

Comments

From: Chris Mechels <cmechels@g.com>

Sent: Tuesday, November 29, 2022 10:27 AM

To: Serna, Sylvia M, DPS <SylviaM.Serna@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; smalave@nmag.gov

Subject: [EXTERNAL] Comment #5 to the 29 November DPS Rules Hearing

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Jason, et al,

A very unsatisfactory experience this morning at the hearing.

MS Teams does NOT work well on my computer, perhaps because I have a slow, DSL, interface.

I requested attendance at a live meeting, due to my hearing difficulties. This was denied me, in spite of the fact that the DPS hearing was live, at their facility. I have all my shots, etc, and have had Covid, but still could not attend.

Instead, about 2 weeks after my request, I was offered "live captioning" under MS Teams. When after some confusion, I got this to work., it involves about a 20 second delay in the captions, very unsatisfactory. I have NEVER had a good experience with Teams, perhaps due to my slow connection.

I claim that DPS did NOT meet my hearing related requirements, though they could easily have done so.

The hearing did NOT address my concerns for their ILLEGAL Rule Makings, which should have been addressed up front.

Instead they proceeded to address the contents of the change, which are of no interest, as the hearing was illegal.

It seems DPS has no respect for our laws, esp the Rules Act, and does what they wish. Thus, the hearing is a sham.

DPS simply breaks our laws, then dares us to sue them, which is expensive and exhausting. This from our "highest" law enforcement.

This will not end well. Our growing crime problem can't be "fixed" by criminal police. The "solution" to criminal police is arming the citizens.

Please abide by our laws.

Chris Mechels
505-982-7144

From: Chris Mechels <cmechels@q.com>
Sent: Monday, November 28, 2022 9:35 AM
To: Serna, Sylvia M, DPS <SylviaM.Serna@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; smalave@nmag.gov
Subject: [EXTERNAL] Comment #4 to the 29 November DPS Rules Hearing

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Jason, et al,

This comment is to place the current illegal Rule Making in context.

It appears that DPS, with the collusion of SRCA, has been in violation of the NM Rules Act for some years. The current DPS leadership would do will to address this history, as it affects their operations and endangers the public.

I suggest three specific areas that deserve attention;

1) The overall violation of the NM Rules Act since 2018. The SSP entries for these Rule Making don't contain, or link to , the required Rule Making record(s). This, by definition, make those Rules "invalid", and "should" be of concern to DPS, and, especially, their Legal Counsel.

2) The overall DPS failure to follow the Rules Act for their operational policies; with a specific failure concerning OPR: 08, Vehicular Pursuit. That policy clearly falls under the Rules Act, as it involves interaction with the public, and public endangerment. It is NOT exempted from the Rules Act as the Correction Department claims to be. The Pursuit Policy is directly responding to the NM Safe Pursuit Act, and implementing it. Thus, no reason can be found to NOT comply with the Rules Act, yet DPS, apparently by decision of their Counsel; ADM: 01; fails to comply. This seems to warrant the attention of the DPS Secretary.

Making this Pursuit Policy of particular interest, in addition to the failure of compliance with the Rules Act, is that the Policy also fails to comply with the NM Safe Pursuit, in a very significant area, thus endangering the public. Following the Rules Act could have addressed this failure.

3) A very recent new policy; OPR: 71 De-escalation 9/1/2022; was implemented under the current DPS Secretary and Counsel, and directly serves to challenge their interpretation of the NM Rules Act, and its applicability to DPS. It clearly involves the public interest, and clearly would benefit from involvement from those who concern themselves with escalation, and public perceptions. How can this NOT involve the Rules Act? No explanation to date.

As noted in my previous comments, the current DPS Rules Hearing is in violation of our laws, and ought to be cancelled. Failure to cancel would reflect a "scofflaw" attitude of DPS, our "top" police agency. I suggest reflection of previous failures is also in order.

