



**The NM EDGE
(A Program of Cooperative Extension Service)
with The NM Association of Counties
Presents**

The New Mexico County Sheriff Handbook

2011 Edition

THE NEW MEXICO COUNTY SHERIFF

A Reference Handbook

January 2011 Edition

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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.

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 Association of 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, the New Mexico Association of 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 Association of Counties. This book is made possible through the partnership between NMAC 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 NMAC. 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 2011 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.

CHAPTER 1

AMERICAN COUNTY GOVERNMENT

An Overview of the Structure of County Government in America

Government in the United States affects us in a number of ways. Although the federal government attracts much of the public attention, it is local government that has the most direct influence on the lives of individuals. Local government is growing at the greatest rate.

In general, governmental activities can be classified into the following categories:

1. Direct Controls--the regulation of particular sectors of the economy, such as public utilities.
2. Consumption services--the provision of such services as recreation, transportation, health and educational institutions.
3. Government production--including military activities such as space exploration research and development.
4. Welfare income redistribution--programs such as aid to the blind and disabled, aid to dependent children, veterans, social security and others.¹

All levels of government may be active in every category but each governmental unit has more responsibilities in some categories than in others. County government, for example, is more involved with direct controls and consumption services than with production or welfare income distribution.

Technically, the United States is organized into a two-level system of government: the federal level and the state level, with local subdivisions. In reality, our government system operates on three levels--federal, state and local without any sharp lines or visible demarcations between them.

County Government

There is no "typical" American county. No matter the region, population, name or organization of the governing bodies, or whether the names or duties of the officers or the functions of the county government are considered, no two counties will be alike or described as typical.

Some of the methods for the organization of counties and their governing bodies are derived from historical forms that existed in England, described in more detail in Chapter 2. These methods were transported to the American colonies, only to be altered by the force of local situations here. The size or population of counties has often been the result of accident, political intrigue or the

¹Kelsey, Balin; Lawrence, Charles C.; and Fletcher, Robert R. Local Government and its Support; Part I - Local Government: Its Development, Responsibilities, Forces for Change. Great Plains Agricultural Council Publication #57. Lincoln, Nebraska: University of Nebraska Extension Service.

strength of local pride when the citizens of an area decided they wanted a voice in setting up and controlling their local government. A brief study of some of these features should be helpful as a background before examining the specifics related to New Mexico county government.

Physical Characteristics

There are over 3,000 active county governments in the United States. County size varies greatly. For example, San Bernardino County, California, consists of more than 20,000 square miles, whereas Arlington County, Virginia, contains only 25 square miles. By population, Los Angeles County is the largest, with over nine million people. In contrast, Loving County, Texas, had a population of less than 100, according to the 2002 U.S. Census. Texas, with 254 counties, has the largest number of counties. Delaware, with only three counties, has the smallest number.

The Governing Body²

On a nationwide basis, the most popular name for the governing body of the county is the "board of county commissioners." This name is used by approximately 40 percent of the counties. The title "board of supervisors" is used by about one-half as many counties, or slightly over 20 percent of the counties. Other names for the governing body include the county court, commissioners' court, fiscal court, board of county commissioners of roads and revenues, police jury and boards of chosen freeholder. In general, the term "commissioner" is used in the small board group, while "supervisor" is used to designate those who are elected at the town or municipal level and who are serving *ex officio* on the county board. An exception is California, which typically has a five-member board, but its members are called supervisors, nevertheless.

In about 300 counties nationwide, members of the board are elected at the local level. Most are local officials, but some do not have an assignment in the local government and are appointed or elected only to reflect a population representation on the board. In either case, the members of the board are usually elected by and from the district each represents. Even when the member of the governing body is elected at the county level, there is some variety in how he or she is elected. The most popular method is election by and from districts. However, about 20 percent of the counties provide for election at large with residence required from the district in which nominated. Another group of counties elect county board members on a completely at large basis. Still another group requires that one or more members of the board be elected at large with the balance being elected from districts. As county government is remodeled and reorganized to cope with present-day problems, the trend is toward more elections at large with nomination from a district.

The number of persons serving on county governing boards varies from a single member in some 100 counties to boards made up of over fifty persons in a few counties. The largest county boards are the boards of supervisors, elected at the local level but also serving on the county level. The so-called boards of county commissioners generally have three to seven members. In New Mexico, the board of county commissioners is three or five members. Counties with governing bodies called county courts have no particular pattern for the number of members. Generally, county courts are larger than the boards of county commissioners and smaller than the board of supervisors.

The terms of office for county board members and the provisions for overlapping terms also

²The Association of Minnesota Counties. Information Manual for Minnesota County Commissioners. St. Paul, Minnesota. January 1973.

vary widely. A few counties elect their board members for a term of one year, but generally these are the counties that elect board members by townships. More counties elect on a four-year term schedule with the overlapping of some members, but nearly as many counties elect on a four-year term schedule with no overlapping. Overlapping terms are less common in counties that have a two or three-year system. Counties that employ a county court system commonly have a chairman or “county judge” elected for an eight-year term with a balance of the board elected for a shorter term, usually four years.

There is no pattern for the name of the governing body, the number serving on it, the term of office of its members or the method of election. The fact that there is not greater uniformity does not necessarily mean that this unit of government is poor or inefficient. What is bad is that this great variance continues to exist without thought or reason, except for habit. This inattention to the form and structure of county government, coupled with false devotion to archaic methods of operation, too often prevents the needed and timely modernization of county government, which would more effectively handle the new assignments it is increasingly being given. For example, the statutory restriction on the number of successive terms a commissioner may serve in New Mexico serves to ensure a constant turnover of public officials and a disruption in county government.

Functions of County Government

Many of the duties that have been assigned to the county level of government are administered by, and the responsibility of, independently functioning boards and committees. These bodies, while a part of county government, often are not responsible to the county governing body and many times are not salaried positions, but are filled by volunteers. Nevertheless, when the general public thinks of county government and its functions, they think of the sum total of the duties given to this level of government without thought about who has the responsibility for the proper administration of each function.

The traditional functions of county government, regardless of the unit having administrative responsibility, include the enforcement of the law, levying and collection of property taxes, conduct of elections, judicial administration, highway construction and maintenance, recording of legal documents, and indigent healthcare. In almost every case the county originally served, and in many instances still serves, as the administrative arm of the state, with some direct responsibility to a variety of state officials.

As the population grows and demand for new services rise, some state legislatures have given additional responsibilities to county governments. Sometimes these responsibilities have come at the request of the counties; many times they have not. The additional responsibilities that counties may assume, or be mandated to assume, include 1) creation of, construction of and operation of hospitals, nursing homes, libraries, airports, parks, forests and recreational areas; 2) provision of general health protection; 3) agricultural aid; 4) weed and predator control; 5) fire protection; 6) sewer and water systems or other utility services; 7) maintenance of community mental health facilities; 8) regulation of liquor establishments; 9) recreation and amusement centers in unincorporated areas; 10) construction and operation of sewer and water systems; 11) establishment of housing and redevelopment authorities; 12) solid waste management; and 13) civil defense and emergency preparedness. Counties are also assuming responsibility for long-term community development using various land use controls (i.e. zoning and subdivision regulation).

CHAPTER 2

THE COUNTY AS A GOVERNMENTAL UNIT

A Historical Background

County and other local government units in the United States take their basic form from similar units developed in the original 13 English colonies in this country. Thus, any historical background of the county as a unit of government must include a discussion of the English form of local government as it developed up to the beginning of the 17th century.

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.³

³ Reeve, Frank Driver. History of New Mexico. New York, Lewis Historical Publishing Company, 1961.

CHAPTER 3

COUNTY GOVERNMENT IN NEW MEXICO

An Overview of Structure and Authority

The state legislature is vested by the New Mexico Constitution as the lawmaking power for the state and the counties are subject to this power. New Mexico law provides a detailed legal framework for county government describes the powers of county officials and specifies the functions that counties may perform. However, there is one important restriction on the legislature's power: The constitution prohibits the legislature from passing special laws that affect or regulate only one or a few counties (NM Const. Art. IV, Sec. 24).

The courts in New Mexico have, on several occasions, affirmed that the counties are involuntary subdivisions of the state, created primarily to aid in the administration of the policies of the state. Notwithstanding this subordination of the counties to the state, New Mexico counties do function as more than an arm of the state, owing in part to their corporate status. In accordance with both law and custom, counties are independent and self-governing, even though they also serve a role as an administrative organ of the state.⁴

Organization of County Government

The form of organization for county government in New Mexico is established by the state constitution and law. The statutorily created county offices are: assessor (NMSA 1978 §4-39-2), clerk (§4-40-2), commissioner (§4-38-16), sheriff (§4-41-2), surveyor (§4-42-1), treasurer (§4-43-2) and probate judge (§34-7-2). County officers are elected for four-year terms (Art. X, Sec. 2). Currently, any person elected to a county office cannot, after holding the office for two consecutive terms, hold any county office for the next two years. However, November 2, 2010, voters will vote to decide whether to change two consecutive terms to three allow 3 consecutive terms.

The Board of County Commissioners

The members are elected to the board of county commissioners ("BOCC" or "board") for four (4) year terms (§4-38-6) and must live in the district they represent. Counties have either three or five commissioners depending on local option.

The board of county commissioners has the power to adopt the county's budget, to levy county taxes, and to enact ordinances. It is charged with examining and settling all accounts of receipts and expenses (§4-38-16) and for providing for the issuance of bond financing for necessary public buildings, roads, bridges, airports, utilities, hospitals, and libraries. County orders for payment from the county treasury must specify the nature of the claim of service, be signed by the chairman of the board of county commissioners, and be attested to by the county clerk (§4-45-4).

The board may employ a county manager and create a personnel merit system for county

⁴Kelsey, Galin; Lawrence, Charles E.; and Fletcher, Robert R. Local Government and its Support; Part I-Local Government: Its Development, Responsibilities, Forces for Change. Great Plains Agricultural Council Publication #57. Lincoln, Nebraska: University of Nebraska Extension Service.

employees (§4-37-1), which indirectly affects the employees of the other elected officials, such as setting their hours of employment, rates of pay, etc. The board also carries out vital election, planning and zoning, and health and safety functions. They may enter into a joint powers agreement with other counties or municipalities to provide common necessary services.

