

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT**  
**CHAPTER 12 PUBLIC DEFENDER DEPARTMENT**  
**PART 5 RECRUITMENT, ASSESSMENT AND SELECTION**

**10.12.5.1 ISSUING AGENCY:** Public Defender Commission  
[10.12.5.1 NMAC - N, 7/1/2015]

**10.12.5.2 SCOPE:** Applies to all employees and candidates for vacant positions.  
[10.12.5.2 NMAC - N, 7/1/2015]

**10.12.5.3 STATUTORY AUTHORITY:** Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978.  
[10.12.5.3 NMAC - N, 7/1/2015]

**10.12.5.4 DURATION:** Permanent.  
[10.12.5.4 NMAC - N, 7/1/2015]

**10.12.5.5 EFFECTIVE DATE:** 7/1/2015 unless a later date is cited at the end of a section.  
[10.12.5.5 NMAC - N, 7/1/2015]

**10.12.5.6 OBJECTIVE:** The objective of Part 5 of Chapter 12 is: to provide a system for the recruitment, examination and selection of applicants for employment in the department.  
[10.12.5.6 NMAC - N, 7/1/2015]

**10.12.5.7 DEFINITIONS:** “Open for recruitment” means soliciting applications from the general public and state employees for vacant positions and may include internal recruitment only.  
[10.12.5.7 NMAC - N, 7/1/2015]

**10.12.5.8 VACANT POSITIONS:**

- A.** All vacant positions to be filled shall be open for recruitment unless otherwise authorized by the chief or provided for in these rules.
- B.** Positions in the department shall be filled at the assigned classification. An underfill may be approved by the chief. An authorized underfill may not exceed one year unless extended by the chief.
- C.** The chief may approve a position to be doublefilled for up to one year.
- D.** The department may allow part-time employees to share the same position.

[10.12.5.8 NMAC - N, 7/1/2015]

**10.12.5.9 RECRUITMENT:**

- A.** The human resource director shall establish a means to effectively advertise and recruit for vacant positions within the department.
- B.** Any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, sexual orientation, age, or mental or physical disability unless based on a bona fide occupational requirement.
- C.** Applications shall be filed in accordance with the human resource director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment. Where applications are received within the time limits although not completed may be allowed to be completed with the permission of the chief.

[10.12.5.9 NMAC - N, 7/1/2015]

**10.12.5.10 APPLICATIONS:**

- A.** The human resource director shall establish application procedures which include, among other things, criteria that will ensure compliance with federal and/or state law. Information on gender, ethnicity, and age of applicants shall be utilized only for affirmative action and other non-discriminatory purposes.
- B.** The human resource director may reject an application and not accept any application from the applicant if the applicant:
  - (1)** has made any false statement or produced any false document in support of the

application; or

(2) has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the department.

C. An applicant whose application has been rejected may appeal to the chief in accordance with the procedures established by the human resource director. Where applications are received within the time limits although not completed may be allowed to be completed with the permission of the chief.

[10.12.5.10 NMAC - N, 7/1/2015]

**10.12.5.11 EXAMINATION:**

**A. Security:**

(1) The human resource director or hiring manager shall maintain the security of all examinations.

(2) Examinations shall be developed in conjunction with the office in accordance with established professional techniques and relevant federal laws, regulations, and guidelines. Examinations shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

(3) Except as provided below no hiring manager shall administer any examination to an applicant or employee without the examination and the examination administration having been approved by the human resource director unless otherwise authorized by statute.

(4) A hiring manager may request a description or demonstration of the skill or ability needed to perform an essential job function in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12-101 Note 29C.F.R. Part 1630.14(a) **Pre-employment inquiry**).

**B. Exemptions from Examinations:**

(1) The human resource director or hiring manager shall exempt from examinations those applicants who possess recognized licensure, registration, or certification by the state of New Mexico and who are applying for positions in the department that require such licensure, registration, or certification.

(2) The human resource director shall exempt from examinations applicants who, in the course of their duties:

(a) develop, administer, or otherwise have access to such examinations; or

(b) formerly developed or administered such examinations within a period of one year from performance of those duties.

C. **Administration of Examinations:** The human resource director shall advise hiring managers regarding the development and administrative procedures of all examinations.

**D. Preference Points:**

(1) Veterans honorably discharged from the United States armed forces and applicants currently serving in the National Guard shall have five points added to their final passing numerical scores on examinations. Veterans honorably discharged from the United States armed forces with a service-connected disability shall have 10 points added to their numerical scores on examinations. A veteran with or without a service-connected disability has his/her name placed on the employment list in accordance with numerical rating of other veterans and non-veterans.

(2) Applicants who pass the examination shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.

[10.12.5.11 NMAC - N, 7/1/2015]

**10.12.5.12 SELECTION:**

A. Selection shall be based solely on qualification and ability. Selection for any appointment other than an emergency appointment to positions in the department shall be justified in writing and made from employment lists.

B. The department is subject to the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978 and may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtaining public employment. The department may only take into consideration a conviction after the applicant has been selected as a finalist for the position.

C. The department shall develop policies governing their use of the employment lists.

D. Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico department of education, division of

vocational rehabilitation, the commission for the deaf and hard of hearing, or the commission for the blind, in accordance with the provisions of Section 28-10-12 NMSA 1978.

(1) The human resource director shall certify the names of former employees who are currently receiving temporary total or permanent partial workers' compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of 10.12.5.10 NMAC.

(2) The human resource director shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per 10.12.10 NMAC.

**F. Temporary promotions:** Employees may be temporarily promoted for a period not to exceed the department months to a temporarily or effectively vacant position for which the department certifies that the employee holds qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

**G. Intra-agency transfers:** An agency may transfer an employee without the employee's consent to a position in the same classification within the same geographic location, which is 35 miles from the boundaries of the community in which the employee is employed or if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

**H. Exempt to career appointments:** Employment in the exempt service shall not count towards the probationary period required by Subsection A of 10.12.2.8 NMAC.

**I. Emergency appointments:** Emergency appointments shall be made in accordance with 10.12.2.NMAC.

**J. Reduction:** Employees may receive a classification reduction to a position for which the chief or human resource director certifies that the employee holds qualifications and abilities necessary for successful job performance.

**K. Physical examinations:** The department may require physical examinations of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the department.

**L. Human immunodeficiency virus-related (AIDS) test:** The department shall not require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. The department must adhere to the provisions of the Human Immunodeficiency Virus Test Act, Sections 24-2B-1 to 24-2B-8 NMSA 1978 Cum. Supp. 1993.

[10.12.5.12 NMAC - N, 7/1/2015]

#### **HISTORY OF 10.12.5 NMAC [RESERVED]**