If our Law Enforcement, esp DPS and the AG, aren't willing to follow our laws, then they are just another criminal enterprise. Do we really want to go there?

I hope this is helpful, and leads to move public involvement with DPS going forward.

Regards,

Chris Mechels
505-982-7144

From: Chris Mechels <cmechels@q.com>

Sent: Wednesday, November 23, 2022 9:42 AM

To: Serna, Sylvia M, DPS <SylviaM.Serna@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; smalave@nmag.gov

Subject: [EXTERNAL] Comment #3 to the 29 November DPS Rules Hearing

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Jason, et al,

This comment, my third, is to examine the context of the proposed changes, which have many problems in common with the DOH Rule of 8/23/2022.

Both DPS and DOH used Emergency Rule Making under false pretenses, as both relied for the required Justification on the claim of "an unanticipated loss of funding". This claim is clearly false, in both cases, as HB68, the underling Legislation, was passed with no emergency declaration, effective on 18 May 2022.

From there DPS and DOH diverge, with the DPS Emergency Rule of 5/5/2022 intended to enable LERF funding in FY22. However, the authority to "promulgate" this Rule did not exist until 18 May 2022, so the Rule is invalid. With that failure, and the lapse after 180 days, there is currently NO Rule in place covering LERF, and this compromises the current Rule Making. This suggests cancellation, as the provided justification is faulty, and rescheduling.

The DOH effort, faced with the same challenge, implementation of HB68, also addresses funding for FY22, for the Violence Intervention Program. It avoids the problem of the 18 May 2022 effective date of the statute, by issue of an Emergency Rule dated 8/23/2022. However, the justification for the Emergency Rule applied to FY22, and 8/23/22 is in FY23. This leaves us wondering if anyone, including Dr. Scrase, actually reads the documents they sign.

It appears both illegal Emergency Rules were driven by getting funds allocated in support of the election campaign. This would be consistent with the irregular passage of HB68, a logrolled bill, rushed through by Wirth, Egolf and MLG, in the closing moments of a short session.

DPS and DOH were then left to push FY22 funding measures, for political ends. They both failed,

with illegal Rule Making. These illegal efforts "should" have been flagged by SRCA, but SRCA chooses NOT to look at submittals, thus allowing them to go forward illegally. This raises ethical questions about DPS, DOH and SRCA.

At present DOH and DPS are still dealing with the mess.

I suggest that FY22 was always impossible, as HB68 didn't, as it could have, claim an emergency, with immediate effect.

Once again, I suggest cancellation, and a reschedule with a clean slate. Continuing simply involves DPS in dishonesty, and illegal disbursements.

HB68 was a terrible bill, brought for political ends to support the campaign, and did not serve the public.

Let's do better.

Regards,

Chris Mechels
505-982-7144

From: Chris Mechels <cmechels@q.com>

Sent: Tuesday, November 22, 2022 4:30 PM

To: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Serna, Sylvia M, DPS <SylviaM.Serna@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>

Subject: [EXTERNAL] Comment #2 to the 29 November DPS Rules Hearing

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Jason, et al,

These comments relate primarily to the 29 November 2022 Rule Making of [10.2.4](#) NMAC. It has numerous problems concerning both the Rule Making process and the content. Below, some of the major problems which render the Rule Making noncompliant with the Rules Act, suggesting a rescheduling of the Hearing.

1) The statutes cited, as required, in the SSP entry are incorrect, and don't agree with the contents of the Rule text file.

2) The required Summary appears to rely on the previous existence of 10.2.4 NMAC created via the 5 May 2022 Emergency Rule Making. As described in my previous comment, that Emergency Rule Making had major problems and is void. The Summary avoids this reality.

3) Due to the problems with the 5 May 2022 Rule Making, and the lapse following 180 days, the December 15th date noted in the summary for a disbursement seems impossible, due to the Register publishing schedule. The next available submittal deadline is 7 December, with

publishing on 19 December. 15 December simply won't work.

