



The NM EDGE County College

A Program of the Cooperative Extension Service and
New Mexico Counties

Present

The New Mexico County Sheriff Handbook

November 2022 Edition



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Cooperative Extension Service
College of Agricultural, Consumer
and Environmental Sciences



**THE NEW MEXICO COUNTY SHERIFF
A Reference Handbook
and Practical Guide**

**November 2022
10th Revised Edition**

Revised by
**Members of the
New Mexico County Sheriff Curriculum Committee**

Edited & Produced by
The NM EDGE
A Program of the New Mexico Cooperative Extension Service
College of Agriculture, Consumer and Environmental Sciences
New Mexico State University

Partial funding provided by
New Mexico Counties
Joy Esparsen, Executive Director

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Better Government through Education

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This handbook is intended as a general reference for informational purposes only. It is not all inclusive. Most importantly, it is not intended to serve as legal advice or interpretation in any way. When in doubt, ask your County Manager and County Attorney



FOREWARD

As Associate Dean and Director for the New Mexico Cooperative Extension Service in the College of Agricultural, Consumer, and Environmental Sciences (ACES) at New Mexico State University, I have had the pleasure of working with the New Mexico Counties (NMC) on a number of projects—none more important than bringing education and resources to New Mexico’s 33 counties. We appreciate the vision of the New Mexico Counties leadership in pursuing collaboration with Cooperative Extension Service to create and help sustain the NM EDGE County College.

NMSU College of ACES’ Cooperative Extension Service delivers the land-grant mission to the people through a century of service to New Mexico residents. Today, Cooperative Extension Service continues to deliver education deeply rooted in tradition, innovation, and collaboration.

In addition to the vital role county agents, specialists, and staff play in providing non-formal, educational programs in every community around the state, we are proud of the evolving role of NM EDGE in pursuit of its goal of Better Government through Education and its statewide reach. Building on the foundation of County College, New Mexico Counties and Cooperative Extension Service joined together to offer high quality, meaningful and accessible education at affordable prices and later expanded to include the nationally recognized Certified Public Manager® Program. NM EDGE continues to work closely with NMC to bring you county-specific classes and resources.

First created and published by Cooperative Extension Service in 1975, this handbook is periodically updated and revised to assure that it remains relevant and factual. This handbook ties directly to the classes being taught in the New Mexico County Assessor curriculum so that the information is consistent and supportive of both handbook and classes.

We hope you will find this handbook a useful and practical resource in your role as New Mexico County Assessor. We also encourage you to give us feedback on ways to make this handbook even more helpful. We sincerely thank you for your service to New Mexico County Government.

Dr. Jon C. Boren

Associate Dean, NMSU College of Agriculture, Consumer, and Environmental Sciences
Director, New Mexico Cooperative Extension Service

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Introduction

The New Mexico State University Cooperative Extension Service's NM EDGE program (Education Designed to Generate Excellence in the public sector), with partial funding and great assistance from the New Mexico Counties, is pleased to provide you with this valuable resource. We hope that the information contained in this handbook will help you grow as an effective and efficient leader within your scope of elected responsibilities.

The NM EDGE is a program of the NM Cooperative Extension Service and offers customized certification training aimed at educating individuals in the public sector to better serve the public and to be more effective in their job. Our goal is "Better Government through Education." In 2003, New Mexico Counties and the NMSU Cooperative Extension Service worked collaboratively to create the NM County College. In 2008 the County College restructured its classes to conform to the nationally recognized Certified Public Manager program and began offering classes for NM Certified Public Officials, NM Certified Public Supervisors, and NM Certified Public Managers. In response to increasing demand for customized certification programs in the public sector, the NM EDGE was created as an umbrella organization under which the NM County College and the NM Certified Public Manager programs operate. The NM EDGE now offers customized New Mexico certification for County Commissioners, County Assessors, County Treasurers, County Clerks, County GIS professionals, Jail Specialists, Jail Professionals, and Cooperative Extension Professionals. Additional certifications are currently being developed. In 2010, in cooperation with the NMSU College of Business and with funding through a grant from the Daniels Fund, the NM EDGE also created the CAPE program which offers classes to earn Certification as an Advocate in Public Ethics. The NM EDGE continues to grow in other areas of the public sector and remains loyal and grateful to its County College founding partner and on-going collaborator, the NM Counties. This book is made possible through the partnership between NMC and NMSU's Cooperative Extension Service NM EDGE program.

These handbooks were originally solely a project of the Cooperative Extension Service which has evolved more recently into a collaborative effort between NMSU and NMC. Throughout the years, many individuals have contributed to the development of this handbook. The Cooperative Extension Service is grateful to all those who have helped make this handbook a practical resource guide. We look forward to a valuable and continued working relationship with you, the locally elected County Sheriffs of New Mexico.

The New Mexico County Sheriff Handbook, a Reference Handbook for the Elected, the Electorate and the Appointed, was developed for New Mexico County Sheriffs and those who elect them. This handbook contains facts and information related to the duties, responsibilities and authority of New Mexico County Sheriffs. County sheriffs may use this handbook as a guide; however, the handbook is not intended to be an all-inclusive reference.

New Mexico residents may also use this handbook as an educational resource to gain a basic understanding of how New Mexico's counties operate and the roles and responsibilities of various county officials. New Mexicans are encouraged to use this handbook to educate themselves so they can participate in the county government processes which help make New Mexico a great place to



live and work.

Throughout this handbook, references are made to various materials, such as the New Mexico Constitution, New Mexico statutes, and certain attorney general opinions. The New Mexico Constitution and statutes are law. Attorney general opinions represent the legal opinion of the attorney general in office at the time. Other informational resource materials are identified throughout the text and attached as appendices. The many legal citations to statutes and constitutional provisions are provided in an abbreviated format in parentheses within the text. No attempt has been made, nor should any be inferred, to interpret these laws or opinions. They are merely intended to be references to the sources that govern certain areas of operation of county government. Throughout this handbook, the masculine pronoun is used; this is for convenience and encompasses both genders when used with reference to county elected or appointed personnel. Also, throughout the manual reference is made to the board of county commissioners, the legal entity that acts on behalf of the county politic and corporate; this board is occasionally abbreviated, “BOCC” to save space and paper. It is quite common for the public and other publications to refer to the board of county commissioners as the “county commission,” “county commissioners,” “board” or “governing board,” “body,” or “local public body.” All refer to the members of the board of county commissioners acting collectively and not individually.

This manual is intended to act as a guide for New Mexico County Sheriffs and is not meant to take the place of a strong policies and procedure manual. Each sheriff should create or maintain a set of policies or standard operating procedures for their office that are in accordance with NM state law and that have been reviewed and approved by the county attorney. This handbook is only one of many resources available to you as an elected official, to help you understand and manage the duties and responsibilities of public office. We sincerely hope this 2022 revised edition of the New Mexico County Sheriff Handbook provides you with the basic tools to assist you in your position of elected County Sheriff for the state of New Mexico.



LAW ENFORCEMENT CODE OF ETHICS

As a Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality, and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

CHAPTER 1

KNOWING YOUR GOVERNMENT

For more information on this Chapter, take NM EDGE classes
CPM 111- Knowing your Government, CPM 113- Knowing the Law I, CPM 211-Knowing the Law II
CPM 212-Contractual Obligations Between Governments, & CARE 101A & B- Building Strong
Intergovernmental Relations in New Mexico

In the United States and New Mexico, the respective Federal constitution and state constitution are both the framework and the foundation for the structure of government and the creation of all law.

While the purpose of this chapter and this handbook is to provide the reader with a better understanding of county government and how county-elected offices functions within the State of New Mexico, it is similarly important to understand the structure of government and how its history, culture and political influence have shaped the face of modern-day New Mexico.

English Development

During the Anglo-Saxon period of English history, ending with the Norman Conquest (Battle of Hastings in 1066), there existed in England units of local government known as shires and townships. The principal officer of the shire was known as a reeve or shire reeve, which even in those early times was sometimes contracted to "sheriff." Later, there developed other local government officials known as constables, justices of the peace, and coroners. The shire court, presided over by the sheriff, developed early and continued into the 1600's. The sheriff was usually an appointee of the Crown and carried out certain responsibilities of local government as directed by the authority of the Crown. Early English history records the smallest administrative unit of government to have been the town or township, which often was the same size and area as the church parish. The most important officer in the township was the constable who had, subject to a considerable extent to direction by the justice of the peace, certain duties and responsibilities in the keeping of the peace. By the 1600's, there had developed what was known as a vestry meeting or a general assembly of the parish (township) that all inhabitants of the parish ordinarily were permitted to attend.

Colonial Development

The New England colonies were organized into strong local communities and strong town units of government. Most of these communities held an annual town meeting similar to the vestry meeting or to the assembly of freeholder that had existed in England. In 1643, the Massachusetts Colony divided its territory into four shires. A few years later a provision was made for representatives from the towns to gather for the purpose of governing the shires. This group of representatives was given a new power, that of equalizing taxes between the smaller units. Thus began local representation on the county board, or as later established in New York State, the board of supervisors. In 1654, each shire of the Massachusetts Colony elected a treasurer as its chief financial officer.

The colonies were also developing a legal and judicial function during these early years. In Connecticut, counties were established in 1666; in 1704 a law was passed providing for a local officer to prosecute crimes. A forerunner to the present-day prosecuting attorney, this officer now exists, under one title or another, in practically all states. Rhode Island, in 1793, designated counties for the sole purpose of judicial administration.

The local unit of government in the colonies of Virginia and Maryland centered on the “plantation” or parish, which featured the quarterly “area court.” The colony of Virginia was divided into eight shires in 1634, and as additional shires, or counties, were organized, each became a unit for representation in the Colonial Assembly. Generally, the officers were the sheriff (who served as tax collector and treasurer), justice of the peace, land surveyor, or coroner. All were appointed by the governor of the colony. The justices appointed a clerk of the court who acted as recorder of deeds. Maryland, which began with a local form of government patterned after the English county, evolved a form similar to the local government of Virginia.

In the colonies of Pennsylvania, Delaware, New York and New Jersey, the English system of local government prevailed. New York was divided into 10 counties, and each county had a county board that was elected and consisted of a freeholder from every town in the county. The county board was to supervise the levying and assessment of local taxes. The original justices of the peace became primarily judicial officers as the supervisors took over more of the administration of the county. In New Jersey, provision was made for the election of town assessors, which developed over time into the board of chosen freeholders. In the more sparsely settled areas of Pennsylvania, a board of three elected commissioners in each county became the chief administrative authority, which was similar to the board of supervisors in New York State. Pennsylvania elected its first sheriff in 1705 and in 1715 the first “recorder of deeds” was appointed by the governor.

The colonists who pushed westward into what became the Northwest Territory, brought with them both the existing systems of local government and the innovations that formed the basis for the county government in our present Middle Western states. The first county officials were appointed by the territorial governor. The first county existing in the Northwest Territory had a sheriff, coroner, treasurer, recorder of deeds, probate judge and justices. A county court was formed, but by 1800, county boards of three appointed commissioners had been created to levy and assess taxes and to audit claims. Townships did exist, but merely as a land measurement that was the result of a national government survey, which set out rectangular areas of land six miles by six miles. Townships were not often used as a unit of local government in the Northwest Territory.

Ohio was the first state organized out of the Northwest Territory. Shortly after its creation as a state, provision was made for elected boards of county commissioners with fiscal and administrative powers similar to those of the former county court. Sheriffs, coroners and justices of the peace were made elected officers.

The New Mexico County

The first counties in New Mexico were established in 1837 and were administered by a representative (prefect) of the area. The number of counties continually increased during the Spanish-Mexican administration. The counties, as they existed, were recognized by the Kearney Code of 1846 when the United States took over jurisdiction of New Mexico. While New Mexico was a territory, the legislature frequently changed the boundaries of counties and created new ones, as well as consolidating some older ones. During the administration of Samuel D. Axtell (1875-1878), the prefects of the Spanish-Mexican regimes were replaced by boards of county commissioners.¹

¹Reeve, Frank Driver. History of New Mexico. New York, Lewis Historical Publishing Company, 1961.

1.1 The U.S. Constitution: Establishing a Federal System of Government

Following the American separation from Great Britain, the original American Colonies formed a loosely aligned union under the *Articles of Confederation*, which provided for a weak central government and powerful state governments. While the central government (or national government) was responsible for handling foreign affairs and the business transactions between the states, it lacked the requisite resources and revenue (taxation power) to conduct its work.

With a number of varying practices, disputes between the states and the inability of the bankrupt national government to take action, Congress recognized the need to rethink and restructure the central government. As a result, a Constitutional Convention was established to address and revise the weaknesses within the original governing document. However, what resulted was more than a mere revision.

When the Constitutional Convention completed its work in September of 1787, the delegates representing each state had created a new document, which fundamentally changed the role of the Federal government and its relationship with the states. Ratified (or placed into law) in 1788, the U.S Constitution established a government based on two essential principles:

1. *Separation of Powers* – Rather than power centralized into one body or institution, the Framers of the Constitution saw a need to divide power between three independent, but interrelated branches: The Legislative (Congress), charged with creating laws; The Executive (President and Administration), charged with approving laws passed by Congress and executing those laws; and the Judicial (Courts), charged with interpreting law.
2. *Checks & Balances* – While power is shared among the three branches, no single branch can act alone: there is a check on the execution of their power. For example, while Congress makes laws (with the approval of two separate houses), the President is responsible for signing such legislation into law or not (veto). In turn, the judiciary, as part of a common law system, has the ability to interpret the law as it has been applied when questioned in court.

While the Framers of the Constitution created a new, stronger central government, they also left intact the original state governments, creating a system of government we have come to know as *Federalism*.

In a Federal system, power is distributed between the central government and the state governments. Although the principle of Separation of Powers is applied to the shared authority among the three branches of the Federal government, the concept can be similarly recalled when applied to the respective, shared power among the central government and the states.

For a majority of the Framers, key to the creation of the new constitution (and the new American nation for that matter), was a reverence for individual freedom. It was their intention to see that no single government (Federal or state) or part of government could impede on individual liberties and rights. That is why some believed that it was important to outline, implicitly, individual rights in the original document.

Recognizing this matter, the states, while in the process of approving the Constitution, held that a *Bill of Rights* be added or amended to the document. Such a change was received and was one of the first actions taken by the First U.S. Congress. As a result, in 1791, the Bill of Rights



(the first 10 amendments to the Constitution) was ratified.

While each of the first nine amendments to the Constitution are important in their own right, in this instance, the focus is on the tenth, which further highlights the balance of power between the Federal government and the states:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

In this very statement, it holds that what the Federal government is not empowered to do by the Constitution is left to each state. However, we know that Federalism, even in its early days, is much more complex, and there are often times no clear boundaries.

1.2 The Role of State & Federal Government

The concept of Federalism is often compared to marble cake because of how the roles of state government and Federal government often intertwine. While some may hold that the Tenth Amendment of the US Constitution clearly suggests that the powers not provided to the Federal government are left to the several states, others would point to the US Constitution's Sixth Article:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

This Article, and its Supremacy Clause, states that the laws of the Federal Government are supreme in their authority and trump similar decisions made by state governments. As a result of these two competing philosophies or views of how Federalism ought to work, we have witnessed an evolution or experiment in Federalism over the past several hundred years. It is a process wherein America has tried to answer the fundamental question of what the proper balance of power and responsibility is between the states and the Federal government.

For example, we know that the US Constitution does not explicitly task the Federal government with the responsibility of education, roads or the administration of a number of social programs. Yet the Federal government provides most funding to states for such programs and initiatives.

It is a question that we continue to struggle with answering, and responses have changed from time to time. Government has responded to changes in society and conformed to the needs of a modern America.

1.3 The New Mexico State Constitution

New Mexico was one of the last two states to become a part of the United States sixty-six years after the end of the Mexican War and the Treaty of Guadalupe Hidalgo, which had promised

statehood to the territory. Despite several earlier attempts at statehood, it was not until 1910 that Congress authorized the territorial government to write a state constitution in the process of becoming a part of the Union. New Mexico became a state in 1912.

Elected on a party ballot, 100 delegates from around the state were selected to serve in a Constitutional Convention to last no longer than 60 days. The delegates came from a variety of professions with lawyers, bankers, ranchers, farmers, doctors, newspaper editors, and merchants represented. Many delegates supported statehood as a way to strengthen corporate business interests through mining, water, and land ownership rights.

Although the new constitution set up a checks and balances system of government, executive power was shared by a large number of elected offices such as Treasurer, Auditor, Secretary of State and Land Commissioner. One of the few things that all the convention delegates agreed upon was to guarantee the civil, religious, and political rights to the descendants of Hispanic Mexicans. They wrote a Bill of Rights that preserved the agreements of the Treaty of Guadalupe Hidalgo, which ended the war with Mexico, in 1848. They also made the bilingual provisions of both the Education Article and the Elective Franchise Article almost un-amendable, by freezing them into the constitution, requiring that they could only be amended by a three-quarters (75%) majority vote statewide and by a two-thirds (67%) majority vote in each county.

Unlike the *US Constitution*, the *New Mexico State Constitution* is significantly longer and constantly changing. If we were to compare the original *US Constitution* to the *US Constitution* of today, several additions, clarifications and a few changes to original text would be apparent, but the document would ultimately look the same. The opposite is true for the State of New Mexico Constitution, which has been amended, grown and changed several times.

Despite the vast differences between the *US Constitution* and that of the *State of New Mexico*, each document serves an importance purpose in the lives of the people it serves.

1.4 County Government in New Mexico

Unlike state government or the Federal government, counties are not autonomous organizations that function with implicit power. Counties are entities created by the state to serve as administrative units or extensions of the state on a local basis. Initially, counties had a general purpose of assessing and collecting property taxes for the state, enforcing laws, running elections, managing records, and maintaining the roads. While the county continues to fulfill all of these responsibilities, county government has transformed into a vital resource for the constituencies they have been created to serve.

The State Constitution's Tenth Article has three provisions that are the only limits on the State Legislature's power over counties. They include:

- A provision that outlines elections and terms of office for county officials (Section Two)
- A provision which states that a county seat can be removed with the approval of 3/5 of the voters in a given county (Section Three), and
- A provision which prevents the legislature from passing special laws that only affect one or a few counties (Section 24).



Beyond these three items, the State is free to exercise its power over the county. While there are many laws and common practices that define how counties function, there are essentially three vital roles that the county plays in NM (as outlined by Garcia, Hain, Clair & Seckler, 2006):

- They serve as an administrative unit of the state.
- They provide and maintain vital services for their constituents, especially those living in non-urban areas; and
- They provide innovative and entrepreneurial leadership that will help to further enhance the lives of those they serve.

1.5 Organization of County Government

The form of organization for County Government in New Mexico is established by the State Constitution. The powers of the county as a political and corporate entity are exercised by a *Board of County Commissioners (BOCC)* (Section 4-38-1 New Mexico Statutes Annotated). The BOCC has broad authority, including adopting the annual budget, approving tax levies, and enacting ordinances to provide for the health, safety, welfare and prosperity and morals of the community. In addition, the BOCC has significant appointive, administrative, and regulatory powers.

While the BOCC serves as the governing body of the county, they must also cooperatively share their power with other elected county officials in a number of different aspects. These offices include the Assessor, Clerk, Sheriff, Treasurer, Probate Judge, and Magistrate Judge. Additionally, New Mexico counties also play a role in housing a district attorney and a district judge or judges. Each office is discussed in brevity below:

1.6 County Assessor

In general, the Assessor is responsible for the proper and timely assessment of most property subject to valuation for taxation purposes within the county (§4-39-2 through §4-39-6 NMSA). In addition, the Assessor is responsible for mailing notices of tax liability within their jurisdiction. Though serving in an elected position, the Assessor works cooperatively with the Taxation & Revenue Department.

1.7 County Clerk

The County Clerk serves an important role for the BOCC and the state. The County Clerk is the ex-officio Clerk of the BOCC (§4-40-3 through 8 NMSA) and, therefore, the Clerk must attend all sessions of the BOCC, though a surrogate may be sent in their place. In this role, the Clerk is responsible for recording all action taken by the BOCC and any supporting materials. The Clerk is also mandated by statute to subscribe to and maintain files of all newspapers published in the county (§4-40-7, 8 NMSA). Additionally, the Clerk's office receives a multitude of documents from the public for filing and recording, such as property records, marriage certificates, and informal probates, which is a service to the state. The Clerk's office may also receive IPRA requests. The Inspection of Public Records Act (IPRA) is a New Mexico state law that provides the public and media access to public information. The law

requires open access to almost all public records in state and local government, with few exceptions (§14-2-1 through §14-2-12).

1.8 County Treasurer

The County Treasurer is responsible for keeping accounts of all county funds received and disbursed by the various county departments, keeping regular accounts of all checks and warrants drawn, and keeping the books, papers and money pertaining to the office ready for inspection by the BOCC at all times (§4-43-2 NMSA).

1.9 County Sheriff

The elected County Sheriff is the conservator of the peace within his or her county, and shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them. (§4-41-2 NMSA).

1.10 Probate Judge

In 1865, the part-time position of elected Probate Judge was created for each county to help with the settlement of wills and estates (§34-7-1 NMSA). The Probate Judge is not required to be a lawyer but is required to hold court in the county seat (§34-7-4 NMSA). The county is responsible for housing the Probate Judge and providing additional administrative resources.

1.11 Magistrate Judge

The magistrate court is a court of limited original jurisdiction within the judicial department of the state government. Personnel of the magistrate court are subject to all laws and regulations applicable to other state offices and agencies and to other state officers and employees except where otherwise provided by law. The magistrate court is not a court of record. (§35-1-1.) The magistrate court consists of one magistrate district in each county excepting a class A county with a population of more than two hundred thousand persons in the last federal decennial census. The name of the magistrate district is the same as the name of the county in which it is located. §35-1-2

1.12 District Judge

There are 13 judicial districts in New Mexico, with one or more District Judges in each district. Districts include two or more counties except for the Second (Bernalillo) and Third (Doña Ana) Judicial Districts, which contain only one. District Judges are charged with presiding over cases of general jurisdiction at the trial level. District Judges hear both criminal and civil cases, and divisions to address specific matters (such as family law) can be created.

Each county is required to provide quarters for the operation of the District Court, including juvenile probation services. The provision of office space includes necessary utilities and maintenance service for the operation and upkeep of District Court facilities (§34-6-24 NMSA).

1.13 District Attorney

While the District Attorney is elected locally, they are an employee of the state and all salaries and expenses, except office space, which is the responsibility of the county, are paid from state funds appropriated to the District Attorney (§36-1-8 NMSA). The District Attorney is charged with prosecuting and defending criminal and civil cases in which the State or county is a party, or may be interested in all courts of record (i.e., magistrate courts are not “courts of record”) within the district. The District Attorney is also authorized and required by law to represent the BOCC upon request, to advise all county and state officers whenever requested, and to represent any county in the district in all civil cases in which the county may be concerned in the Supreme Court or Court of Appeals, except in suits brought in the name of the State (§36-1-18 NMSA).

For more information on the New Mexico County Assessor, County Clerk, County Commissioner, County Sheriff, or County Treasurer, please see that specific *NM Elected County Official Handbook* offered by the NM EDGE.