Finally, the board has significant appointive, administrative and regulatory powers. The board selects, appoints and reappoints members to many different commissions and boards that work on specific county issues on its behalf or on behalf of the county's departments. The board members do not appoint, but rather constitute, the county canvassing board, the entity charged with post-election duties of tallying the votes and ensuring the integrity of each election. Also, the board constitutes the *ex officio* board of finance. In this capacity, the board has supervision over the determination and qualification and selection of banks, savings and loan associations and credit unions to receive public money. The board of finance meets as necessary or whenever informed by the county treasurer (§6-10-8). For more information concerning the position of county commissioner, please refer to *The New Mexico County Commission Handbook*.

County Assessor

The duties of the assessor are prescribed by law (§§4-39-2 through 4-39-7). In general, the assessor is responsible for the proper and timely assessment of most property subject to valuation for taxation purposes within the county. However, valuation of certain types of property such as railroads, telephone, utilities and mineral properties are excluded from the assessor's duties and is the responsibility of the New Mexico property tax division of the taxation and revenue department ("NMTRD, PTD").

The NMTRD, PTD has general supervisory authority over the counties' assessors for purposes of implementation and compliance with the New Mexico Property Tax Code. The NMTRD, PTD provides evaluation and feedback regarding the assessor's valuation activities. An assessor found to be out of compliance with the laws and regulations will be officially notified, as will be the BOCC for that county. The assessor may also request and receive assistance from the NMTRD, PTD to assess property values. To aid the BOCC in determining whether the assessor is operating an efficient program, the assessor must submit a written report accompanying his annual budget requests, which sets forth all the activities associated with maintenance procedures (§7-36-16).

The assessor is required to implement a program to maintain current and correct values of property, subject to the limitations on increases in valuation imposed by NMAC 1978 §7-36-21.2 in year 2000, as amended in 2001 and 2003. The assessor works closely with the county treasurer in providing tax property schedules so that the treasurer may bill all taxes by November 1. In some cases, the assessor may actually do the billing. The assessor is the sole county elected official who may receive additional compensation for study and improvement (§4-39-4). Appraisers may also receive additional compensation for study (§4-39-5). For more information on this office see *The New Mexico County Assessor Handbook*.

County Clerk

The county clerk serves an important role for the BOCC. The county clerk is the *ex officio* clerk of the BOCC (§4-40-3). Consequently the clerk, either in person or through a deputy, must attend all sessions of the BOCC, keep the official seal, records and papers of the BOCC and keep a

record of its proceedings. The county clerk is also required to record all proceedings of the board meetings, to keep record of all board of county commission resolutions, votes and decisions of each commissioner. The clerk is also required to sign orders for payments approved by the BOCC (§4-40-6), and to preserve and file all accounts acted upon by the BOCC (§4-40-4). The clerk is also mandated by statute to subscribe to and maintain files of all newspapers published in the county (§§4-40-7 and 8). The clerk's office receives a multitude of documents from the public for filing and recording, and charges recording fees for same. See §§14-8-12 and 14-8-12.2 for the list of all the recording fees that a county clerk shall receive. For more information on this office, see *The New Mexico County Clerk Handbook*.

County Sheriff

The elected county sheriff is the chief conservator of the peace in the county and is charged with the suppression of assaults and batteries, the apprehension and commitment to jail of all offenders violating criminal state laws or county ordinances (§4-41-2). The sheriff is authorized to appoint deputies to assist in law enforcement (§4-41-5) and to appoint an undersheriff and an executive secretary, who both serve at will. Law enforcement activities are broad and set forth generally in NMSA 1978 §§29-1-1 through 29-13-9.

The sheriff and his deputies serve and execute all processes, writs and orders as directed by the magistrate and district court judges and, to some extent, by the municipal court judges, provided prior satisfactory arrangements for payment for the sheriff's services have been made (§4-41-14).

County Surveyor

The law enacted in 1891, NMSA 1978 §§4-42-1 through 15, created the office of county surveyor. These laws require the county surveyor to be a practicing land surveyor in the surveying business (§4-42-1) and make him responsible for official surveys, plats and maps within the county. Historically, all surveying of county roads and bridges was performed by the county surveyor, and by virtue of office, mandated to be one of the reviewers in establishing new roads or bridges. By these [now archaic] laws, the surveyor was required to keep two sets of books, in accordance with very detailed requirements (§4-42-4). In most counties, the elected office of surveyor is no longer filled. Private surveyors, engineering firms, or the county road or public works department now perform these functions (§4-42-11).

County Treasurer

The county treasurer is responsible for keeping account 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). The treasurer serves *ex officio* as the county tax collector (§4-43-3). All county offices must coordinate fiscal activities with the county treasurer, and finance department if one exists, in order to ensure that all fiscal responsibilities are performed, and on a timely basis. The county treasurer's financial report is compiled at the end of each month and distributed to the BOCC, the New Mexico Department of Finance and Administration (NMDFA) and others as required. The treasurer is responsible for mailing tax bills and the collection of taxes. Another important duty of the treasurer is to work with the BOCC to set investment policy and to invest county funds in order to obtain the highest return possible. The types of investments

available are limited by state statute. At the end of the term of office, the treasurer shall make a full and complete settlement with the BOCC and, in the presence of the city clerk, deliver to the new treasurer all records and other property, and take a receipt therefore. The BOCC shall make a statement to the state auditor with regard to state revenue, showing charges and credits, and any unfinished business charged over to his successor, and further shall see that the books of the treasurer are correctly balanced before passing into the possession of the treasurer-elect (§4-43-4). For more information on this office, see *The New Mexico County Treasurer Handbook*.

Probate Judge

In 1865, the part time position of elected probate judge was created for each county (§34-7-1). The probate judge is not required to be a lawyer, but is required to hold court in the county seat (§34-7-4). The BOCC is required to provide the probate judge with suitable office space, stationery and other needed items (§34-7-6). If for any reason the probate judge is unable to attend the duties of office or is disqualified from any probate proceeding, the duties may be performed by a judge of the district court (§§34-7-9 and 11).

District Attorney

The district attorney is another locally elected official and serves as law officer of the state and of the counties within his or her district. A district attorney is elected for a four-year term in each of New Mexico's thirteen judicial districts (NM Const. Art. VI, Sec. 24). 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 his district. The district attorney is authorized and required by law to represent the BOCC upon request; to advise all county and state officers whenever requested; to represent any county in his 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).

The district attorney is authorized to appoint an assistant district attorney and assign him to represent the county, and to enter into a contract with the county for reimbursement of all or part of the assistant's salary or expenses via NMDFA (§36-1-8). The BOCC is authorized by statute to employ or contract with a private attorney to provide legal advice and representation services. Due to the typical heavy criminal caseloads, lack of personnel in the district attorney's office, or other political concerns, it is not unusual for the BOCC to retain private legal counsel to represent it in civil litigation matters and to serve as in-house counsel for the BOCC, the county manager and department heads on a day-to-day basis and during a variety of public meetings. Private legal counsel does not have the authority to prosecute in the name of the county without express written approval from the district attorney, except in county ordinance (misdemeanor) enforcement actions (§36-1-19).

The district attorney is elected locally, but is a state employee and all salaries and expenses, except office space, are paid from state funds appropriated to the district attorney (§36-1-8). The law requires each BOCC to provide adequate office space and necessary utilities and maintenance service for the operation and upkeep of the district attorney's facilities (§36-1-8.1).

District Judge

There are 13 judicial districts in New Mexico, with one or more district judges in each district. The principal office of each district judge shall be at the county seat of a county in the

judicial district. Additional offices in the county may be provided by district court rule (§34-6-17). District courts are always to be in session (§34-6-2). The legislature shall determine the number of district judges and may increase the number of judges or districts during any legislative session (NM Const. Art. VI, Sec. 16). District judges may hold court in another county at the request of that county's district judge, or may act as a judge *pro-tempore* (NM Const. Art VI, Sec. 15).

Each county BOCC 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).

Classification of Counties and Changes in County Boundaries

The state constitution specifies that the legislature classifies counties and sets the salaries for all county officers (Art. X, Sec. 1). The courts have held that the legislature may mandate differently for each county class, provided that the classifications are based on substantial distinctions and are not arbitrary in nature. A county's population and the assessed property values are used as the criteria for classification. This system of classification provides the legislature greater freedom to adhere to the unique problems of each county classification than would be possible under uniform legislation. County classifications establish the salary schedule for county officials and determine county budget limitations. County officers are prohibited from receiving any fees or emoluments other than the salary set by law (NM Const. Art. X, Sec. 1).

Counties are classified every even-numbered year by the director of the NMDFA, with the classification based on the total assessed valuation of each county at the end of the preceding year (§4-44-2). Once the classification has been made, however, a decrease in a county's total assessment value does not necessarily change the county's classification (A.G. Opinion 1937-38: 50). ***The population and assessment value criteria used by the NMDFA to determine each county's classification are listed in Appendix E.***

The law provides methods for changing county boundaries under certain circumstances. If it is determined that one county can more efficiently render services to another county *owing to road conditions and transportation*, it is possible for that area to be annexed by the county that can provide the most efficient services (§4-33-1). In another situation, when the exact boundary between two counties is in question, a boundary commission is created to mediate the dispute (§4-35-1).

There are no provisions for direct abandonment of a county, but a county's area may be reduced under certain circumstances. A county may be incorporated into a new county through action of the state legislature. Additionally, a county's boundary may change if a community becomes incorporated as an independent, self-sustaining municipality (see 3-2-1 et seq). Lastly, the constitution provides that city and county municipal corporations may be formed by combining city and county governments, as long as the new city and county territory shall contain at least 50,000 inhabitants (NM Const. Art. X, Sec. 4).

