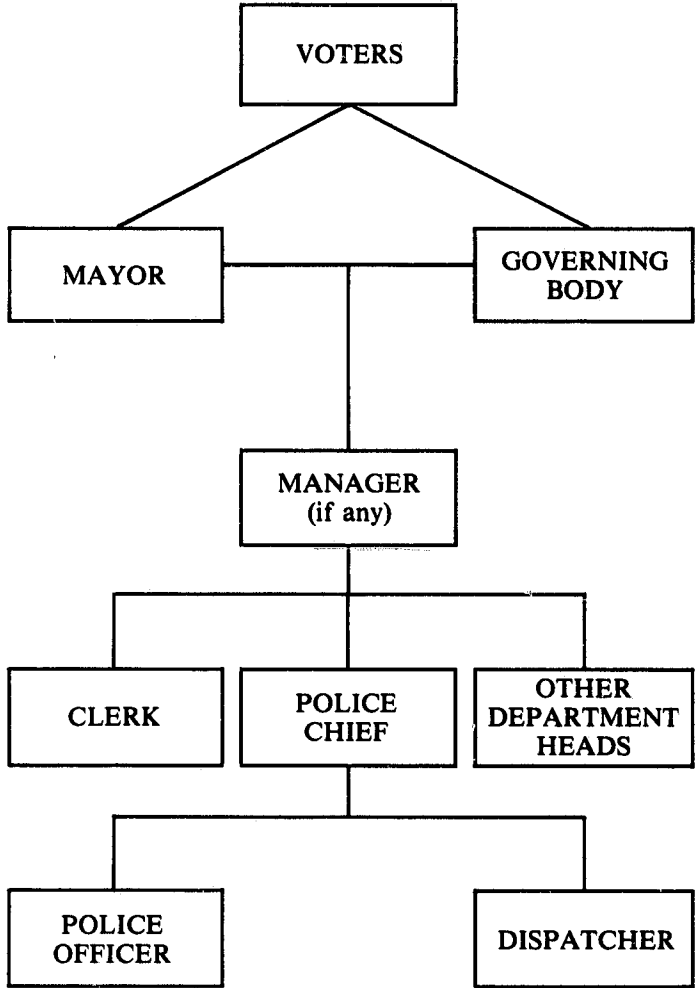
Geographic Knowledge

- 106F** Knowledge of all streets, highways, businesses, hospitals, and government offices within the municipality.

Search and Handling of Female Prisoners

- 106G** When there are no female police officers available and the dispatcher is female, the duty of searching and handling female prisoners is sometimes assigned to the dispatcher. If so, specific training and recognition for this duty must be given.

COMMENTARY: The police department could be liable for negligence if an untrained, inexperienced, or physically incapable dispatcher is injured while attempting to handle female prisoners. Each department should have specific procedures for handling female prisoners, including procedures if there is no female officer or female dispatcher available.



This chart shows the lines of authority from the voters to the members of the police department.

200 RECRUITMENT

Equal Opportunity

- 201 Section 28-1-7 NMSA 1978 states that:
"It is an unlawful discriminatory practice for an employer, unless based on a bona fide occupational qualification, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation against any person otherwise qualified, because of race, age, religion, color, national origin, ancestry, sex or physical or mental handicap."

COMMENTARY: The various requirements in this Chapter are considered to be bona fide occupational qualifications according to present court interpretations.

Municipal Personnel Regulations

- 202 The personnel regulations of the municipality, plus the following requirements, shall be taken into consideration when hiring personnel for the police department. These are minimum qualifications and do not prevent the police chief from selecting the best qualified of the applicants.

New Mexico Law Enforcement Academy Act

- 203 The New Mexico Law Enforcement Academy Act (Secs. 29-7-1 through 29-7-10 NMSA 1978, as amended by Chapter 202, 1979 Laws*) will be taken into consideration when recruiting police officers. This Act states the requirements for appointment as a police officer in New Mexico, as:

"Prerequisites for permanent appointment as a police officer (Sec. 29-7-8, as amended by Chapter 202, 1979 Laws)

A. Notwithstanding any provisions of any general, special or local law to the contrary, no person shall receive an original appointment on a permanent basis as a police officer to any law enforcement unit in this state unless such person:

- (1) is a citizen of the United States, and has reached the age of majority;
- (2) holds a high school diploma or the equivalent;
- (3) has not been convicted of a felony or other crime involving moral turpitude;
- (4) is found, after examination by a licensed physician, to be free of any physical, emotional or mental condition which might adversely affect his performance as a police officer;

* Refers to laws passed during the 1979 session of the New Mexico Legislature.

(5) has met such other requirements as may be prescribed by the New Mexico law enforcement academy board; and

(6) has previously been awarded a certificate by the director of the New Mexico Law enforcement academy attesting to such person's satisfactory completion of an approved police officer basic training program.

B. Every person who is employed on a temporary basis by any law enforcement unit in this state shall forfeit his position as such unless within twelve months from the date of employment he satisfactorily completes a police officer basic training program and is awarded a certificate attesting thereto."

"Police officer defined (Sec. 29-7-9)

"Police officer" means any full-time employee of a police department which is part of or administered by the state or any political subdivision thereof and which employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state. "Police officer" specifically includes deputy sheriffs. Notwithstanding the provisions of this section, sheriffs are eligible to attend the New Mexico law enforcement academy, and are eligible to receive certification as provided herein."

"Certification by waiver (Sec. 29-7-10, as amended by Chapter 202, 1979 Laws)

The director of the New Mexico law enforcement academy shall, with the approval of the New Mexico law enforcement board, waive the basic training program and certify applicants who are employed as full-time police officers and who furnish evidence of satisfactory completion of a police officer basic training program which, in the director's opinion, is comparable to that of the programs of the academy."

COMMENTARY: Chapter 104, 1979 Laws, amended the New Mexico Law Enforcement Academy Act to allow certification by waiver for ten years' law enforcement experience in New Mexico.

Recruitment Standards for Police Officers

204 All applicants for police officer shall be considered with regard to the qualifications stated in Paragraphs 204A to 204M.

Certification

- 204A** All applicants must either:
- a) Submit a copy of their Certification from the New Mexico Law Enforcement Academy, or
 - b) Meet the eligibility requirements for the Basic Recruit Training Program at the New Mexico Law Enforcement Academy.

COMMENTARY: The New Mexico Law Enforcement Academy Act includes the requirements for certification. Graduates of other approved training programs, both in New Mexico and from other states, may be certified by the New Mexico Law Enforcement Academy if their course fulfils the requirements and the officer meets other requirements of the Academy. Paragraphs 204B, 204C, 204D, 204F and 204I include requirements for admission to the Academy. Municipalities should check with the New Mexico Law Enforcement Academy for any additional requirements.

Education

- 204B** A minimum of a high school diploma or G.E.D. equivalent is required (Sec. 29-7-6 NMSA 1978). A copy of the diploma or equivalent evidence of education must be submitted. Higher education is desirable.

Age

- 204C** A minimum age of 18 is required (Sec. 29-7-6 NMSA 1978). A copy of the birth certificate or equivalent evidence of age must be submitted.

COMMENTARY: Any maximum age adopted should be related to ability to perform the duties of an officer. Eligibility for the retirement plan may be considered.

Citizenship

- 204D** United States citizenship is required (Sec. 29-7-6 NMSA 1978).

COMMENTARY: Evidence of United States citizenship will ordinarily be achieved with the birth certificate. Otherwise, naturalization papers or other evidence will be required.

Residence

- 204E** Residence in New Mexico or the municipality at the time of application is not required.

COMMENTARY: Attorney General Opinion No. 79-28 (July 6, 1979) states that police officers are considered employees of the municipality and not "municipal officers";

therefore, they are not required by statute to live within the municipality after employment. However, some municipal personnel regulations may give preference to residents of the municipality, over non-residents, if all other qualifications are equal.

Fingerprint Check

- 204F** A fingerprint check by the FBI will be administered. No convictions for a felony or other crime involving moral turpitude are permitted (Sec. 29-7-6 NMSA 1978).

Arrest Record Check

- 204G** An arrest record check with the New Mexico State Police and the police departments of other places of residence will be conducted. No convictions for a felony or other crime involving moral turpitude are permitted. The kind and number of misdemeanor and traffic convictions will be taken into consideration.

Background Investigation

- 204H** Applicants shall complete a background history form including education and all dates and places of employment, military service, and residence during the last ten years. Friends, neighbors, previous employers, educators, and relatives may be contacted to the extent necessary to determine the applicant's demonstrated abilities or moral character. Military discharge papers may be required if discharge from the United States Armed Services has been within the last ten years. Intentional omissions or falsifications in completing the background history form may disqualify an applicant.

COMMENTARY: The applicant should sign an authorization for the fingerprint, arrest record check, and background investigation, as part of the application process. This might be made part of the application form.

Medical Examination

- 204I** All applicants must have sufficient physical health to enable them to adequately perform their obligations as police officers. All applicants shall pass a medical examination, including vision and hearing tests, conducted by a physician chosen by and at the expense of the municipality.

COMMENTARY: Section 29-7-6 NMSA 1978 requires that applicants to the New Mexico Law Enforcement Academy be "free of any physical, emotional, or mental condition

which might adversely affect their performance at the Academy." Admission to the Academy requires a medical examination within six months prior to application, certifying that the applicant can participate in all parts of the Basic Recruit Program which includes physical education. Municipalities should be aware that the federal Rehabilitation Act of 1973 (as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978) must be complied with. A physical condition which does not affect the officer's ability to perform his/her duty should not exclude him/her from employment.

Personality, Character and Mental Attitude

- 204J** Applicants must demonstrate an attitude, personality and character compatible with good police work. Desirable qualities include good judgment, maturity, discretion, quick and accurate responses, lack of hostility or bias, good manners, honesty, ability to keep information confidential, and emotional stability.

COMMENTARY: The municipality may use any combination of the background investigation, interviews, an oral board examination, or a psychologist's/psychiatrist's consultation to determine whether an applicant has these or other qualities deemed desirable. Any test used, or questions asked, must be related to qualities actually necessary to perform the duties of an officer.

Driver's License

- 204K** A valid New Mexico driver's license is required. Prior traffic convictions and driving experience will be considered. Applicants who do not have a valid New Mexico driver's license may apply on condition that they acquire the license by the date of employment.

COMMENTARY: Vehicle operation is part of the Academy's Basic Recruit Program. Although applicants with no prior driving experience are unlikely, the ability to handle a vehicle and assume responsibility for reasonable maintenance must be taken into consideration. The police chief must see that each new officer hired also acquires an emergency vehicle operator's permit in order to drive police vehicles.

Firearms Qualification

- 204L** An officer must be able to qualify with any weapons used on or off duty, before carrying them. Qualification will not be required at the time of application providing the officer

does qualify at the time of employment, or before carrying the weapons. Inability to qualify with weapons is a sufficient reason for discharge.

COMMENTARY: If officers are hired without firearms training, the police chief must assume responsibility for training them and assuring that they are able to qualify before carrying weapons.

Testing

204M Applicants must be able to pass any qualifications test which has been validated as reliably measuring skills or other attributes that are demonstrably essential to performance of the job and which has been administered in a non-discriminatory manner.

COMMENTARY: Tests used to screen applicants must either be direct tests of job ability or they must be validated according to Equal Employment Opportunity Commission standards. Any test which excludes a disproportionate number of any minority group or women should not be used, unless it can be proved that it is job-related. Approved methods of validating a test are:

(1) testing present employees in the job and correlating their test results with supervisors' performance evaluations of the same employees or other criteria of high performance. If those employees with high scores on the test also have high performance evaluations, and vice versa, then the test may be considered to predict good job performance.

(2) testing new employees when hired, and later comparing the test scores to actual job performance. The EEOC has criteria for how the validation is to be conducted. Often a professional consultant is used to develop and validate a test for a particular job. This can be an expensive and time-consuming process. However, it cannot be assumed that a test for police officers used in one state or department is necessarily valid in another department. Any police department planning to use tests to screen applicants should investigate the EEOC guidelines and validation procedures thoroughly before introducing the test in their department.

Screening During the Application Process

205 Any applicant who fails to meet the minimum qualifications contained in any subsection of Paragraph 204 shall be promptly notified and subsequent screening halted. Disqualification for police officer shall not prevent consideration of his/her application for other municipal positions for which he/she can qualify.