<https://nmedge.nmsu.edu/resources/handbooks.html>

1.14 Tribal Governments in New Mexico

Written by Fred Harris and used with permission

Approximately 2.5 million Native Americans are found in over 500 groups known as tribes, nations, pueblos or native villages.

- Around 10% of the two million people who live in New Mexico are Native Americans.
- Reservations in New Mexico include:
 1. Mescalero Apaches
 2. Jicarilla Apaches
 3. Part of the Navajo reservation
 4. Nineteen Pueblos
- Each of the nineteen New Mexico pueblos is a Federally recognized Indian tribe.
- The Navajo tribe is the largest in the United States.

Reservations arose when Congress “reserved” or set aside certain lands for Native Americans.

- American Indian tribes are not, as some think, “foreign nations.” For example, they can’t make treaties with foreign governments.
- The Federal Government has exclusive power to deal with Federal and tribal matters, unless it delegates that power to the states - which it rarely does.
- Upon becoming a state, New Mexico adopted a constitutional provision (Article XXI, Section 2) giving up taxing jurisdiction and other authority on Indian reservations.
- Legally, a pueblo and a reservation is the same thing. *Pueblo* is a Spanish word for village.
- New Mexico was the first in the nation to create a Bureau of Indian Affairs and a Cabinet Level appointment made by the NM Governor.

For many years Federal policy sought to assimilate Native Americans. It was felt that Native Americans should become like everyone else.



- Since the 1960's, however, federal policy has changed. Preserving the heritage of Native Americans is encouraged.

Native Americans, in addition to being citizens of the United States and the state they live in, are also citizens of the tribes of which they are enrolled as members. Each tribe has the authority to determine who is eligible to be a member.

- Dual citizenship means that Native Americans are entitled to vote in all elections plus tribal elections.
- Native Americans have become active in state and national politics. They are represented in the state legislature. Indian casinos have become a significant source of campaign funds.

When Congress created the reservations, the federal government assumed responsibility for providing certain needs such as health and education benefits.

- But Native Americans do not receive individual payments, as some people think.
- Just as it does for state and local governments, the federal government makes grants and loans to tribes and tribal programs.
- For example, when a Native American attends a public school, the federal government makes a contribution for this purpose to the local school district. This is similar to a federal contribution for children who live on military bases and attend public schools.

Do tribal members have the same constitutional rights as the rest of the country?

- Almost. The Bill of Rights acts as restraint on federal officers. The Fourteenth Amendment acts as restraint on state and local officers. But these amendments do not apply to tribal officials.
- To remedy this, Congress passed the *Indian Civil Rights Act* in 1968 to put similar restraints on tribal officers. But there are exceptions. For example, an Indian tribe can establish a religion, of whatever kind, although it cannot prohibit other religions. A Pueblo may choose to have a Catholic priest "bless the canes" (a traditional symbol of authority) for an inauguration of tribal officials.
- Nor is a tribe required to elect its officials. In fact, the majority of pueblos choose their leaders in the traditional (non-elective) way.

For more information on Tribal Government in New Mexico see *Governing New Mexico: "American Indians and tribal governments" / Chapter Written by Fred R. Harris and LaDonna Harris, UNM Press, 1994*

CHAPTER 2

KNOWING THE LAW

For more information on this Chapter, take NM EDGE classes
CPM 113- Knowing the Law I, CPM 114- The Public Policy Making Process,
CPM 153- Public Meetings & Public Hearings, and
CPM 211 Knowing the Law II

In order to understand law in the United States and New Mexico, we must first understand the sources of law. Generally, there are two sources of law: primary and secondary. Primary sources of law are laws created by an established body of government and have the potential to impact the citizenry. *Secondary sources* of law are essentially background resources that do not have the weight of law but help us to understand primary law. Here are some examples of each:

- Primary Sources of Law: Constitutions, Statutes (state or Federal laws), ordinances (local government laws), and court decisions (rulings made by the courts that interpret or clarify the law).
- Secondary Sources of Law: Opinions issued by the Attorney General, legal publications and dissenting court opinions (arguments against court rulings).

While it is always good to know about secondary sources of law, it is of greater importance, for the purpose this text, to understand our primary sources of law and who has the authority to make such laws.

2.1 The Power to Make Law

It is Congress and the New Mexico State Legislature who have the authority to make law in New Mexico. However, those laws (as legislation) must be signed into effect by the President or the Governor. Such laws are often the subject of dispute and interpretation and that is when the court systems, both federal and state, have the ability to further define the law and thus make policy through precedence.

While the federal government does have the ability to make laws that affect all states and the laws that they make individually, not all federal laws are applicable in each state. Conversely, laws made in New Mexico only affect New Mexico. Nonetheless, the law in New Mexico can affect how the federal government operates within the state.

2.2 The Lawmaking Process

Although both Congress and the New Mexico State Legislature follow ultra-specific procedures in the lawmaking process, all laws are made following a rather general process (model adaptation from Kraft & Furlong, 2007):

- **Agenda Setting:** This is where an issue, problem or desired change is presented before a policy making body such as the State Legislature or the Board of County Commissioners (BOCC). The influences at this point are essential. The public, policy-makers (lawmakers), current events or legal mandates (laws about law making) all play a role in determining what becomes part of the agenda.
- **Policy Formulation:** Once there is a specific issue or item being discussed by a policy-making body, policy-makers must discuss, create, and outline how they will address a particular issue. This process occurs in a political system and there are often clashes of

values.

- **Policy Legitimation:** During the process of formulating policy, lawmakers (policy-makers) must mobilize support for their policy proposal and how it will to achieve its outlined goals. This is the politicking of the process. Not everyone or every policy will prevail. This part of the process often requires compromise and change to a policy in order for it to be adopted.
- **Policy Implementation:** Once a policy has gone through a very complex and lengthy process of approval and adoption (very few items make it this far), it is time to put it into place. Some laws take effect immediately, while others are implemented at a later time or slowly phased into place.
- **Policy Evaluation:** While it is becoming more and more common for a law to require revision within a given period of time, not all laws require future review. However, most laws, should they need to be modified and adapted, will require evaluation. This part of the policy-making process is often left to professionals (such as the Legislative Council Service) and results are presented to the policy-making body.
- **Policy Change:** If a law or policy requires change, it will have to reenter the competitive process as listed above. It will again have to compete for a place on the agenda and be walked through the complexities of the political process.

For specific details on the lawmaking processes in New Mexico and in Congress, please see the following resources:

- **Federal lawmaking: “How Our Laws are Made,” Revised and Updated in 2007, by John V. Sullivan, Parliamentarian, U.S. House of Representatives**
<https://www.congress.gov/help/learn-about-the-legislative-process/how-our-laws-are-made>
- **USHistory.org**
<https://www.ushistory.org/gov/6e.asp>

2.3 Other Law-Making Bodies

Although legislative bodies are typically regarded as the sole creators of law in America, it is important to keep in mind that is not always the case. Administrative decisions and rules set by governmental units also have the effect of law. For example, while the BOCC creates policy for Human Resources within a given county, the Board cannot make a law for every possible HR-related issue. Rather, the Human Resources Department, under direction of the county Manager, tends to be provided with a general law that they have to interpret and apply as they believe was expressed by the BOCC. While their decisions can be overturned by the BOCC (or another governing body, such as the courts), most administrative decisions or policies have the effect of law.

2.4 The Impact of Laws

While counties also follow the policy-making process as a lawmaking entity, it is important to also watch how such a process plays out at both the Federal and state level. While laws have the ability to impact a number of groups and stakeholders, laws at the state and Federal level have a significant impact on local government.



Local governments, including counties, are often delegated or mandated to carry out very specific tasks and duties.

In New Mexico, Article X, Section Eight of the State Constitution holds that the state government by “rule or regulation” (i.e. State Agencies”) cannot place mandates on local governments unless requisite resources or funding are provided. Note that the language “rule or regulation” does not apply to un-funded laws passed by the legislature i.e. State Statutes:

A state rule or regulation mandating any county or city to engage in any new activity, to provide any new service or to increase any current level of activity or to provide any service beyond that required by existing law, shall not have the force of law, unless, or until, the state provides sufficient new funding or a means of new funding to the county or city to pay the cost of performing the mandated activity or service for the period of time during which the activity or service is required to be performed. (Adopted by the people November 6, 1984.)

Here is an example on the application of the Constitutional provision against State Rule or Regulation (Agency action) regarding Unfunded Mandates:

In 1990, the State Environment Department adopted Solid Waste Landfill Permitting Regulations that required local governments to greatly expand the level of funding for the operation of Landfills. There was a Writ of Mandamus filed by the Counties and Cities which resulted in a suspension and delay of regulation implementation until the State provided funding. In 1992, the State Legislature passed the enabling legislation for Cities and Counties to adopt the Environmental Gross Receipts Tax, a new source of funding, thus providing funding for the mandate.

Despite these efforts, unfunded mandates are still handed down to local government. However, through effective intergovernmental relations and communication, there are things that can be done to curb these types of directives.

2.5 Encouraging Public Involvement in Policy Making & Transparency

While there is an expectation that lawmakers understand and know the needs of their constituency, it is impossible to expect that representatives in government are all-knowing. That is why it is critical for policy-makers to engage the public in all decisions they make. Inclusive government is vital to the preservation of a democratic society. To aid public servants in their inclusive efforts, there are two key laws that all elected officials should know.

The first is the *New Mexico Open Meetings Act* (OMA), which was established to ensure that the public has every opportunity to involve themselves in the policy making process. The purpose of this Act holds that:

- Representative government depends upon an informed electorate
- All persons are entitled to the greatest possible information regarding affairs of government and the official acts of public officers and employees; and
- Providing such information is an essential function of government and an integral part of the routine duties of public officers and employees (Section 14-2-5 New Mexico Statutes Annotated)

The first part of the act provides explanations for what types of meetings fall under the law, public notice requirements for meetings, and proper issuance of agendas, minutes, and closed meetings. Also covered in the Act are remedies, penalties, and exceptions to the law.

The second is the *Inspection of Public Records Act* (IPRA), which serves as New Mexico's version of the Federal Freedom of Information Act and is designed to provide the public with access to virtually all public records. Such a law is intended to see that all work and action of the government is visible to the public. Of course, there are some limited restrictions on what is open.

For more information on both of these laws, please see the New Mexico Attorney General's compliance guides. These guides aid local governmental agencies in meeting each respective act's requirements.

The OMA Compliance Guide and a Compliance Checklist are easily downloaded from the NM Attorney General's Office website, with other documents, at <https://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Open%20Meetings%20Act%20Compliance%20Guide%202015.pdf>

The IPRA Compliance Guide and a Compliance Checklist are easily downloaded from the NM Attorney General's Office website, with other documents, at <https://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Inspection%20of%20Public%20Records%20Compliance%20Guide%202015.pdf>

CHAPTER 3

ETHICS AND PROFESSIONALISM IN THE PUBLIC SECTOR

For more information on this chapter, take NM EDGE classes
PE 110 A & B- Ethics: Know the Law I & II, CPM 112- Answering the Call to Public Service,
CPM 121- Ethics and Professionalism, CPM 142- Ethics & Managing Public Funds.
More classes may be referenced throughout the chapter.

Introduction - Ethics are Essential to Government

People judge their government by the caliber of those who serve in it. The public's belief in the integrity of their government will be determined entirely by the ethics of its elected officials and appointed personnel, from the highest elected officials forging policy, to the thousands of public employees diligently conducting the daily work of government.

When members of the public trust their government to act with integrity, they are more likely to vote, voice opinions on issues, resolve disputes through the courts and administrative agencies, pay their taxes fully, cooperate with government authorities, and otherwise comply with the law. Their trust in government depends upon the belief that it will keep its promises, perform diligently and competently, give out truthful and complete information, act transparently, distribute public benefits and burdens fairly, and use publicly funded resources for the benefit of the community.

Nothing erodes public confidence in government more than unethical or dishonest leadership. Even the *perception* of immoral or corrupt behavior among elected public officials can be sufficient to destroy political careers. More important, however, is the impact on the larger community. The cynicism and distrust of government that usually follows political scandals over ethical violations diminish the public trust in its leaders, institutions, and laws. Both history and current events offer numerous examples where the public found dishonesty and favoritism so pervasive that they even attacked the very legitimacy of their governments. (NM EDGE class *PE 226* offers further discussion of this topic.)

This chapter will offer a brief overview of ethical government for public officials, including:

- Universal ethical principles
- Ethical principles for public servants
- Ethical requirements in New Mexico law
- Ethical rules for specific areas of public service
- How leaders create a culture of ethics
- Suggested models for ethical decision-making
- Consequences of misconduct

This chapter is intended *only* as an overview. The NM EDGE curriculum for Certified Advocates for Public Ethics (CAPE) offers a series of classes exploring these and other concepts in detail.

Throughout this chapter we parenthetically note NM EDGE ethics classes in which material is explored, either as Public Ethics (*PE*) or Certified Public Manager (*CPM*) classes. All classes noted may be credited toward attaining a CAPE certificate from NM EDGE.

3.1 Universal Ethical Principles (*PE 120, CPM 139*)

Ethicists have attempted to identify ethical principles valued in all settings and across many different cultures. While there are some differences among their lists, several principles appear on virtually all of them. According to one typical formula, universal ethical principles include:



- Trustworthiness
- Responsibility
- Compassion
- Respect
- Fairness
- Loyalty

Tying all these principles together is a general rule, familiar to all of us, that has been stated in various ways over the millennia:

Treat Others As You Would Yourself Wish To Be Treated.

3.2 Ethical Principles for Public Servants *(PE 239)*

When we apply these universal ethical principles to the work of public servants, we find principles like these:

- Public service is a trust to be used only to advance public interests, not personal gain.
- Decisions are to be made on the merits, free of partiality or prejudice and unimpeded by conflicts of interest.
- Government is to be conducted openly, so the public can make informed judgments and hold public officials and servants accountable.
- Leaders of governmental agencies are responsible for ensuring that they, and all other public servants under their authority, conduct the public's business efficiently, equitably and honorably.
- All public officials must observe the letter and spirit of the laws.
- Public officials are responsible for safeguarding public confidence in the integrity of government by avoiding appearances of impropriety and conduct unbecoming a public servant.

3.3 Ethical Principles in New Mexico Law *(PE 110 and PE 111; CPM 142 and CPM 153)*

New Mexico has embedded many ethical principles into its statutes. Conduct that does not violate the law may still violate other ethical principles. But violating ethical laws may lead to administrative, civil and even criminal sanctions. Ethical violations that do not violate the law still have consequences, discussed elsewhere in this chapter, such as undermining public trust.

A. Governmental Conduct Act:

The primary law governing ethical conduct by officials of New Mexico state and local government is the Governmental Conduct Act, §10-16-1 et seq. NMSA 1978. Originally this law applied only to officials and employees of *state* government. In recent years the legislature has extended coverage of this law to officials and employees of local government, including judges and many board and commission members. It has therefore become crucial that all state and local government officers and employees in New Mexico, including even volunteer board and commission members, understand their ethical responsibilities under the Act. To that end, the Attorney General has published a Compliance Guide to explain the provisions of the Governmental Conduct

Act and clarify their application to covered officials and employees. In addition, the Guide will enable members of the public to become more knowledgeable about the standards of conduct the Act requires and assist them in holding their representatives in government accountable to those standards.

In 2021, the State Ethics Commission approved a model code of ethics, promulgated at 1.8.4 NMAC. The code includes an executive summary, the code provisions approved by the State Ethics Commission, and corresponding commentary and examples applying the model code provisions in particular hypothetical circumstances. <https://www.sec.state.nm.us/education/>

The Attorney General's Compliance Guide on the Governmental Conduct Act may be found online at <https://www.nmag.gov/wp-content/uploads/2021/11/Open-Meetings-Act-Compliance-Guide-2015.pdf>

B. Other Ethics Laws Applicable to Local Government:

The Governmental Conduct Act is not the only New Mexico law that imposes ethical restrictions on officials and employees of local governments. For example, the Whistleblower Protection Act, §10-16C-1 et seq. NMSA 1978, protects public employees against retaliation for disclosing improper conduct at their public agencies. The Open Meetings Act and Inspection of Public Records Act, both described in section 2.5 of this Handbook, are designed to ensure transparency of governmental decision making, so citizens can provide their input and hold their elected representatives accountable for their actions. Local governments who use the State Procurement Code, §13-1-1 et seq. NMSA 1978, are subject to ethical requirements related to their purchasing and contracting practices. A number of state laws prohibit government employees from committing serious unethical practices such as embezzling funds, receiving kickbacks or unlawful fees, or nepotism. And federal laws also control conduct by local government officials in certain circumstances. One example is the limitation on political activities imposed by the Hatch Act, 5 USC §1502, on officials whose jobs are partially or wholly funded by federal grant money.

A listing of many of these laws is in the Appendices to the Attorney General's Compliance Guide on the Governmental Conduct Act <https://www.nmag.gov/wp-content/uploads/2021/11/Open-Meetings-Act-Compliance-Guide-2015.pdf>

3.4 Ethical Rules for Specific Aspects of Public Service

(PE 110 and PE 120 in general, and other classes as noted):

Public servants elected or appointed to positions in local government are required to comply with ethical rules in discharging all of their responsibilities. What follows are some examples, briefly described, of ethical rules that arise frequently for those working in the public sector.

A. Conflicts of Interest:

The Governmental Conduct Act, Criminal Laws, and the Procurement Code, all referenced above, contain numerous restrictions to prevent people from using their

public position to unlawfully benefit themselves, family or friends. For example, these laws restrain people from being involved in hiring or contracting decisions from which they or close family members may benefit. Even former employees of government are restricted from benefiting from certain transactions involving their former agencies. The first step to overcoming ethical problems arising from conflicts is to make full disclosure to the appropriate authorities.

B. Abuses of Power (PE 147):

Public officials cannot take advantage of their authority to harass other people, improperly gain political advantage, or seek unauthorized special favors. Examples of abuse of power include sexual harassment or other forms of bias; offering or withholding public services based on the political affiliations of those requesting them; or avoiding criminal citations because of one's official position.

C. Managing Public Funds (CPM 142):

Special rules apply to those in charge of managing public funds, to ensure that the funds are protected and used as intended. Those having these responsibilities must be aware of their duties as fiduciaries, including the obligation to act with diligence, responsibility, loyalty and honesty.

D. Managing Staff (PE 239):

Supervisors are required to treat those they supervise with fairness, respect and sensitivity to their rights as employees. Employees must be treated with impartiality when being hired or promoted and must receive due process when being disciplined.

E. Politics:

While elected public officials are expected to campaign for office, it is unethical to use official resources or status in support of one's election or other political objectives. Officials are prohibited from requesting, or even "advising," any employee to contribute to or to work on a political campaign.

F. Civility (PE 123):

This is one area where ethical principles require positive behavior, even when laws may not. Public officials should treat all people with whom they come in contact—colleagues, employees, citizens, the media, everyone else they serve—courteously and openly. Government suffers when lapses occur.

G. Research (CPM 271):

Research is an important tool of government, but when it does not consider ethics it can do more harm than good. For example, insensitive polling can cause invasions of privacy, or even emotional harm for people dealing with stressful situations.

H. Transparency (CPM 153):

Government can only be trusted when it operates as much as possible in the open. When citizens understand what officials have decided and, even more importantly, how they decided it, the public will be more inclined to trust the officials' efforts and less inclined to oppose them. This applies both to meetings and government documents,

but with exceptions to protect the public interest. See section 2.5 of this Handbook, above.

3.5 Ethical Leadership *(PE 239)*

Elected public officials have special obligations to ensure that government adheres to the highest ethical standards. It is not enough for elected officials to be honest personally; they are also accountable to the public for the honesty of all appointed public officials that they supervise and contractors that they approve. Meeting these expectations requires elected leaders, as well as other managers, to make several commitments for their terms of office:

A. Understand the Importance of Appearances:

Leaders of government organizations must recognize that appearances count for as much as reality. A public official may know, for example, that they will be fair and unbiased when dealing with a request by a relative or close friend for some service.

But to outside observers, just dealing with such a person gives the appearance that the official cannot help but be influenced by the relationship. Unlike in the private sector, public officials are working with the community's resources, not their own. Thus appearances matter.

B. Create a Culture of Ethics *(CPM 139 and PE 239):*

A leader must inspire ethical conduct within the organization. The leader must demonstrate every hour of every day that ethical conduct is valued and emphasized. Employees and colleagues must know that choosing the ethical course of action will be respected and rewarded, even when it may not be the fastest or easiest way to attain other goals. It is equally important to convey the message that unethical conduct will not be tolerated or overlooked, even when it is done in the name of a desirable goal.

To create a culture of ethics, a leader must ensure that everyone working with the organization understands that they are expected to behave ethically at all times. This requires training in ethics for everyone in the organization, and clear statements of the standards of expected conduct. The disciplinary consequences of unethical conduct must also be clearly defined, and, when necessary, applied. Leaders must assess the compliance of staff with ethical standards, both through periodic performance reviews and through closer, more frequent monitoring as needed to resolve problems.

To ensure the credibility of the agency's commitment to ethics, leadership must train everyone to recognize and respond appropriately to trouble signs, whether those signs point to inappropriate conduct internal to the organization or in dealing with the public. Staff and the public must have clear, easily accessible directions on how to report ethical concerns, and each concern must be acted on promptly and appropriately. Staff must also be confident that a fair and efficient mechanism exists for resolving disputes within the organization, so that they will resort to those mechanisms for constructive conflict resolution before disputes escalate.

C. Commit to a Principle-Based Approach to Ethical Decision-Making *(PE 120 and 220):*

Decisions with ethical consequences often come with little warning and under intense pressure, especially for leaders with weighty responsibilities. Decisions are most difficult



when there are advocates for both sides, each emotionally involved. It is therefore valuable for those responsible for deciding to understand and commit in advance to use one or more systems of ethical decision-making. While there are different ways to resolve ethical dilemmas, the important thing is to commit to using a principle-based approach. If the leader is able to articulate a principled, factually supported reason for his or her decision, that reduces the concern that the leader plays favorites or responds without adequately understanding the situation.

To begin a principle-based ethical decision-making process, it is helpful to start with several preparatory steps. First, seek as much information about the issue as possible. Information obtained from a single source will likely omit facts important to other perspectives. Second, review and consider all the facts, to anticipate the possible consequences of the decision. Third, review your own emotions and put them in context. While reason is usually a more reliable guide than emotion, “gut reactions” may be helpful in matters such as reining in offensive conduct. But it is important to analyze whether the emotion involved is an appropriate one. Fourth, be open to all solutions, since the most ethical and productive decision may not be the one that has been used before or that first comes to mind.

Examples of principle-based approaches include:

- a “virtuous character” test (what would [insert your personal role model] do in this situation?);
- a “disclosure” test (has the process been open and transparent?);
- a “professional ethics” test (does the decision satisfy the professional requirements in the relevant field?);
- an “intuitive ethics” test (which decision feels right?).

Each of these tests has some strengths and some weaknesses, making each appropriate in some circumstances and less appropriate in others. The point is not to select one in advance and stick to it for every decision. Rather, the point is to recognize which test is operating in the decision-making process, to articulate how it has been applied, and to check whether the chosen approach is the most suitable and persuasive to others.