Removal of a County Seat

The statutes defining and specifying the location of each county seat are numerous (See Articles 1-53 of Chapter 4 of the New Mexico statutes). The statutes governing how a county seat may be moved are also archaic and not completely consistent. Because of population growth,

expansion in the types of services provided by counties, and inflation since adoption of these laws, applying them in today's world would be quite awkward. For example, NMSA 1978 §4-34-3 contemplates that the cost of the buildings associated with the county seat (typically the jail, courthouse and other administrative offices) cost in the vicinity of \$30,000, and therefore require petitioners seeking the removal or relocation to deposit \$40,000 with the petition, to be used for the reconstruction of replacement buildings. Furthermore, the statute limits the replacement construction costs to three times the amount of the deposit, or \$120,000. This may be sufficient today for the land research and property acquisition, environmental studies and architectural fees for building design, but it will not even begin to pay for construction of a county courthouse, jail or other administrative building, which now runs in the millions of dollars. The law also contains some interesting limitations, such as the prohibition in NMSA 1978 §4-34-1 against moving the county seat from a town served by the railroad to one not served.

NMSA 1978 §4-34-1 requires a petition to be signed by one half of the number of legal votes cast at the preceding general election before the issue shall be placed on the ballot for a vote at the next general election, or if none within one year, a special election within two months. NMSA 1978 §4-34-1 requires a simple majority of the votes cast on the issue, while the New Mexico constitutional provision conflicts and requires a 60 percent of the votes cast (NM Const. Art. X, Sec. 3). NMSA 1978 §4-34-1 provides that there shall not be an election on the issue of removal of county seat more often than once every ten years, while the New Mexico constitutional provision states not more than once every eight years.

Salaries and Fees of County Officials

The state legislature is responsible for fixing a cap on the salaries and other fees or emoluments of county officials. All fees received by an officer, other than the statutorily set salary, must be turned over to the county treasury (NM Const. Art. X, Sec. 1). County officers are also entitled to reimbursement for expenses such as lodging, mileage and per diem (§§10-8-1 through 8). Maximum allowable salaries for county sheriffs are listed in Table 1 in Chapter 4. The BOCC is not required to adopt the maximum allowable salary (§4-44-12.2).

Moreover, the BOCC may decrease as well as increase the salaries of elected county officials (AG Opinion No. 92-05). Finally, it is possible that the salary received may be less than the amount authorized by the BOCC if taxes collected are not sufficient to cover all county expenses, in which case the salaries of county officers are reduced proportionately (§6-6-13).

Legislative intent (uniform salaries); constitutional prohibition of mid-term salary increases

The legislature made it clear when it first passed NMSA 1978 §4-44-12.3 that it intended for officers holding the same elected position to earn the same salary. After this law was passed, litigation ensued because the law seemed to authorize uniform salaries and pay equity, which numerous county administrators took as authorization to increase salaries during the term of some of the official's terms, while the attorney general opined that despite the approval by each BOCC of the legislature's new increased maximum salaries for elected officials, to implement such salary increases during a county commissioner or other elected official's term was unconstitutional (AG Opinion 94-09; Art IV, Sec. 27).

The Attorney General's position was confirmed by the New Mexico Supreme Court in 1998

when it decided the case of *State ex rel Harragan v. Harris*. That case was filed by petitioners (numerous county elected officials) seeking to compel NMDFA to approve their respective county budgets that had implemented salary increases as voted by their boards of county commissioners. The district court granted petitioners the relief they sought. NMDFA appealed to the court of appeals, which certified the question to the New Mexico supreme court. The supreme court concluded that the mid-term salary increases were in violation of NM Const. Art. IV, Sec. 27 of the New Mexico constitution and reversed the district court. This means that county commissioners in the same county will likely be compensated at different salary rates due to the staggered terms of office and the rate of pay in effect when the commissioner took office (§4-44-12.3).

Section 4-44-12.3 has since been amended to read:

- A. The intent of the legislature when enacting salary increases for elected county officials is to provide for equitable salary increases.
- B. In accordance with Sections 4-44-3 through 4-44-8 NMSA 1978, the majority of a BOCC may provide for salary increases for elected county officials; provided however, that no salary increase shall take effect until the first day of the term of an elected county official who takes office after the date that salary increase is approved.

Per Diem and Mileage

The Per Diem and Mileage Act (§§10-8-1 through 8) governs reimbursement for travel costs associated with legitimate county business. Travel cost reimbursement is one area that has been known to cause confusion and frustration for county elected officials and staff, which can be reduced by learning the intricacies of the act. Elected county commissioners and other officials should consult with their finance department, and/or the NMDFA if there is disagreement about travel and per diem reimbursement. This is imperative because the act provides for administrative and criminal sanctions, as well as for removal from office for violations of the Act. See (§10-8-4, 7).

The Per Diem and Mileage Act, as amended in 2003, increased the allowable rates for travel reimbursement for all public officials, including state, school district and county governments and their respective volunteer agents. Currently the mileage rate is tied to the current IRS rates. This rate changes often and you should always be current on the rate. The rate for 2010 is 50 cents per mile for each mile traveled in a privately owned vehicle. The rate can be looked up at www.irs.gov. Only one person per vehicle is eligible for mileage; and persons driving county owned vehicles are not entitled to mileage. The increased rate for mileage for a privately owned aircraft is 88 cents per mile if the travel is necessary to discharge of official duties, and the private conveyance is not a common carrier [§10-8-4 (D)]. The actual cost of airline travel tickets is also reimbursable.

For each 24 hour period, or portion thereof, while in travel status, **non-salaried** public officers shall be reimbursed according to [§10-8-4 (K)] and receive reimbursement for actual lodging expenses, plus actual meal expenses (limit of \$30 per day in-state/\$45 out-of-state), or shall be reimbursed according to [§10-8-4 (A)] for a flat rate per diem in an amount up to \$95 to cover both lodging and meals. Officials are not entitled to reimbursement for attendance at board or committee meetings held within the boundaries of the municipality, or designated post of duty [§10-8-4 (B); §10-8-4 (I); §10-8-4 (A) (2)].

Salaried public officers or employees are entitled to reimbursement for travel costs at either a flat per diem rate [§10-8-4 (B)] or for actual expenses [§10-8-4 (K)]. The flat per diem reimbursement rate for **in-state** travel increased in 2003 to \$85 per day per diem, or up to \$135 in high cost areas as designated and approved by the BOCC. The flat per diem reimbursement rate for **out-of-state** travel increased in 2003 to \$115, or to \$215 for high cost areas [§10-8-4 (C) (1)]. Examples of out-of-state high cost areas are currently Chicago, Washington D.C., New York, Los Angeles and San Francisco. This reimbursement is also subject to rules promulgated by DFA.

The maximum reimbursement rates that boards of county commissioners may authorize for actual expenses increased to actual lodging cost, plus actual expenses for meals up to \$30 per day **in-state** or \$45 per day **out-of-state**.

To receive reimbursement for *either* flat per diem or actual travel expenses, travel vouchers must be completed, signed and submitted with the receipts [§10-8-5 (B)]. All counties are subject to the rules and regulations promulgated by the Secretary of DFA regarding the provisions of the Per Diem and Mileage Act [§10-8-5 (A)] and are subject to any reduction in the per diem rate for certain classes of public officials as might be imposed by the Secretary of DFA [§10-8-5 (D)].

Advance disbursements for travel arrangements may be allowed by each county and may be based upon certain conditions being met (i.e. sufficient notice to the finance department in advance of the trip).

One final provision in the Per Diem and Mileage Act worth noting is the prohibition against paying travel or mileage reimbursement to county officials in their final months of office, if they have not sought re-election to their currently held office, or if they have been defeated in the primary or general election [§10-8-5 (F)]. Subsection (G) clarifies that this “lame duck” provision does not apply to an elected public official ineligible to succeed himself or herself after serving the term of office.

Powers and Limitation of Counties

The powers of a county as a body politic and corporate are exercised by a BOCC (§4-38-1). The powers are broad and diverse, and without an affirmative grant of authority by the New Mexico constitution or laws, the board has no jurisdiction to act. The BOCC’s powers include ordinance making powers to provide for the safety, health, welfare, prosperity, order, morals, comfort or convenience of the public (§4-37-1). The BOCC does not have any general superintending control or authority over other county elected officials. Elected county officials who fail to perform their offices duties are subject to removal, civil suit, or criminal prosecution if they violate the law or neglect their duties (AG Opinion No. 87-18, *But See* AG Opinion No. 90-5). Every county may also act as an agent of the U.S. government for the expenditure of money authorized by Congress (§4-36-3).

County ordinances may be enforced by prosecution, typically in magistrate court (except for actions seeking injunctive relief which must be filed in district court). Penalties for violations of county ordinances may not exceed a fine of \$300, imprisonment for ninety days or both, with the following exceptions: 1) a \$1,000 maximum penalty for discarding or disposing of refuse, litter or garbage anywhere other than in an authorized landfill; 2) a \$5,000 maximum penalty for improper or illegal disposal of hazardous waste (§4-37-3); and 3) a maximum \$1,000 penalty and 364 days imprisonment for driving while intoxicated.

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 enforcement all state and local laws within the county.

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 he is 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.

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 he assumes the duties of the office, must be made payable to the state on two conditions:

1. That he faithfully performs his duties during his term of office until his successor is duly qualified;
2. That he will pay all money received in his 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).

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 he assumes 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 the New Mexico Association of 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.*

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 he/she is 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, he is 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.

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 him, 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 (§4-41-4).

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).

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 salaries for sheriffs in counties of each class are given in the following table.

Table 1. Maximum Salary Schedule for County Sheriffs
(§§4-44-1 through 4-44-8 and §4-44-14).

County Class	Sheriff Salary Cap
Class A	\$68,308
Class B (over 300 million)	\$59,699
Class B (75 million to 300 million)	\$51,277
Class C	\$51,277
First Class (over \$27 million)	\$38,739
First Class (under \$27 million)	\$38,739
Class H	\$1.00

* Legislature repealed salaries for county offices effective the 1990 general election.

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 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).
- 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.

Ethical Requirements

Under New Mexico Statutes, the sheriff may not use any confidential information acquired by virtue of his office for his or another's gain (§4-44-23).

