

Citizen initiative

Petition to the New Mexico Law Enforcement Certification Board (LECB)

Requesting Rule Making [12-8-7 NMSA 1978]

Submitted May 15, 2025

Submitted To Members:

- **Co-Chair: Cody Ray Rogers Benavidez, crogers@serpeandrews.com**
- Erin Emily Toadlena-Pablo, Chief of Police, Gallup Police Department, etoadlena@gallupnm.gov
- Matthew T. Hutchinson, Sheriff, Eddy County Sheriff's Office, mhutchinson@co.eddy.nm.us
- Thomas Eugene Romero, Chief, BPD-RET., tromero1984@comcast.net
- Summer Kelly Mirabal, Chief of Police, Taos Pueblo Department of Public Safety, policechief@taospueblo.com
- Carly Lea Huffman, carly.huffman@dps.nm.gov
- Joseph P. Walsh, jpw@newmexicolawgroup.com
- Julie Ann Ball, juliea.ball@lopdm.us
- Prof. Dawn Myers, myersd@sanjuancollege.edu
- Dr. Bobbie J Green, bobbiej@bobbiej.com

Counsel: Rebecca Guay, rguay@nmdoj.gov

NM DOJ AG Office: Eric Castillo, ecastillo@nmdoj.gov

Pursuant to: Section 12-8-7 NMSA 1978- “Petitions for adoption, amendment or repeal of rules. (1969) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule and may accompany his petition with data, views, general arguments he thinks pertinent. Within thirty days after the submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with Section 4[12-8-4 NMSA 1978] of the Administrative Procedures Act.”

This petition is submitted by Rachel L. Feldman of Santa Fe County [#1 Via Bella, Santa Fe, NM 87507, rlfeldman1949@gmail.com], along with those individuals submitting letters and signatures indicating their agreement with its content. Written response should be sent to Ms. Feldman, and should be published in a press release by the LECB.

PETITION

Certification Board Independence & Authority to Investigate & Act upon Civilian & Officer Complaints Against the Law Enforcement License of a Law Enforcement Leader:
No law enforcement leaders shall be above the law.

Need for Rules:

- The NM Law Enforcement Certification Board (LECB) statute 29-7-4.3 requires the development of new regulations to replace those under which the predecessor Law Enforcement Academy Board Operated. When the statute was passed in 2023, the old rules were to continue until replaced by new rules so that misconduct investigations could continue without interruption. It has now been almost 2 years during which the LECB has been operating with outdated rules.
- 29-7-4.3 also requires that the LECB function as an independent body, administratively attached to DPS. This is essential for its work to be free from conflicts of interest.
- The old LEA Board rules were silent as to how the Board would handle civilian complaints and complaints that were submitted directly to the Board instead of going through a police agency review process resulting in submission of a form LEA-90.
- The former Attorney General who chaired the LEA Board stated publicly that civilian complaints were appropriate for review by the Board. Further, in a presentation by Tom Grover, made to the LECB on March 20, 2025, minutes of former meetings were referenced as indicating such complaints were appropriate for Board Review.
- The intent of the NM legislature in creating the LECB to replace the LEA Board, was to ensure appropriate oversight, investigation and action regarding misconduct that violates the conditions for licensure/certification of **all** New Mexico law enforcement officers, as well as public safety telecommunicators. The law nowhere indicates any of the following exclusions from this oversight:
 - Complaints from civilians against agency leaders
 - Complaints from law enforcement officers or public safety telecommunicators against agency leadership
 - Complaints that come in a form other than the LEA-90.
- Statements have been made without legal foundation, by members of the LECB, the Secretary of Public Safety, and certain police chiefs indicating that it is not legal for the LECB to review, investigate, or act upon complaints by civilians, or complaints against law enforcement leadership that may come to the LECB in a manner other than an agency LEA-90 form.

- Statements have also been made that indicate a bias against civilian complaints that do not come through the agency review systems. These statements are inappropriate and are against the public interest. All persons affected by law enforcement action should have standing to express concerns about misconduct without necessarily having to file a law suit.