3.5 Consequences of Ethical Breaches (PE 110 A&B- Ethics Knowing the Law I and II)

As discussed in the beginning of this chapter, unethical conduct in government does serious harm to the public interest and to citizen confidence in government. A critical job for elected officials is to use every available tool to prevent ethical problems before they arise. When they arise despite the best efforts of agency leadership, a rapid and predictable response should follow.

A. Education

The first response need not always be punitive. Even employees trained in ethical conduct may not understand the rules, especially when they are new to government. Misconduct may result from honest mistakes. In such cases, education may be sufficient to prevent further errors, provided that the breach can be adequately addressed. Relying on education where possible



also encourages other employees to report problems, since the consequences to the offender may not be criminal charges or administrative discipline.

B. Administrative Sanctions

Most ethical misconduct is handled through disciplinary action. Any disciplinary measures should be only as harsh as the seriousness of the misconduct. Such measures may include reassignment, suspension, or dismissal, among others. Consult your county attorney.

C. Civil Action

When serious infractions have occurred, the Governmental Conduct Act provides for civil cases to be filed. These suits can be used to recoup losses caused by the unethical conduct and prevent further such actions.

D. Criminal Proceedings

When public officials break the law, it may be necessary to refer the matter for prosecution. Most infractions of the Governmental Conduct Act and state criminal laws are classified as misdemeanors, but some are felonies. Criminal laws may also provide for forfeiture of salary or benefits.

Conclusion

Everyone who chooses to enter public service, whether through election or appointment, commits to abide by rules of ethical conduct. It is incumbent on all government personnel to learn the rules and observe them. Leaders have an additional obligation: to ensure that the culture of their government agency includes a commitment to ethics.

CHAPTER 4

THE OFFICE OF NM COUNTY SHERIFF

Popular sovereignty is the basic principle of American government. Under the Constitution of the United States, powers not granted to the Federal government are reserved to the states, and within this framework each state has developed its own constitution. The power to govern is influenced by people in two ways: by their vote in elections and by invoking provisions of the Constitution which will influence governmental actions.

In New Mexico each of the 33 counties is regulated by, and subordinate to, state laws within the authority granted by the Constitution of New Mexico and legislative enactments. While each county is, by law and custom, an independent and self-governing agency of the state, it functions within detailed legal restrictions. These counties rely on the sheriff to enforce all state and local laws within the county.

4.1 Qualifications of Office

There are three provisions of the New Mexico Constitution which address a person's eligibility to hold the office of county sheriff. According to Article V, Section 13, a person must be a legal resident in the county for which they are to be appointed or elected. Article VII, Section 2 provides that this person must be a U.S. citizen and a resident elector of New Mexico.

Since these are requirements spelled out in the New Mexico Constitution, any modification of any or all applicable provision must result from a change in the State Constitution. These provisions determine eligibility to hold office as sheriff. If these qualifications are met, the person must then win an election by the majority of the votes. The people of the jurisdiction determine the officeholder.

4.2 Term Requirements and Oath of Office

Article X Section 2 of the New Mexico Constitution provides that a sheriff be elected every four years (for a limit of two consecutive terms). Statutory requirements apply to the office of sheriff after the person has been elected (§4-41-2 through 4-41-22).

Article XX, Section I of the New Mexico Constitution stipulates requirements of the oath of office. There is an official bond required for the position of sheriff (§10-1-13). This bond, which must be executed by a sheriff before they assume the duties of the office, must be made payable to the state on two conditions:

1. 1. That they faithfully performs their duties during their term of office until their successor is duly qualified;
2. 2. That they will pay all money received in their official capacity to the person entitled to receive it. The statute further states that: the bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond required shall be fixed by the board of county commissioners in a sum equal to twenty percent (20%) of the public money handled by the (Sheriff's Office) during the preceding fiscal year, but not to exceed \$20,000 (§10-1-13).



Any person who shall enter upon or attempt to execute any official duty as sheriff or as ex-officio collector, without having first executed and filed his official bond and oath of office as above required, shall be deemed guilty of a misdemeanor, and upon conviction in the district court, shall be fined in any sum not exceeding three hundred dollars (\$300), in the discretion of the court (§4-41-3).

4.3 Training Requirements

Every county sheriff, except for those who have a certificate attesting to the completion of a basic law enforcement training program, shall participate in and complete an administrative law enforcement training program no later than twelve months after the date that they assume office as county sheriff (§29-7-6.1).

The director of the training and recruiting division of the department of public safety shall establish the administrative law enforcement training program for county sheriffs, subject to review and approval by the executive committee of the sheriff's affiliate of New Mexico Counties (§29-7-6.1). Completion of the training requirements is necessary to maintain one's law enforcement certification as prescribed in the New Mexico Administrative Code 10.29.7.8. Please see Appendix L for more information on in-service training requirements.

4.4 Vacancy and Removal from Office

The office of sheriff can become vacant under the following conditions (§10-3-1):

1. By death of the party in office.
2. Removal from the position as provided by law.
3. Failure to qualify for the position as provided by law.
4. Expiration of term when no successor has been chosen.
5. Removal from the county in which they are elected.
6. Absence from the county for a period of six consecutive months, unless law provides that the duties may be discharged by a deputy and the absence is due to illness or unavoidable cause.
7. Resignation of the position.
8. Accepting and undertaking to discharge the duties of another incompatible office.

Removal of an incumbent sheriff from office can be only for cause as provided by law (§10-4-2). The following are provided as cause for removal:

1. Conviction of any felony or any misdemeanor involving moral turpitude.
2. Failure, neglect or refusal to discharge the duties of the office, or failure, neglect, or refusal to discharge any duty devolving upon the sheriff by virtue of his office.
3. Knowingly demanding or receiving illegal fees as such officer.
4. Failure to account for money coming into his hands as such officer.
5. Gross incompetency or gross negligence in discharging the duties of that office.
6. Any other act or acts, which in the opinion of the court or jury, amount to corruption in office of gross immorality rendering the incumbent unfit to fill the office.



To meet the provisions for removal of a sheriff from office, the procedure must include specific steps. It is, from start to finish, a judicial proceeding and necessarily includes provisions for the protection of the accused sheriff's rights as well as formal provisions intended to protect the public from corrupt officials.

The formal proceeding is initiated by a written accusation by the grand jury to the district court of the county for which the sheriff is elected. The accusation must clearly state one of the six causes, listed above as the charge, and it must be presented in open court. The district judge will transmit the charges to the district attorney who must serve notice to the sheriff of the date of a preliminary hearing to be set in not less than five nor more than ten days. The sheriff, as defendant, is provided opportunity to answer the charges and to object to the legal sufficiency of the charges. If the sheriff enters a plea of not guilty, the case will be tried by jury according to the rules of criminal procedure. The district court may order the sheriff suspended from office pending the outcome of the trial. Upon a finding of guilty the defendant shall be removed from office (§10-4-2).

During the period of suspension pending the outcome of the trial, the District Court must appoint a qualified person to discharge the duties of the office. If the sheriff is found not guilty, they are reinstated and paid for the period of suspension. If the sheriff is removed from office, his successor shall be appointed by the board of county commissioners.

4.5 Exercising Powers after Removal from Office

If any such sheriff, after being removed as provided by law, shall attempt to exercise any of the rights or powers of said office, or shall fail or refuse to turn over the office to the person appointed to succeed them, they shall be deemed guilty of a misdemeanor, and upon conviction thereof in the district court, shall be punished by a fine not exceeding three hundred dollars (\$300), or by imprisonment not exceeding three months, in the discretion of the court before which the cause may be tried (§4-41-4).

4.6 Filling the Vacant Office

When the office of sheriff should become vacant for any reason, as presented above, the board of county commissioners of that county will fill the vacancy by appointment, and the appointee shall be entitled to hold the office until his successor is duly elected and qualified. The appointee must be qualified as sheriff and will hold the office with all powers and duties as sheriff (§10-3-3).

4.7 Compensation and Fees

The New Mexico Constitution empowers the New Mexico Legislature to fix salaries for sheriffs (Article X, Section 1). The salaries for sheriffs and deputy sheriffs are fixed at a maximum amount (§4-44-1). Salaries may be lower than the amount fixed by the New Mexico Legislature. Salaries for deputies are fixed by county officials. Only the New Mexico Legislature can change the salary scale of the sheriff and legislative action is subject to limitation that compensation for any officer may not be raised or lowered during his term of office (NM Const. Article IV, Section 27). This limitation is imposed upon the legislature in order to secure independence of

officials from legislative domination.

For purpose of salary schedules for county officials, each county in New Mexico is designated as a particular class of county. The determination of a county's classification is made by the director of the Department of Finance and Administration during the first session of each Legislature and the director is to notify the board of county commissioners of each of the current classification (§4-44-1). Current maximum salaries for sheriffs in counties of each class are provided in the following table:

| County Class | Maximum Annual Salary |
|--------------------------------|------------------------------|
| Class A | \$90,338.00 (§4-44-4) |
| Class B High Valuation | \$78,952.00 (§4-44-4.1) |
| Class B Intermediate Valuation | \$67,814.00 (§4-44-5) |

Section 27 of the New Mexico Constitution states that no law shall be enacted giving any extra compensation to any public officer, servant, agent, or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except as otherwise provided in this constitution.

The sheriff, like all county officials, is prohibited (NM Const. Article X, Section 1) from receiving for his own use, any gratuity, or other benefits other than the salary fixed by law. In the case of the sheriff, however, the statutes provide for the payment of additional fees and expenses for various specific services which are performed as part of the duties of the sheriff (§4-41-15 through §4-41-22). These fees are paid to the sheriff for the performance of various duties including such things as the service of certain legal papers, attendance at certain sessions of court and county commission meetings, and for travel and other expenses. For the most part, these fees are clearly a form of reimbursement for out-of-pocket type expenses and these legislative enactments clearly fall within the scope of constitutional provisions for salary and reimbursement.

The sheriffs of this state shall be allowed, except from the state or any state agency the following fees and compensations (§4-41-16):

1. For serving every writ, citation, order, subpoena, or summons, not more than forty dollars (\$40.00).
2. For every writ of capias or attachment for each defendant, six dollars (\$6.00).
3. For taking and returning every bond required by law, five dollars (\$5.00).
4. For levying every execution and return of same, six dollars (\$6.00).
5. For making, executing and delivering every sheriff's deed to be paid by the purchaser, six dollars (\$6.00).
6. For every return of non est inventus, fifty cents (\$.50).
7. For making every return of any processes, order, summons, citation, or decree of



any court, two dollars (\$2.00).

No sheriff shall collect more than one of the fees, regardless of how many documents may be served upon one or more individuals when those documents are served at the same time and at the same location.

In the service of any subpoena or summons for witnesses, the sheriff shall be allowed compensation of one dollar (\$1.00) for each of the witnesses so summoned by the sheriff, notwithstanding that the name of such witness may appear in but one copy of the subpoena or summons (§4-41-16).

It is the duty of the sheriffs of the state to attend the following (§4-41-16):

1. The sessions of every district court, which attendance shall be paid in the manner now provided by law;
2. All sessions of the probate court and sessions of the boards of county commissioners, which attendance shall be paid sheriffs out of the general county funds of the county in which the services were rendered; and
3. At the trial or hearing before magistrates in felony cases, where the arrest is made by the sheriff, either with or without a warrant, which attendance shall be paid as provided in this section out of the general county funds; but such sheriffs shall not be allowed any compensation for attending at the trial of any misdemeanor case before any magistrate unless a sheriff made the arrest in such misdemeanor case.

For all travel by private automobile in the service of actual official business, sheriffs and deputy sheriffs are allowed mileage. If it is travel by public transportation, the officer would receive the actual cost of the fare rather than mileage. See Chapter 3 for further detail on per diem.

4.8 Moral Issues

It is unlawful for the sheriff to employ persons related to them unless first approved by the board of county commissioners. This does not apply if the total amount to be paid will be \$600 or less per year (§10-1-10).

CHAPTER 5

ORGANIZATION - MANAGEMENT OF A SHERIFF'S OFFICE

Organization and management are two very important areas that need to be addressed by the sheriff in order to achieve the goals of the department efficiently. Organization tends to vary from department to department based on the number of employees, number of divisions within the department, size of the population in the covered area, and geographical size of the covered area. Management is a tool used to lead and supervise personnel and will vary with the management style of the sheriff. Without management, employees can put the sheriff in a position of liability.

5.1 Organization Considerations

There are several important factors that need to be considered by the sheriff when they are organizing their department. One of these factors is the unity of command principle. The unity of command principle states that an employee should report to only one supervisor at any given time. The second of these factors is the span of control principle. The span of control principle refers to the number of employees that one supervisor can effectively manage. This number is normally considered to be three to seven employees, with five employees being the optimal number. The span of control is usually smaller at the top of the organization and can broaden out at the bottom of the organization. For example, the under-sheriff may only have two captains reporting directly to them, where a sergeant may have seven or eight deputies reporting to them.

Another important factor that a sheriff must consider when organizing their department, is delegation of authority and responsibility. In Chapter 6 we discuss the multiple responsibilities of a sheriff to include the criminal function, the custodial function, the civil function, and the court function. With all of these different duties considered, it is very important that the sheriff delegate some of his authority to other supervisors or deputies within the organization.

In law enforcement, and management in general, organization is achieved through establishing a clearly defined chain of command. The chain of command principle states that authority flows one link at a time from the top of the organization to the bottom. For example, the under-sheriff reports to the sheriff, the captains report to the under-sheriff, the lieutenants report to the captains, the sergeants report to the lieutenants, and the deputies report to the sergeants. This chain of command is normally only modified to accommodate specialized units such as the bomb team, tactical team, and canine unit. It has been proven to cause problems when the sergeant in charge of the bomb squad reports to a lieutenant that has no training or experience in this field and is trying to make the decisions concerning the operation of this unit. In situations such as these, the sergeant of the bomb squad would normally report directly to the under-sheriff or sheriff in order to eliminate some of the confusion.

5.2 Organizing the Sheriff's Office

As we mentioned in the introduction to this chapter, when organizing the sheriff's office there are several things a sheriff must consider. One of these issues is the number of deputies in the



department. If there are only five deputy positions in the department, then they could probably be effectively managed by the sheriff and the under-sheriff. On the other hand, if there are over 100 deputies in the department assigned to several different divisions, then the sheriff will probably have to create a complex chain of command to include captains, lieutenants, and sergeants.

Sometimes the sheriff must consider the geographical layout of the county and organize the department appropriately. If it is a very large county with a largely rural population, the sheriff may want to assign a supervisor at a substation located at the opposite side of the county even if that supervisor is only managing a couple of deputies. This practice would provide the citizens of the county with better police protection than the deputies having to respond hundreds of miles to calls for service.

5.3 The Law Enforcement Chain of Command in the County Sheriff's Office

Sheriff

In the law enforcement chain of command, the sheriff is the commander of the sheriff's office and is considered to be the ultimate decision maker for the organization. The sheriff is responsible for ensuring that the department's goals are met efficiently and is accountable to the citizens of their county.

Undersheriff

The undersheriff is appointed by the sheriff. The under-sheriff's duties are to operate the sheriff's office in the event of an absence by the sheriff, and to assist the sheriff with the day-to-day operations and management of the sheriff's office. The under-sheriff reports directly to the sheriff and the sheriff determines what roles and responsibilities the undersheriff will have within the organization. In sheriff offices throughout the country, some undersheriffs play a primary political role attending meetings and ensuring public relations.

Chief Deputy

In lieu of the title of Undersheriff or in addition to the Undersheriff some Sheriff Departments substitute or have the rank of Chief Deputy. Usually present in larger department Chief Deputies supervise large Divisions usually made up of several units. It is often described in a similar fashion to the duties of undersheriff but at a Division level.

Major

The rank of major is not a very common rank within New Mexico sheriff offices. These positions are more common in the very large sheriff's offices along the east and west coasts. A major is normally in charge of a large division, such as patrol or investigation divisions. Majors usually supervise two or more captains. This rank is more common in jurisdictions with districts that have fifty or more deputies assigned to them. The criteria for the rank of major is normally that they have served three to five years at the rank of captain, and have successfully passed some type of testing process. This rank is ultimately appointed by the sheriff, but more and more sheriff offices are using the practice of unbiased, independent testing, in order to avoid allegations of discrimination and unfairness.

Captain

The rank of captain is more common in sheriff offices with a large number of deputies. A

captain's duties include supervising lieutenants and operating a certain section or division. For example, a captain could be placed in charge of the patrol division, the investigation's division, the court security division or civil service division. A captain usually supervises two or three lieutenants. The most basic criteria for the rank of captain is normally that they have served three to five years at the rank of lieutenant, and have successfully passed some type of testing process. This rank is also ultimately appointed by the sheriff, but the practice of unbiased, independent testing is also a good idea when promoting captains.

Lieutenant

The rank of lieutenant is a common rank in most sheriff offices. A lieutenant's duties are normally to supervise sergeants and make decisions related to day-to-day operations such as shift scheduling, vehicle assignments, and equipment issuance. A lieutenant normally supervises three to five sergeants. If the sheriff's office is small enough that the rank of captain is not required, then the lieutenant will normally fill the roll of the captain as well as carry out the duties of lieutenants. The criteria for filling the rank of lieutenant is normally three to five years' experience at the rank of sergeant, and successful completion of a test and/or interview.

Sergeant

The rank of sergeant is a rank that is present in most sheriff offices. A sergeant is responsible for supervising a shift of deputies and making decisions related to the line law enforcement operations. A sergeant normally supervises anywhere from two to ten deputies. The criteria for filling the rank of sergeant is normally three to five years' experience as a deputy or corporal, and successful completion of a test and/or interview.

Corporal

The rank of corporal is most common in sheriff offices with a larger number of deputies, and a large geographical response area. Corporals fill a similar role as that of a sergeant, as line supervisors. Corporals make decisions when a sergeant is not available. If the span of control is too great for a sergeant, then the sheriff may decide to create the rank of corporal in order to lessen the responsibility required of the sergeant. Corporals normally supervise three to seven deputies and are sometimes utilized to supervise patrol teams. The criteria for filling the rank of corporal is normally three to five years' experience as a deputy and successful completion of a test and/or interview. Corporals are often used as Field Training Officers because of the senior nature of their position.

Deputy

The sheriffs in all the counties of this state shall have power to appoint deputies, who shall remain in office at the pleasure of such sheriffs; except that in counties which have established a merit system by ordinance, the provisions of the ordinance shall control the demotion and discharge of deputies and other employees of the sheriff's office (§4-41-5).

The rank of deputy is a position that is present in all sheriff departments. Deputies are authorized to discharge all the duties which belong to the office of sheriff that may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriff (§4-41-9). Deputies complete line functions such as traffic enforcement,

investigating crimes, making arrests, and keeping the peace.

All deputies prior to their becoming permanently commissioned, must obtain certification as a peace officer. If they do not achieve this certification within one year (12 months) of their initial employment date, they must be terminated according to state law (§29-7-6B). No person who may be under indictment or may be generally known as a notorious bad character, or as a disturber of the peace shall be eligible to serve as a deputy sheriff, and sheriffs are prohibited from issuing commissions to such persons as deputy sheriffs (§4-41-8). Some sheriff offices appoint deputies without proper testing and pre-hire screening. This practice is very risky and leaves the sheriff office wide open for civil liability and lawsuits. A person must be at least twenty-one years old to attend the New Mexico Law Enforcement Academy.

5.4 Merit System for Hiring and Promotions

Each county is authorized and empowered to establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of the deputies and the employees of the county sheriff's office. The ordinance may, in the discretion of the board of county commissioners, provide for the classification of deputies and other employees and their probationary periods, service ratings, pay scales and ranges, the number of hours of work per week and the methods of employment, promotion, demotion and discharge of such deputies and employees within the limits provided by law (§4-41-6).

In all cases of employment by county sheriffs of deputies, clerks and other personnel to positions covered by the merit system subsequent to the passage of an ordinance establishing a merit system, the contract of employment between the deputy or employee and the sheriff shall be considered to contain the provisions of the ordinance and all regulations issued pursuant thereto. The provisions of an ordinance and all regulations issued pursuant thereto shall become part of the contract of employment between the sheriff and all employees of the sheriff's office in positions covered by the merit system when the employment relationship exists at the time of the passage of the ordinance, unless the employee files with the county clerk, within ten days of the passage of the ordinance, a declaration stating that the employee does not desire to have the provisions of the ordinance, together with the regulations issued pursuant thereto, included as a part of their contract of employment (§4-41-7).

5.5 The Posse Comitatus

A sheriff has power to appoint special deputies if it is necessary to preserve the peace (§4-41-10). This power has come down through the centuries as part of our common law tradition. It is called the "posse comitatus" or "power of the county," and is vested only in the sheriff.

In more populous, metropolitan counties, a sheriff may be called upon to use this power in rare instances. There is usually a sufficient number of personnel to provide for enforcement needs in these areas. In less populated counties, the sheriff may have more of a need to call upon the "posse comitatus" to assist them. It is this power that the sheriff uses as a basis for developing a sheriff's reserve program. Sheriff reserve programs are more common than the instance of a



sheriff activating a posse because sheriff reserve deputies are usually more reliable and better trained than a posse.

5.6 A Sheriff's Reserve Forces

In times of serious and extraordinary crises a sheriff may need to expand his forces in order to "keep the peace." One type of program often overlooked by a new sheriff, is a reserve program. This type of organization should not be equated with a "Sheriff's Posse" or with honorary, Special Duty Commissioners, which are frequently of an ornamental or social nature, and which do not lend real enforcement assistance to the sheriff.

There are many approaches to forming a bona fide sheriff's reserve force. The option rests with the sheriff, but below are some determinations which may need consideration:

1. Insurance - Personal Protection Provisions. The sheriff must determine if adequate coverage for reserve personnel can be provided. This should cover hospitalization in case injury occurs during law enforcement activity. New Mexico Counties is prohibited by state law from providing workers compensation coverage for volunteers. The National Reserve Police Officer's Association has some insurance coverage as does the Volunteer Firefighters Insurance Services and some private insurance carriers. Liability for civil or criminal actions may be addressed by special insurance or by placing reserve deputies on assigned risk rolls.
2. Recruitment, selection and training of reserve personnel requires the same care as with regular personnel. Expectations for reserve personnel must be clearly spelled out in appropriate regulations, basic training, advanced training, and in-service training should be provided to each reserve deputy to ensure conformity to liability needs of the agency. New Mexico Counties Sheriff's Affiliate Reserve Training Committee has developed training requirements that are based on different levels of reserve deputy duties. This curriculum will be a valuable resource for sheriffs seeking to have a professional reserve program.

A sheriff's reserve offers a potent back-up force to assist in emergencies where adequate coverage cannot otherwise be provided, such as natural disaster and large-scale law enforcement incidents. Reserve officers are also volunteers and they therefore offer sheriffs an opportunity to provide more law enforcement services than they could otherwise provide within their limited budget.