He may not enter into a contract with nor take any action favorably affecting any person or business which is (§4-44-24):

- 1) Represented personally in the matter by a person who has been an officer or employee of the county within the preceding year if 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;

- 2) . 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 a contract or taking such an action.

Every employee of the county who has a financial interest which may be affected by the actions of the county is required to file a disclosure statement with the county clerk before entering employment and annually thereafter (§4-44-25). ***See also Appendix C: the National Association of Counties (NACO) Code of Ethics for County Officials.***

Moral Issues

It is unlawful for the sheriff to employ persons related to him 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.

Organization Considerations

There are several important factors that need to be considered by the sheriff when he or she is 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.⁵ 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.⁶ 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 him, where a sergeant may have seven or eight deputies reporting to him.

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.⁷ 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.

Organizing the Sheriff's Office

⁵ Rue, Leslie W. and Byars, Lloyd L.; "Supervision, Key Link to Productivity", Mc Graw-Hill, 1999, pg 128

⁶ Ibid.

⁷ Ibid.

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.

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. The sheriff must answer to the citizens of the county and the board of county commissioners for the actions of any employee of the sheriff's office.

Under-sheriff

The under-sheriff 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 sheriffs' office. The under-sheriff reports directly to the sheriff and the sheriff determines what roles and responsibilities the under-sheriff will have within the organization. In sheriff offices throughout the country, some under-sheriffs play a primary political role attending meetings and ensuring public relations.

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 sheriffs' 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.

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.

A deputy must be at least eighteen years of age and be a citizen of the United States (§29-1-9). 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.

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).

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 him. 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.

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 bonafide 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. The New Mexico Association of 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. The New Mexico Association of 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.

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:⁸

Planning,
Organizing,
Staffing,
Directing,

⁸ Ibid. See also: ICMA; "Police Administration", edited by George and Ester Eastman at page 39.

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.⁹ 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.¹⁰

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 505 424 0744.

⁹Gourley; op. cit., pp. 14-15.

¹⁰Ibid., p. 9.

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.

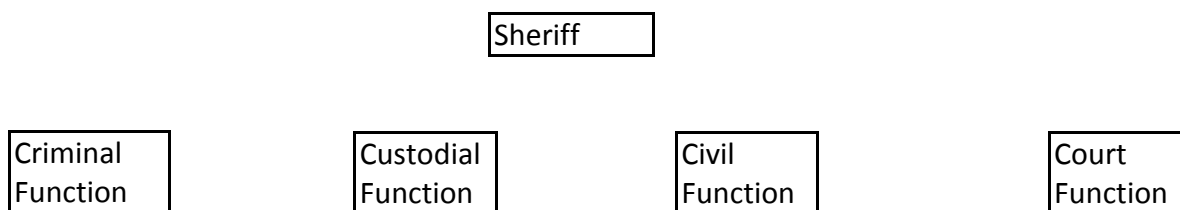
As an independent, elected officer, the sheriff must interpret the powers and duties of the office. For a sheriff, who may not have prior police experience or legal background, the task of handling the duties of the office appears awesome, but the sheriff does not face this task alone. There are a number 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.

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.¹¹ 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



Each of these blocks indicates a particular area of responsibility which the sheriff must fulfill; however this chart tells little about the actual tasks included in each responsibility. To ensure more accurate understanding of each function, each of the blocks under the title should be described in

¹¹ See also: Public Administration Service; Coordination and Consolidation of Police Services - Problems and Potentials, Chicago, Illinois, 1967, pp. 21-28.

See also Germann et al., footnote 8, supra.

more detail.

Specific Tasks

The duties incumbent upon a sheriff fall into four general categories, as follows:¹²

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. Custodial process and keeper of the county jail, including the custody of all prisoners given to his control, the safekeeping and security of such prisoners, protection of inmates' personal property and money, the proper feeding of such prisoners, and the protection of their health, welfare, and morals, including such necessary and complete records so as to ensure all of the above items.
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 him 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:¹³

¹²King, Everett M., Sheriff's Manual, National Sheriff's Association, Washington 6, D.C., pp. 60-64.

¹³Wilson, O.W., "Police Administration", McGraw-Hill Book Company, Inc., 2nd Edition, 1963, pp. 25-27.

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 chiefs 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.¹⁴ 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

¹⁴ German, A.C., "Police Executive Development", Charles C. Thomas Springfield Illinois, 1961, pp. 16-17.

- (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.

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, finger-printing, 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.

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."¹⁵ 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).

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. He or she 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.

The Custodial Function

As the result of any criminal action, suspects may be arrested and held in the county detention facility pending trial or hearing. Suspects who are convicted may be required to serve a

¹⁵ Discussion in re-determination of "high" hazard" areas can be found in: Wilson, O.W. and McClaren, Roy; Police Administration, 3rd Edition, McGraw-Hill Book Company, 1963, p. 357. See also Appendix J, p. 666, et seq., in the same text for a full discussion on this data.

sentence in the county or state facility. County detention operations are especially complex and challenging because county detention facilities hold both pre-adjudicated and convicted individuals. It is imperative that the detention administrator keep this distinction in mind. Counties that operate detention facilities must also provide facilities for the prisoners apprehended by all law enforcement agencies within its jurisdiction (§33-3-1). The variety of possible prisoners raises some critical challenges for a detention administrator serving as custodial officer for the jurisdiction.

The Custodial Procedure

When a person is arrested, there are certain routine procedures which occur, whether they are being held for a felony, a misdemeanor, or for any of the other quasi-criminal situations which may require commitment. Each of these phases will be examined in some detail.

After the arresting officer has transported the prisoner to the jail, he accompanies him to a place where several important actions must take place: the search, booking, assignment, property control, identification, and a check for injury or illness. When these procedures are completed, a final search takes place, the prisoner is issued jail clothing, bedding, given a final physical check for possible injury or illness, and placed in their cell.

Certain records are developed at each stage of the process to assure adequate control over the person and to ensure their safety and well-being while in jail. Shakedown, head counts, and informal checks are conducted to ensure adequate control, and to preserve the security of the jail installation against possible escapes, riots, or other activities which may prove detrimental to the proper operation of the custodial process.

The following custodial procedures are only a suggested guideline for the operating of a custodial facility and should be modified to meet specific needs of a sheriff's jurisdiction. The sheriff or detention facility administrator should also consult with the county's legal department when creating a set of standard operating procedures for a custodial facility to ensure that facility policy and procedure is consistent with current law.

Receiving a Prisoner

No person may be confined except under legal authority. It is therefore essential that the booking officer verify that legal authority prior to accepting custody of an inmate. The detention officer should:

- 1) Know who is authorized to bring persons into jail;
- 2) Examine the documents for authenticity and completeness;
- 3) Verify that the required papers are signed and bear the seal of a competent court;
- 4) Check the dates on the papers, the name and description of the prisoner and the nature of the offense;
- 5) Question the prisoner briefly to determine their name, offense, and when sentenced;
- 6) Not receive or detain anyone in a cell unless he has specific authority to do so;
- 7) Not accept a prisoner bearing signs of injury or illness unless they have been cleared by a medical professional or examined at a hospital that represents that they are not in need of immediate care or treatment.

In those cases where no formal commitment orders are issued, such as booking a person for a preliminary hearing, or awaiting initiation of the legal process, similar rules should apply.

It is vital that some proper routine be developed to maintain standards of security and sanitation. The first stage in processing prisoners is the booking procedure. Booking is the process of recording pertinent data concerning the:

1. Circumstances of the prisoner's arrest;
2. Charges against the prisoner;
3. Identification of people involved including the officers and victim;
4. Relevant data regarding authority to hold the prisoner.

Booking is a formal process and should be done prior to the prisoner being placed in jail or released on bail. During this process the prisoner's property should be removed in the presence of the arresting officer, and a receipt for this property given the prisoner.

Certain data should be obtained in a booking or arrest record, such as:¹⁶

1. Full name and address of person arrested;
2. The date and hour of arrest;
3. The place of arrest;
4. The charge made against the prisoner;
5. The name of the officer making the arrest;
6. The manner in which the arrest was made: on sight, by warrant or other authority
7. The circumstances of release;
8. The arrest number;
9. The case number;
10. Sociological and identifying data;
11. Name of the booking officer;
12. Name of the custodial officer who recorded the data on the booking form;
13. Next of kin or closest friend in case of illness or death;
14. Signature of the arresting officer;

Classes of Prisoners

There may be some inmates who have not committed any crime, but who, for a number of reasons, may be confined in jail. A person may be held as a material witness; pending approval of bail; charged with contempt of court; failure to accede to legitimate court order, either civil or criminal; or for protective custody, and thus be held pending resolution of this area of conflict.

Many people in county detention facilities have been accused of committing a crime, but have not yet been given their "day in court." These pre-adjudicated individuals are considered

¹⁶ Wilson, O.W., Police Records, Public Administration Service, Chicago, Illinois, 1942, pp. 89-92, as quoted in Boolsen, supra, footnote 11.

innocent until proven guilty.

County detention operations are especially complex and challenging because they hold hardened criminals, minor first offenders and everything in between. Jails hold our family, friends and neighbors and they are a microcosm of our community. The characteristics of individuals housed in county detention facilities spans a wide spectrum. Some people may have pled guilty for a lesser offense and have been sentenced to the county jail for having committed a misdemeanor, when in actuality they are true felons. Many people serving time in jail are serving time for misdemeanors, ranging from petty theft to failure to pay motor vehicle fines or failure to comply with the county's animal control ordinance. Many others are awaiting trial or serving a sentence following conviction for drunk driving. Still other people are in jail because they cannot afford to bail out or because they have a mental health disorder and were brought to the facility for protective custody.

Current provisions of the Children's Code require that juvenile offenders must be segregated in a room separated and removed from incarcerated adults. Facilities that house juveniles must comply with standards promulgated by the Children Youth and Families Department (§32A-2-4) and must maintain certification from the Department in order to operate.

This discussion should indicate that a simplistic approach to the problem of custody may very well be self-defeating to any problem of developing modern practices and procedures for running a jail.