All of this, and the major confusion surrounding the 5 May Rule Making, suggests cancellation of the 29 November hearing. Attempting to get FY22 disbursements led to getting the NMACS released before the statute which enabled the NMACS, and this seems illegal.

I suggest forgetting the FY22 attempt, laying on a clean hearing for 10.2.4 NMAC, and focusing on FY23 and beyond.

Of course I can't stop DPS from violating our laws, but I certainly discourage you from doing so, as it's unethical, and in violation of your oaths to those laws.

I am curious what DPS will do with this hearing, as it reveals a good bit about your character. Uniforms don't make the man, character does.

BTW, I'm still waiting for a reply concerning my hearing difficulties. I believe you have an obligation under our laws?

Regards,

Chris Mechels
505-982-7144

From: Chris Mechels <cmechels@q.com>

Sent: Tuesday, November 22, 2022 3:49 PM

To: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Serna, Sylvia M, DPS <SylviaM.Serna@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; smalave@nmag.gov

Subject: [EXTERNAL] Comment #1 to the 29 November DPS Rules Hearing

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Dear Jason, et al,

These comments relate primarily to the Emergency Rule Making of 10.2.4 NMAC, effective 5 May 2022. It has numerous problems concerning both the Rule Making process and the content. Below, some of the major problems which render the Rule Making noncompliant with the Rules Act, and void.

1) The Rule has an effective date of 5 May 2022, and implements a section of HB68 which does not take effect until 19 May 2022, as stated in the SSP entry of 10 May 2022. Thus the Rule implements a statute that has no existence until 19 May. I don't believe this is possible legally, as I've never seen it tried before. If there is a precedent please provide it.

2) The Emergency Rule CES "justification", required by statute, is "an unanticipated loss of funding". This is patently false, as the content of the Bill clearly establishes the program, and

failed to implement it immediately, as they could have done by declaring an emergency,. The justification is dishonest, on its surface; thus the Emergency Rule Making lacks the required justification.

3) The required records for The Emergency Rule making are lacking, both in the SSP entry and the DPS webpage. This violation, itself, makes the Rule Making invalid.

With these failures everything done to date by DPS which relies upon the 5 May Rule seems illegal, and, to the extent disbursements are involved, fraud and larceny.

These problems could have, and should have, been caught by SRCA on your submittals, but they avoid inspection, allowing you to violate our Rules Act if you wish, without comment on their part.

Another over hanging problem is that the 5 May Rule expired on 5 November 2022, leaving any activities under that Rule since then without legal support. This failure seems a DPS management failure, as the 180 days is clearly established.

Thus, due to the 5 May Rulemaking Problems, and the lapse after 180 days, any activity under 10-2-4 NMAC to date is illegal, and possibly fraudulent.

This suggests that the 29 November hearing is built on quicksand, and should be re-scheduled.

Regards,

Chris Mechels
505-982-7144

From: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>
Sent: Monday, November 7, 2022 8:57 AM
To: Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>
Subject: Fwd: [EXTERNAL] Open Meetings

Let's chat about this tomorrow. Should we consider a hybrid meeting

From: Chris Mechels <cmechels@q.com✉>
Sent: Sunday, November 6, 2022 11:50:35 AM
To: Hendricks, Rick, SRCA <[Rick.Hendricks@srca.nm.gov|mailto:Rick.Hendricks@srca.nm.gov]>; Greenlee, Jason, DPS <[Jason.Greenlee@dps.nm.gov|mailto:Jason.Greenlee@dps.nm.gov]>
Subject: [EXTERNAL] Open Meetings

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Rick and Jason,

I have been following up on my concerns with OMA requirements for the upcoming meeting; SRCA on 22 Nov, DPS on 29 Nov.

I am concerned that both of these meeting are not open to the public, as I find video means very difficult, due to hearing issues.