COMMENTARY: It is reasonable to screen applicants first on Paragraphs 204A to 204D to eliminate any obviously ineligible applicants. The fingerprint and arrest record check may take some time to receive replies and should be sent out as the background investigation is begun. Only applicants successfully completing these steps should take the medical or oral board examination.

Recruitment Standards for a Police Chief

- 206 Applicants for police chief shall fulfill all of the requirements for police officer, plus the items in Paragraphs 206A to 206E, as determined from previous employment, education, or the background investigation.

Administrative Ability

- 206A The ability to prepare reports, statistical analyses, and a budget for the police department is required.

Leadership Ability

- 206B Personal qualities necessary to set a good example, and to inspire, to train, and to lead other members of the police department are required.

Public Relations Ability

- 206C The ability to cooperate with the governing body and to establish good relationships with the citizens is required.

Education

- 206D Advanced law enforcement training and/or a college degree (B.A. or B.Sc.) in law enforcement or criminal justice-related areas is desirable.

Experience

- 206E Several years of progressively responsible experience in law enforcement are desirable.

Recruitment Standards for Sergeant, Lieutenant, or Captain

- 207 Qualifications necessary for hiring at, or promotion to, supervisory ranks should be established by the police chief, depending on the size of the police department and the number of persons supervised. The qualifications in Paragraphs 207A and 207B should be considered.

Experience

- 207A** Sufficient experience to handle the supervisory or training responsibilities of the rank is required.

Work Record

- 207B** A past record of good work habits is required.

Police Radio Dispatcher Training Act

- 208** The Police Radio Dispatcher Training Act (Chapter 228, 1979 Laws) sets out the requirements for the appointment of all permanent, full-time police radio dispatchers, as follows:

"Section 4. PREREQUISITES FOR PERMANENT APPOINTMENT AS A POLICE RADIO DISPATCHER.—

A. Notwithstanding any provisions of any general, special or local law to the contrary, no person shall receive an original appointment on a permanent basis as a police radio dispatcher to any law enforcement agency in this state unless such person has previously been awarded a certificate by the director of the New Mexico Law enforcement academy* attesting to such person's satisfactory completion of an approved police radio dispatcher basic training program; and every person who is employed, after the effective date of the Police Radio Dispatcher Training Act, as a police radio dispatcher by any law enforcement unit in this state shall forfeit his position as such unless within twelve months from the date of his employment he satisfactorily completes a police radio dispatcher basic training program and is awarded a certificate attesting thereto. The director of the New Mexico law enforcement academy* shall waive the above requirements for all police radio dispatchers who are serving full time on the effective date of the Police Radio Dispatcher Training Act and shall award each such police radio dispatcher a certificate.

B. For the purposes of the Police Radio Dispatcher Training Act, "police radio dispatcher" means any full-time employee, sworn or civilian, who is employed to dispatch police units by means of radio communications which is a part of or administered by the state or any political subdivision.

* Terminology changed from "chief of training and education bureau" to "director of the New Mexico law enforcement academy" and from "secretary of criminal justice" to the "New Mexico law enforcement academy board" in accordance with the reorganization of the New Mexico Law Enforcement Academy, Chapter 202, 1979 Laws.

Section 5. CERTIFICATION BY WAIVER. — The director of the New Mexico law enforcement academy* shall, with the approval of the New Mexico law enforcement academy board*, waive the basic police radio dispatcher program and certify applicants who furnish evidence of satisfactory completion of a basic radio dispatcher training program which, in the director's* opinion, is comparable to that of the police radio dispatcher training program offered by the New Mexico law enforcement academy*."

Therefore, any new, uncertified dispatcher hired must be eligible to attend the New Mexico Law Enforcement Academy.

COMMENTARY: Any dispatchers employed on the effective date of the Police Radio Dispatcher Training Act, who would be automatically certified, may still attend the Basic Course for Police Radio Dispatchers at the New Mexico Law Enforcement Academy if they or their departments wish them to. An allocation for the cost of training for 1979 was included when the law was passed in the Legislature.

Recruitment Standards for Police Radio Dispatchers

- 209 All applicants for police radio dispatcher shall be considered with regard to the qualifications stated in Paragraphs 209A to 209M.

Certification

- 209A All applicants must either:
- a) Submit a copy of their Certification from the New Mexico Law Enforcement Academy, or
 - b) Meet the eligibility requirements for admission to the Basic Course for Police Radio Dispatchers at the New Mexico Law Enforcement Academy.

COMMENTARY: The Police Radio Dispatcher Training Act includes the requirements for Certification, and Paragraphs 209B, 209C, 209D, 209F and 209I include requirements for admission to the Academy. Municipalities should check with the New Mexico Law Enforcement Academy for any additional admission requirements.

* Terminology changed from "chief of training and education bureau" to "director of the New Mexico law enforcement academy" and from "secretary of criminal justice" to the "New Mexico law enforcement academy board" in accordance with the reorganization of the New Mexico Law Enforcement Academy, Chapter 202, 1979 Laws.

Education

- 209B** A minimum of a high school diploma or G.E.D. equivalent is required (Chapter 228, 1979 Laws, Section 2B). A copy of the diploma or equivalent evidence of education must be submitted.

Age

- 209C** A minimum age of 18 is required (Chapter 228, 1979 Laws, Section 2A). A copy of the birth certificate or equivalent evidence of age is required.

Citizenship

- 209D** United States citizenship is required (Chapter 228, 1979 Laws, Section 2A).

COMMENTARY: Evidence of United States citizenship will ordinarily be achieved with the birth certificate. Otherwise, naturalization papers or other evidence will be required.

Residence

- 209E** Residence in New Mexico or the municipality at the time of application is not required.

COMMENTARY: Some municipal personnel regulations may give preference to residents, over non-residents, if all other qualifications are equal.

Fingerprint Check

- 209F** A fingerprint check by the FBI will be administered. No convictions for a felony or other crime involving moral turpitude are permitted (Chapter 228, 1979 Laws, Section 2C).

Arrest Record Check

- 209G** An arrest record check with the New Mexico State Police and the police departments in other places of residence will be conducted. No convictions for a felony or other crime involving moral turpitude are permitted. The kind and number of misdemeanor convictions will be taken into consideration.

Background Investigation

- 209H** Applicants shall complete a background history form including education and all dates and places of employment, military service, and residence during the last ten years. Friends, neighbors, previous employers, educators, and

relatives may be contacted to the extent necessary to determine the applicant's demonstrated abilities or moral character. Military discharge papers may be required if discharge from the United States Armed Services has been within the last ten years. Intentional omissions or falsifications in completing the background history form may disqualify an applicant.

COMMENTARY: The applicant should sign an authorization for the fingerprint, arrest record check, and background investigation, as part of the application process. This might be made part of the application form.

Medical Examination

- 209I** Good hearing, speech, and sufficient physical health to adequately perform the duties of a dispatcher are required. A medical examination by a physician for the municipality is required.

COMMENTARY: The Police Radio Dispatcher Training Act requires that dispatchers be "free from any physical, emotional or mental condition which might adversely affect their performance." However, there is a provision for a correspondence course for Certification for dispatchers who are unable to attend the Academy due to a severe physical handicap. A physical condition which does not affect an applicant's ability to perform the duties of a dispatcher should not exclude him/her from employment.

Telephone Voice

- 209J** A clear, distinct telephone voice is required.

Clerical Skills

- 209K** Adequate typing, filing, handwriting, grammar, and spelling ability are necessary for keeping records and other clerical duties as required.

Personality, Character and Mental Attitude

- 209L** A conscientious manner, accuracy, good judgment and memory, ability to respond quickly and accurately under pressure, and the ability to keep information confidential are required.

Search and Handling of Female Prisoners

- 209M** If there are no female officers and the dispatcher is female, it may be decided to assign the duty of searching and handling female prisoners to the dispatcher. If so, the maturity

and physical ability to handle this duty should be considered at the time of hiring and proper training in procedures must be given.

COMMENTARY: Each department should have specific procedures for searching and handling female prisoners.

Recruitment Standards for Other Employees

- 210** Other employees for the police department shall be hired according to the personnel regulations of the municipality. Fingerprint and arrest record checks are not required for employees other than officers and dispatchers who must be eligible to attend the New Mexico Law Enforcement Academy. Each municipality shall decide whether the duties involved require fingerprint, arrest record or extensive background investigations.

COMMENTARY: The time and expense of extensive checks may not be practical for some positions. However, access to the police records and promotability of persons hired should be considered.

**300 APPOINTMENT AND
PERFORMANCE
EVALUATION**

300 APPOINTMENT AND PERFORMANCE EVALUATION

Authority for Selection

- 301** The police chief shall select the best qualified person who meets at least the minimum standards for any position in the police department.

COMMENTARY: The police chief should have the authority to select or disqualify any applicant. The mayor and governing body should select a police chief in whom they have confidence for the selection of employees for the police department. A municipality may choose to have the manager, clerk, or other municipal officials handle the initial stages of recruitment or to advise on selection.

Appointment of Police Officers and the Police Chief

- 302** Each new police officer, prior to entering on duty, shall complete the steps in Paragraphs 302A, 302B and 302D. The police chief has the additional requirement of bonding in Paragraph 302C.

Commission

- 302A** Each police officer shall receive, from the governing body, an appointment in writing, as a police officer of the municipality (Sec. 29-1-9 NMSA 1978). This written appointment, usually referred to as a "commission", is necessary to give the officer the authority to assume police powers within the municipality.

Oath

- 302B** Each new police officer shall "take an oath or affirmation to support the constitution of the United States, the constitution and laws of New Mexico", and the ordinances of the municipality, and "to faithfully perform the duties of the office" (Sec. 3-10-2A NMSA 1978).

Bond

- 302C** The governing body shall require a corporate surety bond from the police chief "for the care and disposition of municipal funds in the employee's custody and for faithful discharge of the employee's duties". Expenses of the bond shall be paid by the municipality. A blanket corporate-surety bond may be secured instead (Sec. 3-10-2B NMSA 1978).

COMMENTARY: Although the statute states that a bond is necessary from "the police officer", administrative practice has been to bond the one required police officer in a municipality, therefore, the police chief, and not each and every police officer.

Time Limit

- 302D** Each police officer shall take the oath and the police chief shall also be bonded within ten days after receiving the appointment (Sec. 3-10-2 NMSA 1978).

COMMENTARY: It is the responsibility of the municipality to have these procedures completed. However, the officer must be available and perhaps should make a request in writing if the procedures are not accomplished within the time period, since the statute provides that the governing body may declare the position vacated if the procedures are not completed within ten days after notification of appointment (Sec. 3-10-2C NMSA 1978).

Appointment of Other Employees

- 303** Each other new employee of the police department shall complete the steps in Paragraphs 303A and 303B.

Appointment

- 303A** All other employees of the police department shall be appointed to their positions by the mayor with the approval of the governing body (Sec. 3-11-6 NMSA 1978).

COMMENTARY: This appointment could be in writing, but is sometimes done by motion at the regular meeting of the governing body.

Bond

- 303B** Other employees of the police department who handle municipal funds or personal property shall be bonded or be included in the corporate surety bond as necessary (Sec. 3-10-2B 1978).

Probationary Period

- 304** All employees of the police department shall serve a probationary period during which they may be dismissed, without appeal, for failure or inability to perform the duties of the position. The probationary period for various classes of employees is stated below in Paragraphs 304A to 304C.

Certified Police Officers or Certified Dispatchers

- 304A** Ninety days following the date of employment.

COMMENTARY: The police chief should determine from experience whether ninety days is a suitable length of time to evaluate a new employee's performance and may recommend a change in the time limit, if necessary.

Uncertified Police Officers or Uncertified Dispatchers

- 304B** Until successful completion of the basic program for police officers or dispatchers at the New Mexico Law Enforcement Academy, with a minimum of ninety days. Inability to complete the basic program and receive certification within twelve months of the date of employment is a sufficient reason for discharge.

COMMENTARY: Section 29-7-8, amended by Chapter 202, 1979 Laws, requires that an officer be certified, and Chapter 228, 1979 Laws, requires that a dispatcher be certified, in order to receive "an original appointment on a permanent basis". Therefore, an uncertified officer or dispatcher must be considered a temporary or probationary employee until certification is received. However, this temporary or probationary period could last for up to twelve months until the officer or dispatcher completes the respective basic course at the Academy. Some municipal personnel rules prohibit an employee from using paid sick leave or vacation time until after successful completion of the probationary period. It would be unnecessary and unfair for uncertified officers or dispatchers to be prohibited from using these or other benefits for up to one year. This could be handled by amending the municipal personnel regulations to permit all employees to receive benefits after the same period of time, whether or not uncertified officers and dispatchers are still technically temporary or probationary employees. This change for benefit purposes does not change the fact that an uncertified officer or dispatcher still may be dismissed without appeal for unsatisfactory performance or failure or inability to receive certification.