Property Control

When a prisoner is relieved of his property and given his receipt, the sheriff's responsibility does not cease. So long as that person is in jail, and so long as the detention officer has custody of his person and property, care must be taken to ensure its safekeeping from the prisoner's incarceration to release.

The detention administrator should have a process that fixes responsibility for inmate property at all stages of the proceedings. There is a need for a formal control system which would ensure that anything belonging to a prisoner is returned in the same condition in which the jail received it.

Various procedures have been discussed in the texts, but one simple method is to:

1. Identify and itemize whatever is taken from the prisoner;
2. Issue a signed and witnessed receipt to the prisoner;
3. File a copy with the arrest record;
4. Seal, store and control the property in a secure place; and
5. File a record of the release transaction with the original report.¹⁷

If a prisoner is released to another facility the same procedure should be executed to ensure property is transferred appropriately to protect local personnel.

¹⁷ Wilson, in his text on Police Records, pp. 89-95, outlines very clearly a procedure which will fulfill these minimum requirements.

Search of Prisoners

When an individual is booked into jail, jail staff should conduct a thorough pat search of the person to ensure that no contraband such as weapons, narcotics, etc., is hidden on the person or in their clothing. Items which can be used to injure oneself or others, escape, or damage jail property, are all considered to be contraband and must be confiscated. Clothing, shoes, and personal property have been used to conceal contraband. The prisoner's clothing and personal property should therefore be examined and secured. The wisest procedure is to allow a prisoner to keep only those items which are absolutely necessary.

When developing search procedures it is important to remember that pretrial detainees do not lose all of their 4th Amendment protection simply because they are charged with a crime. Even though searches are critical to maintain the safety and security of a detention facility, there are limits on the types of searches that may be lawfully performed. It is essential that jails adopt lawful search policies and staff comply with them.

Some searches are more intrusive than others. For example, pat searches are the least invasive. They do not require the subject to remove their clothes. Pat searches can and should be conducted on every individual who is booked into the facility. It is best if these searches are performed by same gender officers but this is not essential when the individual being searched is male or under exigent circumstances. Strip searches are more intrusive because they include a visual inspection of the subject's naked body. In recent years there has been much litigation regarding alleged unjustified strip searches. The law in this area continues to develop around the country. However, in New Mexico strip searches (or any search that requires the subject to remove or rearrange their clothing so that their genitals, anus, or breasts can be viewed) of pretrial detainees should never be conducted unless there is reasonable suspicion that the individual is carrying or concealing contraband. There are a number of factors that can be considered to determine whether reasonable suspicion exists. These include the person's pending charges, conviction history, prior institutional behavior, and information received from a credible 3rd party.

A policy and procedure for strip searches should be adopted by the detention administrator with the assistance of the county attorney, and case law in the area should be reviewed to ensure compliance. The policy should provide sufficient guidance for staff to determine when and under what circumstances different searches may be performed. Only personnel who have been sufficiently trained to determine whether reasonable suspicion exists should have the authority to authorize a strip search on an arrestee at booking. Staff must also be trained to insure compliance with the policy.

Please see Appendix G for the NMAC Sample Inmate Search Policy, Appendix H for the NMAC Sample Inmate Search Form, and Appendix I for the NMAC Sample Intake Search Form. These tools were created in partnership with the NMAC Detention Administrator's Affiliate to assist counties with developing lawful policies that protect the rights of inmates but also to help ensure safety in the facility.

It is also a good policy to conduct irregular and frequent searches of a prisoner's cell at unannounced times to ensure that there is no contraband which may have been overlooked. Prisoners can fashion weapons or articles of escape from various ordinarily innocent items such as

spoons, shoestrings, and any number of other materials. Frequent and unannounced "shakedowns" are necessary if the jail personnel are to discover items of this nature.

Medical Care

When a prisoner is booked into a detention facility they must be screened for possible communicable diseases, vermin, or illnesses. The screening should also determine whether the individual needs prescription medication, chronic care, or emergency treatment. The detention facility shouldn't accept an individual for incarceration if the person's medical needs exceed the facility's ability to provide care.

This preliminary medical screening will suffice in most instances, but where there is any doubt as to the well-being of a prisoner, competent medical assistance by a licensed physician must be obtained before the person is admitted to jail. A local doctor can be of assistance in training jail personnel to carry out the preliminary medical screening.

Where a prisoner is under medication and may have medicine in his possession, such medical treatment should be allowed only on the orders of a competent physician, and such medicines should be retained and issued only by the detention officer on duty on a medical doctor's written prescription.

Feeding of Prisoners

Providing appropriate meals to inmates is also critical to the safe and secure operation of a detention facility. Inmates must be provided with meals that comply with medical diet restrictions and may also be entitled to diets that comply with their religious beliefs. The detention facility must keep a written record showing the exact time of confinement and release of each prisoner they incarcerate (§4-44-19). Similar detailed records should be maintained regarding food served to inmates. All allowed expenditures under legislative provisions shall be based upon actual meals served, and records showing this required information must be submitted to the board of county commissioners, at least monthly and expenditures for feeding prisoners shall be made monthly from the county general fund.

Sheriffs are frequently responsible for inmate transportation. Under state law sheriffs are to be reimbursed the actual expense incurred for the care and feeding of prisoners in transit (§4-44-20). Expenditures for reimbursement to the sheriff are to be based upon actual meals served, not estimated, and proof of actual expenses is required. The amounts reimbursed by the state for actual expenses incurred for the care and feeding of prisoners in transit cannot exceed maximums for per prisoner expenditures as allowed by law, which varies from time to time by legislative enactment (§4-44-19).

Finally, all fees paid to the sheriff for feeding of federal prisoners or prisoners in transit from and to other jurisdictions, must be deposited promptly with the county treasurer. It is often the practice that a sheriff will, through a reciprocal agreement with other sheriffs or law enforcement authorities, feed prisoners in transit without charge in return for the same consideration in another's jurisdiction.

When the sheriff or his deputies are in charge of prisoners in transit, they are to be allowed

monies for feeding these prisoners in transit. The sheriff must show proof of actual expenses to be allowed any amount from the county general fund (4-44-20).

Classification of Inmates

As pointed out earlier in this section, many different types of people may be prisoners in a jail. It is important to consider how to separate different classifications of inmates among these several categories of inmates.

It is obvious that males must be completely segregated from female prisoners. It is equally important that juveniles be separated from adults, and that the several classes of inmates be kept as separate from each other as possible.

Felons should be kept separately from subjects who are accused or convicted of misdemeanors; persons committed on criminal process and awaiting trial, from those who are already convicted and being held under sentence. The facility also needs to screen for sexual vulnerability or possible predatory behavior.

Gang affiliation should also be considered for segregation of inmates. Wherever possible, rival gang members should not be housed in the same area to prevent unnecessary fights and related injuries. Persons should also be monitored to ensure that they do not change gang affiliation while incarcerated.

Individuals who may be detained as witnesses or who may be held under an order imposing punishment for contempt of court may also require segregation. Much will depend upon the availability of facilities and the judgment of the classification committee. Wherever possible, classification separations should be accommodated even if it requires transfer of inmates to another facility.

The most important functions of a jail are providing for the safety and security of prisoners, staff, and the public. This requires constant vigilance and a routine which will correct any weak spot in the system, as soon as it is discovered.

The security of persons and their protection can best be assured by direct supervision and both routine and non-routine checks of the cells and inmates. If prisoners are convinced that searches are made frequently, they will be much less daring in attempting to impose themselves upon other prisoners. Direct supervision and frequent checks decrease the amount of unsupervised time available to a prisoner to do anything contrary to the rules of the jail.

In order to accomplish excellent security, a detention officer must always have good observation of all prisoners. Never let a prisoner get behind the person who is responsible for the prisoner. This is imperative because a person cannot see what is going on behind their back and can be taken by surprise.

The detention officer should never enter a cell alone, nor should he have any keys on his person when doing so. One person should be in a central position while the other person carries out whatever tasks he needs to perform. This is of greatest importance when placing a prisoner into the

cell and taking one out. Proper design of the jail can be of great help in minimizing these risks, but where design may be lacking, the personnel may decrease risks by taking extra precautions and maintaining their vigilance. Jails do not allow escapes - careless people do.

Weapons

It seems obvious that no weapons of any kind, carried by anyone, should be allowed in the jail. There should be a place where all officers can check their weapons before entering into the jail proper. Carelessness in this matter can lead to tragedy and serious criminal consequences.

Keys

Another item of critical concern relates to the matter of key control. A clear routine will indicate where every key is at all times of the day or night. A system should be developed which will allow keys to be in the possession of only those personnel who should have access to them. Key control should also include at least quarterly testing of all emergency keys.

A central control of all keys must be kept. There should be a record of each key, and panel boards, key cabinets, and key charts must be properly maintained and under the personal supervision of someone at all times.

A double door locking arrangement for entrance into the jail area is an added precaution. This will provide security against possible escape. In no instance should both doors be open at the same time, but such a system can be negated by the carelessness of one person.

In cases of fire or other emergency, some system must be in effect which will allow a prompt release of prisoners if this becomes necessary.

Tools

Control of tools in the jail is of equal importance to the matter of keys and weapons. Many tools can be used as dangerous weapons or as an aid to escape. One method to control these items is a sound inventory system and record of each tool. Constant checks must be made to ensure that inmates do not keep anything of this nature in their possession. One means to assist in this problem is to allow only the type and number of tools needed for a particular job to be brought into the jail. Toolboxes or extra tools can be left outside the jail proper to prevent their theft and later use by an inmate.

Even such common domestic items as brooms, mops or other utensils, present a possible hazard, and should only be used under careful supervision by the jail staff. Carelessness in the handling of any such items may lead to serious consequences. "Vigilance" and "control" are key words in maintaining jail security.

Records

The primary purpose of records in a jail is to obtain a clear continuous picture of the location and conditions of every person in the jail. At all times the whereabouts of each prisoner should be known and a confirmation of this fact be available to the sheriff or his designee.