Specific Rules Requested

- The LECB is the only authority that reviews, investigates and takes action to suspend, revoke or otherwise sanction any person licensed/certified as a law enforcement officer or public safety telecommunicator by the state of New Mexico. This authority applies regardless of rank and must include **all** licensed/certified law enforcement leaders regardless of the law enforcement agency in which they are employed.
- To ensure freedom from conflicts of interest with authorities in the Department of Public Safety (DPS)—to which the LECB is administratively attached—LECB must seek (with assistance of DPS and or the Department of Finance and Administration DFA) formal independence for budget, personnel, and administrative purposes, including securing office space, necessary equipment, security of files, and other necessities.
- While employment action may be taken for misconduct investigated within a law enforcement agency, such action does not revoke or suspend a license, and the individual may work elsewhere in the state. The LECB should review employment actions taken because of misconduct if it believes the misconduct rises to the level of sanctioning a license. Agencies are required to report such action, but may not do so consistently, or when agency leadership is involved and may intervene to prevent such reporting.
- Action for violation of laws may also be taken by the courts, but such action imposes fines and other penalties, not necessarily a sanction against the individual's license. Legal actions may be reviewed by the LECB where it believes the misconduct rises to the level of sanctioning a license.
- There is no recourse other than LECB for a civilian or line officer within a chain of command to hold a law enforcement leader accountable for misconduct with a sanction to their license preventing future employment in the state.
- While agencies are required to submit misconduct complaints based on their internal investigations to the LECB, those agencies have some discretion, and have been inconsistent in submitting all such investigations to LECB. Should civilians or others within the chain of command disagree with the agency decision regarding the seriousness of misconduct, there is currently not a clear mechanism to have a review by the LECB, but there should be.

- LECB rules must make a provision for formal complaints of law enforcement leadership misconduct to be reported both by civilians, and by personnel within the chain of command. LECB may want to modify the LEA-90 form to accommodate such complaints, or it may want to specify another format that ensures appropriate and adequate information is submitted to be able to screen legitimate complaints for review. It is appropriate for LECB rules to specify criteria for completeness and adequacy of content for such complaints.
- When reviewing alleged misconduct by law enforcement leaders, the LECB must consider violation of both criminal and civil law, as well as actions that are corrupt and inconsistent with the oath taken by all public officials regarding upholding all laws and the public trust. It is also important to consider abuse of power as a leadership violation that interferes with the implementation of law enforcement functions.
- There is a history of corruption among the top ranks of law enforcement in New Mexico, and its leadership must not be excluded from any form of misconduct review.
- The LECB will need to consider the best mechanisms for objective investigations, using its own staff resources, as well as the State Police when appropriate, and requesting support from the NM Department of Justice as needed, but particularly when state agency personnel are the subject of complaints. However the investigation is conducted, the LECB cannot avoid or neglect to act upon misconduct in the ranks of law enforcement leadership on the basis of any political pressures. LECB action can be appealed to the courts.
- The LECB will also need to consider the best mechanisms for its CEO and staff to screen incoming complaints, to ensure that they receive fair consideration.

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PETITION

*Certification Board Independence & Authority to Investigate & Act upon Civilian &
Officer Complaints Against the Law Enforcement License of a Law Enforcement Leader:
No law enforcement leaders shall be above the law.*

I agree with and support the above referenced petition to the NM Law Enforcement
Certification Board requesting rule making.

Print Name

Address

email

Signature: _____

Affiliation (optional): _____

Email to:

crogers@serpeandrews.com; etoadlena@gallupnm.gov;
mhutchinson@co.eddy.nm.us; tromero1984@comcast.net;
policechief@taospueblo.com; carly.huffman@dps.nm.gov;
jpw@newmexicolawgroup.com; juliea.ball@lopdm.us;
myersd@sanjuancollege.edu; bobbiej@bobbiej.com; rguay@nmdoj.gov

Subject Line: **Petition to the New Mexico Law Enforcement Certification Board**

CC: rlfeldman1949@gmail.com

Add any personal comments you have. Please email **after 5/15/2025**

**The next Certification Board Meeting will be held June 12th at 9am, and this should
be on the agenda. There will be opportunity for brief public comment.**

