



**New Mexico
Regulation and Licensing
Department**

CRIMINAL OFFENDER EMPLOYMENT ACT
AND PROFESSIONAL LICENSURE

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Criminal Offender Employment Act - Authority

NMSA 1978, § 28-2-4

A. Any board or other agency having jurisdiction over employment by the state or any of its political subdivisions or the practice of any trade, business or profession may refuse to grant or renew or may suspend or revoke any public employment or license or other authority to engage in the public employment, trade, business or profession for any one or any combination of the following causes:

Criminal Offender Employment Act - Causes

- (1) where the applicant... or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction **directly relates** to the particular employment, trade, business or profession;
- (2) where the applicant... or licensee has been convicted of a felony or a misdemeanor involving moral turpitude and the criminal conviction **does not directly relate** to the particular employment, trade, business or profession, if the board or other agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or

Criminal Offender Employment Act - Causes

(3) where the applicant... or licensee has been convicted of trafficking in **controlled substances, criminal sexual penetration or related sexual offenses or child abuse** and the applicant... or licensee has applied for reinstatement or issuance of a **teaching certificate, a license to operate a child-care facility or employment at a child-care facility**, regardless of rehabilitation.

Board or Agency Responsibility

B. The board or other agency **shall explicitly state in writing the reasons for a decision** which prohibits the person from engaging in the employment, trade, business or profession if the decision is based in whole or in part on conviction of any crime described in Paragraphs (1) and (3) of Subsection A of this section.

Completion of probation or parole supervision or expiration of a period of three years after final discharge or release from any term of imprisonment without any subsequent conviction shall create a presumption of sufficient rehabilitation for purposes of Paragraph (2) of Subsection A of this section.

Criminal Offender Employment Act - Case Law

PURPOSE: The purpose of a license revocation proceeding is not to punish the licensee but to protect the public from practitioners who do not possess the necessary qualifications.

- *Varoz v. N.M. Bd. of Podiatry*, [1986-NMSC-051](#), [104 N.M. 454](#), [722 P.2d 1176](#).

REHABILITATION: The distinction in treatment between crimes that directly relate to a profession and crimes that do not directly relate to a profession concerns the burden of proof:

- Under Subsection A(1), an applicant for issuance or reinstatement of a license or certificate has the burden of proving that he or she has been sufficiently rehabilitated;
- Under Subsection A(2), there is a presumption of rehabilitation and the board or agency has the burden of proving an applicant for issuance or reinstatement of a license or certificate has not been sufficiently rehabilitated.
- *N.M. Bd. of Pharmacy v. Reece*, [1983-NMSC-080](#), [100 N.M. 339](#), [670 P.2d 950](#).

Criminal Offender Employment Act - Case Law

Rehabilitation. — While "rehabilitation" is not defined in this section (although the statute does create a presumption of rehabilitation after completion of parole, or after a certain period has elapsed after release from prison), its dictionary definition is "to restore a condition of good health, ability to work or the like."

Bertrand v. N.M. State Bd. of Educ., [1975-NMCA-145](#), [88 N.M. 611](#), [544 P.2d 1176](#), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

Rehabilitation decision. — Probative evidence of rehabilitation of a teacher who was on a one year probation for one count of distribution of marijuana, included her conscientious and successful performance at her job and the parents' perception of her as a person with whom they would trust their children; but evidence that she had become angry when her probation officer would not let her see her file, made a derogatory comment about the laws and "narcs," told a student who asked her about drugs that he could get in some trouble because of some bad laws, but for him to do what he wanted, was probative of what the board could conclude was a poor attitude towards criminal offenses for a teacher, and since the state board members spoke to her at some length themselves and were able to draw their own impressions of her progress towards rehabilitation, the appellate court would not substitute its judgment for that of the board. *Bertrand v. N.M. State Bd. of Educ.*, [1975-NMCA-145](#), [88 N.M. 611](#), [544 P.2d 1176](#), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

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WRITTEN REASONS: When a decision is made on grounds that a criminal conviction directly relates to a person's profession, the reasons for such a decision must be explicitly stated in writing.

It is not sufficient to merely recite the language of the statute, but rather the "reasons" for the conclusion that there is a direct relation must be given, especially so that a reviewing body may know the reasons for the administrative body's conclusion; and if the conviction of a crime is to operate as other than an automatic bar to employment, the administrative agencies must explain what they perceive the detrimental effect of employment to be.

- *Bertrand v. N.M. State Bd. of Educ.*, [1975-NMCA-145](#), [88 N.M. 611](#), [544 P.2d 1176](#), cert. denied, 89 N.M. 5, 546 P.2d 70 (1976).

Criminal Offender Employment Act [Opt-In]

NMSA 1978, § 28-2-6 - Applicability

The provisions of the Criminal Offender Employment Act relating to any board or other agency which has jurisdiction over the practice of any trade, business or profession apply to authorities made subject to its coverage by law, or by any such authorities' rules or regulations if permitted by law.

Title VII of the Civil Rights Act of 1964

- A violation may occur when an employer treats criminal history information differently for different applicants or employees, based on their race or national origin (disparate treatment liability).
- An employer's neutral policy (e.g., excluding applicants from employment based on certain criminal conduct) may disproportionately impact some individuals protected under Title VII, and may violate the law if not job related and consistent with business necessity (disparate impact liability).

Barriers: Enforcement and Training

Under the NM Human Rights Act there is a defined grievance procedure, hearing procedures and enforcement. NMSA 1978, §§ 28-1-10, 28-1-11, 28-1-12.

Under the Governmental Conduct Act there is a defined enforcement procedure, criminal penalties and civil penalties. NMSA 1978, §§ 10-16-14, 10-16-17, 10-16-18.

Under the Open Meetings Act there is a defined enforcement and penalty section of the Act. NMSA 1978, §§ 10-15-3, 10-15-4.

Barriers: Enforcement and Training

Under the NM Human Rights Act the Human Rights Commission has defined powers and duties. NMSA 1978, § 28-1-4.

Under the Governmental Conduct Act the Attorney General, District Attorney or appropriate state agency or legislative body has enforcement authority. NMSA 1978, § 10-16-14, 10-16-17, 10-16-18.

Under the Open Meetings Act there is a defined enforcement and penalty section of the Act. NMSA 1978, §§ 10-15-3, 10-15-4.

Questions?