The detention officer needs "fingertip control" over each prisoner in his charge, and this

must be current. One means is to have a Prisoner Control Board, conforming to the physical layout of the jail, and which is kept absolutely up-to-date. It should record the vital data about each prisoner, and at a minimum, contain the following information:

1. Name of prisoner;
2. Date placed in jail;
3. Charge on which held,
4. Bail provisions;
5. Any restrictions or holds;
6. Date of probable release

To supplement these data, frequent jail inspections should be conducted at unannounced intervals. All such activities must be entered in a jail log. It is vital for the safety of the jail officer and other deputies that these inspections are thorough and complete. Nothing can be left to chance.

A jail count will also help in prisoner control. Each prisoner must be actually observed or heard in order to know and identify each one personally. This should be done any time jail personnel are changed, and the count should be verified and accepted before a change takes place. Other counts should be made unannounced to ensure the presence of each person who is supposed to be in jail. If there are any irregularities in either the count or the inspection, it must be noted in the log, and proper steps taken to correct such discrepancies.

Adult Detention Standards

There are no mandatory standards for adult detention operations in New Mexico. However, the New Mexico Association of Counties Detention Affiliate has developed voluntary standards as part of a local government accreditation program. These standards have been tailored to New Mexico law. They are an excellent reference tool and provide much more specific guidance about the topics noted above.

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 race horse. 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 principle 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, he may have to attach monies, bank accounts and/or salaries, and in each instance he becomes fully accountable. He must, therefore, use every resource at his 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, he is 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, he 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.**

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.

By law the sheriff is required to attend to the needs of the court and to provide attendants to this high office. These people are known most often as bailiffs, and are the responsibility of the

sheriff. In some instances this task may be performed by the sheriff himself, but most often it is performed by persons who are selected as bailiffs, and who have that title (§4-41-16C). 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.

The sheriff is charged with the responsibility of attending upon the jurors, and supervising them during the court session. He 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, he must be concerned with and sensitive to possible future trends in the criminal justice system and his 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, he cannot fulfill the trust, and maintain the confidence of the people he serves. This could have grave consequences on his impact as a law enforcement officer.

To help meet these demands the sheriff must be cognizant of the technology that is currently available to him, 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.

Professional Career Development

A sheriff should ensure that he is continuously improving himself by obtaining further education for the duties that he is 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.

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 he has completed his term.

Another method of career development is becoming an active member of a law enforcement organization. One of these organizations is the New Mexico Sheriffs' and Police Association. This association provides resource guides and training for law enforcement procedures and management. Persons interested in becoming a member of this association can contact the association at 1-800-491-1004. 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. Being a member of a law enforcement association can provide an excellent extended network of contacts to the sheriff, and provide him 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 the New Mexico Association of 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. For example, The NM EDGE, in conjunction with NMAC, has developed curricula for a Certified Jail Specialist and a Certified Jail Professional designation.

To request information on The NM EDGE County College please contact The NM EDGE (505 424 0744) or view the Web site at <http://aces.nmsu.edu/ces/countycollege>.

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.

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.

Notes

APPENDICES

APPENDIX A – RESOURCES FOR COUNTY SHERIFF: A Partial List

The New Mexico Association of Counties

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

Bruce Swingle or Grace Philips

1215 Paseo de Peralta, Santa Fe, NM 87501

Phone: 505 983-2101, Web site: www.nmcounties.org

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

Mary C. DeLorenzo, CMP

4001 Office Ct. Dr. Ste. 308, Santa Fe, NM 87507

Phone: 505-424-0744, Web site: <http://aces.nmsu.edu/ces/countycollege/>

El Paso Intelligence Center (EPIC)

11339 Ssg Sims Street, Biggs Field, TX 79908

Phone: 915-760-2000, Web site: <http://www.usdoj.gov/dea/programs/epic.htm>

FBI - Law Enforcement Executive Development Association (LEEDA)

P.O. Box 2349, West Chester, PA 19380

Phone: 877-772-7712, Fax: 610-399-1913, Web site: <http://www.leedafbi.org>

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

12000 Alumni Drive, Jacksonville, FL 32224-2678

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

National Sheriffs' Association (NSA)

1450 Duke Street, Alexandria, VA 22314-3490

Phone: 703-836-7827, Web site: <http://www.sheriffs.org>

New Mexico Department of Public Safety Forensic Laboratories Northern Laboratory

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

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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 he is 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 he 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, he 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 he shall have escaped at any time, to apprehend as soon as possible the fugitive, and send him forthwith to the jail of the respective county, where he shall be kept, with all possible security in order to prevent his making his 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, he 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, he 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, he may call to his 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 fire fighting 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 he assumes 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 association of 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 [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
- 6) NMSA 1978; or
- 7) attempt to commit any of the sex offenses set forth in Paragraphs (1) through
- 8) (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
- 3) NMSA 1978;
- 4) 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;
- 5) aggravated indecent exposure, as provided in Section 30-9-14.3 NMSA 1978;
- 6) enticement of child, as provided in Section 30-9-1 NMSA 1978;

- 7) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is less than eighteen years of age;
- 8) 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
- 9) 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 he committed the sex offense for which he was 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 him 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.

29-13-2 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 and university police and county sheriff's departments for money in the fund pursuant to the provisions of Subsection B of this section.

B. The division shall determine the rate of distribution of money in the fund to each tribal, municipal and university police and county sheriff's department as follows:

- 1) all municipal police and county sheriff's departments shall be rated by class pursuant to this paragraph in accordance with populations established by the most recently completed decennial census; provided that the population of any county shall not include the population of any municipality within that county that has a municipal police department. The rate of distribution to which a municipal police or county sheriff's department is entitled is the following:

CLASS	POPULATION	AMOUNT
1	0 to 20,000	\$20,000
2	20,001 to 160,000	\$30,000
3	160,001 to 1,280,000	\$40,000;

- 2) university police departments shall be entitled to a rate of distribution of seventeen thousand dollars (\$17,000)[;]
- 3) tribal police departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection C of this section, to six hundred dollars (\$600) 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. No tribal police department shall be eligible for any disbursement under the fund if commissioned peace officers cite non-Indians into the tribal court for civil or criminal citations; and
- 4) municipal and university police and county sheriff's departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection C of this section, to six hundred dollars (\$600) for each police officer or sheriff's deputy employed full time by his department who has been certified by the New Mexico law enforcement academy 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.

C. After distributions are determined in accordance with Subsection A and Paragraphs (1) and (2) of Subsection B of this section, if the balance in the fund is insufficient to permit the total allocations provided by Paragraphs (3) and (4) of Subsection B of this section, the division shall reduce that allocation to the maximum amount permitted by available money.

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

A. 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.

B. 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.

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.

C. 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.

D. Samples from unidentified human remains shall be provided by the state medical investigator.

E. Samples of known reference materials from missing persons shall be provided by the investigating law enforcement agency.

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:
 - a. enforce the provisions of all county ordinances;
 - b. diligently file a complaint or information alleging a violation if circumstances would indicate that action to a reasonably prudent person; and
 - c. 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 ring 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 him in former section 1929 Code, § 33-4416 (now 4-41-2 NMSA 1978), the law throws around him 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 him, 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 him 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 him. *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 he is a poor person and that he is unable to pay for proper medical or surgical attention, or that his family is unable to do so for him or furnish support for himself 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 him, 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 his deputy, to attend the probate court of his 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 his deputy shall serve and execute, according to law:

A. all process, writs and orders directed to him by the judges of the magistrate courts; and criminal process directed to him 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 his 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 him 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 he 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 he 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 his 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 his 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 his 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 his 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 his county office or employment for his 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 he holds 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 surveyor	_____	5,000
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 his election, or within ten days of his 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 he is elected and in case of municipal officers, when he removes from the town or city for which he is 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 he is 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 his 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 his office;
- C. knowingly demanding or receiving illegal fees as such officer;
- D. failure to account for money coming into his 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 his jurisdictional boundary while in fresh pursuit of a misdemeanor whom he would otherwise have authority to arrest shall have the authority to arrest that misdemeanor anywhere within this state and return him 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.

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 his or her 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 Association of Counties

The New Mexico Association of Counties (NMAC) 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, NMAC 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 NMAC. 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: Paul Gutierrez, ED, 613 Old Santa Fe Trail, Santa Fe, NM 87505, 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: Mary C. DeLorenzo, CMP, Program Director

4001 Office Court Drive, Santa Fe, NM 87507 Phone: 505-424-0744, NMEDGE@nmsu.edu,

<http://aces.nmsu.edu/ces/countycollege/>

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 New Mexico Council of Governments 224 West Coal Avenue 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 P.O. Box 5115 Santa Fe, NM 87502 Ph - 505-827-7313 Fax - 505-827-7414
District 3 Bernalillo, Sandoval, Torrance and Valencia Counties	Mid Region Council of Governments 317 Commercial NE Ste. 104 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 - 505-762-7714 Fax - 505-762-7715
District 5 Grant, Luna, Catron and Hidalgo Counties	Southwest New Mexico Council of Governments P.O. Box 2157 Silver City, NM 88062 Ph - 505-388-1509 Fax - 505-388-1245
District 6 Chaves, Eddy, Lea, Otero and Lincoln Counties	Southeastern New Mexico Economic Development District 201 N. Nevada Ste. B Roswell, NM 88201 Ph - 505-624-6131 Fax - 505-624-6134
District 7 Doña Ana, Sierra and Socorro Counties	South-central Council of Governments P.O. Box 1072 OR 600 Hwy 195 Ste. D Elephant Butte, NM 87935 Ph - 505-744-0039 OR 888-229-1266 Fax - 505-744-0042

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 Classification and Elected Official's Salaries (Section 4-44-4 through 4-44-8 NMSA 1978 Compilation)

Article X, Section 1 of the State Constitution provides for the classification of New Mexico counties. Under NMSA 1978, 4-44-2, that responsibility has been given to the Local Government Division of the New Mexico Department of Finance and Administration (DFA).

County classification is based primarily upon two factors - population and assessed property valuation. It is revised every even-numbered year on or before April 30 (or April 29 in leap year). The final assessed valuation for the preceding year and the population as reported every ten years by the U.S. Census Bureau are the bases for determination. The classification is effective upon written notification from DFA, however, salary upgrades may not go into effect until the following January 1 (odd years). The following charts summarize class criteria and current county classifications.