<https://cv.nmhealth.org/wp-content/uploads/2022/08/081222-Omnibus-PHO.pdf> seems the latest DOH Covid guidance and relaxes restrictions.

SF County BCC allows public presence since 6-14-2022. LA County even earlier.

I therefore suggest, and request, that the two meetings of interest allow public presence, and this is consistent with OMA requirement. Not allowing the public would seem to be a violation of OMA.

I request a prompt response, as I will need hearing assistance if you insist on going with video. If I am present my hearing aids are adequate.

Regards,

Chris Mechels

505-982-7144

rom: Waters, Joan, DPS

Sent: Monday, November 7, 2022 3:33 PM

To: Chris Mechels <cmechels@q.com>

Cc: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>

Subject: RE: [EXTERNAL] DPS Rule Hearing on 11/29/2022

Mr. Mechels: Thank you for your e-mail of November 4, 2022. You articulated two concerns regarding the publication of the Notice of Public Hearing on Proposed New Permanent Rule on the New Mexico Sunshine Portal. Your concerns and the agency's responses are set forth below:

1. "The Public Notice, provided in the SSP entry, conflicts with the SSP entry content in the Purpose and Summary sections, with the Notice being more correct."

Response: The portion of the Notice entitled "Summary of the full text of the proposed permanent rule" was entered in the Sunshine Portal as the "Purpose". The first sentence (only) of the portion of the Notice entitled the "Purpose of the proposed permanent rule" was posted on the Sunshine Portal as the "Summary". We apologize for any confusion this may have caused and we thank you for bringing this matter to our attention.

2. "In both the SSP entry and the Notice the statutes cited as authority (required) are wrong."

Response: This is true. The first statute cited, Section 29-11A-5, provides for the department's rulemaking authority under the Sex Offender Registration and Notification Act. The second statute cited, Section 9-19-4 H. (3), is a typographical error. The correct statute is Section 9-19-14 H. (3). Again, we apologize for any confusion this may have caused and we thank you for bringing this matter to our attention.

Joan M. Waters,
Assistant General Counsel
N.M. Department of Public Safety
P.O. Box 1628 (87504-1628)
4491 Cerrillos Rd.
Santa Fe, N.M. 87507
Office: 505.827.9154
Fax: 505.827.3387
Cell: 505.365.3531

E-mail: joan.waters2@dps.nm.gov

From: Chris Mechels <cmechels@q.com>

Sent: Monday, November 7, 2022 7:55 AM

To: Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>

Cc: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>

Subject: RE: [EXTERNAL] DPS Rule Hearing on 11/29/2022

Matt,

I understand your position of course. Just found it interesting that DPS noted your "approval". Never seen that before.

As you know, there are ongoing problems with illegal (violation of the Rules Act) submissions on Rule Makings. You won't look at content. The AG won't look at Hearing Procedures which violate the Default Hearing Procedure (EIB being an example), as the statutes simply say the procedures "must be filed" with the AG, not that that AG must look at them.

My conclusion; you, and the AG, don't give a rip about the Rules Act, even though you are responsible, and you don't give a rip about "upholding the NM laws" which you are sworn to.

IF you cared, you "could" look at the submitted content, and, if necessary, pick up the phone, and call the submitter, in this case Jason. I suspect he'd appreciate such a call, and would like to be correct. But, you won't do that, and the AG won't call the EIB on their illegal hearing procedure.

So, what does it mean, to "uphold" the NM laws, including the Rules Act. Holding them over your head to keep the rain off?

You all seem content to let illegal (non compliant with the Rules Act) filings go by, and print them in the Register. Is the public then to catch the errors and sue the DPS, to have the hearing set aside? The AG will of course defend the DPS against the public. DPS, the lead "law enforcement" agency, knowingly violating the law?

This is called "governance"? When those employees, and their agencies, "sworn" to our laws have no interest in their implementation, and dare the public to sue, IF they can find Counsel, and pay for the suit? There is no fee recovery specified for Rules Act suits, unlike OMA and IPRA.