**The meeting is held in the Law Enforcement Academy Building at Cerrillos &
Jaguar roads—Park in the upper lot off Jaguar. You will be directed to the room**

**once you enter the main lobby. A zoom link will be posted at:
<https://www.lea.nm.gov/law-enforcement-certification-board/board-meetings/>**

BACKGROUND & REASON FOR THIS CITIZEN INITIATIVE

Law enforcement misconduct investigation has generally been conducted within local agencies. At least since 2015, state law authorized state level investigation of misconduct, and action against law enforcement certificates/licenses has been conducted by the NM Law Enforcement Academy Board (LEA Board), a body made up of members appointed by the Governor and chaired by the Attorney General. While nominally an “independent body”, the LEA Board was staffed by Department of Public Safety (DPS) staff, generally assigned to the Law Enforcement Academy. It was never set up as an independent body with its own budget, staff, and resources. In 2022, the legislature passed HB 68 in the final days of the session, splitting the LEA Board, into two new independent bodies: the Law Enforcement Certification Board, and the Law Enforcement Standards and Training Council. That legislation included very limited information about either body, its scope of authority, or information needed for its implementation. In 2023, a citizen group (Indivisible SOS Santa Fe) worked with DPS and others in the law enforcement community, to develop more detailed legislation that would guide implementation of the HB 68 version. This bill was sponsored by Senator Maestas, and was passed by both chambers and signed by the Governor as SB 19. It is SB 19 language and legislative intent that is the basis for the attached petition.

Since passage of SB 19, neither the LECB, nor the Standards and Training Council, were formally set up as independent agencies, under Department of Finance and Administration protocols as intended by law. Neither body has initiated any rule making to develop rules under which the new bodies will operate as required by law. As a result, both bodies continue to operate under the old LEA Board rules, which are both out-of-date, and inappropriate for the scope of the new bodies. The “LEA-90” form and process predates the most recent LEA Board legislation, and has been relied upon for some time by local agencies to handle complaints against law enforcement personnel. Reporting actions based on LEA-90 forms to the LEA Board and now to the LECB, has been required but not enforced and there were not consequences for failure to report until SB 19 was passed.

Recent events have revealed the barriers to independent investigation and adjudication of law enforcement misconduct complaints, that are still in place in NM.

- DPS failed to set up the LECB with the DFA as an independent body creating a clear conflict of interest.

- LECB only hired its own CEO late summer/fall 2024, and recently fired him in a public meeting in March after the DPS Secretary and a number of police chiefs, using the police chief's association in the Municipal League, made a public campaign to get him fired. All of this was poorly, and possibly illegally handled.
- The LECB is left without a staff leader and resources to do its work. The LEA Academy director recently resigned, and had been the only DPS leader with competency to screen and handle complaints in preparation for LECB meetings, even with the conflict of interest.
- The remaining LECB staff are assigned to DPS but have no meaningful supervision. The files are on DPS premises, with potential access by DPS personnel, which is not permissible.
- Two complaints exist on law enforcement leaders that have not been handled: one on Chief Medina of ABQ-PD, and one on Secretary Bowie.
- At its March meeting, the LECB co-chair proposed that the LECB did not have jurisdiction to review civilian complaints that don't come through the LEA-90 process and should limit its work to LEA-90s. In public comment and through a presentation by a member of the public, the LECB was told that taking such a position is not consistent with or supported by any law, and advised to seek assistance in clarifying its scope of authority from the Attorney General. The proposal to limit scope to LEA-90's was tabled to obtain further advice.

This petition is a direct response to this most recent effort by the LECB to not take responsibility for citizen complaints that are filed against law enforcement leaders. Handling complaints such as those against Medina, and Bowie is clearly within the legislative intent and language of current law, and all rules and procedures need to be updated to comply with the current legal requirements.

Until the LECB can operate as an independent body without conflict of interest, and until it clarifies its responsibility for all law enforcement licenses in NM regardless of rank or agency, there will be no legitimate investigation or adjudication of law enforcement misconduct in NM.