



# NEW MEXICO CORRECTIONS DEPARTMENT

Secretary  
Alisha Tafoya Lucero

CD-017000 Establishment of the Office of General Counsel	Issued: 10/16/85 Effective: 10/30/85	Reviewed: 05/11/22 Revised: 06/29/18
Alisha Tafoya Lucero, Cabinet Secretary		<i>Original Signed and Kept on File</i>

## AUTHORITY:

- A. NMSA 1978, Section 33-1-6, as amended.
- B. Policy *CD-010100*

## REFERENCES:

- A. ACA Standard 2-CO-1A-28, *Standards for the Administration of Correctional Agencies*, 2<sup>nd</sup> Edition.
- B. ACA Expected Practice 5-ACI-1A-23, *Performance Based Standards and Expected Practices for Adult Correctional Institutions*, 5<sup>th</sup> Edition.
- C. ACA Standard 4-APPFS-3D-20, *Standards for Adult Probation and Parole Field Services*, 4<sup>th</sup> Edition.
- D. ACA Standards 1-CTA-1A-16, *Standards for Training Academies*, 1993.

## PURPOSE:

To establish the role of the Office of General Counsel to ensure the availability of legal counsel and assistance to the Secretary and the Corrections Department. [5-ACI-1A-23] [1-CTA-1A-16] [2-CO-1A-28]

## APPLICABILITY:

All Department employees who have need of and/or use general counsel in the performance of their official duties.

## FORMS:

None

## ATTACHMENTS:

None

## **DEFINITIONS:**

- A. Counsel: A lawyer; counselor-at-law; attorney-at-law.
- B. Legal Performance: Actions conforming to the rules of law or permitted by law.
- C. Statute: An act of the legislature, adopted pursuant to its constitutional authority, by prescribed means and in certain form, such that it becomes the law governing conduct within its scope.

## **POLICY: [4-APPFS-3D-20]**

The Secretary, the Department and all employees shall be provided with legal advice from counsel in the performance of their official duties, as well as representation in all actions arising from the legitimate performance of those duties. The Department recognizes that qualified legal assistance is necessary to:

- A. Ensure policies and procedures are consistent with legal decisions;
- B. Provide advice relating to statutory and court requirements on policy formulation and application;
- C. Provide representation before courts and other appropriate bodies, as required or requested by the Secretary, and as allowed by the Attorney General, pursuant to state law or determined by the Risk Management Division; and
- D. Represent the Department, as necessary, before legislative committees, draft proposed legislation, testify at legislative hearings and analyze proposed legislation for departmental impact.



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## AUTHORITY:

Policy *CD-017000*

**PROCEDURES: [5-ACI-1A-23] [1-CTA-1A-16] [4-APPFS-3D-20] [2-CO-1A-28]**

### A. Counsel Availability:

The Office of General Counsel shall be available for advice, consultation and/or the possible representation of the Department on the following:

1. Actions against the Department or any of its institutions or facilities;
2. Actions against the Department's Secretary for actions taken during the legal performance of his duties;
3. Actions against Department employees for actions taken during the legal performance of their duties;
4. Court decisions rendered;
5. Offenders' rights;
6. Policy information and review;
7. Court requirements;
8. Operational matters including contractual issues;
9. Liaison with outside counsel;
10. Legislative activities, including drafting proposed bills and offering testimony;
11. Labor-management issues (i.e., union matters);
12. Judgment and sentences, probation and parole revocations and other commitment order review and final authority;
13. Acquisition of inmate treatment guardians; and
14. Training at the New Mexico Corrections Department Training Academy.

### B. Limited Representation:

Representation of the Department will be in cooperation with the Risk Management Division or the Office of the Attorney General.

### C. Requests for Legal Assistance:

Requests for legal assistance shall be made verbally or in writing to the General Counsel for the Office of General Counsel. All written requests must be accompanied with adequate background information and/or supporting documents to explain the reason for the assistance. If a verbal request is made, all background information and/or supporting documents shall be forwarded to the Office of General Counsel, as soon as possible. Research work may not begin without background materials.

**D. Channels of Communication:**

1. Correctional facility employees shall direct all written requests for legal advice or representation through the office of the Warden. All requests shall then be forwarded to the Office of General Counsel together with the Warden's comments and recommendations.
2. Central Office employees shall direct all written requests for legal advice or representation through their supervisor to the respective Division Director. All requests shall then be forwarded to the Office of General Counsel together with the Division Director's or appropriate supervisor's comments and recommendations.
3. Probation/Parole Division employees shall direct all written requests for legal advice or representation through their supervisor for forwarding to the appropriate Region Manager. The Region Manager will forward it to the Division Director. All requests shall then be sent to the Office of General Counsel with the Division Director's comments and recommendations.

**E. Legal Liaisons - Appointment and Duties:**

Each Warden and the Probation/Parole Division Director shall appoint an employee to act in the capacity of legal liaison for that institution or facility and shall advise the Office of General Counsel of the designated employee. Duties shall include:

1. Maintenance of appropriate records on all lawsuits filed against the Department affecting said institution, facility, or Probation/Parole Division as follows:
  - a. Docket/Logs/Calendar; and,
  - b. Tickler files system.
2. Processing of documents to the Office of General Counsel in a timely manner to ensure response dates are met.
3. Assisting the Office of General Counsel in the gathering of information necessary for the defense or prosecution of lawsuits.
4. Assisting the Office of General Counsel in the gathering of information pertaining to discrimination claims filed against the Department by its employees or employment applicants with the offices of Equal Employment Opportunity Commission and the Human Rights Commission.