

HOUSE BILL 428

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

INTRODUCED BY

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AN ACT

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

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

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

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

A. "agency" means any state board, commission,

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1 department or officer that is authorized by law to make rules,  
2 conduct adjudicatory proceedings, make determinations, grant  
3 licenses, impose sanctions, grant or withhold relief or perform  
4 other actions or duties delegated by law and ~~[which]~~ that is  
5 specifically placed by law under the Administrative Procedures  
6 Act;

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

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

24 D. "licensing" includes the agency process  
25 respecting the grant, denial, renewal, revocation, suspension,

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1 annulment, withdrawal, amendment, limiting, modifying or  
2 conditioning of a license;

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

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

10 G. "rule" includes the whole or any part of every  
11 regulation, standard, statement or other requirement of general  
12 or particular application adopted by an agency to implement,  
13 interpret or prescribe law or policy enforced or administered  
14 by an agency, if the adoption or issuance of such rules is  
15 specifically authorized by the law giving the agency  
16 jurisdiction over such matters. It also includes any statement  
17 of procedure or practice requirements specifically authorized  
18 by the Administrative Procedures Act or other law, but it does  
19 not include:

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

22 (2) regulations concerning only the internal  
23 management or discipline of the adopting agency or any other  
24 agency and not affecting the rights of, or the procedures  
25 available to, the public or any person except an agency's

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1 members, officers or employees in their capacity as such  
2 member, officer or employee;

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

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

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

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

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

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

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

23 (2) withholding of relief;

24 (3) imposition of any form of penalty;

25 (4) destruction, taking, seizure or

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1 withholding of property;

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

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

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

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

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

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

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

16 L. "agency proceedings" means any agency process in  
17 connection with rulemaking, orders, adjudication, licensing,  
18 imposition or withholding of sanctions or the granting or  
19 withholding of relief; and

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

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

25 "14-4-2. DEFINITIONS.--As used in the State Rules Act:

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

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

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

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

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

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

18               (2) posting it on the sunshine portal;

19               (3) making it available in the agency's  
20 district, field and regional offices, if any;

21               (4) sending it by electronic mail to persons  
22 who have made a written request for notice from the agency of  
23 announcements addressing the subject of the rulemaking  
24 proceeding and who have provided an electronic mail address to  
25 the agency;

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1 (5) sending it by electronic mail to persons  
2 who have participated in the rulemaking and who have provided  
3 an electronic mail address to the agency;

4 (6) sending written notice that includes, at a  
5 minimum, an internet and street address where the information  
6 may be found to persons who provide a postal address; and

7 (7) providing it to the New Mexico legislative  
8 council for distribution to appropriate interim and standing  
9 legislative committees;

10 F. "rule" means any rule, regulation or standard,  
11 including those that explicitly or implicitly implement or  
12 interpret a federal or state legal mandate or other applicable  
13 law and amendments thereto or repeals and renewals thereof,  
14 issued or promulgated by any agency and purporting to affect  
15 one or more agencies besides the agency issuing the rule or to  
16 affect persons not members or employees of the issuing agency,  
17 including affecting persons served by the agency. An order or  
18 decision or other document issued or promulgated in connection  
19 with the disposition of any case or agency decision upon a  
20 particular matter as applied to a specific set of facts shall  
21 not be deemed such a rule, nor shall it constitute specific  
22 adoption thereof by the agency. "Rule" does not include rules  
23 relating to the management, confinement, discipline or release  
24 of ~~[inmates of any penal or]~~ a person housed at any charitable  
25 institution, the New Mexico boys' school, the girls' welfare

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1 home or any hospital; rules made relating to the management of  
2 any particular educational institution, whether elementary or  
3 otherwise; or rules made relating to admissions, discipline,  
4 supervision, expulsion or graduation of students from any  
5 educational institution; and

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

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

11 "33-2-1. ADOPTION OF RULES.--

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

17 B. Prior to the adoption, amendment or repeal of  
18 such rules, the corrections department shall:

19 (1) provide forty-five days for public  
20 comment; and

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

25 SECTION 4. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2025.

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