Other Employees

- 304C** Ninety days following the date of employment.

Performance Evaluation

- 305** The police chief shall initiate a conference with each employee at least once every six months. The purpose of the conference for the police chief is to discuss the employee's

performance, any improvements which have taken place or improvements which are necessary. Any disciplinary action which has been noted in the employee's personnel file should be reviewed to determine whether the situation has been corrected. Encouragement and guidance should be given on any issues the employee is having difficulty with. The need for, or interest in, any advanced law enforcement courses should be recognized and acted upon as appropriate. The employee should be encouraged to air any grievances, problems, or dissatisfactions that he/she has, and steps should be taken to remedy them if at all possible. A written report shall be prepared by the police chief on issues covered in the evaluation conference. This report should be signed by the employee, as an acknowledgment of his/her having read it, not necessarily as an agreement to its content. A copy of the evaluation should be put in the employee's personnel file and a copy given to the employee.

*COMMENTARY: The Municipal League is in the process of collecting various performance evaluation forms from police departments. If any officials feel that an evaluation form would be useful, they may contact the League staff to review sample forms and discuss their objectives for a performance evaluation form for their department. Copies of an excellent booklet, *Evaluating Employee Performance: A Manual for Local Governments*, published by the Washington Local Government Personnel Institute, are available from the League office.*

Evaluation During Probationary Period

306

Evaluation conferences shall be held at least monthly during the probationary period so that problems may be corrected promptly or the employee terminated during the probationary period.

400 RULES OF CONDUCT

Observance of Rules of Conduct

- 401 Rules designated for "officers" shall be observed by all commissioned police officers of the department, either certified or uncertified. Rules designated for "employees" shall be observed by all commissioned police officers, dispatchers, and other employees (generally clerical staff) of the department. All employees shall also observe any other procedures, regulations, or special orders of the police chief as are designated for their position.

Disciplinary Action for Violation

- 402 The mayor and governing body, upon recommendation from the police chief, shall adopt an appropriate disciplinary action for the violation of any rule of conduct at the time the rules are adopted.

COMMENTARY: Disciplinary action should be decided in advance, so that unusually harsh action is not taken for minor violations, or major violations ignored. Kinds of, and procedures for administering, disciplinary action are covered in Chapter 500. The review committee formed at the time this personnel manual is considered may advise on disciplinary action.

Adjustment of Disciplinary Action

- 403 The police chief has the authority to adjust, or recommend to the governing body to adjust, the disciplinary action imposed in specific cases when extenuating circumstances warrant it and proper documentation of reasons is given.

GENERAL CONDUCT

Unbecoming Conduct

- 404 Employees shall conduct themselves at all times, both on and off duty, in a manner which will reflect favorably upon the police department. Conduct unbecoming an employee of the police department shall include that which can be demonstrated as bringing the police department into disrepute, as reflecting discredit upon an employee, or impairing the operation or efficiency of the employee or police department.

COMMENTARY: Each police department should have specific rules covering foreseeable misconduct. The "unbecoming conduct" rule should be used infrequently to

cover actions which are inappropriate for an employee of the police department, but which have not been specifically defined in advance. The police chief, mayor and governing body must be able to prove that the conduct in question actually does bring the police department into disrepute, reflect discredit upon an employee, or impair the operation or efficiency of the employee or police department, in a manner serious enough to warrant disciplinary action.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Immoral Conduct

405

Employees shall maintain a high level of moral conduct in their personal and business affairs. Employees shall not participate in any conduct contrary to justice or honesty, or involving moral turpitude, which prevents them from performing their duty as an employee, or which brings the police department into disrepute.

COMMENTARY; The police chief, mayor or governing body charging an employee with violation of this rule must be able to prove that the conduct does in fact reduce the effectiveness of the employee or bring the police department into disrepute.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Observance of Laws

406

Employees shall obey all laws of the United States and of any state or municipality in which they are present. Conviction of a felony shall be evidence of the violation of this rule. Conviction of a misdemeanor, or several misdemeanors, shall be considered with regard to the effect on the employee's ability to perform his/her duties.

COMMENTARY: This subjects the employee to departmental discipline in addition to any criminal or civil penalty.

DISCIPLINARY ACTION

FOR CONVICTION OF A FELONY: _____

FOR CONVICTION OF A MISDEMEANOR: _____

FOR THE PERIOD BETWEEN ARREST AND TRIAL:

WEAPONS AND USE OF FORCE

Approved Weapons

- 407 Officers, while on duty, shall carry a firearm and other weapons (e.g. baton, mace) which are approved by the police chief. Officers may also carry an approved, concealed, loaded firearm, when off duty, if they are within their jurisdiction and might be expected to take police action. Weapons shall not be carried when off duty when it is illegal, unsafe, or unfeasible. Weapons need not be worn when the officer is at home.

COMMENTARY: Section 30-7-2 NMSA 1978 on unlawful carrying of a deadly weapon states:

"A. Unlawful carrying of a deadly weapon consists of carrying a concealed loaded firearm or any other type of deadly weapon anywhere, except in the following cases:

- (1) in the person's residence or on real property belonging to him as owner, lessee, tenant or licensee;*
- (2) in a private automobile or other means of conveyance, for lawful protection of the person's or another's person or property; or*
- (3) by a peace officer in the lawful discharge of his duties.*

B. Nothing in this section shall be construed to prevent the carrying of any unloaded firearm.

C. Whoever commits unlawful carrying of a deadly weapon is guilty of a petty misdemeanor."

DISCIPLINARY ACTION FOR VIOLATION: _____

Carrying Firearms While Under the Influence of an Intoxicant or Narcotic

- 408 Officers shall not carry firearms while under the influence of an intoxicant or narcotic.

COMMENTARY: Section 30-7-4 NMSA 1978, amended by Chapter 79, 1979 Laws, on negligent use of a deadly weapon states:

"A. Negligent use of a deadly weapon consists of:

- (1) discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;*
- (2) carrying a firearm while under the influence of an intoxicant or narcotic;*

(3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or

(4) discharging a firearm within one hundred fifty yards of an inhabited dwelling or building without the permission of the owner or lessee thereof.

B. The provisions of Paragraph (1), (3) and (4) of Subsection A of this section shall not apply to a peace officer or other public employee, who is required or authorized by law to carry or use a firearm in the course of his employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of his office or employment.

C. The exceptions from criminal liability provided for in Subsection B, shall not preclude or affect civil liability for the same conduct. Whoever commits negligent use of a deadly weapon is guilty of a petty misdemeanor."

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Carrying Firearms in Liquor Establishments

409

Officers shall not carry firearms in establishments which serve or sell liquor, except in the lawful discharge of their duties.

COMMENTARY: Section 30-7-3 NMSA 1978 states:

"Unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages consists of carrying a loaded or unloaded firearm on any premises licensed by the department of alcoholic beverage control for the dispensing of alcoholic beverages except:

(1) by a law enforcement officer in the lawful discharge of his duties; . . .

B. Whoever commits unlawful carrying of a firearm in an establishment licensed to dispense alcoholic beverages is guilty of a fourth degree felony."

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Qualification with Firearms

410

Officers shall regularly qualify with approved on-duty and off-duty firearms according to standards and times set by the police chief.

COMMENTARY: Each police chief should specify what types of firearms and other weapons are approved in the

department and the safety precautions for their use.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Safe Handling of Weapons

- 411** Officers shall handle weapons in a safe and prudent manner at all times. Firearms shall not be removed from the holster for unnecessary display or showing-off.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Protection from Unauthorized Use of Weapons

- 412** Officers shall protect their weapons from use by unauthorized persons, including the public, prisoners, children, and family members. This includes wearing the holster in a manner that the firearm cannot easily be removed by others and providing a safe place for keeping weapons at home.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Maintenance of Weapons

- 413** Officers shall clean and inspect their firearms regularly and have any malfunctions repaired immediately, according to department procedures.

COMMENTARY: The police chief should institute a procedure for the periodic inspection of weapons, perhaps at the time of firearms qualification.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Minimum Force

- 414** Officers shall make arrests without force whenever possible and with no more force than necessary at all times.

COMMENTARY: Aggressive behavior on the part of the officer is likely to result in the arrested person responding with violence. Officers should conduct themselves so that they are not unnecessarily inciting violence on the part of the arrested person.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Warning Shots

- 415** Officers shall not fire warning shots at any time, and particularly not at a fleeing person or vehicle.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Firing at Misdemeanants

- 416** Officers shall not fire at any person committing a misdemeanor or traffic violation, even though such person may escape.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Endangering Citizens

- 417** Officers shall not fire weapons in any situation where persons other than the officers or the armed felon may be endangered.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Situations Which Permit the Use of Firearms

- 418** Officers shall recognize that the decision to use the firearms is a grave responsibility and shall endeavor to control the situation by other means if at all possible. Situations which may require the officer to use his/her firearm shall be limited to the following:

- a) to stop the action if a positively identified armed felon is endangering other persons;
- b) for the officer's self-defense;
- c) to call for assistance, or give an alarm, in a serious situation when other means are not available;
- d) to prevent a felony dangerous to human life, when other means to prevent the felony would be too slow, ineffective, or hazardous to the officer or person endangered;
- e) to kill a critically injured or dangerous animal when other alternatives are not available;
- f) for authorized target practice; or
- g) for other possible instances in which in the conscience of a reasonable and prudent man would dictate the use of firearms as a last resort.

COMMENTARY: Section 30-2-6 NMSA 1978 on justifiable homicide by a public officer or public employee states:

"Homocide is justifiable when committed by a public officer or public employee or those acting by their command and in their aid and assistance:

A. in obedience to any judgment of a competent court;

B. when necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty;

C. when necessarily committed in retaking felons who have been rescued or who have escaped, or when necessarily committed in arresting felons fleeing from justice; or

D. when necessarily committed in order to prevent the escape of a felon from any place of lawful custody or confinement."

Therefore, it may be technically legal to fire at a fleeing felon. However, it is frequently difficult to justify later and causes poor publicity for the department, particularly if the supposed felon turns out to be a juvenile, an unarmed person, or a misdemeanor. Various court cases in other states have not upheld the legality of firing at a fleeing felon. Officers should not kill, upon the request of any person, an animal which is merely a nuisance.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Report of Discharge of Firearms

- 419** Officers shall make a written report of any discharge of their firearms, and the circumstances surrounding it, on or off duty, to the police chief. Authorized target practice and game hunting under proper regulations is exempt. Any discharge of firearms which causes injury or death to any person shall be reported to the police chief immediately, regardless of the hour.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Mistreatment of Prisoners

- 420** Officers shall not mistreat any person in their custody.

COMMENTARY: Each department should have specific procedures for handling persons in custody. This rule allows disciplinary action to be taken for mistreatment of persons in custody, (e.g. verbal abuse, refusal of telephone calls, etc.), apart from excessive use of force.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

GENERAL RULES WHILE ON DUTY

Reporting for Duty

- 421 Employees shall report for duty at the time and place required. They shall be physically and mentally fit and have the proper equipment and information to perform their duties. Judicial subpoenas shall be considered an order to report for duty. Unexcused absences from court are not permitted.

COMMENTARY: The police chief shall be informed of required court appearances as soon as possible, so that they may be taken into consideration when the duty schedule is made up.

DISCIPLINARY ACTION
FOR VIOLATION: _____

Use of Sick or Emergency Leave

- 422 Employees shall notify the department as soon as possible, or, unless unable to do so, at the latest two hours before the shift begins, if they expect to be unable to report for duty due to illness or other emergency.

COMMENTARY: This allows time for the police chief to obtain other coverage for the shift. It would be extremely rare for illness to occur exactly at the time the shift begins and the employee not to be aware of the possibility earlier.