5.7 Basic Management Principles

The principles of management that are commonly listed as "basic" to the process of administering any organization, were probably first defined in writing by Henri Fayol in Great Britain in 1930 and later, in 1937, by Luther Gulick of the Institute of Public Administration. Although many management concepts have changed over the years, the basic ingredients of successful management are pretty much as described by Fayol and Gulick. These pioneers described administrative activities with the acronym POSDCORB, in which the initial letters are combined, thus:

Planning, Organizing, Staffing, Directing, Coordinating, Reporting, and Budgeting, which,



according to most authorities, encompasses all of the essential tasks of the manager. The administrator or management processes, however they are identified, are not mutually exclusive. In many ways each of the various components are part of other processes and interdependent one upon the other. For purposes of definition, it is easier to separate the several components. According to Gourley, in his booklet on Effective Municipal Police Organization, these activities can be defined as:

Planning involves the preparation of a broad outline of the tasks that must be accomplished and the methods for doing them in order to achieve the purpose and objectives of the enterprise.

Organizing is the establishment of the formal structure of authority through which work subdivisions are arranged, defined, and coordinated.

Staffing includes the personnel functions of recruiting and training the staff and studying and improving working conditions.

Directing consists of the continuous task of making decisions, embodying them in specific and general orders and instructions, and serving as the leader of the enterprise.

Coordinating is the all-important duty of inter-relating the various parts of the work.

Reporting involves informing the executive's superiors as to what is happening. This function demands that the executive and his subordinates remain alert in their areas of responsibility through records, research, and inspection.

Budgeting includes formulating the budget and performing fiscal planning, accounting, and control.

Note: The NM EDGE County College has an entire track of classes in Management and Leadership as well as another track devoted to Finance and Budgeting. Each of these classes are three hours in length and provide information specific to New Mexico. For information regarding class specifics or delivery schedule, contact the NM EDGE at 505 244 4059.

CHAPTER 6

GENERAL POWERS AND DUTIES OF THE SHERIFF

As an elected official, the sheriff's primary task is to enforce the laws of the state and the ordinances of the county. The sheriff's duties are as follows: they shall be conservator of the peace within his county; shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them (§4-41-2).

The grant of power in this statute is broad and all-inclusive. In the first clause the sheriff is given authority to enforce any state law or execute any civil action - so long as these actions are necessary to conserve the peace within the county. Any disturbance or threat to the peace in the county allows a sheriff to use the force at hand to quell the disturbance or restore peace.

As an independent, elected officer, the sheriff must interpret the powers and duties of the office. For a sheriff, who may not have prior police experience or legal background, the task of handling the duties of the office appears awesome, but the sheriff does not face this task alone. There are a number of other responsible public officials as well as those from other agencies and local universities that can provide advice and counsel in the interpretations of and use of these vast powers.

6.1 Functions and Role of the NM Sheriff

Under the statutes of New Mexico, the responsibility of the sheriff is spelled out in general terms (§4-41-2). In some sections of the United States there have been moves to limit, alter or restructure the basic duties of the office of sheriff. In New Mexico these duties remain essentially the same as when counties were formed in the Territory of New Mexico in 1837.

See Figure 1 below:

Figure I. Sheriff's Functions

Sheriff

| | | | |
|------------------------------|---------------------------------|---------------------------|---------------------------|
| Criminal Function | Extradition Function | Civil Function | Court Function |
|------------------------------|---------------------------------|---------------------------|---------------------------|

Specific Tasks

The duties incumbent upon a sheriff fall into four general categories, as follows:

1. Criminal matters and jurisdiction, including, but not limited to, the preservation of the peace, the apprehension and detention of law violators, prevention of vice and crime, suppression of vice and crime, and the regulation of non-criminal conduct, which may have an effect upon the foregoing.
2. Execution of extradition warrants when directed to arrest the accused. Peace officers or any other person empowered to make the arrest shall have the same authority in arresting the accused. (§31-4-8, §31-4-9)
3. Civil matters, including accurately recording all details regarding the receipt and service of all processes, publications of notices, certifying and dating releases of attachments and other writs, including also specific information on every civil paper which is transmitted by the sheriff or his deputies.
4. Court functions, as relating to serving the court by providing bailiff, summoning juries, executing civil and criminal court writs and orders, serving as crier to, and providing personal attendance upon the court.

While a sheriff may not be involved in each of these tasks, each of the above categories of responsibilities is part of the charge to them as conservator of the peace of the county. The degree of activity in each area of responsibility depends in large part on the traditions of the office and experience of the incumbent. Guidance and budget activity by the board of county commissioners or the county manager may be an influence on the degree of each sheriff's involvement in any or all categories. Most sheriffs in New Mexico do not oversee county detention operations.

Definition of Tasks

To assist in defining the many law enforcement duties performed by a sheriff and his deputies, it might be well to understand the several functions or categories into which these duties can logically be grouped. O.W. Wilson, in his text "Police Administration," classifies the duties and groups them as follows:

1. Line Functions: Those relating to the accomplishments of the fundamental police responsibility. These can be grouped according to the method by which this occurs:
 - a. Patrol
 - b. Traffic
 - c. Crime Investigation
 - d. Crime Prevention
 - e. Vice Control

These can be considered as the basic line or operational units.

2. Auxiliary Functions: Those services which assist the agency in carrying out the tasks of one above. These can be grouped as:
 - a. Records Tasks
 - b. Communications Tasks
 - c. Custodial Functions - Jail, etc.
 - d. Laboratory Functions - Identification, etc.
 - e. Property Control and Management Tasks
 - f. Maintenance

3. Administrative Functions: Those tasks which facilitate the effective completion of one and two above. Those are based on the principle that available resources of the agency should be used in the most effective manner possible. These can be further classified as follows:
 - a. Administrative duties - include organizing the agency, outlining objectives, planning operations, and controlling them. These processes are planning, directing, and controlling, and it is done by the Sheriff's capability to organize, deputize and supervise.
 - b. Managerial duties include selecting, promoting, supervising, training, and assigning personnel in the proper manner. It also includes the financing, equipping, and programming for specific objectives.

These elements are basic to the development of a sound organization, and in fulfilling the enforcement objectives.

As *A. C. Germann* points out in his treatise *Police Executive Development*, police activities can be classed into two major areas. Germann's classification thus includes:

1. Line Functions
 - a. Primary operational activities
 - (1) Patrol
 - (2) Investigatory
 - (3) Vice
 - (4) Traffic
 - (5) Juvenile

 - b. Special operational activities
 - (1) Ambulance and rescue
 - (2) Civil Defense
 - (3) Animal Regulation
 - (4) Youth Service
 - (5) Guard Service
 - (6) Licensing
 - (7) Department Reserve

- (8) Auxiliary - Volunteer Reserve
 - (9) Miscellaneous - such as supervision of probationers and parolees, - emergency relief and lodging, etc.
2. Staff Functions
- a. Primary staff services
 - (1) Personnel and Training
 - (2) Planning and Research
 - (3) Fiscal
 - (4) Public Relations
 - (5) Civilian Personnel
 - b. Auxiliary staff services
 - (1) Crime Laboratory (criminalistics)
 - (2) Detention and Jail
 - (3) Records and Identification
 - (4) Property and Maintenance
 - (5) Communications
 - (6) Transportation
 - c. Inspection services
 - (1) Intelligence
 - (2) Internal affairs
 - (3) Departmental vice
 - (4) General Inspections

(Author's Note: Not all of these tasks are acceptable as police functions to some administrators but are included as indications of the variety of jobs various agencies may be called upon to perform.)

Once the tasks have been listed, as illustrated above, each job should be described clearly. The job descriptions can thus be used to determine the requirements a particular individual may need in order to carry out a particular task with some probability of success. This audit of tasks and available workers may prove helpful in determining training and experience requirements, which in turn may be used in implementing training programs to make personnel more effective.

6.2 Specialization

Frequently, the main thrust of an agency is the development of investigative specialists, rather than the total development of each individual officer's investigative skills. Positions requiring selected techniques, such as criminology, polygraphy, forensic sciences, fingerprinting, photography, electronic data processing, computer programming, and other skills of this nature are the type of tasks that may benefit from specialization. Specializing in investigation of specific crimes, records, communication, jail operation and like tasks, should be allowed only after operations reach the point where the assigned officers cannot handle the problems with dispatch or without spending too much time away from their general police duty.



6.3 The Criminal Function, Crime Prevention and Suppression

If an establishment or area of a county shows a high incidence of criminal activity, manpower should be assigned in sufficient strength to have an impact on that crime. If this deployment of strength in "high-hazard" areas achieves its purpose, then the first requirement of the criminal function, prevention of crime, will have been met. Crime results from a combination of two factors: "the desire to commit a crime and an opportunity to do so." Manpower deployed in an effective way does much to eliminate opportunities for criminal depredations. The sheriff, or his deputies, can do little to erase a desire to commit a crime in the mind of potential criminals. Forceful patrol to suppress criminal activity may prove most beneficial in preventing crime. If the crime prevention activity works well, less effort need be expended on suppression of vice and criminal acts. The Criminal Code of New Mexico enumerates the various illegal acts which make-up the criminal law responsibility of a sheriff (NMSA, Chapter 30, 1978, annotated and revised).

6.4 Criminal Investigation

Once a crime has been committed and brought to the attention of the sheriff, the next phase of law enforcement comes into play. This phase is the investigation of criminal acts. In order to be effective, an investigator must know the criminal law to include the essential elements of the specific crimes. An investigator, whether a general law enforcement officer or a specialist, must understand the nature of evidence, the types of evidence required for a successful court presentation and the legal constraints which apply to the collection, preservation, and presentation of evidence in court.

The investigator must know what elements constitute a sound case investigation; the proper method of recovering and handling property; the proper procedure to identify, apprehend, interrogate, and process offenders and suspects. They must understand how a case is prosecuted and be prepared to assist the prosecutor in fulfilling this responsibility. This requires an intimate knowledge of the laws of arrest, search and seizure, and any court decisions which impact on this process. The investigator must recognize legality of evidence to assist in prosecuting the case.

Numerous other skills are required of a professional enforcement officer, and not all are in the area of knowledge. On the physical side of the coin, an officer must be alert to potential physical danger when an apprehension is made. This requires skill in the mechanics of arrest, and in matters of officer survival and self-defense. Special care must be exercised when dealing with and the transport prisoners.

6.5 The Extradition Function

Subject to the provisions of §31-4-2, the provisions of the constitution of the United States controlling and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this state.

If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other



person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance (§31-4-7).

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused to the duly authorized agent of the demanding state. (§31-4-8).

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in Section 3 [31-4-3 NMSA 1978] with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act [31-4-1 to 31-4-30 NMSA 1978] not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom. (§31-4-6).

6.6 The Civil Function

One of the more perplexing problems with which a sheriff must deal relates to matters resulting from processes initiated through civil and criminal court actions (§4-41-14). A good, general "rule-of-thumb" is for the sheriff to follow diligently all orders of courts of competent jurisdiction.

Upon such a court order, which is valid on its face, the sheriff has the responsibility of properly serving those orders and to take, safeguard, and deliver property ranging in value from a mongrel pup to a massive jet airliner, from canned goods to a thoroughbred racehorse. In each case the sheriff must assume complete responsibility for the care and safekeeping of these items.

The purpose of this discussion is to point out some of the principal points for consideration and some areas which have, in the past, proved to be pitfalls for a sheriff who may not be fully aware of the requirements regarding these phases of his responsibility.

The Process

The term "process" refers to a number of items incident to or issued by a court in civil action proceedings. It may include writs, precepts, notices, or orders of execution and each is binding upon the sheriff to take particular actions in fulfilling these orders of the court. We are speaking only of those items resulting from civil court actions. In particular, this term refers to those instruments by which a defendant is required to appear in court; by which proceedings in that court are carried on, and the means by which judgments of the court are executed. Thus, we can see that there are original, intermediate, and final processes involved. Although these terms have fallen into disuse in modern times, they may still be appropriate in attempting to outline a particular stage of an action, and to indicate the responsibility of the sheriff at each stage of the proceedings.



In order to ensure that the court process is carried out properly, the sheriff must discharge his duties under the law in a timely and proper manner. His failure to do so may void the subsequent stages of an action. This proper discharge of duty is vital to the original process action. It is important that each sheriff and his deputies know and understand their role in the civil process.

The Summons

Under New Mexico state law, after a complaint has been filed with the clerk of a court with jurisdiction in the matter, the action may commence. Notice of filing the complaint is given by serving a copy on the defendant with a summons to appear at or within a specified time period.

The manner and conditions under which any process will be served depend greatly upon the jurisdiction of the court, and upon the persons involved. Service should be conducted at the convenience of the defendant and at an hour and day which would be least disruptive for the defendant, as long as the defendant is not avoiding being served. However, where the defendant's character and reputation are known to be unreliable, and where evasion of service might be a consideration, it may be well for the officer to confront the defendant with the summons as quickly as possible, regardless of the time, place, or circumstances. Such actions will, of course, rest with the knowledge, judgment, and discretion of the officer.

There are specific requirements in regard to personal or substitute service, service to minors, corporations, nonresidents, or other defendants of a special type. Additionally, similar service is required for injunctions, writs prior to execution and common law writs of various types. The clear understanding of these processes requires sound legal guidance from competent authority, and each sheriff is urged to consult with and to work with the appropriate authorities in these matters.

Return of Service

In New Mexico courts, a process which has been served must be returned to the court promptly and within the time during which the person served must respond to the process. A valid return is an indication that an officer has received the process on a certain date, and that within a particular period of time has carried out the mandate of the court. Such notations are made in order to indicate the proper exercise of this responsibility. The notation of date and time and place of service, by whom, other pertinent data, plus the circumstances of service would indicate a return. It is obvious that this data must be transmitted to the court in which the action takes place.

Returns should be made in person to the court, but in some instances mail or messenger may be used. Again, the circumstances of a particular situation will have a bearing upon the legality of the process. Where mail is used, it may be advisable to use registered or certified mail. Where a question of time may appear to be of importance, it may be wise to use special delivery service for the return.

The statutes relating to a sheriff's duty to enforce county ordinances, diligently file complaints and cooperate with the district attorney provide for penalties for failure or neglect in these

duties (§4-37-4). Either civil or criminal liability may be obtained by the sheriff should he fail to meet the requirements of the law, either through neglect or by deliberate failure.

Where there is some distinction between these two terms, they mean the same thing. A failure to make proper service of process is the same as a failure to make a due return even though the process may have been served. It is important that the sheriff have a clear understanding of his role and responsibility in these affairs, and that each of his representatives also has clear knowledge of those duties incumbent upon each of them.

Subpoenas

The subpoena differs somewhat from a summons although its purpose is also to bring a person into court or before a particular body for a stated reason. In general, a summons relates to defendants or party to a cause or to jurors who may be called for duty. A subpoena relates primarily to producing witness testimony in a court, either through a person or through documents.

The power to issue this type of judicial process is somewhat less restrictive, and thus the requirements for service are not as strict as in matters relating to other court processes. It appears that the sheriff may serve such documents and return the same under fewer restrictions than for the summons or other court processes.

The important point to keep in mind on any of these procedures is that the requirements are detailed in the New Mexico state law. This manual merely suggests some guidelines to follow.

Execution of Orders

In order to fulfill the requirements of a court, other writs may be issued. Execution is the final process in a civil action and shall be in conformity to the order, judgment or decree issued by the court. It may involve a levy on property, foreclosure, attachment, lien, or garnishment, and in some cases may lead to contempt proceedings and civil arrest.

This area of the law is explicit and for each of the possible judgments available, there are specific statutory and case law provisions which apply. It is important that a sheriff be fully aware of his specific role in these matters. As the result of a particular action, the sheriff may have to conduct a sheriff's sale, enforce a foreclosure, or carry out an eviction. In order to satisfy a judgment, they may have to attach monies, bank accounts and/or salaries, and in each instance, they become fully accountable. They must, therefore, use every resource at their command to fulfill all legal requirements.

Necessary Records

In all cases, whether civil or criminal in nature, a sheriff must maintain accurate, complete, and comprehensive records of every action. While such records are not necessarily required by law in criminal matters, the statutes are most explicit in matters resulting from civil actions.

Failure to conform to or perform any part of the legal requirements in a civil case may lead to serious problems for a sheriff. In general, they are required to record his receipt and

service of any process; publish and record such publishing of various legal notices; and certify and date all writs and releases of attachments, etc. This includes the proper return and donation of all papers from the court. None of this can be done in a haphazard manner but must be business like in nature.

Upon demand, the sheriff may be required to produce a complete chronological record regarding the manner in which a particular document, writ or process was handled by his office. This will include from the time of original receipt until final return of the paper to the court of origin. It therefore behooves a sheriff to give close supervision and careful attention to these matters. In a manual of this nature, it would be improper to attempt to outline any procedure to be adopted in keeping such records. There are a number of texts on the market which can do this. However, it is proper to indicate some of the problems and to give some general insights which may be of help to the sheriff. Specifically, if the sheriff will remember that every paper and all money or property must be accounted for, in detail, they will have fewer problems. In essence, every civil paper should have the following data recorded:

1. The year, month, day, hour, and minute of delivery to the server. The reason for this is that there may be a specific time limit within which the paper must be served.
2. Similar information should be given in reference to the time and release to the person serving or delivering the paper.
3. Similar data regarding the return of the process must be recorded.
4. Where fees are involved, a very accurate and careful accounting of all transactions, where and when completed, and any amounts collected, and their locations must be kept. This is the area which is perhaps the greatest pitfall and place of possible error for some sheriffs, great care is needed.
5. An accurate record of the final certification must be kept. It should include but is not limited to data regarding the parties involved, the title of the paper, final disposition of all persons, monies, papers, and things involved in the case, so far as the sheriff is concerned.

If this type of an accounting process is kept and followed faithfully, the sheriff will have done much to meet his obligations under the law. For specific guidance, the sheriff should consult his legal advisor, the County Attorney, and the NM statutes.

6.7 The Court Function

As a court officer, the sheriff is fulfilling one of the most traditional of his ancient tasks. Historically, it is in this role as an officer of the court that the office became most useful. Gradually, of course, this role has shifted; today it takes on relatively less importance than in former times.

It is the duty of the sheriffs of the state to attend:

- (1) the sessions of every district court, which attendance shall be paid in the manner now provided by law;
- (2) all sessions of the probate court and sessions of the boards of county commissioners, which attendance shall be paid sheriffs out of the general county funds of the county in which the services were rendered; and
- (3) at the trial or hearing before magistrates in felony cases, where the arrest is made by the sheriff, either with or without a warrant, which attendance shall be paid as provided in this section out of the general county funds; but sheriffs shall not be allowed any compensation for attending at the trial of any misdemeanor case before any magistrate unless a sheriff made the arrest in the misdemeanor case.

The purpose of court attendance is to ensure that order is maintained and to assist the court in its dignity. This may require conferring with the judge to determine his needs or any special requirements of the court. (§4-41-16C).

The sheriff is charged with the responsibility of attending upon the jurors and supervising them during the court session. They must be prepared to provide for their needs, protect and escort them to and from the court, provide for their health and ensure their isolation from outside influences. This duty is usually achieved by assigning these tasks to court security officers or bailiffs.

CHAPTER 7

PROFESSIONAL CAREER DEVELOPMENT - FUTURE TRENDS

The sheriff must be concerned not only with everyday management needs, but with planning for and developing the type and the quantity of personnel who can most effectively function within his organization. In order to achieve the highest possible efficiency, they must be concerned with and sensitive to possible future trends in the criminal justice system and their community.

The current emphasis on crime in the United States, from the smallest village to the largest city, requires the sheriff of today and in the future to give close attention to the role that he will be called upon to play. The citizens of this country are being inundated with information about the extent and seriousness of crime by radio, television, newspaper, and the internet. They appear to be more concerned than ever and are willing to play a role in protecting the community.

The fact remains that crime has increased in scope and seriousness. The type of crimes committed is changing and the types of offenders being held are also changing. The mobility of our society today places the sheriff in the main current of law enforcement. His role will become even more complex in the Southwest as the population increases, as industrial development accelerates, as transportation, and thus mobility begins to become more comprehensive and as the socio-cultural patterns of our society change. Unless the sheriff takes note of these changes, they cannot fulfill the trust, and maintain the confidence of the people they serve. This could have grave consequences on their impact as a law enforcement officer.

To help meet these demands the sheriff must be cognizant of the technology that is currently available to them, the future trends in crime and the law enforcement techniques used to address them, and to his own career development. The community is now requiring a more qualified candidate as sheriff, thus pressuring sheriffs to attend training and development pertinent to their role in law enforcement.

7.1 Professional Career Development

A sheriff should ensure that they are continuously improving themselves by obtaining further education for the duties that they are required to perform. Several courses are available nationwide for law enforcement managers. These courses help prepare the sheriff for the role as a law enforcement department head and allow the sheriff to be a better qualified candidate for reelection.

One of these courses is the Federal Bureau of Investigations (FBI) National Academy. The FBI National Academy is a professional course of study for U.S. and international law enforcement leaders that serves to improve the administration of justice in police departments and agencies at home and abroad and to raise law enforcement standards, knowledge, and cooperation worldwide. The FBI National Academy is a ten-week course that is held at the FBI Academy in Quantico, VA. While attending the National Academy the students attend undergraduate and/or graduate level classes in the areas of law, behavioral science, forensic science, leadership development, communication, and health and fitness. Sheriffs interested in attending the FBI National Academy should contact their nearest FBI office for the academy requirements and must be nominated by a county commissioner.

The FBI Law Enforcement Executive Development Association (FBI-LEEDA) also offers courses that are held in locations nationwide that are centered around the subjects of leadership and management. One of these courses, the Command Institute, is a five-day program designed for law enforcement leaders for command level positions. Persons interested in attending the Command Institute should contact the FBI-LEEDA at 1-877-772-7712.

The Institute of Police Technology and Management (IPTM) located at the University of North Florida in Jacksonville offer several courses in law enforcement management. These courses include Comprehensive Staff Inspections Workshop, Developing Law Enforcement Managers, First Line Supervision, Line Supervision, Fiscal Management for Law Enforcement, Implementing and Managing the Community Oriented Policing, Management of the K-9 Unit, Managing the Patrol Function, Managing the Police Training Function, and Police Supervision. All of these courses are normally one week in length. Persons interested in attending any of these courses should contact the IPTM at (904)620-4786.

Signet Training Group offers a Law Enforcement Executive Program that covers topics including principles of leadership, constitutional policing, organizational skills, communication skills, data analysis and patrol plans, criminal investigations, wellness, ethics, liability and risk management, project management, IPRA compliance, community engagement (PIO), event planning, and more. If you would like more information about the next-scheduled course, please email jesse@signettraining.com or randy@signettraining.com.

<https://signettraining.com>

Sheriffs can also obtain knowledge and skills by attending college courses either online or at a local university. Many universities offer online criminal justice and management degrees, in an effort to make it more convenient for sheriffs and other police administrators to complete their degree. Some of the universities that offer these online degrees include: New Mexico State University Criminal Justice Masters Program, National University Criminal Justice Administration Bachelors Program, Boston University Criminal Justice Masters Program, and Long Island University for Homeland Security Degrees. Obtaining a degree in a related field could also make the sheriff a more desirable candidate for reelection and provide more career opportunities after they have completed their term.