It seems you just don't care to implement the laws you are responsible for, even enough to pick up the telephone. You only pick up your pay check.

This is called "governance" in our fair state. No "Rule of Law" because you don't care about the law. If you did, you'd pick up the phone.

We live in a Dark time, when the Rules Act is violated with impunity, and you watch and do nothing. The only hope is a new Governor and AG, and that's only a hope.

Sadly, you aren't even the worst.

Regards,

Chris Mechels

505-982-7144

On Fri, 4 Nov, 2022 at 10:37 AM, Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov> wrote:

To: chris mechels; hendricks, rick, srca

Cc: Jason.Greenlee@dps.nm.gov; Joan.Waters2@dps.nm.gov

Hi Chris,

Then notice that was reviewed and approved by me (as every notice is reviewed and approved by A.L.D. pursuant to rule and statute) is found here:

https://www.srca.nm.gov/nmac/nmregister/xxxiii/DPSnotice_xxxiii19.html

https://www.srca.nm.gov/nmac/nmregister/xxxiii/DPSnotice_xxxiii19.pdf

I don't review or approve anything that any agency places on the sunshine portal. The requirement to place on the sunshine portal is placed on each agency.

All of these points have been made to you before...

I've gone ahead and corrected your incorrect cc: to DPS general counsel office.

Have a great weekend.

Please keep you and yours well: wear your mask, keep your distances and wash your hands often !

matt

Matthew Ortiz

Administrative Law Division Director

+ matt.ortiz@srca.nm.gov +

505-476-7941

<<http://www.nmcpr.state.nm.us/>>

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From: Chris Mechels <cmechels@q.com>
Sent: Friday, November 4, 2022 10:15 AM
To: Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>; jason.jason.greenlee@state.nm.us
Subject: [EXTERNAL] DPS Rule Hearing on 11/29/2022

CAUTION: This email originated outside of our organization. Exercise caution prior to clicking on links or opening attachments.

Rick, et al,

This email to alert you all to a problem with this hearing. I'm sending this to SRCA and DPS because the SSP entry mentions Matt as approving.

While I applaud the involvement, which I have long suggested, in approving Rules submitted to SRCA, this SSP entry has obvious problems.

The Public Notice, provided in the SSP entry, conflicts with the SSP entry content in the Purpose and Summary sections, with the Notice being more correct.

In both the SSP entry and the Notice the statutes cited as authority (required) are wrong.

It seems both DPS and SRCA dropped the ball on this one.

That said, I applaud SRCA actually looking at the submittals, which they have resisted doing.

Regards,

Chris Mechels

505-982-7144

From: Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>
Sent: Friday, November 4, 2022 10:37 AM
To: Chris Mechels <cmechels@q.com>; Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>
Cc: Greenlee, Jason, DPS <Jason.Greenlee@dps.nm.gov>; Waters, Joan, DPS <Joan.Waters2@dps.nm.gov>
Subject: RE: [EXTERNAL] DPS Rule Hearing on 11/29/2022

Hi Chris,

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All of these points have been made to you before...

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Have a great weekend.

Please keep you and yours well: wear your mask, keep your distances and wash your hands often !

matt

Matthew Ortiz

Administrative Law Division Director

+ + matt.ortiz@srca.nm.gov +

505-476-7941

<<http://www.nmcpr.state.nm.us/>>

From: Chris Mechels <cmechels@q.com>

Sent: Friday, November 4, 2022 10:15 AM

To: Hendricks, Rick, SRCA <Rick.Hendricks@srca.nm.gov>; Ortiz, Matt, SRCA <Matt.Ortiz@srca.nm.gov>; jason.jason.greenlee@state.nm.us

Subject: [EXTERNAL] DPS Rule Hearing on 11/29/202

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Regards,

Chris Mechels

505-982-7144