DISCIPLINARY ACTION
FOR VIOLATION: _____

Illness or Injury Reports

- 423 Employees shall not falsely report themselves ill or injured or otherwise deceive or attempt to deceive the department as to the condition of their health. Employees shall report to the police chief any physical or mental condition which may affect their job performance and shall seek treatment promptly. Employees shall be alert to behavior of other employees which may indicate a physical or mental condition which seriously affects job performance, and shall report such behavior to a supervisory officer or the police chief. The police chief may require that an employee be examined by a physician or psychiatrist if there is sufficient reason to believe that the employee's job performance is being affected by his/her health.

COMMENTARY: The inability of an employee to perform his/her duties adequately due to a physical or mental condi-

tion may cause such an employee to jeopardize his/her own or another employee's life.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Neglect of Duty

- 424** Employees shall not read nonpolice-related literature, play games, watch television or movies, or other wise engage in entertainment while on duty, except as may be required for the performance of duty. Employees shall not engage in any activities, personal telephone calls, or personal business which would cause them to neglect or be inattentive to duty.

COMMENTARY: It generally creates a poor public image if police department employees appear to be amusing themselves at taxpayers' expense. Mailing a letter is unlikely to interfere with an officer's duty, but doing the week's grocery shopping would be considered inappropriate while on duty.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Sleeping on Duty

- 425** Employees shall remain awake on duty. If unable to do so, they shall report to the police chief who shall relieve them from duty, reassign, or discipline them as appropriate under the circumstances.

COMMENTARY: Some departments with few officers and long on-duty periods may wish to eliminate or amend this rule.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Leaving Duty Post

- 426** Officers shall not leave their assigned duty area while on duty, except for authorized reasons and upon notifying the department.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Absence Without Leave

- 427** Employees shall not be absent without official leave for more than 48 hours, unless extenuating circumstances can be proved.

COMMENTARY: In most cases this rule is used as a basis to dismiss an employee who disappears (e.g. doesn't call in sick, doesn't return from vacation, etc.) without approved leave. There could be a rare case where an employee could not report due to an accident which might justify a reversal of the decision. Obviously, the police chief should make a reasonable attempt to learn the employee's whereabouts or circumstances of his/her absence before enforcing this rule.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Meals and Breaks

- 428** Officers shall notify the department when suspending patrol duty for meals or breaks and shall leave word where they may be reached. Officers are subject to immediate call at all times while at meals or on breaks. Other employees shall take meals or breaks according to a departmental schedule which provides for adequate coverage of the police department.

COMMENTARY: Departments with several officers on a shift should have a procedure for scheduling meals and breaks so that not all officers are off patrol at the same time.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Unsatisfactory Performance

- 429** Employees shall perform their duties in a competent manner. Unsatisfactory performance may include, but shall not be limited to, the following:

- a) lack of knowledge of the laws to be enforced;
- b) unwillingness or inability to perform the assigned duties;
- c) failure to observe work standards for the position;
- d) failure to take appropriate action on the occasion of crime, disorder or other matter requiring police attention;
- e) repeated poor performance evaluations by the police chief;
- f) repeated violations of rules of conduct and procedures with supporting written records. The number and seriousness of the violations shall be considered.

COMMENTARY: Generally violation of this rule is used for dismissal of an employee who does not seem suited for

police work. Note that written evidence of violations or poor performance evaluations are necessary.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Reports

- 430** Employees shall submit required reports on time and in accordance with established departmental procedures. Reports shall be truthful and complete. Employees shall not knowingly submit false, inaccurate or improper information in a report. Facts shall be clearly distinguished from opinions in reports.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Care of Evidence and Property

- 431** Employees shall promptly process property and evidence acquired in connection with police responsibilities, according to the procedures of the department. Employees shall not manufacture, conceal, falsify, destroy, remove, tamper with, or withhold any evidence for an investigation, nor appropriate any found articles, confiscated property, or municipal property to their own use.

COMMENTARY: Each department should have established procedures as to where and by whom evidence, found articles, and confiscated property are kept.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Use of Equipment

- 432** Employees shall take care of department equipment according to proper procedures and shall not lose or damage it due to negligence. Employees shall not use police equipment for nonpolice employment or personal use, without authorization from the police chief. All equipment turned over to other employees at the end of a shift shall be in good condition or steps taken for its maintenance.

COMMENTARY: Each department should establish procedures for the maintenance of police cars, weapons, uniforms, radios, etc. Using police equipment when not on police duty could cause confusion as to liability if an accident occurs. When police cars are taken home, each department should issue specific procedures as to when and how they will be used.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Identification

- 433** Officers shall carry their badges and identification cards on their persons at all times, including when off duty, except when impractical or dangerous to their safety or to an investigation. Officers shall give their name and badge number, in a courteous manner, to any person requesting it while they are on duty or presenting themselves as having an official capacity, except when withholding of such information is necessary for the performance of police duties.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Answering Questions

- 434** Officers shall truthfully answer questions, from the police chief, specifically and narrowly related to their employment and the operation of the police department. Answers shall not be used in criminal prosecution of the officer unless Miranda warnings and proper criminal procedures are used.

COMMENTARY: This rule allows the officer to be disciplined for refusal to answer questions. Note that questions concerning the officer's personal life are not permitted unless the issue can be demonstrated to be directly related to job performance or police matters.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Use of Medical Examinations, Photographs, and Lineups

- 435** Officers shall submit to medical examinations, chemical tests, photographs, or lineups, when ordered by the police chief, and when such requirements are specifically and narrowly related to a particular internal investigation and when probable cause for the officer's involvement exists. Results of such examinations, tests, photographs, or lineups shall not be used in the criminal prosecution of an officer unless proper criminal procedures are used.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

FOLLOWING ORDERS

Insubordination

- 436** Employees shall promptly obey any lawful order of the police chief or any superior officer. This shall include

orders relayed by the dispatcher or another employee of the same or lesser rank.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Conflicting Orders

- 437** Employees who are given an otherwise proper order which is in conflict with a previous order, rule of conduct or directive shall respectfully inform the police chief or superior officer issuing the conflicting order. If the police chief or superior officer does not retract or alter the order, it shall stand, and the responsibility shall be on the police chief or superior officer. Employees shall obey the second order and shall not be held responsible for the previous order.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Illegal Orders

- 438** Employees shall not obey any order which they know, or should know, would require them to commit an illegal, unsafe, or reckless act. If in doubt as to the legality or safety of an order, employees shall request the officer giving the order to clarify it or to confer with higher authority. Employees shall not be disciplined for questioning the legality or safety of an order or for refusing to obey it if not satisfied as to these issues.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Chain of Command

- 439** Employees shall refer problems, grievances, or suggestions for the improvement of procedures up the chain of command to the police chief. The police chief shall then take action or discuss the matter with the mayor and governing body, if appropriate. Employees shall not take internal problems of the department directly to the mayor or members of the governing body, without attempting to resolve them with the police chief, unless the issue is covered by Paragraph 440. Supervisory officers shall not prevent an employee from taking an issue to the police chief, if the employee so desires. The police chief shall not prevent the employee from requesting a grievance hearing according to Paragraph 511, if the employee wishes.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Obligation to Report Illegal or Improper Actions

- 440 Employees shall be obligated to report illegal acts or violations of these rules of conduct or procedures by other members of the department to a supervisory officer or the police chief. Employees shall not be disciplined for not following the chain of command if the circumstances of the situation warrant it. Reports may be made to the mayor if the illegal action or violation involves the police chief.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Intervention

- 441 Employees shall not interfere with cases being handled by other employees or by any other governmental or police agency, unless:
- a) ordered to intervene by the police chief; or
 - b) the intervening employee believes beyond a reasonable doubt that a grave injustice would result from failure to take immediate action.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Action Outside Regular Duties

- 442 Officers shall obtain permission from the police chief before taking investigative or other police action, not part of their regular duties, unless the situation requires immediate police action.

COMMENTARY: The intention is to prevent conflict of authority, not to suppress the officer's initiative. Clear guidelines of what is and what is not a part of each officer's duty are necessary.

DISCIPLINARY ACTION

FOR VIOLATION: _____

DRIVING

Unauthorized Persons in Police Vehicles

- 443 Officers shall not transport citizens in police vehicles except in the course of police business or upon receipt of authorization from the police chief.

COMMENTARY: This prevents officers from giving rides to friends and family while on duty, or allowing an unauthorized person to accompany the officer on a tour of

duty. However, an officer could pick up a stranded motorist and take him to a service station. Authorizations should include a waiver of liability for the department and officer for injury. Any authorization is likely to be for particular individuals to observe police duties (e.g. chaplains, citizens in community relations programs).

DISCIPLINARY ACTION

FOR VIOLATION: _____

Operating Vehicles

- 444** Officers shall drive and park police vehicles in a careful and prudent manner and shall obey all traffic laws in order to set a good example for the community.

COMMENTARY: Some citizen will notice every minor traffic violation committed by a police officer. Poor driving habits will cause complaints and make it more difficult for officers to enforce traffic laws.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Locking Vehicle

- 445** Officers shall remove the keys, roll up the windows, and lock the police car at all times when parking and leaving it, except when impractical in an emergency.

COMMENTARY: This is to prevent the police car from being stolen, from children playing in it, or persons hiding in the back seat.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Seat Belts

- 446** The driver and the passenger in the front seat of police vehicles shall wear seat belts.

COMMENTARY: Since the municipality may be liable for injuries sustained, it ought to require good safety practices.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Emergency Driving Procedures

- 447** Officers shall not exceed the speed limit, disregard stop signs or lights, or use their red light and siren, except in the following instances:

a) when responding to an emergency call; or

b) when in pursuit of an actual or suspected violator of the law.

Section 66-7-6 NMSA 1978 states the law regarding authorized emergency vehicles, as follows:

"A. The driver of an authorized emergency vehicle, when responding to an emergency call or when in pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section subject to the conditions stated. The director and the chief of the New Mexico state police may designate emergency vehicles and revoke the designation. When vehicles are so designated, they are authorized emergency vehicles.

B. The driver of an authorized emergency vehicle may:

- (1) park or stand, irrespective of the provisions of the Motor Vehicle Code (66-1-1 to 66-8-140 NMSA 1978);
- (2) proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation;
- (3) exceed the maximum speed limits so long as he does not endanger life or property; and
- (4) disregard regulations governing direction of movement or turning in specified directions.

C. The exemptions granted to an authorized emergency vehicle apply only when the driver of the vehicle, while in motion, sounds an audible signal by bell, siren or exhaust whistle as reasonably necessary, and when the vehicle is equipped with at least one lighted lamp displaying a red light visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from the front of the vehicle.

D. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor does it protect the driver from the consequences of his reckless disregard for the safety of others."

Therefore, officers shall drive with proper care for the traffic, weather and road conditions and for the safety of other persons, regardless of whether they are responding to an emergency call or pursuing a violator of the law.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Driver's License/Emergency Vehicle Operator's Permit

- 448 Officers shall possess a valid New Mexico driver's license and an emergency vehicle operator's permit, and shall carry them at all times when driving. Officers shall notify the police chief of any charges or convictions of traffic violations, while on or off duty, and any suspension or revocation of their license.

COMMENTARY: Suspension from duty or assignment to office work is probably the only alternative, if the officer's license is suspended or revoked, unless the community has officers on foot patrol or in two-person vehicles.

DISCIPLINARY ACTION FOR VIOLATION: _____

Apprehension of Traffic Violators

- 449 Officers shall not arrest persons for violations of the Motor Vehicle Code unless the officer is wearing a uniform. Officers in uniform, but in unmarked vehicles, should not ordinarily attempt to stop vehicles for traffic violations, but should call for a marked vehicle to make the stop.

COMMENTARY: Section 66-8-124 NMSA 1978 states:

"Arresting officer to be in uniform.

No person shall be arrested for violating the Motor Vehicle Code or other law relating to motor vehicles punishable as a misdemeanor except by a full-time salaried peace officer who, at the time of the arrest, is wearing a uniform clearly indicating his official status."

Attorney General Opinion No. 73-71 (November 14, 1973) referred to the definition of a uniform as:

"It can thus be concluded that the members of the municipal police force, if in uniform, should wear a dress of the same general appearance, as opposed to their ordinary civilian dress. Such dress should clearly indicate their official status. . . . The uniform should identify the officer as being an officer of the city police force, and should generally conform to the dress of the other officers."