Another method of career development is becoming an active member of a law enforcement organization. There are numerous professional organizations in New Mexico and surrounding states. Two of the most prevalent are the New Mexico Sheriffs Association (<http://nmsheriffs.org/>) and the Western States Sheriff's Associations (<https://www.westernsheriffs.org/>). On a national level, one of the most common associations for a sheriff to be a member of is the National Sheriffs' Association (NSA). The NSA provides training, seminars, and a variety of specialized programs for its members. Persons interested in becoming members of the NSA can contact the NSA by telephone at 1-800-424-7827 Ext. 332. Many Sheriffs also belong to the International Association of the Chiefs of Police (IACP) Being a member of a law enforcement association can provide an excellent extended network of contacts to the sheriff and provide them with vital information needed to fulfill his role as sheriff.

Another training opportunity for county sheriffs is the County College program. County College is a partnership between New Mexico Counties and New Mexico State University Cooperative Extension Service with the goal of delivering quality training opportunities to county officials and their employees. The program is administered by The NM EDGE. The purpose of County College is to foster professional development and create a consistent program for continued training. The program is designed to meet the needs of all aspects of county government by providing cost-effective, accessible, and targeted educational opportunities to all county policy makers and staff. Participation in this program allows county officials to organize their professional development around critical skills necessary to achieve excellence in their organizations. Many of the training opportunities are offered in conjunction with regional association conferences or affiliate meetings. County officials are also able to earn continuing education units (CEU's) through County College training sessions. Upon completion of the program, participants earn a certificate as a "Certified Public Official" or other customized New Mexico certifications depending on the individual's interest.

To request information on The NM EDGE County College please contact The NM EDGE (505 244 4059) or view the website at <https://nmedge.nmsu.edu/programs/certification.html>

7.2 Technical Resources Available to the Sheriff

With the advent of new technology, sophisticated instruments, and tools an officer not only has a wider range of techniques and new equipment to use, but there are also a number of new criminal acts relating to this new technology, such as computer fraud and identity theft.

In more complicated investigations it may become necessary to use the sciences and skills of such fields as pathology, lie-detection, chemical analysis, firearms identification and forensics, microscopy, blood testing and DNA analysis, computer analysis, and fingerprinting and photography in order to bring a case to successful conclusion.

It may be impractical, if not impossible to have this type of talent on the sheriff's staff, but many of these skills can be found in personnel at nearby universities, high school faculties, state crime labs, larger law enforcement agencies in the area, or specialists such as doctors, engineers or chemists in the community. One must know something about what capabilities are available, and how they might be used in a particular case.

In New Mexico, the Department of Public Safety (DPS) provides forensic laboratory services to any law enforcement organization located within New Mexico. The New Mexico DPS has laboratories located in Santa Fe and Las Cruces that provide services such as latent fingerprint analysis, firearm analysis, DNA and serology analysis, and chemical analysis. The northern laboratory located in Santa Fe can be contacted by telephone at (505)827-9136, and the southern laboratory located in Las Cruces can be contacted by telephone at (505)541-7580.

Great attention and detail should be given to processing a crime scene. A crime scene could

contain literally thousands of pieces of evidence. From the smallest hair or clothing particle left by the suspect to the weapon used in a murder. The laboratory will not be able to analyze these items if they are not found and gathered properly. The New Mexico State Police has several crime scene technicians who are stationed throughout the state. These crime scene technicians have attended several evidence gathering courses and are equipped with specialized equipment for gathering all types of evidence. Any law enforcement agency may request the assistance of the crime scene teams by contacting their local New Mexico State Police Office.

The New Mexico State Police can also offer additional technical assistance in the areas of aerial support, hazardous materials incidents, search and rescue, explosive ordinance disposal, canine narcotics detection, and underwater dive teams. The New Mexico State Police can offer a great deal of assistance to sheriffs when they are dealing with any of these types of incidents. The New Mexico State Police have a large budget that affords them the ability to purchase state of the art law enforcement technology.

When attempting to gain information about a specific suspect or to further one's investigation, the investigating officer can now utilize available intelligence centers. These intelligence centers have been developed around the nation in order to create and maintain databases that are used to track criminal activity. One of the most popular and widely used intelligence centers is the El Paso Intelligence Center (EPIC), which is located at Biggs Army Airfield in El Paso, TX. EPIC can be reached twenty-four hours a day, seven days a week at telephone number, (915)760-2000. EPIC can provide information regarding vehicles and addresses, recent border crossings, drug organizations, and criminal activities and trends. Another organization that can often offer technical assistance to local sheriffs is the National High Intensity Drug Trafficking Program (HIDTA). The federal government has identified several high intensity drug trafficking areas across the nation, and New Mexico is one of those areas. HIDTA centers have intelligence centers that track major drug organizations and trafficking trends in the area and can provide law enforcement officers with this information. The New Mexico HIDTA center can be contacted by telephone at (505)541-7501.

7.3 Future Trends

When focusing on the future trends of law enforcement it is important first to look at current and future crime trends. One crime that has become more prevalent in the last five years is terrorism. In the 1980's international terrorism was widespread in the form of airplane hijacking and hostage taking situations around the world. This trend continued into the early part of the 1990's with the first World Trade Center bombing in New York City, NY on February 26, 1993. In the middle part of the 1990's, terrorism shifted more to domestic terrorism, specifically with the Murrah Federal Building bombing in Oklahoma City, OK on April 19, 1995. Domestic terrorism was focused from anti-government organizations, white supremacists, and pro-life organizations. The FBI immediately began to target these organizations and made a large number of arrests.

In the beginning of 21st Century the terrorism trend shifted again to international terrorism with the attack on the World Trade Centers on September 11, 2001. This attack left thousands of innocent people dead and resulted in a war on terrorism being launched by the United States on the culprits of the terrorism located in the Middle East. The United States formed the Department of Homeland Security, which had not existed until the World Trade Center attack. The United States also increased security procedures at airports and developed the positions of air marshals to provide security on airlines. This international terrorism has affected sheriff departments across the nation by providing a new area of law enforcement focused on terrorism and has created a large surplus of federal funds to perform these law enforcement tasks. Grants from the Department of Homeland Security are available to law enforcement agencies nationwide for the purchase of equipment and the payment of officer's salaries. The law enforcement agencies have used these grants to purchase items such as mobile command centers, explosive ordinance disposal equipment, explosive detection canines, armored vehicles for tactical team response, communication equipment, and various other law enforcement tools. Sheriffs interested in obtaining federal and state grants related to the Department of Homeland Security directive should contact the New Mexico Homeland Security Office at (505)476-1050.

Due to the large number of in the line of duty officer deaths that occur every year, the law enforcement world in general has been focusing on officer safety equipment. One of the tools that has been invented in an effort to make an officer's duties safer is the dash mounted vehicle camera. Not only is the vehicle camera vital in identifying suspects in cases where an officer has been shot on a traffic stop and is unconscious or unable to give suspect information to the other officers, it is also a very effective tool to be able to show a jury videotape of the criminal violation and the defendants demeanor during the incident. Cameras also act as a good tool in defending against civil cases. Bogus civil cases can usually be shut down quickly when a videotape is available showing that the accusations against the officer involved are false. If the officer did commit the offense that is alleged, the cameras make it easy for the sheriff to decide on disciplinary or legal action that should be taken on the officer or officers at fault. Cameras are available in either digital format or VHS format from a variety of vendors. Some of the vendors that carry these camera systems are ICOP Digital, Kustom Signals, MPH, WatchGuard



Video, Panasonic Toughbook, Apollo Video Technology, and many others. Some grants are also available nationwide specifically for the purchase of these in-car cameras.

Another officer safety tool is the electronic disabling device (EDD) also known as the Taser. The EDD is an electrical apprehension device that is smaller than the standard issued duty weapon, fits easily onto the officer's duty belt, and has a range of twenty-one feet. The development and utilization of EDDs has created a decrease in officer related injuries, a decrease in suspect injuries, a decrease in the use of lethal force by officers, a decrease in the use of baton strikes to control a suspect, and savings in the amount of money paid out for excessive use of force complaints. EDDs are used by most law enforcement agencies when a suspect is not responsive to commands or is being otherwise uncooperative and violent. Some EDDs are available with a digital video camera that attaches to the handle in order to document deployment with a video clip. Misuse of EDDs can cause serious injury and has resulted in substantial liability to law enforcement agencies. However, when used appropriately, these tools can be very effective and have caused a positive change in the techniques that law enforcement officers use to apprehend suspects.

Dash cameras and EDDs are two examples of recent future law enforcement technology advances. There is a multitude of technology that was not mentioned in this handbook. Sheriffs should attempt to stay updated on current and future law enforcement technology by subscribing to law enforcement periodicals and visiting law enforcement Web sites.

Body Cameras, In the last few years there has been exponential growth in the number of law enforcement agencies that are using body cameras. These are cameras that are worn on the uniform of each individual officers that record interactions between police and the community. There are many schools of thought on the necessity of body cameras but the trend across the country is that more and more police department are adopting body cameras to reduce citizen complaints, document use of force, and provide transparency between the agency and the community.

According to § 29-1-18, law enforcement agencies shall require peace officers the agency employs and who routinely interact with the public to wear a body-worn camera while on duty. Peace officers who fail to comply with the policies and procedures required to be adopted pursuant to Subsection A shall be presumed to have acted in bad faith and shall be deemed liable for the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence.

40-13-1 Family Violence Protection Act

Under the Family Violence Protection Act, Law Enforcement is required to make a reasonable attempt to notify the victim when abusing household member is released from custody. This task has been made much easier by New Mexico adopting the VINE PROGRAM (Victim Information Notification Everyday). The VINE programs operates in almost every county in New Mexico. A Deputy supplies a victim covered under the Protection Act the contact

information for VINE and when the abusing member is release or their custody status changes the victim is notified if they have registered for the VINE program. This process satisfies the Law Enforcement responsibilities under 40-13-7. For more information go to <http://www.appriss.com/vine.html>

SUMMARY OF STATUTE

40-13-7. Law enforcement officers; emergency assistance; limited liability; providing notification to victims when an abusing household member is released from detention; statement in judgment and sentence document.

- A person who allegedly has been a victim of domestic abuse may request the assistance of a local law enforcement agency.
- The jail or detention center shall make a reasonable attempt to notify the arresting law enforcement agency or officer when the abusing household member is released from custody. The arresting law enforcement agency shall make a reasonable attempt to notify the victim that the abusing household member is released from custody.

APPENDIX A

RESOURCES FOR COUNTY SHERIFF: A PARTIAL LIST

The New Mexico Counties

Law Enforcement & Detention Advisory Committee or NM Sheriff's Affiliate

Grace Philips

444 Galisteo St, Santa Fe, NM 87501

Phone: 505 983-2101, Website: www.nmcounties.org

The NM EDGE (A Program of the NM Cooperative Extension Service)

Christy Green

NM EDGE Albuquerque Office

NMSU@CNM Montoya Campus – Tom Wiley Building, TW 206

4700 Morris Street, NE, Albuquerque, NM 87111

Phone: 505 224 4058, Website: <https://nmedge.nmsu.edu/index.html>

El Paso Intelligence Center (EPIC)

11339 SSG Sims Street, El Paso, Texas 79918

Phone: 915-760-2000, Website: <https://www.dea.gov/what-we-do/law-enforcement/epic>

FBI - Law Enforcement Executive Development Association (LEEDA)

Phone: 877-772-7712 or 484-321-7821, Fax: 610-644-3193, Website: <https://fbileeda.org/>

Institute of Police Technology and Management (IPTM), University of North Florida

12000 Alumni Drive, Jacksonville, FL 32224

Phone: 904-620-4786, Fax: 904-620-2453, Website: <http://www.iptm.org/>

National Sheriffs' Association (NSA)

1450 Duke Street, Alexandria, VA 22314

Phone: 800-424-7818, Fax: 703-838-5349, Website: <http://www.sheriffs.org>

New Mexico Department of Public Safety Forensic Laboratories Northern Laboratory

P.O. Box 1628, Santa Fe, NM 87504-1628

Phone: 505-827-9137, Fax: 505-827-3318, Website: <https://www.dps.nm.gov/forensic-lab/>

New Mexico Department of Public Safety Training and Recruiting Division

4491 Cerrillos Road, Santa Fe, NM 87507

Training Website: <https://www.dps.nm.gov/training-bureau/>

Recruiting Website: <https://www.dps.nm.gov/recruiting-bureau/>

New Mexico Sheriffs' Association (NMSA)

<http://nmsheriffs.org/>

Western States Sheriffs' Association

<https://www.westernsheriffs.org/>



National Internal Affairs Investigators Association
<https://www.niaia.org/>

New Mexico Supreme Court Law Library 237 Don Gaspar
Phone: 505-827-4850, Email: libref@nmcourts.gov, Website: <https://lawlibrary.nmcourts.gov/>

APPENDIX B

NM STATUTES ANNOTATED

The following appendix is a list of NM Statutes that pertain to law enforcement and county sheriffs. This is a partial list of statutes, and one should seek the advice of the county attorney on matters that are in question or particular statutes that may not be listed. Furthermore, one must remember that statutes are subject to amendments during each Legislative Session and this manual is updated only every four years. These statutes were retrieved online from Michie's Annotated Statutes.

29-1-1 Investigation of criminal violations; commencement of prosecution; cooperation; removal.

It is hereby declared to be the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state which are called to the attention of any such officer or of which they are aware, and it is also declared the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken, and it is also declared his duty to cooperate with and assist the attorney general, district attorney or other prosecutor, if any, in all reasonable ways. Such cooperation shall include the prompt reporting of all arrests for liquor law violations at licensed liquor establishments to the department of alcoholic beverage control. Failure to perform his duty in any material way shall subject such officer to removal from office and payment of all costs of prosecution.

29-1-2 Stolen livestock and other property; duties.

That it shall be the duty of all sheriffs, deputy sheriffs and constables, in their respective counties, to employ all lawful means to immediately trace and discover all livestock and other property which may have been stolen or unlawfully taken from the possession of the true owner thereof.

29-1-3 Arrest and detention of escaped prisoners.

All persons [Any person] who shall have been committed to jail, under any criminal charge, and shall before the final trial of the cause for which he was imprisoned, or before the completion of the sentence, in case they shall be convicted in the court in which the charge may be pending, escape from jail, and any time thereafter shall be found in any county, precinct or demarcation of this state, they shall be arrested and imprisoned again, until the judgment of the court may be had or the sentence fully complied with.

29-1-4 Officers' duties under 29-1-3.

It shall be the duty of judicial and ministerial officers, in their respective counties, precincts or demarcations, who shall see or receive information that any of the persons mentioned in the foregoing section [29-1-3 NMSA 1978], are to be found in his county, precinct or demarcation, notwithstanding they shall have escaped at any time, to apprehend as soon as possible the fugitive, and send them forthwith to the jail of the respective county, where they shall be kept, with all possible security in order to prevent them making their escape again.

29-1-5 Penalty for violation by sheriff, constable, or deputy; surety's liability.

If any sheriff, deputy sheriff or constable, or any deputy shall be found guilty of delay, negligence, or neglect in compliance with the provisions of the preceding section [29-1-4 NMSA 1978], on complaint being made before any justice of the peace [magistrate] in the



county, they shall be fined in any sum not less than fifty dollars [(\$50.00)], nor more than one hundred dollars [(\$100)], which shall be collected of them or their securities.

29-1-6 Penalty for violation by magistrate.

If any justice of the peace [magistrate] shall be guilty of a violation of Section 29-1-4 NMSA 1978, on conviction thereof before the district court, they shall be fined in any sum not less than twenty-five dollars [(\$25.00)] nor more than fifty dollars [(\$50.00)].

29-1-7 Execution of process; officer may call aid.

In all cases when, by the common law or a statute of this state, any officer is authorized to execute any process, they may call to their aid all inhabitants above the age of majority in the county in which the officer is authorized to act.

29-1-8 Penalty for refusing to aid officer; action to recover.

If any person shall refuse or neglect to obey the summons of any such officer, such person shall be fined in any sum not exceeding fifty dollars [(\$50.00)], nor less than five dollars [(\$5.00)], to be recovered by suit before any justice of the peace [magistrate], to the use of the county in which said suit may originate.

29-1-9 Appointment of peace officers; citizenship certificate of appointment; exceptions.

No sheriff of a county, mayor of a city or other person authorized by law to appoint special deputy sheriffs, marshals, policemen or other peace officers in the state of New Mexico to preserve the public peace and to prevent and quell public disturbances shall appoint as such special deputy sheriff, marshal, policeman or other peace officer any person who shall not be a citizen of the United States of America. No person shall assume or exercise the functions, powers, duties and privileges incident and belonging to the office of special deputy sheriff, marshal, policeman or other peace officer without first having received an appointment in writing from a person authorized by law to appoint special deputy sheriffs, marshals, policemen or other peace officers; provided that nothing in this section shall apply to lawfully appointed United States marshals or to deputies of those marshals or to railroad peace officers appointed pursuant to Section 63-2-18 NMSA 1978 in the performance of their duties as peace officers. This section shall not apply in times of riot or unusual disturbance and when so declared by the public proclamation of the governor of the state.

29-1-10 Law enforcement agencies, state and local; participation in federal programs.

All state and local law enforcement agencies are hereby authorized to participate in the Federal Law Enforcement Assistance Act of 1965 (Public Law 98-197 [89-197]).

29-1-10.1 Federal funds; receipt and expenditure for law enforcement activities.

Any law enforcement agency of the state of New Mexico may receive and spend for law enforcement activities, in addition to amounts appropriated to it, transfers from the United States department of justice or the United States department of the treasury pursuant to the Controlled Substances Act, 21 U.S.C. § 881(e) (1970), and the Tariff Act of 1930, 19 U.S.C. § 1616(a) (1930), both as amended before or after the effective date of this section.



29-1-11 Authorization of tribal and pueblo police officers and certain federal officers to act as New Mexico peace officers; authority and procedure for commissioned peace officers.

- A. All persons who are duly commissioned officers of the police or sheriff's department of any New Mexico Indian nation, tribe, or pueblo or who are law enforcement officers employed by the bureau of Indian affairs and are assigned in New Mexico are, when commissioned under Subsection B of this section, recognized and authorized to act as New Mexico peace officers. These officers have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws.
- B. The chief of the New Mexico state police is granted authority to issue commissions as New Mexico peace officers to members of the police or sheriff's department of any New Mexico Indian nation, tribe or pueblo or a law enforcement officer employed by the bureau of Indian affairs to implement the provisions of this section. The procedures to be followed in the issuance and revocation of commissions and the respective rights and responsibilities of the departments shall be set forth in a written agreement to be executed between the chief of the New Mexico state police and the Indian nation, tribe or pueblo or the appropriate federal official.
- C. The agreement referred to in Subsection B of this section shall contain the following conditions:
 - (1) the Indian nation, tribe or pueblo, but not the bureau of Indian affairs, shall submit proof of adequate public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance from a company licensed to sell insurance in the state;
 - (2) each applicant for a commission shall successfully complete four hundred hours of basic police training that is approved by the director of the New Mexico law enforcement academy;
 - (3) the chief of the New Mexico state police shall have the authority to suspend any commission granted pursuant to Subsection B of this section for reasons solely within the chief's discretion;
 - (4) if any provision of the agreement is violated by the Indian nation, tribe or pueblo or any of its agents, the chief of the New Mexico state police shall suspend the agreement on five days' notice, which suspension shall last until the chief is satisfied that the violation has been corrected and will not recur;
 - (5) the goldenrod-colored officer's second copy of any citation issued pursuant to a commission authorized by this section shall be submitted within five days to the chief of the New Mexico state police;
 - (6) any citation issued pursuant to a commission authorized



by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court;

(6) the agreement or any commission issued pursuant to it shall not confer any authority on a tribal court or other tribal authority that the court or authority would not otherwise have;

(7) the authority conferred by any agreement entered into pursuant to the provisions of this section shall be coextensive with the exterior boundaries of the reservation; except that an officer commissioned under this section may proceed in hot pursuit of an offender beyond the exterior boundaries of the reservation, and the authority conferred in any written agreement between the chief of the New Mexico state police and the Navajo Nation may extend beyond the exterior boundaries of the Navajo reservation to and including the area enclosed by the following description:

Beginning at a point where the southern boundary line of the Navajo Nation reservation intersects the western right-of-way line of US 491, and running thence; southerly along the western right-of-way line of US 491 to the northerly city limits of Gallup; thence, easterly along the northerly city limits of Gallup to the northern side of the right of way of I-40; thence, in an easterly direction along the northerly side of the right of way of I-40 to the northerly limits of the village of Prewitt; thence, in a straight line between the northerly boundary of the village of Prewitt to the southerly boundary of Ambrosia Lake; thence in a straight line between the southerly boundary of Ambrosia Lake to the southerly boundary of Hospah; thence, east along a straight line from the southerly boundary of Hospah to the southern boundary of Torreon; thence along the easterly side of the right of way of state road 197 to the westerly city limits of Cuba; thence, north along the westerly side of the right of way of state road 44 to the southerly boundary of the Jicarilla Apache Nation reservation; thence, westerly along the southerly boundary of the Jicarilla Apache Nation reservation to the southwest corner of that reservation; thence, northerly along the westerly boundary of the Jicarilla Apache Indian reservation to a point where the westerly boundary of the reservation intersects the southerly side of the right of way of state road 44; thence, northerly along the southerly side of the right of way of state road 44 to its intersection with the northerly side of the right of way of Navajo road 3003; thence, along the northerly side of the right of way of Navajo road 3003 to a point where the northerly side of the right of way of Navajo road 3003 intersects the westerly side of the right-of-way line of state road 371; thence, northerly along the west side of the right of way of state road 371 to the southerly side of the right of way of Navajo road 36; thence, westerly along the southerly side of the right of way of Navajo road 36 to the eastern border of the Navajo Nation reservation; thence, along the eastern and southerly borders of the Navajo Nation reservation to the point of beginning. The municipalities of Cuba and Gallup and the villages of Thoreau and Prewitt are excluded from the grant of authority that may be conferred in any written agreement entered into pursuant to

provisions of this section; provided, however, any written agreement may include under such grant of authority the communities of Ambrosia Lake, Hospah, Torreon, Lybrook, Nageezi, Counselors and Blanco Trading Post and those communities commonly known as the Wingate community; the Navajo Nation Blue Water ranch area of the Thoreau community; the Prewitt community, exclusive of the village of Prewitt; the Haystack community; the Desidero community; the Sand Springs community; the Rincon Marquis community; the Charley Jesus Arviso and the Castillo community; and state road 264 beginning at the point where it intersects US 491 and ending where state road 264 intersects the Arizona-New Mexico state line; and

- (8) the chief of the New Mexico State Police or the chief's designee and the Indian nation, tribe or pueblo or the appropriate federal official shall be required to meet at least quarterly or more frequently at the call of the chief of the New Mexico state police to discuss the status of the agreement and invite other law enforcement or other officials to attend as necessary.
- D. Nothing in this section impairs or affects the existing status and sovereignty of an Indian nation, tribe or pueblo as established under the laws of the United States.
- E. All persons who are duly commissioned federal law enforcement officers employed by the federal bureau of investigation; drug enforcement administration; bureau of alcohol, tobacco and firearms; United States secret service; United States customs service; immigration and naturalization service; United States marshals service; postal inspection service; United States probation department; and United States pretrial services agency; and other appropriate federal officers whose primary duty is law enforcement related, who are assigned in New Mexico and who are required to be designated by the county sheriff on a case-by-case basis in the county in which they are working, are recognized and authorized to act as New Mexico peace officers and have all the powers of New Mexico peace officers to enforce state laws in New Mexico, including the power to make arrests for violation of state laws. The department of public safety shall maintain a registry that lists the name and affiliated federal agency of every federal law enforcement officer recognized and authorized to act as a New Mexico peace officer pursuant to the provisions of this subsection. This subsection shall not be construed to impose liability upon or to require indemnification by the state for any act performed by a federal law enforcement officer pursuant to this subsection.
- F. The provisions of Subsection E of this section regarding designation of federal law enforcement officers by a county sheriff do not apply to federal law enforcement officers who are duly commissioned officers of a police or sheriff's department for an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs.
- G. Nothing in this section limits, impairs or nullifies the authority of county sheriffs to appoint pursuant to Chapter 4, Article 41 NMSA 1978 duly commissioned state or

federally certified officers who are employees of a police or sheriff's department of an Indian nation, tribe or pueblo in New Mexico or who are federal law enforcement officers employed by the bureau of Indian affairs as deputy sheriffs authorized to enforce New Mexico criminal and traffic law.