County classification is important for several reasons. It may affect qualification for state or federal financial assistance, and it dictates the maximum salary levels of elected public officials.

Class	NMSA 1978 Reference	Valuation Criteria (in dollars)		Population Criteria	Other Criteria
		over	But less than		
A	(4-44-4)	75,000,000	-	Over 100,000	-
B-Over	(4-44-4.1)	300,000,000	-	Under 100,000	-
B-Under	(4-44-5)	75,000,000	300,000,000	Under 100,000	-
C	(4-44-6)	45,000,000	75,000,000	Under 100,000	-
First-Over	(4-44-7)	27,000,000	45,000,000	-	-
First-Under	(4-44-8)	14,000,000	27,000,000	-	-
H (1)	(4-44-3)	-	-	-	200 sq. miles

(1) Los Alamos is the only county currently in this classification.

APPENDIX F - County Classifications

COUNTY	Values	Population	Current 04/30/06	4/30/2006
Bernalillo	11,260,232,703	556,678	A	A
Catron	80,143,510	3,543	C	B-UNDER
Chaves	808,945,703	61,382	B-OVER	B-OVER
Cibola	218,969,003	25,595	B-UNDER	B-UNDER
Colfax	539,356,011	14,189	B-OVER	B-OVER
Curry	451,314,773	45,044	B-OVER	B-OVER
De Baca	37,374,251	2,240	1-OVER	1-OVER
Dona Ana	2,531,605,987	174,682	A	A
Eddy	2,517,937,193	51,658	B-OVER	B-OVER
Grant	493,460,034	31,002	B-OVER	B-OVER
Guadalupe	95,535,280	4,680	B-UNDER	B-UNDER
Harding	33,972,126	810	1-OVER	1-OVER
Hidalgo	117,191,007	5,932	B-UNDER	B-UNDER
Lea	2,483,995,950	55,511	B-OVER	B-OVER
Lincoln	684,776,887	19,411	B-OVER	B-OVER
Los Alamos	654,338,343	18,343	H	H
Luna	324,959,861	25,016	B-UNDER	B-OVER
McKinley	610,667,869	74,798	B-OVER	B-OVER
Mora	71,229,729	5,180	C	C
Otero	681,995,515	62,298	B-OVER	B-OVER
Quay	117,154,351	10,155	B-UNDER	B-UNDER
Rio Arriba	1,903,505,889	41,190	B-OVER	B-OVER
Roosevelt	233,957,008	18,018	B-UNDER	B-UNDER
Sandoval	1,802,843,244	89,908	B-OVER	B-OVER
San Juan	4,180,639,069	113,801	A	A
San Miguel	397,881,381	30,126	B-OVER	B-OVER
Santa Fe	4,887,341,479	129,292	A	A
Sierra	201,793,711	13,270	B-UNDER	B-UNDER
Socorro	178,058,257	18,078	B-UNDER	B-UNDER
Taos	834,532,577	29,979	B-OVER	B-OVER
Torrance	236,828,394	16,911	B-UNDER	B-UNDER
Union	113,353,236	4,174	B-UNDER	B-UNDER
Valencia	821,009,971	66,152	B-OVER	B-OVER
TOTAL	40.606.900.302			

Appendix G: NMAC SAMPLE INMATE SEARCH POLICY

- I. **REFERENCES:** (4-ALDF-2A-20, 4-ALDF-2C-01, 4-ALDF-2C-03-4, 4-ALDF-2C-06, SJ-090, and SJ-091)
- II. **PURPOSE:**

The purpose of this policy is to provide guidelines for determining when searches are legally permissible and to establish procedures for conducting permissible searches.
- III. **JUSTIFICATION:**

The County conducts searches of arrestees and inmates in order to prevent the introduction of weapons, drugs, and other contraband into the Detention Center, to protect the health safety and welfare of inmates, staff, and visitors, and to further the safe, secure, and orderly running of the Detention Center.
- IV. **DEFINITIONS:**
 - Pat Search

A Pat search is a search in which the individual's clothing **is not** removed and the officer makes physical contact with the inmate being searched.
 - Clothing Search

A clothing search is the search of an individual's clothing where they are required to disrobe, one item of clothing at a time, and pass the clothing to the officer for inspection. There is no physical contact between the officer and the individual and the individual **is not** required to remove their undergarments.
 - Strip Search

A strip search is the visual examination of an individual's naked body for weapons, drugs or other contraband. A strip search requires removal of all clothing. However, any search that requires the subject to remove or arrange some or all of their clothing to permit a visual inspection of their breasts, buttocks, or genitalia shall be treated as a strip search and subject to the limitations described in this policy.
 - Body Cavity Search

A body cavity search is a search of an individual's body cavity, (e.g., anus, vagina, nose etc.) that involves touching or probing with hands or an instrument.
- V. **SEARCH OF INMATES:**
 - A. **On Initial Intake**
 - Pat Search

All individuals booked into the Detention Center shall be subject to a thorough pat search in order to retrieve contraband **prior to** being accepted from the arresting law enforcement agency.
 - Clothing Search

All individuals who are dressed out into a Detention Center uniform shall be subject to a clothing search at the time of the clothing exchange.
 - Strip Search

Strip searches of arrestees on intake must be authorized in writing by *[insert ranks/titles of individuals who have authority to authorize strip search]*. Strip searches may only be conducted when there is reasonable suspicion to believe the arrestee may be in possession of weapons, drugs, or other contraband under the limited circumstances described below.

All strip searches must be documented.

Circumstances warranting strip search of arrestees on intake:

1. There is reasonable suspicion to believe the arrestee is carrying or concealing contraband because one or more of the charge(s) for which the arrestee is being booked involve possession or distribution of controlled substances, or the arrestee's use of physical violence or weapons.
2. Even though the arrestee's charges do not involve drugs, weapons or violence there is reasonable suspicion to believe the arrestee is carrying or concealing contraband because:
 - a. The arrestee has a criminal record that includes convictions for crimes involving drugs, weapons or physical violence (so long as the convictions are sufficiently serious and recent to create a reasonable suspicion that the individual is carrying or concealing contraband);
 - b. The arrestee used or concealed contraband or attempted escape during a prior incarceration;
 - c. The arrestee's appearance and demeanor, or actions suggest they are carrying or concealing contraband
 - d. The circumstances surrounding the arrest suggest they are carrying or concealing contraband;
 - e. The facility has learned from a credible third party that the arrestee may possess weapons, drugs or contraband; or
 - f. The officer conducting the pat search discovered evidence of a suspicious object beneath the arrestee's clothing.

Other circumstances which may contribute to a determination of reasonable suspicion (but which are insufficient standing alone):

1. Whether the arrestee will be intermingled with the general population; and
2. Whether the arrestee has a known gang affiliation.

B. After Intake

Inmates residing at the facility are also subject to searches after booking under the following circumstances.

Pat Search

A pat search is the most often search type used in the Detention Center. Pat searches should be conducted by officers whenever an inmate departs from or returns to a secure area.

Strip Search

Strip searches are utilized when there is reasonable suspicion to believe the inmate is in possession of contraband that cannot be detected by a pat search and under the circumstances described below.

Circumstances **requiring** strip search of inmates:

- a. The inmate is returning to the secure area of the facility from outside activities, such as, supervised leave, work release, work detail, court, medical furloughs, etc.;
- b. Before and after every contact visit.

Circumstances justifying strip search of inmates but which require supervisor approval:

- a. The inmate participated in an activity where they had an opportunity to mingle with outside groups, particularly where there were large numbers of people under minimal supervision;
- b. The inmate is being admitted/discharged from maximum security or the Mental Health Unit;
- c. The inmate is being placed on suicide watch;
- d. When information is learned that the inmate possesses contraband;
- e. When an officer discovers evidence of a suspicious object beneath the inmate's clothing.

C. Search Procedures

Searches may only be conducted by staff trained in techniques that protect both inmates and staff from bodily harm and civil liability. The least invasive form of search indicated (given the type of contraband and suspected method of introduction) shall be conducted. The subject should not be touched anymore than is necessary to conduct a comprehensive search of their person.

SEARCHES SHALL NEVER BE USED TO DEGRADE, HARASS, EMBARRASS OR PUNISH

1. Pat Search:

Pat searches are conducted by an officer that is the same gender as the individual being searched. Pat searches should be performed prior to departure from any secure area and when there is reasonable suspicion to believe an inmate is in possession of contraband. Always have a new arrestee remove all of their personal property from their pockets and ask them if they have any weapons of any kind in their possession and where they are located before attempting to search. Pat searches shall be conducted as follows:

- a. Stand behind the inmate;
- b. Have inmate removed hat, unbutton coat or jacket, and empty all personal articles from pockets;
- c. Put on gloves;
- d. Run hands under shirt collar and down upper part of each arm to wrist. Bring back hands along underside of arms and armpits, sweeping hands down shirt front to belt from front to back. Run hands down front and back of legs to shoe tops and back up sides of legs, sweeping hands down the back from collar to belt. If an object is detected, try to identify it by gently squeezing it before attempting to remove it;
- e. Have inmate remove shoes and socks;
- f. Examine hat, shoes, socks and other articles;
- g. When searching large groups of inmates, such as work details, line up all inmates with hats off, coats unbuttoned and pockets emptied;
- h. Do not allow inmates to intermingle during searches. Inmates that have not been searched, shall not be allowed to mingle with those who have; and
- i. After search is completed, check the area for contraband dropped or discarded by inmates.