Although it is not illegal for a uniformed officer in an unmarked car to make a traffic stop, it can be unsafe. Officers should not use their private cars for police patrol, since they would not have an authorized emergency vehicle permit, and there could be confusion as to liability if there is an accident. Both the driver and the vehicle need an emergency vehicle permit from the Department of Motor Vehicles.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

PUBLIC RELATIONS

Courtesy to the Public

- 450** Employees shall be courteous to the public, shall control their tempers, and shall not engage in arguments, even in the face of extreme provocation. Employees shall not use coarse, violent, profane, or insolent language or gestures and shall not express any prejudice concerning race, religion, politics, national origin, sex, lifestyle or similar personal characteristics of persons with whom they come in contact. Employees shall be aware that persons with whom they deal may be emotionally upset, frightened, or grief-stricken. Employees shall use tact and sensitivity when interviewing or aiding such persons so that the situation is not aggravated.

COMMENTARY: Officers may be called upon to notify relatives of the death of a person or to conduct interviews concerning the circumstances of a death. Kindness and sensitivity in these situations do much to enhance the image of the police department.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Response to Requests for Assistance

- 451** Employees shall take action in a courteous and official manner, according to department procedures, whenever any person requests assistance. This includes referring persons to other governmental agencies when the matter cannot be handled by the police department. Employees shall not show a lack of concern or of interest in a person's complaint.

COMMENTARY: The issue is always of great concern to the person requesting assistance. Lack of response from the police department causes poor public relations.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Information Given to Press and Public

- 452** Employees shall comply with the Arrest Record Information Act (Secs. 29-10-1 through 29-10-8 NMSA 1978) regarding any information given out from police records. The Arrest Record Information Act states:

“Purpose of Act (Sec. 29-10-2)

The legislature finds and declares that the responsible exchange of complete and accurate information among law enforcement agencies is recognized as necessary and indispensable to effective law enforcement. Individual rights, however, may be infringed if information is inaccurate, incomplete or is disseminated irresponsibly. The Arrest Record Information Act is for the purpose of protecting those rights.

Definitions (Sec. 29-10-3)

As used in the Arrest Record Information Act:

A. “arrest record information” means notations of the arrest or detention, or indictment or filing of information or other formal criminal charge against an individual by a law enforcement agency which resulted in a negative disposition; and

B. “negative disposition” means that:

- (1) criminal proceedings have been concluded and the defendant was found not guilty;
- (2) a prosecutor has elected not to refer the matter for prosecution; or
- (3) criminal proceedings have been indefinitely postponed, and includes but is not limited to acquittal, case continued without finding, charge dismissed due to insanity or mental incompetence, charge still pending due to insanity or mental incompetence, nolle prosequi, deceased, deferred disposition, pardoned, extradition proceedings have been concluded and mistrial-defendant discharged.

Confidentiality of Arrest Records (Sec. 29-10-4)

The arrest record information maintained by the state or any of its political subdivisions pertaining to any person charged with the commission of any crime shall be confidential and dissemination or the revealing the contents thereof, except as provided in the Arrest Record Information Act is unlawful.

Exchange of Information (Sec. 29-10-5)

A law enforcement agency may disseminate arrest record information to a federal, state or local government law enforcement agency, provided that when such arrest record is disseminated to a law enforcement agency situated outside this state, such information shall be accompanied by a statement substantially embodying the intent set forth in Section 20-10-4 of the Arrest Record Information Act. Nothing in the Arrest Record Information Act prohibits

direct access by the attorney general, district attorney or the courts to such information where it is deemed necessary in the performance of their functions under law. Nothing in the Arrest Record Information Act prohibits direct access by a law enforcement agency to automated wanted information pertaining to a person or to stolen property information.

Access by Individuals (Sec. 29-10-6)

A. Upon satisfactory verification of his identity, any individual may inspect, in person, through counsel or through his authorized agent, arrest record information maintained by a law enforcement agency concerning him.

B. Personnel assigned to contractual research for a state or federally approved criminal justice project shall be permitted access to arrest record information. Approved personnel shall not further disseminate such information except as statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

Application (Sec. 29-10-7)

A. The provisions of the Arrest Record Information Act do not apply to criminal history record information contained in:

- (1) posters, announcements or lists for identifying or apprehending fugitives or wanted persons;
- (2) original records of entry such as police blotters maintained by criminal justice agencies, compiled chronologically and required by law or long-standing custom to be made public, if such records are organized on a chronological basis;
- (3) court records of public judicial proceedings;
- (4) published court or administrative opinions or public judicial, administrative or legislative proceedings;
- (5) records of traffic offenses and accident reports;
- (6) announcements of executive clemency; and
- (7) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable.

B. Nothing in this act prevents a law enforcement agency from disclosing to the public arrest record information related to the offense for which an adult individual is currently within the criminal justice system. Nor is a law enforcement agency prohibited from confirming prior arrest record information to members of the news media or any other person, upon specific inquiry as to whether a named

individual was arrested, detained, indicted or whether an information or other formal charge was filed, on a specified date, if the arrest record information disclosed is based on data enumerated by Subsection A of this section.

Review of Arrest Record Information (Sec. 29-10-8)

A person who believes that arrest record information concerning him is inaccurate or incomplete shall, upon satisfactory verification of his identity, be entitled to review such information and obtain a copy of it for the purpose of challenge or correction. In the event a law enforcement agency refuses to correct challenged information to the satisfaction of the person to whom the inaccurate or incorrect information relates, the person shall be entitled to petition the district court to correct such information.”

COMMENTARY: Each police chief may want to delegate the responsibility for press relations to a particular officer, or keep the responsibility for himself, to ensure that any information given out is in conformance to the Arrest Record Information Act. Note that the mayor and members of the governing body do not have any privileged access to police records.

DISCIPLINARY ACTION FOR VIOLATION: _____

Conversations About Police Business

- 453 Employees shall be discreet in their personal conversations so that names of persons involved in police action, descriptions of incidents, etc. are not disclosed to unauthorized persons. Employees should be aware that information learned as an employee of the police department is confidential, unless it is a matter of public record. Employees shall refrain from bragging or gossiping about police procedures or business in any manner which would reflect negatively on the department or on persons involved in police action, or which would jeopardize pending police action or court cases. Nothing in this paragraph is intended to infringe upon the First Amendment rights of an employee of the police department.

COMMENTARY: New and inexperienced employees may be particularly susceptible to discussing police incidents with acquaintances and should be cautioned by the police chief as to the confidentiality of information learned as an employee. This includes being discreet when talking to

other employees in a public place where the conversation might be overheard by others.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Public Statements or Appearances

- 454 All invitations for employees to speak to civic groups, schools, etc., as a representative of the police department, shall be reviewed and approved by the police chief in advance. Employees shall not represent themselves to be, or allow others to infer that they are, presenting the official policies, views and opinions of the department or the municipality without the knowledge or approval of the police chief. This shall apply to addressing public gatherings or contacts with the news media.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

ABUSE OF POSITION

Gifts, Gratuities or Bribes

- 455 Employees shall not solicit or accept from any person, business or organization any gift (including money, tangible or intangible personal property, food, beverage, loan, promise, service, or entertainment) for the benefit of themselves, or the police department, if it may reasonably be inferred that the donor:

- a) seeks to influence action of officers to either perform or not perform an official duty; or
- b) has an interest which may be substantially affected directly or indirectly by the performance or nonperformance of an official duty.

COMMENTARY: Section 30-24-1 NMSA 1978, concerning bribery of a public officer or public employee, states:

"Bribery of public officer or public employee consists of any person giving or offering to give, directly or indirectly, anything of value to any public officer or public employee, with intent to induce or influence such public officer or public employee to:

- A. give or render any official opinion, judgment or decree;*
- B. be more favorable to one party than to the other in any cause, action, suit, election, appointment, matter or thing pending or to be brought before such person;*

C. procure him to vote or withhold his vote on any question, matter or proceeding which is then or may thereafter be pending, and which may by law come or be brought before him in his public capacity;

D. execute any of the powers in him vested; or

E. perform any public duty otherwise than as required by law, or to delay in or omit to perform any public duty required by law. Whoever commits bribery of a public officer or public employee is guilty of a third degree felony."

Note that it is gifts which influence an officer's actions which are forbidden by Paragraph 455. If free coffee, discounted meals, etc. are regularly given to officers by a particular establishment, the police chief should determine whether the management expects favors in return, such as overlooking ordinance or parking violations in the area. It is the attitude of the management which determines whether coffee is "free" or whether officers are obligated in return. If violations of this rule are frequent, the police chief may wish to issue more specific, stricter rules.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Rewards

- 456 Employees shall not accept rewards from citizens or businesses for services rendered in the line of duty. Persons desiring to reward an employee shall be directed to the police chief to fill out a citizen report concerning the praiseworthy action.

COMMENTARY: This is to prevent officers from accepting money for finding a lost child, for example. It is intended to prevent the impression that offering a reward improves the efficiency of the police department. However, a favorable citizen report in the employee's personnel file should be to the employee's benefit.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Abuse of Official Identification

- 457 Officers shall not use their official position, identification cards or badges, and other employees shall not use their official position, for:
- a) personal or financial gain;
 - b) obtaining privileges not otherwise available to them except in the performance of duty; or
 - c) avoiding consequences of illegal acts.

Officers shall not lend their identification cards or badges to another person or permit them to be photographed or reproduced without the permission of the police chief.

COMMENTARY: This prohibits officers from using their identification to gain free admission to sports events, movies, etc. when they are there for entertainment and not police business.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Commercial Use of Position

- 458** Employees shall not authorize the use of their names, photographs, and official titles which identify them as employees of the police department, in connection with testimonials or advertisements of any product or service, without the approval of the police chief.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

Referrals for Services

- 459** Employees shall not recommend, except in the transaction of personal business, any product or service, such as an attorney, ambulance service, towing service, bondsman, or funeral director.

COMMENTARY: This is to prevent the appearance of favoritism or the receipt of kickbacks from certain organizations. Each department should have a set procedure for calling tow companies or private ambulance services upon request, either in rotation for each call, by the month or by geographic area, so that business is fairly distributed among them.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

False Arrest

- 460** Officers shall not make false accusations of charges or make any arrest, search or seizure which they know or should know is not in accordance with law and departmental procedures.

**DICIPLINARY ACTION
FOR VIOLATION: _____**

Financial Interest in Businesses

- 461** Employees shall not acquire financial interest in any business which could be directly affected by the employee's official acts. Employees shall not use confidential information acquired through their employment for their own or another's private gain.

COMMENTARY: This rule is from Section 3-10-4 NMSA 1978 which states:

"Financial interests of municipal officers or employees.

A. No elected municipal officer during the term for which elected and no municipal employee during the period of such employment shall acquire a financial interest in any new or existing business venture or business property of any kind when such officer or employee believes or has any reason to believe that the new financial interest will be directly affected by his official act.

B. No elected municipal officer and no municipal employee shall use confidential information acquired by virtue of his municipal office or municipal employment for his or another's private gain.

C. The district attorney of the judicial district in which the municipality is located shall prosecute when appropriate any complaint brought to his attention involving a violation of this section. Violation of the provisions of this section by any municipal officer or municipal employee is grounds for removal or suspension of the officer and dismissal, demotion or suspension of the employee."

DISCIPLINARY ACTION

FOR VIOLATION: _____

Political Activity

- 462** Employees, while in uniform or on duty, or while purporting to represent the views of the police department, shall not:
- a) attempt to influence, interfere with, or affect the results of any local, state, or federal election;
 - b) solicit votes or distribute literature for, or against, any candidate;
 - c) circulate petitions;
 - d) sell tickets or participate in fund-raising events for any candidate or political party; or
 - e) endorse, or oppose, any candidate in a political advertisement or before a public gathering.

Municipal property shall not be used for political posters or bumper stickers.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Incompatible Offices

463 Employees shall not hold or become a candidate for an incompatible elective office of the municipality.

COMMENTARY: In the case of Haymaker v. State, ex rel. McCain, 22 N.M. 400, 163 P.248 (1917), the New Mexico Supreme Court held that public offices may be incompatible for functional as well as physical reasons:

"The incompatibility between two offices, which upon acceptance of one by the incumbent of the other operates to vacate the latter, is not simply a physical incompatibility to discharge the duties of both offices at the same time, but it is an inconsistency in the functions of the offices, as where one is subordinate to the other or where a contrariety or antagonism would result in the attempt by one person to faithfully and impartially discharge the duties of both."

Therefore, the office of mayor or member of the governing body would be incompatible with that of police officer, since the mayor and governing body have the authority to hire, dismiss and set the salaries for police officers. The office of municipal judge would be incompatible with that of police officer, since the officer could not give testimony and decide the case at the same time.