29-1-12 Authorization to maintain and retake custody of Arizona prisoners.

An officer or employee of the Arizona department of corrections who has in his custody, pursuant to Arizona law, a ward, offender, or prisoner of the state of Arizona whom he is transporting from a facility in Arizona to another point in Arizona via New Mexico or to a point in New Mexico for firefighting or conservation work shall maintain custody of such ward, offender, or prisoner in New Mexico. Such officer or employee may, in the event of escape of such ward, offender or prisoner in New Mexico, retake such ward, offender or prisoner in the same manner as if such officer or employee were a New Mexico police officer and such ward, offender or prisoner had been committed to his custody under New Mexico law.

29-1-13 Unclaimed property; inventory.

A peace officer shall immediately inventory and record any personal property that comes into his possession and is taken under authority of law or is left in his possession or in the possession of the state, county, or municipality. As used in Sections 29-1-13 through 29-1-15 NMSA 1978, "peace officer" means any full-time employee of a police or sheriff's department that is part of or administered by the state or any political subdivision of the state and which employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the state.

29-1-14 Unclaimed property; authority to sell; notice of sale; deadly weapons, controlled substances and other contraband excepted.

- A. Any personal property having a fair market value greater than fifty dollars (\$50.00) that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days shall be sold at public sale.
- B. Prior to the sale of seized personal property, the law enforcement agency shall make a reasonable attempt to notify the original owner of the seized personal property and shall publish a notice of the sale of unclaimed personal property once each week for two successive weeks. The notice shall contain:
 - (1) a brief description of the personal property to be sold;
 - (2) the time and place of the sale; and
 - (3) the name of any purported owner, if known.
- C. If prior to the sale the true owner identifies the personal property to be sold and offers strict proof of identity and ownership of the personal property, the personal property shall be returned to its true owner.

- D. Any personal property offered but not sold at a public sale may be destroyed or otherwise disposed of upon application to the district court, ex parte and without notice.
- E. Any personal property sold at public sale, claimed by its true owner, destroyed, or otherwise disposed of pursuant to this section shall be removed from the inventory record kept by the law enforcement agency.
- F. Any personal property having a fair market value equal to or less than fifty dollars (\$50.00) that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days may be destroyed, except as otherwise provided by order of the district court upon ex parte application without notice.
- G. Any alcoholic beverage that has been unclaimed by the true owner, is no longer necessary for use in obtaining a conviction, is not needed for any other public purpose and has been in the possession of a state, county or municipal law enforcement agency for more than ninety days may be destroyed or may be utilized by the scientific laboratory division of the department of health for educational or scientific purposes.
- H. This section shall not apply to deadly weapons or items of significant historical value, poisons, controlled substances, or other contraband lawfully seized as evidence for the prosecution of a violation of statute or ordinance or which has otherwise come into the lawful possession of a state, county or municipal law enforcement agency and has been in possession for more than ninety days. Once it is determined by the law enforcement agency that any property enumerated in this subsection is no longer necessary for use in obtaining a conviction or is not needed for any other public purpose, the law enforcement agency may apply to the district court, ex parte and without notice, for an order authorizing destruction or other disposition of the property; provided that a state, county or municipal law enforcement agency shall allow state museums access to agency inventory records for the purpose of inspecting and selecting firearms that are appropriate to state museum firearm collections. The court shall grant the application if the proposed destruction or disposition is in the best interest of the public safety and welfare.
- I. This section shall not apply to any personal property for which a notice of intent to claim has been served. Any victim, as defined in Section 31-26-3 NMSA 1978, or alleged victim shall be entitled to serve notice of intent to claim ownership of any personal property upon that person, agency or entity in actual custody or control of the property. Nothing in this subsection shall be construed to limit, interfere with or affect the rights or remedies of the rightful owner of any seized property.

29-1-15 Proceeds of sale; title to property vests in purchaser.

- A. Any money derived by a peace officer from the sale of unclaimed personal property shall be paid to the appropriate treasurer for credit to the general fund of the state, county, or municipality.



- B. Any person purchasing unclaimed personal property at a public auction conducted by a peace officer has good title to the property. The true owner of the unclaimed personal property is divested of any right to the property and is stopped from making any claim to the property

29-1-16 Electronic recordings of custodial interrogations.

- A. A state or local law enforcement officer shall comply when reasonably able to do so with the following procedures when conducting a custodial interrogation:
 - 1. the custodial interrogation shall be electronically recorded in its entirety;
 - 2. if conducted in a police station, the custodial interrogation shall be electronically recorded by a method that includes audio or visual or both, if available; and
 - 3. the electronic recording shall include the advice of constitutional rights required by law.
- B. A law enforcement officer shall comply with the provisions of this section unless the law enforcement officer has good cause not to electronically record the entire custodial interrogation and makes a contemporaneous written or electronic record of the reasons for not doing so. Good cause includes:
 - 1. the electronic recording equipment was not reasonably available;
 - 2. the electronic recording equipment failed and obtaining replacement equipment was not feasible;
 - 3. the individual refused to be recorded; or
 - 4. the statement was made in a court proceeding or a grand jury proceeding.
- C. Statements that are spontaneously volunteered and not the result of custodial interrogation are not subject to the provisions of this section.
- D. The provisions of this section shall apply only to custodial interrogations when, at the time of the interrogation, the person is suspected of committing a felony offense.
- E. The provisions of this section do not apply to custodial interrogations conducted outside the state of New Mexico.
- F. The provisions of this section do not apply to statements used for impeachment purposes.
- G. The provisions of this section do not apply within a correctional facility.
- H. As used in this section:
 - 1. **custodial interrogation** means questioning by law enforcement officers that requires the advice of constitutional rights; and
 - 2. **electronic recording** means a complete and authentic electronic recording created by visual or audio media, including by motion picture, videotape, audio tape or digital media.



- I. This section shall not be construed to exclude otherwise admissible evidence in any judicial proceeding.

29-7-6.1 County sheriffs; training requirement.

- A. Every county sheriff, except sheriffs who have previously been awarded a certificate attesting to completion of a basic law enforcement training program, shall participate in and complete an administrative law enforcement training program no later than twelve months after the date they assume office as a county sheriff.
- B. The director of the training and recruiting division of the department of public safety shall establish the administrative law enforcement training program for county sheriffs, subject to review and approval by the executive committee of the sheriff's affiliate of the New Mexico Counties.
- C. A county sheriff's per diem, mileage and tuition expenses attributed to attendance at the administrative law enforcement training shall be paid for by the governing body of the county served by that sheriff.

29-11A-5 Local registry; central registry; administration by department of public safety; participation in the national sex offender registry; rules.

- A. A county sheriff shall maintain a local registry of sex offenders in his jurisdiction required to register pursuant to the provisions of the Sex Offender Registration and Notification Act (SORNA) [29-11A-1 NMSA 1978].
- B. The county sheriff shall forward:
 - 1. registration information obtained from sex offenders to the department of public safety. The initial registration information and any new registration information subsequently obtained from a sex offender shall be forwarded by the county sheriff no later than ten working days after the information is obtained from a sex offender. If the department of public safety receives information regarding a sex offender from a governmental entity other than a county sheriff, the department shall send that information to the sheriff for the county in which the sex offender resides; and
 - 2. samples of DNA obtained from sex offenders to the administrative center for the sex offender DNA identification system pursuant to the provisions of the DNA Identification Act [29-16-1 NMSA 1978].
- C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978]. The department shall participate in the national sex offender registry administered by the United States department of justice. The department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

- D. The department of public safety shall retain registration information regarding a sex offender convicted for any of the following sex offenses for the entirety of his natural life:
1. criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;
 2. criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;
 3. sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;
 4. kidnapping, as provided in Section 30-4-1 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;
 5. criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978; or
 6. attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978.
- E. The department of public safety shall retain registration information regarding a sex offender convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:
1. criminal sexual penetration in the fourth degree, as provided in Section 30-9-11 NMSA 1978;
 2. sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;
 3. false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;
 4. aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;
 5. enticement of child, as provided in Section 30-9-1 NMSA 1978;
 6. incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;
 7. solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or
 8. attempt to commit any of the sex offenses set forth in Paragraphs (1) through (6) of this subsection, as provided in Section 30-28-1 NMSA 1978.
- F. Notwithstanding the provisions of Subsection E of this section, if a sex offender is convicted a second or subsequent time for a sex offense set forth in that subsection, the department of public safety shall retain information regarding the sex offender for the entirety of the sex offender's natural life.
- G. The department of public safety shall adopt rules necessary to carry out the provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978]. Rules necessary for the collection of DNA samples and the administration and operation of the sex offender DNA identification system shall be adopted by the DNA identification system oversight committee pursuant to the provisions of the DNA Identification Act [29-16-1 NMSA 1978].

29-11A-5.1 Public access to information regarding certain registered sex offenders; active community notification; internet Web site.

- A. If a sex offender is convicted of one of the following sex offenses, the county sheriff shall forward registration information obtained from the sex offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:
 1. criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;
 2. criminal sexual contact of a minor in the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;
 3. sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;
 4. sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; or
 5. attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.
- B. A person who wants to obtain registration information regarding sex offenders described in Subsection A of this section may request that information from the:
 1. sheriff for the county in which the sex offenders reside;
 2. chief law enforcement officer for the municipality in which the sex offenders reside;
 3. district attorney for the judicial district in which the sex offenders reside; or
 4. secretary of public safety.
- C. Upon receiving a request for registration information regarding sex offenders described in Subsection A of this section, the county sheriff, chief municipal law enforcement officer, district attorney or secretary of public safety shall provide that registration information, with the exception of a sex offender's social security number and DNA information, within a reasonable period of time, and no later than seven days after receiving the request.
- D. Within seven days of receiving registration information from a sex offender described in Subsection A of this section, the county sheriff shall contact every licensed daycare center, elementary school, middle school and high school within a one-mile radius of the sex offender's residence and provide them with the sex offender's registration information, with the exception of the sex offender's social security number and DNA information.
- E. The department of public safety shall establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section, except that the department of public safety shall not provide registration information on the internet web site regarding a sex offender who was less than eighteen years of age when they committed the sex offense for which they were convicted as a youthful offender, as provided in Section 32A-2-3 NMSA 1978,

unless at the time of sentencing, the court made a finding that the sex offender is not amenable to treatment and is a danger to the community. The registration information provided to the public pursuant to this subsection shall not include a sex offender's social security number or DNA information or a sex offender's place of employment, unless the sex offender's employment requires them to have direct contact with children.

AUTHORITY OF PUBLIC

Members of the public may make requests for available information about more than one particular sex offender, including blanket requests for information about all sex offenders who live in a certain area or in the state as a whole. 1999 Op. Att'y Gen. No. 1999-3.

The department of public safety may post all publicly available sex offender information made available by the SORN Act, 29-11A-1 NMSA 1978 et seq., on a web site or other public forum. 1999 Op. Att'y Gen. No. 1999-3.

29-16-6 Collection of samples. (Effective January 1, 2007.)

- A. A covered offender shall provide one or more samples to the administrative center, as follows:
1. a covered offender convicted on or after July 1, 1997 shall provide a sample immediately upon request to the corrections department as long as the request is made before release from any correctional facility or, if the covered offender is not sentenced to incarceration, before the end of any period of probation or other supervised release;
 2. a covered offender incarcerated on or after July 1, 1997 shall provide a sample
 3. immediately upon request to the corrections department as long as the request is made before release from any correctional facility;
 4. a covered offender on probation or other supervised release on or after July 1, 1997 shall provide a sample immediately upon request to the corrections department as long as the request is made before the end of any period of probation or other supervised release;
 5. a covered offender required to register or renew his registration pursuant to the
 6. provisions of the Sex Offender Registration and Notification Act [29-11A-1 NMSA 1978] shall provide a sample immediately upon request to the county sheriff located in any county in which the sex offender is required to register, unless the sex offender provided a sample while in the custody of the corrections department or to the county sheriff of another county in New Mexico in which the sex offender is registered.
- B. A person eighteen years of age or over who is arrested on or after January 1, 2007 for the commission of a felony as provided in Section 1 [29-3-8.2 NMSA 1978] of this 2006 act shall provide a sample immediately upon request to jail or detention facility personnel, unless:
1. the person has previously provided a sample sufficient for DNA testing pursuant to

- the provisions of this section;
 - 2. the sample is in the possession of the administrative center; and
 - 3. the sample has not been expunged.
- A. Samples from unidentified persons or relatives of a missing person shall be provided to the administrative center, as follows:
 - 1. upon the completion of a permission to search form authorizing the collection of DNA sample;
 - 2. upon the receipt of a properly executed search warrant; or
 - 3. upon the issuance of a court order.
 - B. Samples from unidentified human remains shall be provided by the state medical investigator.
 - C. Samples of known reference materials from missing persons shall be provided by the investigating law enforcement agency.

29-13-2 Purpose of act.

The purpose of the Law Enforcement Protection Fund Act [29-13-1 NMSA 1978] is to provide for the equitable distribution of money to municipal police, university police, tribal police and county sheriff's departments for use in the maintenance and improvement of those departments in order to enhance the efficiency and effectiveness of law enforcement services and to sustain at a reasonable level the payments available to the surviving eligible family members of a peace officer killed in the line of duty.

29-13-2.1 Definitions.

As used in the Law Enforcement Protection Fund Act [29-13-1 NMSA 1978]:

- A. "division" means the local government division of the department of finance and administration;
- B. "fund" means the law enforcement protection fund;
- C. "governmental entity" means a municipality, university, tribe or a county;
- D. "tribal police department" means the police department of a tribe that has entered into an agreement with the department of public safety pursuant to Section 29-1-11 NMSA 1978;
- E. "tribe" means an Indian nation, tribe or pueblo located wholly or partly in New Mexico; and
- F. "university" means a four-year post-secondary educational institution listed in Article 12, Section 11 of the constitution of New Mexico.

29-13-4 Determination of needs and rate of distribution.

- A. Annually on or before April 15, the division shall consider and determine the relative needs as requested by tribal, municipal, school district and university police departments, county sheriff's departments, the department of public safety and the academy for money in the fund in the succeeding fiscal year pursuant to the provisions of Subsections C and E of this section.



B. As necessary during the year, the division shall transfer an amount from the fund to the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund that enables the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund to be maintained at a minimum balance of three hundred fifty thousand dollars (\$350,000) through fiscal year 2023 and one million dollars (\$1,000,000) thereafter.

C. The division shall determine the rate of distribution of money in the fund as follows:

(1) all municipal police, school district police and county sheriff's departments shall be entitled to a rate of distribution of forty-five thousand dollars (\$45,000) through fiscal year 2023 and ninety-five thousand dollars (\$95,000) thereafter;

(2) university police departments shall be entitled to a rate of distribution of forty-five thousand dollars (\$45,000) through fiscal year 2023 and ninety-five thousand dollars (\$95,000) thereafter;

(3) the academy shall be entitled to a rate of distribution of twenty-four thousand five hundred dollars (\$24,500) to carry out the purposes of Section [29-7-7.7](#) NMSA 1978 and to a rate of distribution of two hundred thousand dollars (\$200,000) to carry out the purposes of the Law Enforcement Training Act [Chapter [29](#), Article [7](#) NMSA 1978];

(4) tribal police departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to one thousand dollars (\$1,000) through fiscal year 2023 and one thousand five hundred dollars (\$1,500) thereafter for each commissioned peace officer in the tribe. To be counted as a commissioned peace officer for the purposes of this paragraph, a commissioned peace officer shall have been assigned to duty and have worked in New Mexico for no fewer than two hundred days in the calendar year immediately prior to the date of payment. Payments shall be made for only those divisions of the tribal police departments that perform services in New Mexico. A tribal police department shall not be eligible for any disbursement under the fund if commissioned peace officers cite non-Indians into the tribal court for civil or criminal citations;

(5) municipal, school district and university police and county sheriff's departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to one thousand dollars (\$1,000) through fiscal year 2023 and one thousand five hundred dollars (\$1,500) thereafter for each police officer or sheriff's deputy employed full time by that department who has been certified by the law enforcement certification board as a police officer or has been authorized to act as a New Mexico peace officer pursuant to the provisions of Section [29-1-11](#) NMSA 1978; and

(6) municipal police, sheriff's and school district police departments that assign officers as school resource officers shall be entitled to one thousand dollars (\$1,000) through fiscal year 2023 and one thousand five hundred dollars (\$1,500) thereafter for each assigned school resource officer's training pursuant to Section [29-7-14](#) NMSA 1978.

D. After distributions are determined in accordance with Subsection A, Subsection B and Paragraphs (1), (2), (3) and (6) of Subsection C of this section, if the balance in the fund is

insufficient to permit the total allocations provided by Paragraphs (4) and (5) of Subsection C of this section, the division shall reduce that allocation to the maximum amount permitted by available money.

E. After all distributions have been made in accordance with Subsections A through D of this section, and if the balance in the fund is sufficient, the department of public safety shall be entitled to a rate of distribution of not more than two million dollars (\$2,000,000).

F. The division shall confirm, before making any distribution under this section, that the beneficiary is in compliance with all of the beneficiary's statutory reporting requirements, including those described in Subsection C of Section [29-3-11](#) NMSA 1978, Subsection B of Section [29-7-7.1](#) NMSA 1978 and Sections [29-7-7.2](#), [29-7C-7](#) and [29-7C-8](#) NMSA 1978.

29-13-9 Expenditures of money distributed from the law enforcement protection fund; wrongful expenditure.

D. Amounts distributed from the fund shall be expended only for the specific purposes for which they are distributed and shall not be distributed for accumulation, except as provided for the peace officers' survivors fund.

E. Any person who expends or directs or permits the expenditure of any money distributed from the fund for purposes other than those expressly authorized by the Law Enforcement Protection Fund Act [29-13-1 NMSA 1978] shall be personally liable to the state for the amount of money wrongfully expended and interest and costs. An action to recover the amount of any wrongful expenditure may be commenced by the attorney general or the district attorney upon the filing with that officer of a verified statement describing the wrongful expenditure.

29-14-4 Investigations of peace officers; requirements.

When any peace officer is under investigation by his employer for alleged actions that could result in administrative sanctions being levied against the officer, the following requirements shall be adhered to:

- A. Any interrogation of an officer shall be conducted when the officer is on duty or during his normal waking hours, unless the urgency of the investigation requires otherwise;
- B. Any interrogation of an officer shall be conducted at the employer's facility, unless the urgency of the investigation requires otherwise;
- C. prior to commencement of any interrogation session:
 - 1. an officer shall be informed of the name and rank of the person in charge of the interrogation and all other persons who will be present during the interrogation;
 - 2. an officer shall be informed of the nature of the investigation, and the names of all known complainants shall be disclosed to the officer unless the chief administrator of the officer's employer determines that the identification of the complainant



- shall not be disclosed because it is necessary for the protection of an informant or because disclosure would jeopardize or compromise the integrity or security of the investigation; and
3. a reasonable attempt shall be made to notify the officer's commanding officer of the pending interrogation;
- D. during any interrogation session, the following requirements shall be adhered to:
1. each interrogation session shall not exceed two hours unless the parties mutually consent to continuation of the session;
 2. there shall not be more than two interrogation sessions within a twenty-four hour period, unless the parties mutually consent to additional sessions, provided that there shall be at least a one-hour rest period between the sessions;
 3. the combined duration of an officer's work shift and any interrogation session shall not exceed fourteen hours within a twenty-four-hour period, unless the urgency of the investigation requires otherwise;
 4. there shall not be more than two interrogators at any given time;
 5. an officer shall be allowed to attend to physical necessities as they occur in the course of an interrogation session; and
 6. an officer shall not be subjected to offensive language or illegal coercion by his interrogator in the course of an interrogation session;
- E. any interrogation of an officer shall be recorded, either mechanically or by a stenographer, and the complete interrogation shall be published as a transcript; provided that any recesses called during the interrogation shall be noted in the transcript; and
- F. an accurate copy of the transcript or tape shall be provided to the officer, upon his written request, no later than fifteen working days after the investigation has been completed.

4-37-4 Enforcement officers in counties; duties.

- A. It is the duty of every county sheriff, deputy sheriff, constable and other county law enforcement officer to:
1. enforce the provisions of all county ordinances;
 2. diligently file a complaint or information alleging a violation if circumstances would indicate that action to a reasonably prudent person; and
 3. cooperate with the district attorney or other prosecutor in all reasonable ways.
- B. Any county law enforcement officer that fails to perform his duty in any material respect is subject to removal from office and payment of all costs of prosecution.

4-41-2 The sheriff shall be conservator of the peace within his county; shall suppress assaults and batteries, and apprehend and commit to jail, all felons and traitors, and cause all offenders to keep the peace and to appear at the next term of the court and answer such charges as may be preferred against them.

This section and 3-13-2 NMSA 1978 authorize peace officers to suppress disturbances and breaches of the peace; the power and duty to suppress breaches of the peace includes the right to take any reasonable steps to prevent a breach of the peace from occurring when the officers

have good reason to believe that a disturbance may take place. *State v. Hilliard*, 107 N.M. 506, 760 P.2d 799 (Ct. App. 1988).

When making an arrest, a peace officer's duty is to overcome all resistance and bring the party to be arrested under physical restraint by using the means that are coextensive with the duty. Consequently, as a result of the duties devolved upon them in former section 1929 Code, § 33-4416 (now 4-41-2 NMSA 1978), the law throws around them a special protection. *State v. Vargas*, 42 N.M. 1, 74 P.2d 62 (1937).

4-41-3 Failure to execute bond and oath; performing duties; penalty.

Any person who shall enter upon or attempt to execute any official duty as sheriff or as ex-officio collector, without having first executed and filed his official bond and oath of office as above required, shall be deemed guilty of a misdemeanor, and upon conviction in the district court, shall be fined in any sum not exceeding three hundred dollars [(\$300)], in the discretion of the court.

4-41-4 Exercising powers after removal; penalty.