An elected position on the school board or for a county, state or federal office would not likely be an "inconsistency in the functions of the offices". However, there could be a physical incompatibility if the time required for the duties of the office conflicts with the time the officer must devote to employment as a police officer. Section 10-6-3 NMSA 1978 states:

"Any incumbent of any public office or employment of the state of New Mexico, or of any of its departments, agencies, counties, municipalities or political subdivisions whatsoever, who shall accept any public office or employment, whether within or without the state, other than service in the armed forces of the United States of America, for which a salary or compensation is authorized, or who shall accept private employment for compensation and who by reason of such other public office or employment or private employment shall fail for a period of thirty successive days or more to devote his time to the usual and normal extent dur-

ing ordinary working hours to the performance of the duties of such public office and employment, shall be deemed to have resigned from and to have permanently abandoned his public office or employment."

DISCIPLINARY ACTION
FOR VIOLATION: _____

ALCOHOL AND DRUGS

In Police Buildings or Vehicles

- 464 Employees shall not store, bring into the police buildings, carry in the police vehicle, or buy while in uniform, any alcoholic beverage, controlled substances, narcotics or hallucinogens, except those which are held as evidence.

COMMENTARY: An officer buying liquor in uniform is likely to cause a complaint from some person, regardless of whether the officer was off duty and on the way home or not.

DISCIPLINARY ACTION
FOR VIOLATION: _____

Medical Use of Drugs

- 465 Employees shall notify the police chief when any controlled substance, narcotic, hallucinogen is prescribed by a physician or dentist for their use. Employees shall not possess or use any controlled substance, narcotic or hallucinogen in other circumstances, except when held as evidence. Use of other medication which might affect an employee's alertness shall be reported to the police chief, so that it can be taken into consideration when assigning duties.

DISCIPLINARY ACTION
FOR VIOLATION: _____

Use of Alcohol on Duty

- 466 Employees shall not drink alcoholic beverages while in uniform or on duty.

COMMENTARY: This rule does not cover the issue of officers eating in establishments which serve liquor, while on duty, providing they do not drink alcoholic beverages. The police chief may want to decide this issue depending on the availability of local restaurants. If the department has undercover officers, the rule may need to be amended to allow them to drink alcoholic beverages under proper and

specific orders of the police chief, in the performance of duty.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Appearance for Duty While Intoxicated

- 467** Employees shall not appear for duty, or be on duty, while under the influence of alcoholic beverages to any degree whatsoever, or with the odor of liquor on their breath. This includes emergency call-out if the officer was on an official call-out schedule for that day.

COMMENTARY: Some departments may wish to make the rule more specific, such as no drinking alcoholic beverages for eight hours prior to duty.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

OFF DUTY

Police Action While Off Duty

- 468** Officers shall take police action if a criminal offense is being committed in their presence, or shall give emergency aid, while off duty. Officers shall clearly identify themselves as police officers and shall make a written report of any police action taken while off duty. Officers shall call the department and have an on-duty officer handle the situation whenever possible.

COMMENTARY: The identification as an officer and the written report are to establish the fact that the officer was taking action in line of duty, in case of accident or liability. The police chief may wish to give more specific instructions as to the kinds of issues that off-duty officers should handle depending on the number of on-duty officers available in the department.

**DISCIPLINARY ACTION
FOR VIOLATION:** _____

Reporting for Emergencies

- 469** Off-duty officers shall leave a telephone number where they can be reached and shall report for duty promptly when requested, according to the call-up schedule of the department. All officers are subject to call at all times for major emergencies.

COMMENTARY: Each department should have an on-call schedule so that the dispatcher knows who to call first when additional officers are needed. Procedures for major emergencies requiring all officers should be covered.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Other Employment

470 Officers may engage in off-duty employment subject to the following limitations:

- a) such employment shall not interfere with the officer's employment with the police department; and
- b) officers shall submit a written request specifying the kind and hours of employment for the police chief's approval before engaging in such employment.

Approval may be denied if it appears the outside employment might:

- a) cause the officer to be unavailable when on call or for emergencies;
- b) physically or mentally exhaust the officer to the point where police performance is affected;
- c) require that special consideration be given to scheduling the officer's regular hours; or
- d) bring the police department or the officer into disrepute or impair the efficiency of the department or officer.

DISCIPLINARY ACTION

FOR VIOLATION: _____

Neighborhood or Personal Quarrels

471 Officers shall avoid being involved in neighborhood quarrels, if at all possible. Officers shall not make, or threaten to make, arrests of their own family members, unless a grave injustice would result from not taking action. Off-duty officers shall have on-duty officers handle the incident if at all possible. Any necessary action which is taken shall be clearly established as police action and documented with proper reports. If criminal prosecution is desired from the officer's own involvement in an incident, the officer shall have the police chief handle the investigation or complaint procedure.

COMMENTARY: If the police chief wants to press criminal charges for an incident in which he/she was per-

sonally involved, it may be desirable to have the Sheriff or State Police handle the investigation.

**DISCIPLINARY ACTION
FOR VIOLATION: _____**

PERSONAL HABITS

COMMENTARY: Employees should be aware that observance of the following rules is considered proper behavior for an employee of the police department. The line for disciplinary action has been removed since it is unlikely that action more severe than an oral or written reprimand would be imposed for minor infractions. Serious violations could be cited under other rules such as Unbecoming Conduct or Observance of Laws. Some police chiefs may wish to particularly emphasize certain rules in their departments and should do so by special orders, after ascertaining that such action can be upheld as necessary for efficient job performance.

Smoking

- 472 Employees shall observe common courtesy if smoking tobacco when in contact with the public. Officers shall not smoke when in formation, while directing traffic, or when it is necessary to leave their assignment to do so.

COMMENTARY: For example, an officer should not smoke when taking a report from a citizen at the desk or while issuing traffic citations, mainly because the slightest provocation is likely to be offensive to some persons.

Association with Persons with Criminal Behavior

- 473 Employees shall avoid regular or continuous voluntary association or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the police department for present involvement in felonious or criminal behavior, except as necessary for the performance of official duties, or where unavoidable because of family relationships.

COMMENTARY: This takes into consideration that some persons previously convicted of a felony may have been rehabilitated, and also that an officer would have difficulty avoiding a spouse or child in the prohibited category.

Personal Appearance

- 474 Officers shall present a neat, clean and well-groomed appearance while on duty. Hair, mustache and sideburns shall

be neatly trimmed and of moderate style. Officers shall request approval from the police chief to have a beard.

COMMENTARY: Some departments may wish to issue more specific regulations as to appearance, if it is a particular problem.

Wearing Uniform

- 475 Officers shall wear their full uniform, according to specifications of the department, at all times while on duty, unless a special exemption is received from the police chief. Uniforms shall be clean and pressed and shoes shined.

COMMENTARY: Each police chief should specify the correct uniform, insignia, hat, and equipment to be worn and the procedures for replacing worn or damaged uniforms.

Court Appearance

- 476 Officers appearing in municipal or magistrate court for testimony shall wear their full uniform if on duty. Conservative business attire should be worn in district or federal courts and may be worn in lower courts if the officer is off duty.

COMMENTARY: Court dress is a matter of courtesy to the presiding judge and may be dictated by the judge. The police chief may want to issue specific instructions as to whether ties or jackets should be worn by officers depending upon the season and the municipality.

Physical Condition

- 477 Officers shall keep themselves in good physical condition, by regular exercise, so that their agility remains sufficient for police duties. Weight shall be kept in proportion to height.

COMMENTARY: The municipality may wish to require and pay for an annual medical examination for the police chief or for all their police officers.

Payment of Debts

- 478 Officers shall show responsibility in the handling of their personal finances and payment of just debts, so that an officer does not acquire a reputation for non-payment of debts which affects his/her capacity to function as an officer. Officers shall not sign notes or make loans to, or receive loans from, other employees in the police department, persons currently in the custody of the police department, or per-

sons involved in any judicial proceeding, civil or criminal, in which the officer is likely to be called as a witness.

COMMENTARY: This is intended to prevent situations where the officer is obligated to other persons, or where the "loan" could be confused with a bribe. The police chief should not take the responsibility of acting as a collection agent for a creditor.

Telephone

- 479 Employees shall have telephones in their residences and shall keep the department informed as to their current telephone number. The telephone number may be unlisted, if desired, providing the department is informed of the number.

Residence

- 480 Officers shall reside within 20 minutes travel time of the police department, under normal driving conditions, so that they may be readily available when on-call or for emergencies. Changes of address shall be reported to the department promptly.

COMMENTARY: Attorney General Opinion No. 79-28 (July 6, 1979) states that police officers are considered employees of the municipality and not "municipal officers"; therefore, police officers are not required by statute to live within the municipality. The above rule is to make officers available for emergencies. This section should be amended if the municipal personnel rules have other residency requirements.

**DISCIPLINARY
ACTION AND
COMMENDATIONS
500**

500 DISCIPLINARY ACTION AND COMMENDATIONS

Purpose of Disciplinary Action

- 501 The purpose of disciplinary action includes the following:
- a) to improve the employee's performance in the future,
 - b) to promote good behavior in general,
 - c) to promote the effectiveness of the police department, and
 - d) to uphold high morale among the employees.
- Disciplinary action which does not achieve these results should be reconsidered.

COMMENTARY: If discipline is administered in an unfair or unduly harsh manner, the morale of employees is likely to be low. Positive incentives for good behavior are more likely to be effective than punishment.

Consideration of Disciplinary Action

- 502 When the rules of conduct are first adopted, the police chief shall recommend an appropriate disciplinary action for the violation of each rule of conduct. These rules and disciplinary action shall be discussed and adopted by the mayor and governing body. The kinds of disciplinary action usually imposed in police departments are described in Paragraph 507. However, this does not prevent the municipality from using other measures, if considered more desirable. Consideration should be given as to whether disciplinary action will be more severe for second and third violations of the same kind, or for several different violations within a time period.

COMMENTARY: The municipality may wish to form a review committee, including the police chief, to review the entire personnel manual and recommend disciplinary action for the violation of each rule of conduct.

Employee to be Informed of Violation

- 503 Employees shall be informed promptly and specifically, by the police chief, of any violation of a rule of conduct or procedure.

COMMENTARY: Violations should not be ignored for some time and then suddenly be acted on.

Training and Guidance

- 504 When reviewing a possible case for disciplinary action, the police chief shall take into consideration whether the

employee's action was due to a lack of knowledge or inexperience which is correctable. Training and guidance in proper procedures shall be provided in all cases, instead of disciplinary action, where it can be reasonably concluded that it would improve the employee's performance in the future.

Imposing of Disciplinary Action

- 505** The disciplinary action for the violation of each rule of conduct in Chapter 400 shall be imposed with due consideration for the seriousness of the violation and the pattern of the employee's past performance and conduct.

Time for Improvement

- 506** A reasonable time for improvement shall be allowed if appropriate and justified by the circumstances. The time period shall be documented in the employee's personnel file and action taken at the end of the period.

Kinds of Disciplinary Action

- 507** The forms of disciplinary action which are most often used by police departments are stated in Paragraphs 507A to 507F.

Oral Reprimand

- 507A** Oral reprimands are generally used for minor, first offenses which can be corrected by proper instruction. They should be given in a positive manner to encourage more appropriate action. Oral reprimands may be given by the police chief or any superior ranking employee.

Written Reprimand

- 507B** This is a notation in the employee's personnel file of the specific offense and the action taken. It may include instructions for improvement and a time limit if applicable. The employee must receive a copy of the reprimand and sign an acknowledgment of its receipt for the file. Written reprimands shall be given by the police chief or any designated supervisor.

COMMENTARY: If an employee is later dismissed for unsatisfactory performance, it is very helpful to the department to have a written record of the times and issues for which the employee was corrected in the past. Written reprimands, or the lack of them, may also be used as part of

the evaluation during the probation period or at the regular performance evaluation.

Order to Leave the Workplace

- 507C** This is a temporary measure taken by the police chief for the period between the violation of the rule of conduct and the time when the mayor or governing body can take action. An order to leave the workplace relieves the employee from active duty immediately, but does not constitute a formal suspension.

Suspension from Duty Without Pay

- 507D** This is used for serious offenses which warrant removal of the employee from duty for a period of time. The police chief shall recommend suspension to the mayor. The mayor may suspend the officer until the next regular meeting of the governing body, unless there is a merit system ordinance to the contrary (Sec. 3-11-6D(3) NMSA 1978). At the next meeting the governing body shall consider the circumstances and have the authority to approve or disapprove the suspension. If the suspension is disapproved, the employee shall be reinstated and paid the salary to which he/she was entitled during the period of the suspension.

COMMENTARY: The mayor and members of the governing body should ordinarily support the police chief's recommendation for suspension, demotion, or dismissal, unless they wish to hold a personnel hearing for investigation of the case, or unless they feel that the police chief's recommendation is not in accordance with fair and proper procedures. Some police departments use short suspension periods without pay as a penalty system for various violations. Very small departments must consider whether they can actually do without an employee's services before deciding to use suspension liberally. Consideration must also be given as to whether the employee is likely to return to work with improved behavior after the suspension. Suspension should not be used to encourage a poor employee to resign, but direct action taken instead for improvement or dismissal.

Demotion in Rank

- 507E** Demotion should only be used when the employee is not handling the supervisory responsibilities of the rank properly, but it is expected that the employee will be productive in a lower rank. This action should be taken by the mayor and governing body, upon recommendation of the police chief, if the police chief is not personally involved.

COMMENTARY: Demotion is impractical in the smallest departments if there is little difference in duties between ranks. In some cases the police chief may willingly give up the administrative duties of police chief and assume a lower rank. This situation is best handled by negotiation between the governing body and the police chief, rather than by direct disciplinary action.

Dismissal

507F Dismissal should be used in the following instances:

- a) when the employee is convicted of a felony;
- b) when the employee is convicted of misdemeanors (the number depending on the type and effect on the employee's performance);
- c) during the Probationary Period without appeal, if the employee does not perform adequately or does not exhibit the qualities desirable in an employee of the police department;
- d) for flagrant and serious violations of rules of conduct or procedures, even though violation of one individual rule may not warrant dismissal;
- e) for physical, emotional or mental disability which affects job performance, prior to the time the employee qualifies for disability retirement;
- f) for documented Unsatisfactory Performance; or
- g) for violation of any other rule of conduct or procedure which is specified, in advance, as warranting dismissal.

Dismissal should ordinarily be recommended by the police chief and action taken by the mayor and governing body under Section 3-11-6D(1) or (2) NMSA 1978. The employee is entitled to written reasons for his/her dismissal from the mayor, upon his/her request (Sec. 3-11-6E(1) NMSA 1978).

COMMENTARY: Although the mayor and/or governing body have the statutory authority to dismiss an employee without the police chief's recommendation, this action would override the police chief's authority to supervise and discipline the employees of the police department. Dismissal without the police chief's recommendation should only be taken in unusual circumstances.

Personnel Hearing

508 When a violation of a rule of conduct which may involve suspension, demotion, or dismissal is brought before the mayor and governing body, they may choose to call a closed meeting for personnel matters, to investigate the issue, before making a decision. Chapter 366 of the 1979 Laws

amended Section 10-15-1E(2) of the Open Meetings Act, to permit closed meetings for:

“(2) personnel matters; provided that for purposes of this act, “personnel matters” means the discussion of hiring, promotion, demotion, dismissal, assignment or resignation of or the investigation or consideration of complaints or charges against any individual public employee; provided that this subsection shall not be construed as to exempt final actions on personnel from being taken at open public meetings; nor shall it preclude an aggrieved public employee from demanding a public hearing.”

Notification in Writing

- 509** Employees shall be notified, in writing, of all disciplinary action taken by the mayor and governing body, before it becomes effective.

Right to Appeal

- 510** Employees shall have the right to appeal any disciplinary action within 15 days of receiving written notification of the action, except during the probationary period. A hearing for the appeal shall be conducted by the mayor and governing body in accordance with the Open Meetings Act (see Paragraph 508). If either party wishes to have legal counsel present, an opportunity must be given for both parties to obtain counsel, if desired. Both parties may call any witnesses appropriate to the case.

COMMENTARY: Appeals are likely to occur when the disciplinary action was taken by the mayor and governing body without a full hearing and the employee believes the action was unfair.

Grievances

- 511** Employees shall bring any grievance about working conditions, policies or procedures of the police department to the attention of the police chief first. If not satisfied with the disposition, the employee may request a hearing before the mayor and governing body in the same manner as an appeal hearing. No more than 15 days shall elapse between the time of disposition of the issue by the police chief and the request for a hearing.

COMMENTARY: This would happen only when the employee wanted to initiate a grievance that was not based on previous disciplinary action. It also prevents employees from taking complaints to the mayor and members of the

governing body without first attempting to resolve them with the police chief.

Purpose of Commendations

512 The purpose of a system of commendations includes:

- a) to reward employees for outstanding attention to duty; and
- b) to improve morale.

COMMENTARY: Most police department manuals, this one included, have a heavy emphasis on poor behavior of the employee. However, the employee who is not subject to any disciplinary action and competently performs his/her duties all year may be neglected. Often the best that can be expected is a small annual raise and not to be fired. There need to be some advantages to offset the pressure and harassment of police work. Otherwise, municipalities will find that their best officers go elsewhere looking for whatever advantages are important to them.

System of Commendations

513 Each municipality shall introduce a system of awards and recognition for meritorious service for the employees of the police department.

COMMENTARY: More pay and shorter hours are usually the first rewards which comes to mind. However, municipalities which actually do not have the resources to reward their good employees with large raises and generous fringe benefits should consider what other benefits might be considered desirable by their police employees. A police officer in a small community generally likes to be respected and appreciated by the citizens. The mayor, members of the governing body, and the police chief should discuss ways in which the police officer's prestige might be increased. Perhaps the local newspaper can be approached to run articles on meritorious service of individual officers, or citizen awareness columns on the role of the police officer. The governing body can establish a system of public awards for good service for employees of the police department, or perhaps for all municipal employees. If the governing body shows respect and appreciation for the work of its police department, some of this attitude should rub off on the citizens. A supportive governing body and appreciative citizens may make the municipality a desirable place to be a police officer.

600 REPORTS FROM THE PUBLIC

Right and Opportunity

- 601** All persons shall have the right and opportunity to make a report, either positive or negative, about the service of the police department or the actions of an individual employee. They shall be assured that their report will be given due consideration and acted upon according to proper procedures.

COMMENTARY: Reports which concern the actions of a particular employee are often referred to as complaints. However, there is no reason for a municipality to encourage only negative responses. The report form may have better acceptance, particularly with the employees, if both complaints and commendations are encouraged.

Report Form

- 602** Report forms shall be made available at the police department and at the manager or clerk's office to any person who requests one, or expresses a desire to complain about or praise any action of employees of the police department.

COMMENTARY: Each municipality should decide which personnel are most likely to be approached by persons wishing to make a report. Any person accepting reports must be knowledgeable and interested in acquiring complete information.

Assistance with Report Form

- 603** The police chief, or most senior employee on duty, shall assist the person in completing the report form. All reports shall be accepted with courtesy and no indication given that the issue is unworthy of attention. Telephone reports will be accepted if the person is unable or unwilling to come to the police department in person.

Complaints to Elected Officials

- 604** When a complaint is brought to the attention of the mayor or any member of the governing body, the elected official should be prepared to explain the report procedure and should direct the person to the police chief to file the report, if it concerns an employee. The mayor shall accept reports concerning the police chief personally. Reports accepted by the manager or clerk's office shall be promptly directed to the police chief or mayor, as appropriate. Elected officials

shall refrain from filing reports on the behalf of persons who decline to be identified and cannot be contacted for further information.

COMMENTARY: In some cases the elected official may wish to accompany the person to the police department and assist with the report procedure. However, the elected official shall not indicate that he/she will intervene on the complainant's behalf. Elected officials ought to be assured that all reports are investigated and handled properly.

Signed or Anonymous Reports

- 605 All persons shall be encouraged to sign their names and addresses to reports, so that they may be contacted for further information during the investigation, and also so that their statement can be used in a hearing if necessary. Emphasis shall be given that hearsay evidence, without corroboration, cannot be used to discipline an employee. However, anonymous reports shall be accepted and acted upon as far as possible.

COMMENTARY: Many anonymous complaints may indicate that persons fear reprisal, are unconvinced that reports will be investigated properly, or perhaps that the complaint is exaggerated or invalid.

Validity of Complaint

- 606 The police chief, or mayor if the report concerns the chief, shall have the authority to determine if the complaint has sufficient validity or information for further investigation.

COMMENTARY: This merely allows for the elimination of obviously frivolous complaints.

Authority for Investigation

- 607 The police chief shall have the responsibility for investigating any valid report which does not concern the police chief personally. The mayor shall have the responsibility for investigating any valid report concerning the police chief.

COMMENTARY: Section 3-11-6C(2) NMSA 1978 gives the mayor the responsibility to "examine the grounds of reasonable complaint made against the employees" of the municipality. However, the authority should be delegated to the police chief to investigate reports concerning employees or procedures of the police department.

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Information Necessary on Report

- 608** The report shall include all of the following information that is known to the person making the report:
- a) date, time, and place of incident,
 - b) name, address, and telephone number of all persons involved, including the principal person, any persons arrested, any witnesses, or attorneys of any parties;
 - c) name, address, telephone number and best time to contact, of person making the report, including indication of involvement if not the principal person;
 - d) identity or description of police officer involved;
 - e) description of incident;
 - f) name, office telephone number, and signature of employee accepting the report (for the convenience of the person making the report).

Statement of Principal Person Involved

- 609** If the person making the report is not the principal person involved in the incident, he/she should be informed that the principal person involved will have to support the statement for the investigation to continue, unless this is impossible due to death, injury or other unusual circumstances.

COMMENTARY: This is intended only to prevent situations where one person makes repeated complaints of behalf of other persons who are unwilling or uninterested in making the report themselves, and who do not cooperate with the investigation.

Time Limit

- 610** Reports shall not be accepted concerning incidents which occurred more than ninety days prior to the filing of the report.

Copy to Person Making the Report

- 611** The person making the report shall receive a copy, either in person or by mail if the report was taken by telephone and the identity is known, along with an acknowledgment that an investigation will be conducted and the result reported to the person making the report within a specified time. Even frivolous complaints should have an acknowledgment that no further investigation will be made, if the identity of the person is known.

Copy of Report to Employee

- 612** The employee involved shall receive a copy of the report from the police chief, unless there is sufficient reason to keep confidentiality while an investigation is initiated.

COMMENTARY: There could be a situation, such as on-going graft, which the police chief might want to investigate using proper criminal procedures, before informing the employee. However, in most cases the report will concern a single, past incident and the employee should be promptly informed and given an opportunity to present his/her side of the issue.

Copy of Report to the Employee's Personnel File

- 613** A copy of the report and the documentation of the disposition of the case shall be placed in the employee's personnel file.

Investigation

- 614** The police chief or mayor, as specified in Paragraph 607, shall conduct an investigation into the incident referred to in the report. All witnesses and the employee involved shall be permitted to give their description of the incident. If the mayor is conducting the investigation, he/she must be aware of proper investigation procedures. If there is any possibility of criminal charges being filed against the employee, proper criminal investigation procedures shall be used.

Decision

- 615** The police chief shall determine if the employee violated any rule of conduct or procedure and shall determine the disciplinary action in accordance with the procedures outlined in Chapter 500. The employee should receive a copy showing the disposition of the case.

COMMENTARY: Since serious complaints will result in suspension or dismissal, the mayor and governing body may be involved at this stage in deciding the disciplinary action, and may choose to call a personnel hearing as in Paragraph 508.

Notification to Person Making Report

- 616** The person making the report shall receive a written statement of the final action taken on the report. Paragraphs 616A and 616B show the usual statement of disposition for complaints.

Charges Unfounded

- 616A** This may need some explanation of why the employee's actions were correct, or that other evidence did not support the charge.

Charges Sustained

- 616B** The person should be told that the action was in violation of a department rule of conduct or procedure and that disciplinary action has been taken in accordance with the personnel policy. Ordinarily the person should not be told what the disciplinary action was.

COMMENTARY: In both cases, the notification should indicate that the person who made the report may discuss the matter with the police chief personally, if he/she is not satisfied with the disposition of the case.

Person Making the Report Not Satisfied

- 617** If the person making the complaint is not satisfied with the investigation, or the police chief's explanation, he/she has all the remedies available under the law.

Employee Not Satisfied

- 618** If the involved employee is not satisfied with the conduct of the investigation or the disciplinary action taken, he/she shall have the right to either an open or closed personnel hearing, before the governing body, on the matter (if one has not already been held). The request for the hearing shall be made within 15 days of receiving official notice of the disposition of the case.