If any such sheriff, after being removed as provided by law, shall attempt to exercise any of the rights or powers of said office, or shall fail or refuse to turn over the office to the person appointed to succeed them, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in the district court, shall be punished by a fine not exceeding three hundred dollars [(\$300)], or by imprisonment not exceeding three months, in the discretion of the court before which the cause may be tried.

4-41-5 Deputy sheriffs; appointment and term; merit system.

The sheriffs in all the counties of this state shall have power to appoint deputies, who shall remain in office at the pleasure of such sheriffs; except that in counties which have established a merit system by ordinance, the provisions of the ordinance shall control the demotion and discharge of deputies and other employees of the sheriff's office, except for one under-sheriff and an executive secretary, both of whom shall hold exempt positions.

LIABILITY OF SHERIFF FOR DEPUTY

Sheriff's liability for the acts of his deputy is not based on any principal-agent or master-servant concept; rather, a sheriff can be held liable for the actions of his deputy undertaken by virtue of the deputy's office, in which the sheriff placed the deputy, pursuant to former 15-40-9, 1953 Comp. (Repl.Vol. 3) (now 4-41-5 NMSA 1978), or because the deputy acted under color of office, or on either of these grounds. *Karr v. Dow*, 84 N.M. 708, 507 P.2d 455 (Ct. App. 1973), cert. denied, 84 N.M. 696, 507 P.2d 443 (1973).

4-41-6 Counties authorized to establish merit systems for deputies and personnel in the county sheriff's office.

Each county is authorized and empowered to establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of the deputies and the employees of the county sheriff's office. The ordinance may, in the discretion of the board of county commissioners, provide for the classification of deputies and other employees and their probationary periods, service ratings, pay scales and ranges, the number of hours of work per



week and the methods of employment, promotion, demotion and discharge of such deputies and employees within the limits provided by law.

4-41-7 Provisions of merit system constitute part of employment contract.

In all cases of employment by county sheriffs of deputies, clerks and other personnel to positions covered by the merit system subsequent to the passage of an ordinance establishing a merit system, the contract of employment between the deputy or employee and the sheriff shall be considered to contain the provisions of the ordinance and all regulations issued pursuant thereto. The provisions of an ordinance and all regulations issued pursuant thereto shall become part of the contract of employment between the sheriff and all employees of the sheriff's office in positions covered by the merit system when the employment relationship exists at the time of the passage of the ordinance, unless the employee files with the county clerk, within ten days of the passage of the ordinance, a declaration stating that the employee does not desire to have the provisions of the ordinance, together with the regulations issued pursuant thereto, included as a part of his contract of employment.

4-41-8 Deputy sheriff; qualifications; character; revocation of commission.

No person who may be under indictment or may be generally known as a notorious bad character, or as a disturber of the peace shall be eligible to serve as a deputy sheriff, and sheriffs are hereby prohibited from issuing commissions to such persons as deputy sheriffs, and it is hereby made the duty of the judge of the district court upon complaint being made that the provisions of this section have been violated to investigate the same, and if found to be true, such judge of the district court is hereby given authority to revoke any such commission given by any sheriff contrary to the provisions of this section.

4-41-9 Deputy sheriffs; powers and duties.

The said deputies are hereby authorized to discharge all the duties which belong to the office of sheriff, that may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriffs.

AUTHORITY OF SPECIAL DEPUTY

Pursuant to former 15-40-11,1953 Comp. (now 4-41-9 NMSA 1978) a deputy sheriff has such authority as may be conferred upon them by the sheriff who issues his commission; whether a deputy sheriff had the authority to levy execution on a debtor's car was therefore a question of fact barring summary judgment because the parties' affidavits conflicted as to the extent of authority a sheriff had conferred upon them. *Novak v. Dow*, 82 N.M. 30, 474 P.2d 712 (Ct. App. 1970).

4-41-10 Right to carry arms; deputies; appointment.

All sheriffs shall at all times be considered as in the discharge of their duties and be allowed to carry arms on their persons. On the appointment of any regular or permanent deputy sheriff, it shall be the duty of the sheriff to file one notice of the appointment in the office of the county clerk of the sheriff's county and one notice of the appointment in the office of the clerk of the district court of that county, and each of the sheriff's deputies shall file an oath of office in the office of the county clerk. Any sheriff is hereby authorized at any time to appoint respectable and orderly persons as special deputies to serve any particular order, writ or process or when



in the opinion of any sheriff the appointment of special deputies is necessary and required for the purpose of preserving the peace, and it shall not be necessary to give or file any notice of such special appointment; however, the provision authorizing the carrying of concealed arms shall not apply to such persons. Provided, no person shall be eligible to appointment as a deputy sheriff unless the person is a citizen of the United States of America. There shall be no additional fees or per diem paid by the counties for any additional deputies other than as provided by law.

4-41-10.1 Right to carry concealed arms.

Notwithstanding anything contained herein to the contrary, only fully certified sheriffs and full-time certified deputy sheriffs shall be allowed to carry concealed arms.

4-41-11 Injuries to sheriff or deputy while making arrest; medical expenses; limitation.

Whenever any sheriff or deputy sheriff has been or may be hereafter wounded or injured while in pursuit of or attempting to arrest any person accused of any crime in this state, and shall make affidavit fully setting forth the facts of his said wounding or injury, and shall also make affidavit that they are a poor person and that they are unable to pay for proper medical or surgical attention, or that his family is unable to do so for them or furnish support for themselves or family, and said affidavit shall be supported by the affidavit of two disinterested freeholders of the county, not more than one of whom shall be from the same precinct, then upon the presenting of said affidavits to the board of county commissioners of the county wherein said sheriff or deputy sheriff was an officer at the time of his said injury or wounding, they may allow from the county treasury a sum of money, which to them shall seem reasonable, to be used for the benefit of said wounded or injured officer for medical or surgical attention or for the removal of said officer to some hospital or for the immediate relief of his family: provided, that no such sum or sums of money shall altogether exceed five hundred dollars [(\$500)].

4-41-12 Entering other counties; powers.

The various sheriffs of the several counties of this state shall have the right to enter any county of this state, or any part of this state, for the purpose of arresting any person charged with crime, whether the county so entered be the same to which the sheriff so entering was elected or not; and the deputies of said sheriffs shall have the same power as is conferred on the sheriffs, and any sheriff entering any county as above mentioned, shall have the same power to call out the power of said county to aid them, as is conferred on sheriffs in their own counties.

4-41-13 Execution of process of probate court; attendance.

It is hereby made the duty of the sheriffs of the several counties of this state to serve and execute all process directed to them by said judges of probate in their respective counties, and shall be subject to fine and amercement as provided by law for the neglect or refusal to discharge the duties required of them; and it is hereby made the duty of the sheriff of each county, or their deputy, to attend the probate court of their county, under the direction of the judge thereof.

4-41-14 Sheriff to serve and execute process and orders of magistrate [and municipal] courts.

The sheriff or their deputy shall serve and execute, according to law:

- A. all process, writs and orders directed to them by the judges of the magistrate courts; and criminal process directed to them by the municipal judge of any incorporated municipality in the state if the criminal process arises out of a charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs and if the municipal judge from whose court the process has issued has made satisfactory arrangements with the sheriff for payment for the services to be rendered.

GOVERNMENTAL IMMUNITY

Under 4-41-14 NMSA 1978, the sheriff and their deputies had immunity for serving and executing a writ against a tenant that was stayed during an appeal because the Sheriff did not have a duty to check with the clerk of courts to determine whether an appeal was filed, or that a stay was granted. *Runge v. Fox*, 110 N.M. 447, 796 P.2d 1143 (Ct. App. 1990).

SEARCH AND SEIZURE

A motion to suppress evidence that was discovered during a search of an individual's business and residence was properly denied because a deputy sheriff from one county was permitted to obtain and execute a search warrant in another county even though no local or state law enforcement official participated. *State v. Gutierrez*, 102 N.M. 726, 699 P.2d 1078 (Ct. App. 1985).

DUTY OF SHERIFF

A sheriff must serve civil summons or any other process forwarded to them for service by a magistrate or metropolitan court sitting in another county. 1983-1986 Op. Atty. Gen. No. 113.

EXTRATERRITORIAL JURISDICTION

The magistrate or metropolitan court has the authority or jurisdiction to have a civil summons or any other process served by a sheriff in a county other than the one in which the court sits. 1983-1986 Op. Atty. Gen. No. 113.

4-41-15 Fees; payment in advance.

The party at whose application any civil writ, subpoena or process, except execution, is issued, shall pay in advance, if so demanded by the sheriff, the fees allowed by law for such services.

FEES

The state and its agencies need not use the sheriff to serve process but if they do, they may also be required, pursuant to 4-41-15 NMSA 1978 to pay in advance. 1979 Op. Atty. Gen. No. 79-29, overruling Op. Atty. Gen. No. 57-207, insofar as it holds that the state and its agencies are not required to pay the statutory fees for service of process pursuant to 4-41-16A NMSA 1978.

4-41-16 Fees; attendance on courts; sessions of county commissioners; hearing before judges.

- A. The sheriffs of this state shall be allowed, except from the state or any state agency, the following fees and compensations:
1. for serving every writ, citation, order, subpoena or summons, not more than thirty dollars (\$30.00);

2. for every writ of *capias* or attachment for each defendant, six dollars (\$6.00);
3. for taking and returning every bond required by law, five dollars (\$5.00);
4. for levying every execution and return of same, six dollars (\$6.00);
5. for making, executing and delivering every sheriff's deed, to be paid by the purchaser, six dollars (\$6.00);
6. for every return of *non est inventus*, fifty cents (\$.50); and
7. for making every return of any process, order, summons, citation or decree of any court, two dollars (\$2.00).

No sheriff shall collect more than one of the fees listed in this subsection, regardless of how many documents may be served upon one or more individuals, when those documents are served at the same time and at the same location.

- B. In the service of any subpoena or summons for witnesses, the sheriff shall be allowed compensation of one dollar (\$1.00) for each of the witnesses so summoned by the sheriff, notwithstanding that the name of such witness may appear in but one copy of the subpoena or summons.
- C. It is the duty of the sheriffs of the state to attend:
 1. the sessions of every district court, which attendance shall be paid in the manner now provided by law;
 2. all sessions of the probate court and sessions of the boards of county commissioners, which attendance shall be paid sheriffs out of the general county funds of the county in which the services were rendered; and
 3. at the trial or hearing before magistrates in felony cases, where the arrest is made by the sheriff, either with or without a warrant, which attendance shall be paid as provided in this section out of the general county funds; but such sheriffs shall not be allowed any compensation for attending at the trial of any misdemeanor case before any magistrate unless a sheriff made the arrest in such misdemeanor case.

DUTY OF COUNTY COMMISSIONERS TO PROVIDE COURTHOUSE SECURITY

Pursuant to 34-6-24 NMSA 1978, 4-41-16C NMSA 1978, and 4-38-18 NMSA 1978, the board of county commissioners is responsible for providing security for the county courthouse on a twenty-four-hour basis if considered by them to be necessary for the care and operation of the building. 1979 Op. Atty. Gen. No. 79-4.

FEES

The state and its agencies need not use the sheriff to serve process but if they do, they may also be required, pursuant to 4-41-15 NMSA 1978 to pay in advance. 1979 Op. Atty. Gen. No. 79-29, overruling Op. Atty. Gen. No. 57-207, insofar as it holds that the state and its agencies are not required to pay the statutory fees for service of process pursuant to 4-41-16A NMSA 1978.

4-41-17 Executions; commissions and expenses.

For commissions for receiving or paying moneys on executions, where lands, goods or chattels have been levied upon, advertised and sold, four per centum on the first five hundred dollars [(\$500)], and two percent on all sums above that; also the actual expenses incurred in taking

care of any such goods or chattels so levied upon, between the day of levy and sale; and one-half of said commission, when the money has been paid without making levy or sale.

4-41-18 Fees; service of jury venire.

The sheriff shall receive ten dollars [(\$10.00)] for the service of any jury venire and shall be paid the regular rates of mileage hereinafter provided, for each mile actually and necessarily traveled in serving said jury venire.

4-41-19 County peace officers and constables; mileage; conditions.

- A. Peace officers and constables shall be allowed mileage, or the distance actually and necessarily traveled by privately owned conveyance in serving any judicial process.
- B. In serving any jury venire, a sheriff, deputy sheriff, constables [constable] or other county peace officer shall charge for the actual mileage traveled and necessary in providing service of jury venire.
- C. If more than one peace officer or constable travels in one privately owned conveyance in the performance of official business, only the officer owning the conveyance used shall be reimbursed.

4-41-20 Sheriffs, deputy sheriffs and other county peace officers; public transportation; reimbursement.

Whenever a sheriff, deputy sheriff or other county peace officer utilizes public transportation in the performance of any official business within or without the state they shall be reimbursed for the actual cost of the fare and shall not be paid mileage. The mode of public transportation used shall be the most economical possible, considering all the expenses and circumstances.

4-41-21 More than one subpoena, summons or prisoner; no extra charge.

It is distinctly provided that when more than one subpoena or summons or service is made or performed upon more than one person in the same town or place, or when more than one prisoner is conducted from one place to another, the sheriff shall not charge more nor receive any mileage in excess of that which they would be entitled to for serving one subpoena in such place, or conducting one prisoner from one place to another: and provided, further, that in service of subpoena or summons in more than one town or place along the same route, the sheriff shall not be entitled to any greater mileage than that of the most distant point actually and necessarily traveled to in the discharge of their duties, with the additional mileage earned in actual and necessary travel from, and in returning to, the place of departure from any general route as aforesaid.

4-41-22 [Other fees.]

For all other services and expenses, except those mentioned in this article, the sheriff shall receive the fees and compensation fixed by law for such services and expenses.

4-44-19 [Prisoners; operating allowance; records and maintenance.]

- A. Each county sheriff, jail administrator or independent contractor shall keep a written record showing the exact time of confinement and release of each prisoner incarcerated in the jail under their jurisdiction. As used in this act, *jail administrator* means the person



- hired by a county, municipality, or a combination of these who supervises the entire operation of the jail and reports directly to the administrative head of the local governmental entity or local governing body.
- B. The governing body of a jail shall, from appropriate funds, provide the necessary funding to maintain and operate the facility.
 - C. All fees remitted to the sheriff or jail administrator for federal or other prisoners in their custody shall be promptly deposited in their entirety by the sheriff or jail administrator with the appropriate depository entity. As used in this section, *depository entity* means the treasurer of the particular local governmental entity responsible for management of the jail.

4-44-20 Prisoners; feeding in transit.

- A. The county sheriffs shall be reimbursed for the actual expense incurred for the care and feeding of prisoners in transit. Reimbursement shall not be made pursuant to this section without proof of actual expenses incurred by a sheriff or their delegate. The reimbursement for any prisoner shall not exceed the rate set by the Per Diem and Mileage Act [10-8-1 NMSA 1978].
- B. Subject to appropriation by the legislature, a county shall be reimbursed by the state for the actual expenses incurred for the care and feeding of prisoners in transit. Notwithstanding the provisions of this subsection, a single county shall not receive more than fifty percent of the total amount of money allocated to all counties as reimbursement.

4-44-23 Confidential information.

No elected county official or employee shall use confidential information acquired by virtue of their county office or employment for their or another's gain.

4-44-24 Contracts with former officials or employees.

A county or any of its officers shall not enter into a contract with, nor take any action favorably affecting, any person or business, which is: A. represented personally in the matter by a person who has been an officer or employee of the county within the preceding year, if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the officer or employee; or B. assisted in the transaction by a former county officer or employee whose official act, while in county employment, directly resulted in the county's making such contract or taking such action.

4-44-25 Disclosure of financial interest.

- A. Every employee of the county who has a financial interest which he believes or has reason to believe may be affected by the actions of the county by which he is employed shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the county clerk before entering county employment, and during the month of January each year.
- B. Every elected county official, who has a controlling interest, or a financial interest exceeding ten thousand dollars (\$10,000) in a business which is regulated by official acts

of the county or does business with the county exceeding one thousand dollars (\$1,000) per year, shall disclose the precise nature and value of such interest. Disclosure shall be made to the county clerk during the month of January each year they hold office.

- C. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the county clerk for inspection to any citizen of this state. The valuation shall be confidential except for official removal proceedings.
- D. The filing of disclosures under this section is a condition of entering upon and continuing county employment.

10-1-10 [Nepotism prohibited; exceptions.]

It shall hereafter be unlawful for any person elected or appointed to any public office or position under the laws of this state or by virtue of any ordinance of any municipality thereof, to employ as clerk, deputy or assistant, in such office or position, whose compensation is to be paid out of public funds, any persons related by consanguinity or affinity within the third degree to the person giving such employment, unless such employment shall first be approved by the officer, board, council or commission, whose duty it is to approve the bond of the person giving such employment; provided, that this act [10-1-10, 10-1-11 NMSA 1978] shall not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$ 600 or less a year, nor shall it apply to persons employed as teachers in the public schools.

10-1-13 County officers; oath; bond.

- A. As used in this section, "county officer" means county commissioner, county assessor, county clerk, county sheriff, county surveyor, county treasurer, probate judge, county flood commissioner and small claims court clerk.
- B. Before assuming the duties of his office, each officer shall take and subscribe the oath of office prescribed by the constitution and give an official bond payable to the state and conditioned for the faithful performance of his duties during his term of office and until his successor is elected or appointed and is qualified, and that he will pay all money received in his official capacity to the person entitled to receive it. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond required shall be fixed by the board of county commissioners in a sum equal to twenty percent of the public money handled by the county officer during the preceding fiscal year, but not to exceed:

| | |
|---------------------------|--------|
| County Commissioner | 5,000 |
| County Assessor | 5,000 |
| County Clerk | 10,000 |
| County Sheriff | 20,000 |
| County Treasurer | 50,000 |
| Probate Judge | 5,000 |
| County Flood Commissioner | 10,000 |
| Small Claim Court Clerk | 10,000 |

- C. Each county officer shall appoint a deputy or clerk, as allowed by law, who shall take the oath of office required of the appointing county officer and shall receive salary as provided by law. In case of the death of the appointing county officer, the deputy shall continue in office and perform the duties of the county officer until a new county officer is appointed and qualified as required by law.
- D. The cost of official bonds for county officers shall be paid from the county general fund, and the board of county commissioners may elect to provide a schedule or blanket corporate surety bond covering county officers and employees for any period of time not exceeding four years.
- E. If any county officer fails to give bond by January 10 following their election, or within ten days of their appointment, the board of county commissioners shall declare to the office vacant.

10-3-1 [Circumstances causing vacancy in local office.]

Any office belonging to the class mentioned in Section 10-4-1 NMSA 1978 becomes vacant under any of the following circumstances:

- A. by death of the party in office;
- B. removal of the officer as provided by this chapter;
- C. failure of the officer to qualify as provided by law;
- D. expiration of the term of office when no successor has been chosen as provided by law;
- E. when the officer removes from the county in which they are elected and in case of municipal officers, when they remove from the town or city for which they are elected;
- F. absence from the county for six consecutive months, and in cases of municipal officers, absence for such length of time from the village, town or city for which they are elected; but this provision does not apply to those officers wherein the law provides that the duties may be discharged by a deputy, when such absence is due to illness or other unavoidable cause;
- G. by resignation of the officer;
- H. by an officer accepting & undertaking to discharge the duties of another incompatible office.

10-3-3 [Vacancy in county or precinct office; appointment.]

Whenever any vacancy in any county or precinct office in any of the counties of this state other than a vacancy in the office of county commissioner, shall occur by reason of death, resignation or otherwise it shall be the duty of the board of county commissioners of the county where such vacancy has occurred to fill said vacancy by appointment and said appointee shall be entitled to hold said office until their successor shall be duly elected and qualified according to law.

10-4-2 [Causes for removal of local officers.]

The following shall be causes for removal of any officer belonging to the class mentioned in the preceding section [10-4-1 NMSA 1978]:

- A. conviction of any felony or of any misdemeanor involving moral turpitude;
- B. failure, neglect or refusal to discharge the duties of the office, or failure, neglect or

- refusal to discharge any duty devolving upon the officer by virtue of their office;
- C. knowingly demanding or receiving illegal fees as such officer;
- D. failure to account for money coming into their hands as such officer;
- E. gross incompetency or gross negligence in discharging the duties of the office;
- F. any other act or acts, which in the opinion of the court or jury amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.

31-2-8 Authority to arrest misdemeanor; fresh pursuit.

- A. Any county sheriff or municipal police officer who leaves their jurisdictional boundary while in fresh pursuit of a misdemeanor whom they would otherwise have authority to arrest shall have the authority to arrest that misdemeanor anywhere within this state and return them to the jurisdiction in which the fresh pursuit began without further judicial process.
- B. For purposes of this section, "fresh pursuit of a misdemeanor" means the pursuit of a person who has committed a misdemeanor in the presence of the pursuing officer. Fresh pursuit shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

32A-2-4 Detention facilities; standards; reports; appeals.

- A. The department shall promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all detention facilities in the state meeting the standards promulgated. The department may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the department, except as otherwise provided in Chapter 32A, Article 2 NMSA 1978.
- B. The department shall inspect all detention facilities in the state at least once each twelve months and shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the department. If as the result of an inspection a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the department.
- C. The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision. Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act [14-4-1 NMSA 1978].
- D. Any person aggrieved by an administrative decision of the department rendered under



the provisions of this section may petition for the review of the administrative decision by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

- E. After January 1, 1994, no state or county detention facility shall hold juveniles sentenced by a federal court, unless the facility meets state standards promulgated by the department.

33-3-1 Common jails; operation by sheriff, jail administrator or independent contractor.

- A. The common jails shall be under the control of the respective sheriffs, independent contractors or jail administrators hired by the board of county commissioners or other local public body or combination thereof, and the same shall be used as prisons in the respective counties.
- B. Contracts between local public bodies and private independent contractors for the operation, or provision and operation, of a jail are specifically authorized by this section; provided that prior to July 1, 1987, no more than two pilot projects involving private independent contractors are authorized in New Mexico, pursuant to Section 33-3-26 NMSA 1978.

AUTHORITY OF SHERIFF

To determine what measures can the sheriff take to force acceptance of persons who have been properly committed to their custody by state or federal authorities, the sheriff should consult with the county attorney or district attorney's office about the legal measures that would be most appropriate in the particular circumstances. 1994 Op. Att'y Gen. No. 1994-8.

AUTHORITY OF SHERIFF TO TRANSPORT PRISONERS

The transportation of prisoners housed at a county jail or other detention facility is not the exclusive responsibility of the local sheriff's department. Jail administrators and independent contractors may also transport inmates at their facilities. Accordingly, a county sheriff, a jail administrator, and jailers in charge of other detention facilities that have contracted to house prisoners committed to the county jail may make whatever arrangements are mutually agreeable to ensure that inmates housed in those facilities are properly transported to and from court proceedings. 2000 Op. Att'y Gen. No 2000-2.

DUTY OF COUNTY JAIL ADMINISTRATORS

County jail administrators have no authority to refuse to accept persons who have been properly committed to their custody by state or federal authorities. 1994 Op. Att'y Gen. No. 1994-8.

NMC IN BRIEF

New Mexico Counties is the insurance and workers compensation provider for almost all New Mexico counties. NMC offers Risk Management and Loss Prevention programs as well as offering Multi-Line, Workers' Compensation and Law Enforcement coverage.