COMMENTARY: An employee may also file suit against the municipality if he/she believes that the disciplinary action was unjustified.

700 COMPENSATION AND BENEFITS

Merit System Personnel Ordinance

- 701 The mayor and governing body may adopt a merit system personnel ordinance for the police department as permitted under Section 3-14-4A NMSA 1978, which states;

“Municipality may establish a merit system; provisions constitute part of an employment contract.

A. Any municipality may establish by ordinance a merit system for the hiring, promotion and general regulation of municipal employees. This ordinance may contain reasonable restrictions or prohibitions on political activities which are deemed detrimental to the merit system thereby established. The ordinance may provide for a personnel board or personnel officer to:

- (1) administer the ordinance; and
- (2) establish the rules and regulations pursuant to the ordinance, which may include:
 - (a) rules governing the classification of employees;
 - (b) service rating of employees;
 - (c) establishment of pay scales and ranges;
 - (d) establishment of the number of hours of work per week; and
 - (e) methods of employment, promotion, demotion, suspension, and discharge of municipal employees.”

COMMENTARY: This manual could form the basis for part A(2)(e) of the personnel ordinance.

Salary

- 702 Each municipality shall consider a police officer's hours, training, experience, and responsibilities in comparison with other municipal employees when setting pay scales. The municipality shall endeavor to pay a fair and equitable salary, within its budget, in order to retain competent employees for its police department.

COMMENTARY: A salary and benefits survey is available from the New Mexico Municipal League to assist municipalities in determining whether their police officers' salaries and benefits are comparable with other municipalities of similar size.

Final Pay

- 703 Employees of the police department who terminate for any reason shall receive payment for all earned wages and for accrued annual leave in accordance with the personnel

regulations of the municipality. All police identification, equipment and property shall be returned to the police chief by the employee upon termination. The value of any lost, damaged, or unreturned equipment or property may be deducted from the final paycheck, if the non-return or damage is determined to be caused by the employee's negligence.

Dependent Status

- 704 Employees shall report changes in marital and dependent status to the department, for insurance and tax purposes, as soon as feasible after the change.

Social Security

- 705 Each municipality should inform new employees whether or not they will contribute to, and receive benefits from, social security.

COMMENTARY: Employees should be aware that if the municipality joined social security before joining P.E.R.A., then police and fire employees are mandatorily covered by social security. If the municipality joined P.E.R.A. first, then police and fire employees cannot be covered by social security at a later date.

Retirement/Disability/Survivors' Benefits

- 706 All employees should be informed of the contributions and benefits of the retirement/disability/survivors' benefit plan of the municipality, if a plan is provided.

COMMENTARY: Many municipalities will have elected to cover all municipal employees under the Public Employees' Retirement Act (P.E.R.A.) described briefly in Paragraph 707.

Public Employees' Retirement Act (P.E.R.A.)

- 707 The complete statutes relating to P.E.R.A. are covered in Sections 10-11-1 through 10-11-38 NMSA 1978. If the municipality has elected to become a member of P.E.R.A., both the employees and the municipality make contributions. Police officers contribute 7% of their salary and other municipal employees contribute 5.4% of their salary. The municipality may choose from a range of contribution levels for police officers and fire department employees. The formula for retirement benefits depends on the employer's level of contributions. The various combinations of age and years of service at which an employee can retire are described in Section 10-11-1Y NMSA 1978. Most

municipal employees retire at age 60 with 30 years of service. Police officers may retire at age 55 with 25 years of service. If the municipality has elected to pay certain additional contributions, police officers may retire with 25 years of service regardless of age. Chapter 275 of the 1979 Laws amended the statute to allow retirement of police officers with 20 years of service, if the municipality has elected to pay a specific level of contributions. Employees who are no longer employed by an employer affiliated with P.E.R.A. may request a refund of their own contributions. Employees with at least 5 years of contributions, who are no longer employed by an affiliated employer, may elect to leave their contributions on deposit and receive a deferred benefit at retirement age.

COMMENTARY: Each municipality should make available to interested employees complete information on P.E.R.A. if they are an affiliated employer.

Disability Retirement

- 708 If an employee cannot perform the required duties because of physical or mental impairment, application should be made for any disability benefits provided by the employer's benefit plan, before the employee is terminated. A disabled employee may request consideration for any vacant position for which he/she is qualified and capable of performing. Disability retirement may be initiated by the employee, his/her attorney, the police chief or the governing body. The governing body may require a medical examination at its own expense, performed by a physician of its choice. If two conflicting opinions are presented, a third impartial opinion shall be sought.

COMMENTARY: If the municipality is affiliated with P.E.R.A., employment-connected disability is covered at date of employment and non-employment-connected disability after ten years of service.

Survivors' Benefits

- 709 The department shall assist survivors of an employee to claim any benefits to which they are entitled under the survivors' benefit plan of the municipality, if any, or from any other agency.

COMMENTARY: Survivors' benefits from P.E.R.A. are paid for death in line of duty for all affiliated employees. Many municipalities make a separate 2% contribution for police officers to a survivors' benefit fund. Benefits from this fund are described in Section 10-11-35 NMSA 1978.

State Workmen's Compensation

- 710** Each municipality is required to provide Workmen's Compensation benefits for employees under Section 52-1-2 NMSA 1978. Benefits are provided for medical care, disability and survivors' pensions for accidents or injury sustained in the course of their employment. It is important that officers taking police action while off duty shall identify themselves as police officers and make a report of the incident, so that they will clearly be covered by Workmen's Compensation for any injury which may occur.

Life/Health Insurance

- 711** Benefits for medical care and from life insurance shall be paid according to the insurance plan of the municipality.

COMMENTARY: Each department should give explicit information on the benefits and the method for filing claims for their insurance plan and for Workmen's Compensation benefits.

Public Safety Officers' Benefits Act

- 712** A lump sum benefit may be available to survivors of a police officer, firefighter, correctional, parole, probation or judicial officer who dies as a "direct and proximate result of personal injury sustained in the line of duty." There are some minor exclusions and conditions regarding duplicate federal benefits. Further information on eligibility and claim forms are available from:

Public Safety Officers' Benefits Program
Law Enforcement Assistance Administration
U.S. Department of Justice
Washington, D. C. 20531
(202) 724-7620

COMMENTARY: Any municipality which believes that survivors may qualify for this benefit should contact the above address and assist survivors with the application.

Federal Employees' Compensation Act

- 713** Medical, temporary and permanent disability, and death benefits may be paid to a non-federal law enforcement officer, or survivors, who is injured, sustains disease, or is killed under one of the following conditions:

a) while engaged in the apprehension of any person who has committed a federal crime, or is wanted for the commission of a federal crime, or is sought in a criminal proceeding instituted by the United States;

- b) while protecting or guarding a federal fugitive or a material witness of a federal crime; or
- c) while engaged in the lawful prevention or attempted prevention of a federal crime.

Benefits will be reduced by the amount of any state or local workmen's compensation benefits received. Further information on eligibility and claim forms are available from:

U.S. Department of Labor
Employment Standards Administration
Office of Workers' Compensation Programs
Washington, D. C. 20211

COMMENTARY: This is essentially a federal workmen's compensation benefit paid in limited circumstances involving federal crimes. It is intended to pay the difference between state and federal workmen's compensation benefits, when the state benefit is lower. Municipalities should assist the officer or survivors in determining whether they qualify for this benefit and in making the application.

Sick or Emergency Leave

- 714 Paid leave for illness or family emergency shall accrue according to the personnel regulations for the municipality. Employees of the police department shall give at least two hours notice, before their shift begins, so that their position may be covered in their absence. The police chief shall authorize payment for sick leave and may require a physician's statement for illness which exceeds three days.

Vacation

- 715 Paid vacation time shall accrue according to the personnel regulations of the municipality. All requests to take earned vacation time shall be submitted to the police chief as far in advance as practical and before scheduling is done for the time period. The police chief shall have the authority to approve or disapprove any request in accordance with the needs of the department.

Holidays

- 716 Employees of the police department shall be required to work various holidays on an equitable rotating schedule to be determined by the police chief.

Overtime/Compensatory Time Off

- 717 Each municipality shall consider the amount of overtime hours which the employees of the police department regularly work and decide a fair means of compensation.

COMMENTARY: Extra pay for overtime hours or compensatory time off is given at the discretion of each municipality. It is not legally required for local government employees. However, often police department employees work considerably longer hours than other municipal employees and it should be determined whether their base pay is actually intended to cover this, or whether extra compensation should be provided.

Lay Off

- 718** Lay off of employees shall be handled according to the municipal personnel regulations.

Resignation

- 719** Resignations shall be submitted to the police chief as far in advance as possible, but with a minimum of two weeks' notice. Failure to give adequate notice shall be recorded in the employee's personnel file.



P.O. BOX 846 - SANTA FE, N.M. 87501 - PHONE (505) 982-5573

DATE: December 12, 1979
TO: All interested persons
FROM: Lorna Dailey, Staff Assistant
New Mexico Municipal League
RE: MANUAL FOR MUNICIPAL POLICE DEPARTMENTS IN NEW MEXICO

The New Mexico Municipal League is pleased to send you a copy of our new publication, a Manual for Municipal Police Departments in New Mexico. This model personnel manual is designed for municipal police departments of ten officers or less. It was prepared to assist those police departments in New Mexico who do not currently have written personnel rules. It has been receiving a good response among police chiefs and governing body members, and we would like to share it with other persons interested in law enforcement.

NCJRS

DEC 19 1979

ACQUISITIONS

800 BIBLIOGRAPHY AND INDEX

BIBLIOGRAPHY

Several books which were useful in the preparation of this manual are:

Background Investigation Manual: Guidelines for the Investigator. 181 pages, \$4.10, February 1977

Model Procedure for Investigation of Citizen Complaints. 67 pages, \$2.30, November 1976

These two books are published by The California Commission on Peace Officer Standards and Training and are available from:

California Office of Procurement
Publications Section
4675 Watt Avenue
North Highlands, CA 95660

Local Government Police Management. Edited by Bernard L. Garmire. 564 pages, \$21.50 (paid in advance) or \$22.50 (to be billed), 1977

Published by and available from:

International City Management Association
1140 Connecticut Avenue NW
Washington, D.C. 20036

Managing for Effective Police Discipline: A Manual of Rules, Procedures, Supportive Law and Effective Management. 415 pages plus two booklets for supervisors, \$18.50, 2nd ed. rev. 1977

Published by and available from:

International Association of Chiefs of Police
11 Firstfield Road
Gaithersburg, MD 20760

Performance Appraisal in Police Departments. \$3.00, 1977

Police Chief Selection: A Handbook for Local Governments. \$3.00, 1976

These two books are published by and available from:

Police Foundation
1909 K Street NW
Washington, D.C. 20006

Evaluating Employee Performance: A Manual for Local Governments. \$5.00, 1979

Published by:

Washington Local Government Personnel Institute
4719 Brooklyn Avenue N.E.
Box C-5373
Seattle, WA 98105

A few copies of *Evaluating Employee Performance* are available from the New Mexico Municipal League. The League also has a copy of the other books available for inspection or loan. Various other manuals from police departments, both in New Mexico and other states, are available for inspection.

ORGANIZATIONS

All police chiefs in New Mexico are eligible to join the New Mexico Municipal Police Chiefs Association, which is subsection of the New Mexico Municipal League. Further information is available from:

New Mexico Municipal Police Chiefs Association
New Mexico Municipal League
P.O. Box 846
Santa Fe, NM 87501

All police officers in New Mexico are eligible to join the New Mexico Sheriffs' and Police Association, which publishes *The New Mexico Lawman*. Further information is available from:

New Mexico Sheriffs' and Police Association
7883 Marble Avenue
Albuquerque, NM 87110

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900 AMENDMENTS AND
SPECIAL ORDERS

900 AMENDMENTS AND SPECIAL ORDERS

AMENDMENTS

Amendments, changes, or deletions to the manual which become part of the regulations adopted by the municipality may be added in this section. They should refer to the Paragraph number of the manual.

COMMENTARY: Half of an 8½" x 11" sheet will fit this binder.

SPECIAL ORDERS

Any Special Orders issued by the police chief may be added in this section also. Each Order should include the date, a numbering sequence, and the employees affected, in addition to the subject matter of the Order.

END