LAW ENFORCEMENT POOL

State Risk Management provided the counties with coverage for sheriffs' departments and detention facilities for many years. In 1995, however, the state decided to no longer make law enforcement coverage available to counties. NAC stepped up and again in collaboration with A.J. Gallagher worked with counties to establish the Law Enforcement Pool. The Law Enforcement Pool began operations as a liability program August 1, 1995 with 19 original member counties. This Pool provides coverage for law enforcement activities, which includes sheriff departments and detention centers. The Law Enforcement Pool is governed by a Board of Directors. Contributions to the pool are based on two factors: losses and exposures calculated over the last five years. For more information on NMC and the services it provides to its 33 member counties go to www.nmcounties.org

APPENDIX C

NATIONAL ASSOCIATION OF COUNTIES CODE OF ETHICS

National Association of Counties Code of Ethics for County Officials

Preamble

The National Association of Counties (NACO) is committed to the highest standards of conduct by and among county officials in the performance of their public duties. Individual and collective adherence to high ethical standards by public officials is central to the maintenance of public trust and confidence in government.

While county officials agree on the need for proper conduct, they may experience personal conflict or differing view of values or loyalties.

In such cases the principles contained in this Code of Ethics provide valuable guidance in reaching decisions which are governed, ultimately, by the dictates of the individual conscience of the public official and their commitment to the public good.

Certain of these ethical principles are best expressed as positive statements: actions which should be taken; courses which should be followed; goals which should permeate both public and private conduct. Other principles are expressed as negative statements: actions to be avoided and conduct to be condemned.

The Code of Ethics for County Officials has been created by and for elected county officials. However, these principles apply to the day-to-day conduct of both elected and appointed officials and employees of county government.

NACO recognizes that this Code of Ethics should serve as a valuable reference guide for all those in whom the public has placed its trust.

Ethical Principles

The ethical county official should:

- Properly administer the affairs of the county.
- Promote decisions which only benefit the public interest.
- Actively promote public confidence in county government.
- Keep safe all funds and other properties of the county.
- Conduct and perform the duties of the office diligently and promptly dispose of the business of the county.
- Maintain a positive image to pass constant public scrutiny.
- Evaluate all decisions so that the best service or product is obtained at a minimal cost without sacrificing quality and fiscal responsibility.
- Inject the prestige of the office into everyday dealings with the public employees and associates.
- Maintain a respectful attitude toward employees, other public officials, colleagues, and associates.
- Effectively and efficiently work with governmental agencies, political subdivisions, and other organizations in order to further the interest of the county.
- Faithfully comply with all laws and regulations applicable to the county and impartially apply them to everyone.

APPENDIX D

INFORMATION RESOURCES FOR COUNTY OFFICIALS

Upon assuming office, or when an unusual issue arises, elected officials may wish to gather as much information as possible concerning a particular issue. This Appendix provides some practical information resources that we hope assist you in your quest to fully inform yourself, to better serve the public. This list is not exhaustive and may serve simply to point you in the right direction.

Please note that there are statutes that prohibit public officials from acquiring and using confidential information, or information that is accessible to you only by virtue of your Office, for personal gain, or for the gain of others.

New Mexico Counties

New Mexico Counties (NMC) is the official federation of New Mexico counties. Its primary purpose is to aid in the improvement of New Mexico county government. To accomplish this purpose, NMC provides a medium for the exchange of ideas and experiences of county government and officials throughout the state through education and training in the areas of public administration and record keeping; by cooperating fully with the state and national governments; by promoting more practical and official county legislation and by assisting in the development of proper methods of financing county government. Any county within the State of New Mexico is eligible for membership in NMC. Association affiliates include commissioners, managers, finance directors, purchasing agents, assessors, treasurers, county clerks, sheriffs, probate judges, attorneys, road superintendents, detention administrators, information system specialists, land use managers, risk managers, DWI coordinators, fire and emergency managers, health care managers, GIS specialists, and extension agents.

Contact: Joy Esparsen, 444 Galisteo Street, Santa Fe, NM 87501, Phone:(505)983-2101.

The NM EDGE (A Program of NM Cooperative Extension Service)

The NM EDGE is an umbrella organization which administers continuing education certification programs specific to New Mexico and which includes the County College, the NM Certified Public Manager program, and the CAPE program. Its goal is Better Government through Education. Classes are offered throughout New Mexico at various times of the year in an effort to bring affordable and meaningful education to the public sector.

Contact: Christy Green, Program Director
CNM Montoya Campus, 4700 Morris Street, NE, Albuquerque, NM 87112
Tom Wiley Hall TW 206
Phone: (505)244-4059, NMEDGE@nmsu.edu
<https://nmedge.nmsu.edu/>

Cooperative Extension Service

The Cooperative Extension Service (CES) functions throughout the state, generally with offices located in county courthouses. The CES serves as an educational arm of the state's land grant college, New Mexico State University. As such, it offers educational opportunities to all county residents and officials in a variety of areas. The four program areas are: community resource development, agriculture, home economics and youth.

Contact: Dr. Jon Boren, CES Director and Associate Dean, New Mexico Cooperative Extension Service, New Mexico State University, P.O. Box 30003, Dept. 3AE, Las Cruces, NM 88003-0003.

National Association of Counties

The National Association of Counties (NACo), a federation of county governments representing over two-thirds of the nation's county governments, is the spokesman for counties on the national scene. Increased activity by the federal government in subjects that have historically been considered of local government concern and the institution of many federal aid programs have made this county voice in the nation's capital increasingly important.

NACo's activities are conducted through the following programs:

1. Publications. NACo produces more than a dozen different types of publications. The most important and the most useful to the individual county official is County News, NACo's Biweekly newspaper.
2. Research and inquiry service. NACo has an extensive library on county government problems and thinking. This library is used to prepare research reports, legislative analyses, and answers to inquiries. NACo, aided by a grant from the Ford Foundation, developed "New County, USA," a concerted effort to mobilize a national program to streamline, strengthen, improve, and gain support for county government.
3. National legislative liaison. NACo is called upon, either by Congress or NACo members, to prepare position and background papers on issues before the Congress and to keep its membership advised of the actions of Congress, the executive agencies, and administrative departments.
4. Representation on national commissions. NACo is able to project and promulgate the viewpoint of county government in many sensitive and important national areas by representation on various national commissions and agencies.

Contact: Executive Director, 440 First Street, NW, Washington, D.C. 20001.

Department of Finance and Administration--The Local Government Division

The Local Government Division of the Department of Finance and Administration is one of the most important departments within state government, vis-a-vis the boards of county commissioners. This division, by law (6-6-2), has the power to require the submission of budgets by each county and the calling of public hearings; to require periodic financial reports from the counties; to supervise the disbursement of county funds; to authorize the transfer of county funds and to increase county budgets. The Local Government Division may also engage in research, conduct surveys and examine the operation of the county government and the county commission (6-6-4). The Executive Planning Act transferred many of the

former functions of the State Planning Office to the Local Government Division. The Local Government Division administers Community Development Block Grants and state legislative appropriations to counties. The division is also a technical resource to each county government. Specifically, Local Government Division personnel are available to assist county commissioners as they deal with budgets, purchases, investments, and similar activities.

Contact: New Mexico Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico 87503-2783.

New Mexico Municipal League

The New Mexico Municipal League is a non-profit corporation governed by municipal officials. The purpose of the League is to solve problems common to the state’s municipalities, to promote efficiency in municipal government, to provide information to its member municipalities, and to provide technical assistance to those same members.

Contact: New Mexico Municipal League, P.O. Box 846, Santa Fe, New Mexico 87501.

Councils of Government

The New Mexico councils of government, commonly called “COGS”, are groupings of counties, cities and some school districts within those counties by regions. Each COG serves as an area-wide clearinghouse to coordinate and develop planning activities on behalf of their member governments. The goal is not to duplicate or assume any function performed by county or municipal governments. COG activities are determined solely by the desire of the elected public officials and citizens who serve on the governing boards. Some COGs, with the approval of their governing boards, have entered the arena of coordinating activities related to law enforcement, services to the aging, manpower development, and health.

| NM COG District | Office Location |
|--|--|
| District 1 Cibola, McKinley and San Juan Counties | Northwest NM Council of Governments 106 W Aztec Ave, Gallup, NM 87301 Ph - 505-722-4327 Fax 505 - 722-9211 |
| District 2 Colfax, Mora, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos and Los Alamos Counties | North Central New Mexico Economic Development District 3900 Paseo Del Sol Santa Fe, NM 87502 Ph - 505-395-2668 |
| District 3 Bernalillo, Sandoval, Torrance and Valencia Counties | Mid Region Council of Governments 809 Cooper Avenue NW Albuquerque, NM 87102 Ph - 505-247-1750 Fax - 505-247-1753 |
| District 4 Union, Harding, Quay, Guadalupe, De Baca, Curry and Roosevelt Counties | Eastern Plains Council of Governments 418 Main Street Clovis, NM 88101 Ph - 575-762-7714 Fax - 575-762-7715 |

| | |
|---|--|
| District 5 Grant, Luna, Catron and Hidalgo Counties | Southwest New Mexico Council of Governments P.O. Box 2157 Silver City, NM 88062 Ph - 575-388-1509 Fax - 505-388-1500 |
| District 6 Chaves, Eddy, Lea, Otero and Lincoln Counties | Southeastern New Mexico Economic Development District 1600 SE Main Street, Suite D Roswell, NM 88203 Ph - 575-624-6131 Fax - 575-624-6134 |
| District 7 Doña Ana, Sierra and Socorro Counties | South Central Council of Governments 600 Hwy 195, Elephant Butte, NM 87935 OR 2231 Avenida de Mesilla, Mesilla, NM 88046 Ph - 575-744-4857 |

New Mexico Department of Transportation

The New Mexico Department of Transportation has its headquarters in Santa Fe, with district offices in Deming, Roswell, Albuquerque, Las Vegas, Santa Fe, and Milan. The Highway Department will assist the board of county commissioners in the evaluation of requests for state financial assistance in county improvements through formal “Cooperative Agreements”, executed on a sixty percent state to forty percent county funding match. These proposals are subject to State Highway Commission approval and to the availability of funds. Second, the department is required by law to verify mileage of county roads reported as being maintained by the county. The department, upon verification, reports the mileage to the Department of Motor Vehicles and the State Treasurer for the disbursement of registration fee collections to the counties on a proportionate basis of miles maintained. Thirdly, when needed, the department, upon approval of the State Highway Engineer, will provide traffic engineering services in the form of determining speed zones, traffic control signs, and recommending proper signs and locations. Such requests must meet with the approval of the State Highway Engineer and Department of Finance and Administration.

Contact: State Transportation Engineer, 1120 Cerrillos Road, Santa Fe, New Mexico 87504-1149.

Economic Development Department

The Economic Development Department (EDD) assists potential investors, local community organizations, regional groups, and local governmental units (including county government) with a variety of technical economic development services. Their services are available statewide and include community development, industrial development, and resort facility development. The New Mexico State Housing Division is part of the Department and assists local governments and others in developing housing projects.

Contact: Economic Development Department, 1100 St. Francis Drive, Santa Fe, New Mexico 87504.

State Forestry Department

The New Mexico State Forestry Department provides a number of services beneficial to the general citizenry, to county government, and to County Commissioners.

Among those services are:

1. fire protection provided for private and state lands;
2. fire equipment provided to rural fire departments;
3. trees provided for environmental planting; and
4. assistance provided to local government and development groups in integrating forest resources in land-use planning decisions.

Contact: New Mexico state headquarters, P.O. Box 1948 Santa Fe, New Mexico 87504-1948.

Taxation and Revenue Department

The Property Tax Division of the NMTRD is comprised of 3 bureaus, the Appraisal Bureau, State Assessed Property Bureau and the Delinquent Property Tax Bureau.

The PTD has 5 main responsibilities:

- Provide general supervision of the state's 33 county assessors and their related operational activities.
- Assure the implementation and compliance of applicable statutes, rules and regulations.
- Establish evaluation criteria and procedures to directly monitor each assessor's performance of their required functions.
- Appraise and review the estimate of value of real property transactions for counties, schools, municipalities and other state agencies.
- Collect delinquent real property taxes, penalties, interest and costs through initial contact of taxpayers, public auction sales and installment agreements.

Contact: District offices are located in Farmington, Santa Fe, Albuquerque, Las Cruces and Roswell. Headquarters: P.O. Box 630, Santa Fe, New Mexico 87504-0630.

Employment Security Department

The Employment Security Department (ESD), with headquarters in Albuquerque and local offices throughout the state, can be of service to county government. Most of the services offered by the ESD are handled through local offices, and all users of these services have free access to the system. The ESD services most frequently requested by counties come from the Research and Statistics Section, which has responsibility for most agency reports, research, economic analyses and manpower information activities. This information is available on a county basis.

Contact: Director of Manpower, ESD, P.O. Box 1928, Albuquerque, New Mexico 87103.



APPENDIX E

CRITERIA TO DETERMINE COUNTY CLASSIFICATION

COUNTY DATA BY CLASSIFICATION

| COUNTY | 2019 VALUATION (\$) | 2018 POPULATION |
|--|------------------------|--------------------|
| <u>CLASS A</u> (over \$75 million, 100,000 or over population) | | U.S. Census |
| Bernalillo | 16,952,351,679 | 678,701 |
| Dona Ana | 4,589,998,699 | 217,522 |
| Sandoval | 3,710,601,626 | 145,179 |
| San Juan | 3,814,098,088 | 125,043 |
| Santa Fe | 7,466,107,560 | 150,056 |
| | 36,533,157,652 | 1,316,501 |
| <u>CLASS B</u> (over \$300 million, under 100,000 population) | | |
| Chaves | 1,288,173,029 | 64,689 |
| Cibola | 360,429,892 | 26,476 |
| Colfax | 657,720,407 | 12,110 |
| Curry | 953,685,323 | 49,437 |
| Eddy | 6,496,325,704 | 57,900 |
| Grant | 834,793,726 | 27,346 |
| Lea | 7,067,438,527 | 69,611 |
| Lincoln | 1,331,436,563 | 19,556 |
| Luna | 611,725,058 | 23,963 |
| McKinley | 811,456,844 | 72,290 |
| Otero | 1,229,359,648 | 66,781 |
| Rio Arriba | 1,268,456,259 | 39,006 |
| Roosevelt | 410,637,830 | 18,743 |
| San Miguel | 636,513,990 | 27,591 |
| Sierra | 316,778,014 | 10,968 |
| Taos | 1,525,534,477 | 32,835 |
| Torrance | 419,275,786 | 15,591 |
| Valencia | 1,519,144,756 | 76,456 |
| | 27,738,885,833 | 711,349 |
| <u>CLASS B</u> (over \$75 million but under \$300 million; under 100,000 population) | | |
| Catron | 128,086,710 | 3,578 |
| De Baca | 93,632,516 | 1,781 |
| Guadalupe | 173,380,145 | 4,341 |
| Harding | 86,110,889 | 655 |
| Hidalgo | 179,086,439 | 4,240 |
| Mora | 143,617,342 | 4,506 |
| Quay | 231,752,436 | 8,253 |
| Socorro | 284,170,213 | 16,735 |
| Union | 175,328,432 | 4,118 |
| | 1,495,165,122 | 48,207 |
| <u>H CLASS</u> (under 200 square miles) | | |
| Los Alamos | 793,533,630 | 19,101 |

FIRST CLASS (over \$27 million, under \$45 million):

None

FIRST CLASS (over \$14 million, under \$27 million):

None

SECOND CLASS (over \$8.25 million, under \$14 million):

None

THIRD CLASS (over \$6.5 million, under \$8.25 million):

None

FOURTH CLASS (over \$4.75 million, under \$6.5 million):

None

FIFTH CLASS (under \$4.75 million):

None

TOTAL

\$66,560,742,237

2,095,158

Classification of counties determined by secretary of finance and administration in 2018 pursuant to Section 4-44-2 NMSA 1978.
Counties will be reclassified in April 2020.

Population: U.S. Census Bureau, 2018 Population Estimate. factfinder.census.gov.

Valuation: New Mexico Department of Finance and Administration, Budget and Finance Bureau/Property Taxes & Annual Reports:
Certificates of Property Tax Rates by County, 2019.

APPENDIX F COUNTY CLASSIFICATIONS

| Select Classification Year (per statute, done biennially on even years) | | | | | | | | 2022 |
|---|----------------|---|-----------|----------|----------|----------|---------------|--------------------|
| Select Valuation Data (most current final tax year valuations) | | | | | | | | 2020-21 Final |
| Select Population Data (most current annual data or estimate from US census) | | | | | | | | 21 Census Estimate |
| Select Square Mileage Data (most current info available) | | | | | | | | 2010 data |
| 2022 County Classification | | | | | | | | |
| | | Maximum Allowable Salaries | | | | | | |
| County | CLASSIFICATION | Commissioner | Treasurer | Assessor | Sheriff | Clerk | Probate Judge | |
| Bernalillo | A | \$39,106 | \$86,626 | \$86,626 | \$90,338 | \$86,626 | \$38,114 | |
| Catron | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Chaves | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Cibola | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Colfax | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Curry | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| De Baca | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Dona Ana | A | \$39,106 | \$86,626 | \$86,626 | \$90,338 | \$86,626 | \$38,114 | |
| Eddy | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Grant | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Guadalupe | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Harding | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Hidalgo | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Lea | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Lincoln | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Los Alamos | H | n/a | \$75,733 | \$75,733 | \$78,952 | \$75,733 | n/a | |
| Luna | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| McKinley | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Mora | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Otero | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Quay | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Rio Arriba | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Roosevelt | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| San Juan | A | \$39,106 | \$86,626 | \$86,626 | \$90,338 | \$86,626 | \$38,114 | |
| San Miguel | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Sandoval | A | \$39,106 | \$86,626 | \$86,626 | \$90,338 | \$86,626 | \$38,114 | |
| Santa Fe | A | \$39,106 | \$86,626 | \$86,626 | \$90,338 | \$86,626 | \$38,114 | |
| Sierra | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Socorro | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Taos | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Torrance | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| Union | B-Intermediate | \$21,534 | \$64,844 | \$64,844 | \$67,814 | \$64,844 | \$15,098 | |
| Valencia | B-High | \$30,196 | \$75,733 | \$75,733 | \$78,952 | \$75,733 | \$26,482 | |
| (Counties will be reclassified April 2024) | | | | | | | | |
| <i>In accordance with Section 4-44-1, 4-44-2, 4-44-3, 4-44-4, 4-44-4.1, 4-44-5, 4-44-12.3, 4-44-12.4 and 4-44-14A the governing body of an H class county shall designate</i> | | | | | | | | |
| | | Maximum Allowable Salaries for Part-Time (applies to H class - Los Alamos) | | | | | | |
| | | Commissioner | Treasurer | Assessor | Sheriff | Clerk | Probate Judge | |
| | | \$15,844 | \$7,922 | \$7,922 | \$7,922 | \$7,922 | \$4,636 | |

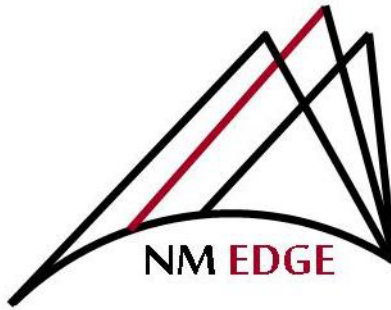
GLOSSARY

COMMONLY USED WORDS & TERMS

- **Accountability** - taking responsibility for your own actions as well as holding others responsible for theirs
- **Assessor, County** - an elected official who assesses property for taxation
- **Board of County Commissioners (BOCC)** - the governing body of the County
- **Board of Finance** - Board of County Commissioners as ex officio
- **Canvassing Board** - Board of County Commissioners with County Clerk as ex officio
- **Clerk, County** - an elected official serving as custodian of records, commission minutes, and elections
- **Code of Ethics** - written statement of values
- **Conflict of Interest**- when one activity could potentially corrupt (or appear to corrupt) another
- **Cooperative Extension Service** - serves NM Counties and brings education to rural areas
- **County Classification** - based on population and the total assessed valuation of each county at the end of the preceding year
- **Fiduciary Responsibility** - the public trust
- **Funds, Designated** - specific to the enabling legislation allowing collection (e.g. Fire, Indigent, Hospital, etc.)
- **Industrial Revenue Bonds**- pursuant to the Industrial Revenue Bond Act, New Mexico municipalities and counties are authorized to issue IRBs to stimulate the expansion and relocation of commercial and industrial projects in the state.
- **Joint Powers Agreement** - an agreement to share power between governmental entities
- **Mill/Tax Rates**- the rates for each county that determine the amount of each property tax bill
- **New Mexico Counties (NMC)** - a private non-profit with a public purpose to serve as resource to New Mexico Counties. NMC was previously known as New Mexico Association of Counties (NMAC)
- **New Mexico Constitution** - foundation for law and government in New Mexico
- **New Mexico Department of Finance and Administration (DFA)**- provides budget direction and fiscal oversight to state agencies and local governments
 - **DFA Local Government Division (LGD)** - provides administrative and technical support to local entities throughout the State of New Mexico
- **New Mexico State Hierarchy**- Governor over Cabinet Secretaries over Departments over Divisions over Bureaus
- **New Mexico State Regulations** - policies made by administrative agencies
- **New Mexico State Statutes** - laws created by the New Mexico State Legislature



- **New Mexico Taxation & Revenue Department (NMTRD)**- charged with the task of collecting tax dollars and distributing them according to state law, TRD administers taxation, revenue and motor vehicle laws passed by the Legislature and signed by the Governor.
 - **New Mexico Property Tax Division (PTD)**- The Property Tax Division of TRD helps local governments in the administration and collection of ad valorem taxes in the State of New Mexico
- **Open Meetings/Public Records Acts** - New Mexico sunshine laws which insure transparency
- **Per Diem and Mileage** - governs reimbursement for travel costs associated with legitimate county business
- **Probate Judge, County** - an elected official required to hold court overseeing matters of estates and wills
- **Public Trust** - the trust placed in a person who is elected to public office; also can be a reference to public coffers
- **Sheriff, County** - an elected official responsible for preserving the peace
- **Special Tax Districts**
 - **Public Improvement District (PID)**- are created to help developers finance infrastructure in new communities such as roads, parks and other amenities. Bonds are sold to finance these improvements and property owners are each assessed a portion of the bonds. This assessment is added to an owner's property tax bill and paid off over time.
 - **Tax Increment Development Districts (TIDD)**- are mechanisms to support economic development and job creation by providing gross receipts tax financing and property tax financing for public infrastructure.
- **Stewardship** - a responsibility to take care of something one does not wholly own
- **Tax Roll** - information for each property that is needed by the Treasurer to generate tax bills. The tax roll must be sent to the Treasurer's office by October 1 of each year
- **Treasurer, County** - an elected office responsible for keeping account of all county funds received and disbursed, and serving as ex officio county tax collector
- **Voter Convenience Centers** - up to 10 combined precincts created within the County to offer greater access to voting
- **Warrant** – a report delivered to the Treasurer's office with total tax dollars to be collected by the Treasurer for each school/taxing district, municipality, special districts that bill through property taxes and all livestock rendered each tax year.



Better Government through Education

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