2. Clothing Search:

Clothing searches are conducted as part of the inventory of the detainee's belongings when the individual is dressed into their detention uniform. Clothing searches are conducted by an officer that is the same gender as the individual being searched. Clothing searches shall be conducted as follows:

- A. Conduct the search in an area that assures privacy.
- B. Prior to beginning the clothing search, conduct a pat-search of the individual.
- C. Instruct the individual to face you and remove one item of clothing at a time.
- D. Manually check each clothing item for weapons, drugs, or other contraband.
- E. Allow the individual to retain their undergarments or the last item of clothing necessary to cover the individual's breasts, genitalia and buttocks. If the individual is not wearing underpants have them empty all pockets and run your thumbs around the inside of the waist band and thoroughly check the hems and seams of the clothing.
- F. Do not require the individual to remain unclothed for longer than the minimum time necessary to inspect each article of clothing.
- G. Provide the individual with a detention uniform and secure their personal belongings.

3. Strip Search:

Strip searches shall only be conducted by detention staff who are the same gender as the subject and who have been trained to perform strip searches. When possible, two detention staff of the same gender as the subject will be present during strip searches. No non-essential personnel may witness a strip search.

Strip searches shall be conducted as follows:

- A. Isolate the subject pending approval for the search.
- B. Conduct the search in an area that assures privacy.
- D. Conduct the search in a tactful, professional manner.
- E. During a strip search, do not touch the subject except as required to control them.
- F. Have the subject remove their clothing.
- G. Physically examine the following areas:
 - a. All clothing;
 - b. Run fingers over lining, seams, collars, cuffs, waistbands, and fly;
 - c. Shoes, inside soles and heels;
 - d. Socks, turning them inside out;
 - e. False teeth, artificial limbs, plaster casts;
 - f. If applicable, under bandages and dressings;
 - g. Have the subject run their fingers through their hair. Check for wigs and hairpieces;
- H. Visually examine the following areas:
 - a. The inside and outside of the subject's ears;
 - b. The subject's nostrils and mouth (above and below tongue);
 - c. Under the subject's breast area and fatty rolls (when necessary, have the subject lift their breasts or separate fatty rolls);
 - d. The subject's hands, torso, and back;
 - e. The subject's genital area

1. To obtain a clear view of the groin area, have the subject lift their penis and testicles;
 2. Have subjects with thick pubic hair part their pubic hair;
 3. To obtain a clear view of the rectum/vaginal area, have the subject to bend over and spread the rectum;
 4. Have the subject squat and instruct them to cough 3-5 times then re-inspect the rectum/vaginal area;
 - f. Between the toes and the soles of the subject's feet.
 - l. Immediately after completing the search, have subject robe in appropriate attire.
4. **Body Cavity Search:**
- The Detention Center does not conduct body cavity searches. Should strip examination and/or other information lead an officer to believe that an individual is concealing contraband, a weapon, or evidence within a body cavity, the officer shall consult with *[insert rank like jail administrator or shift commander]* to determine whether sufficient justification exists for a body cavity search. Body cavity searches shall only be performed by healthcare personnel under conditions that give due regard to hygiene and the subject's privacy.

D. Search Documentation

On Initial Intake

An Intake Search Form must be completed for **every** individual who is booked into the facility. This form will record which searches were performed and the results. The Intake Search Form is also used to document all justifications for strip searches performed on intake and the name of the approving supervisor. Any time a strip search is performed on initial intake a copy of the Intake Search Form must be submitted through the on-duty supervisor to the detention administrator.

After Intake

An Inmate Search Form must be completed any time contraband is found on an inmate.

V. DISPOSITION OF CONTRABAND:

1. All contraband found during searches will be confiscated. Illegal contraband will be turned over to the Chief of Security, along with the Chain of Custody Form and handled as evidence. Confiscated contraband shall be stored in a secure cabinet within the Chief of Security office, or placed with law enforcement personnel, for prosecution.
2. Officers identifying inmates possessing contraband will complete a disciplinary report and Chain of Custody Form.

Attachments: Intake Search Form, Inmate Search Form

THIS SAMPLE POLICY IS BEING PROVIDED TO ASSIST YOU
WITH DEVELOPING YOUR FACILITY POLICY.

IT IS NOT LEGAL ADVICE.

YOU ARE ADVISED TO HAVE YOUR COUNTY ATTORNEY REVIEW AND APPROVE
YOUR STRIP SEARCH POLICY BEFORE IT IS IMPLEMENTED.

Appendix H – NMAC Sample Inmate Search Form

<Facility Name>

INMATE SEARCH FORM

This form must be completed any time contraband is located on an inmate.

Date: _____ Time (Military Time): _____

Officer(s) conducting Search: _____

Supervisor approving Strip Search: _____

Inmate's Name: _____ Inmate's Number: _____

Search Type (s) Performed: (Check all that apply)

☐ Clothing ☐ Pat/Frisk ☐ Strip ☐ Body Cavity ☐ Other _____

Which search type revealed contraband?

☐ Clothing ☐ Pat/Frisk ☐ Strip ☐ Body Cavity ☐ Other _____

Contraband Type:

☐ Drug(s) ☐ Ignition Source(s) ☐ Money ☐ Tobacco ☐ Weapon ☐ Other

Describe Contraband: _____

Contraband Location: ☐ In Clothes ☐ In Orifice ☐ On Body ☐ Other

Describe Location: _____

STRIP SEARCH JUSTIFICATION

Reason(s) for STRIP search: (Check all that apply)

☐ Information learned from 3rd party that inmate possesses weapons, drugs, or other contraband (explain):

Contact with public:

☐ Work Release ☐ Furlough ☐ Court ☐ Porter/Work Detail ☐ Contact Visit ☐ Other: (specify) _____

☐ Pat/frisk search revealed presence of object concealed beneath the clothing? (explain): _____

☐ Inmate's appearance/demeanor (explain): _____

☐ Inmate placed on suicide watch ☐ Contraband is located in inmate's living area

☐ Inmate involved in violent incident (explain): _____

☐ Other (explain): _____

Completed by: _____

Date: _____

Supervisor Approval: _____

Date: _____

APPENDIX I – NMAC Intake Search Form

<Facility Name>
INTAKE SEARCH FORM
Complete this form for every Booking/Intake.

Date: _____ Time (Military Time): _____

Officer(s) conducting Search: _____

Supervisor approving Strip Search: _____

Subject's Name: _____ Subject's Number: _____

☐ Male ☐ Female Age: _____ Occupation: _____

☐ Known gang member ☐ Prior Criminal Record ☐ Felony charge ☐ Mis charge

☐ Parole Violation ☐ Probation Violation ☐ Sentenced ☐ Petty Mis charge

Current Charges (*most serious*): _____

Search Type (s) Performed on Subject: (*Check all that apply*)

☐ Pat/Frisk ☐ Clothing ☐ Strip ☐ Body Cavity ☐ Other _____

Was contraband found? ☐ YES ☐ NO

Which search type revealed contraband?

☐ Pat/Frisk ☐ Clothing ☐ Strip ☐ Body Cavity ☐ Other _____

Contraband Type:

☐ Drug(s) ☐ Ignition Source(s) ☐ Money ☐ Tobacco ☐ Weapon ☐ Other

Describe Contraband: _____

Contraband Location: ☐ In Clothes ☐ In Orifice ☐ On Body ☐ Other

Describe Location: _____

Reason(s) for STRIP search: (*Check all that apply*)

Current Charges: ☐ Drugs ☐ Weapon(s) ☐ Violence

Prior Criminal Conviction(s): ☐ Drug(s) ☐ Weapon(s) ☐ Violence ☐ None

Describe: _____

Incarceration (institutional) Record: ☐ Contraband ☐ Escape/attempt ☐ Violence ☐ Disciplinary ☐ Suicide Risk

Describe: _____

Information learned from 3rd party that subject possesses weapons, drugs, or other contraband (*explain*):

☐ Pat/frisk search revealed presence of object concealed beneath the clothing?

☐ Circumstances of arrest (*explain*): _____

☐ Subject's appearance/demeanor (*explain*): _____

☐ Other (*explain*): _____

Completed by: _____

Supervisor Approval: _____

Date: _____

Date: _____

APPENDIX J – ADDITIONAL REFERENCES

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APPENDIX K – In service Training Requirements

10.29.7.8 2006-2007 IN-SERVICE TRAINING CYCLE FOR LAW ENFORCEMENT OFFICERS

A. A minimum of twenty (20) hours of maintenance training/education may apply toward the 40-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. Four (4) hours shall be in safe pursuit procedures pursuant to Section 29-20-3 NMSA 1978. A minimum of one (1) hour shall be in domestic abuse incident training pursuant to Section 29-7-4.1 NMSA 1978. For all officers who may be involved in the arrest of DWI offenders, eight (8) hours shall be in NHTSA approved standardized field sobriety testing (SFST) protocols. For SFST instructors, sixteen (16) hours shall be in NHTSA approved SFST instructor recertification. Remaining hours may include firearms, first aid, defensive tactics, driving, and DWI measuring devices or other areas where periodic maintenance is measured and/or tested. Any training conducted in this area must be accredited by the academy.

B. A minimum of twenty (20) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the law enforcement officer. Of the twenty hours above, a minimum of eight (8) hours are required from one or any combination of the following subjects: cultural awareness, critical incident response, ethics, legal update, first line supervision, mid-management, executive management, animal cruelty, amber alert, racial profiling, homeland security, natural disaster preparedness, and identity theft. Training courses that are conducted in critical incident response or amber alert must be accredited by the academy.

C. Required training may be received through the following means.

- (1) The advanced training bureau will contract for course instruction at the regional training sites.
- (2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.
- (3) Curriculum developed by the training and recruiting division will be provided to individual agencies upon request for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.
- (4) The training and recruiting division will provide instructional video tapes which can be

loaned to agencies. Agency instructors or facilitators will conduct the training using the same guidelines for other video training.

(5) Facilitator guidelines and exams will accompany the video tape.

(6) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

D. This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

E. Implementation is to begin on January 1, 2006. This two-year period consists of the twenty (20) hours of maintenance training required in Subsection A of 10.29.7.8 NMAC, the twenty (20) hours of advanced training required in Subsection B of 10.29.7.8 NMAC.

F. Officers obtaining certification between January 1, 2006 and December 31, 2006, will be required to obtain one-half of the in-service training requirement. Officers obtaining certification between January 1, 2007, and December 31, 2007, will be required to meet the next two-year requirement which will go into effect on January 1, 2008. This policy will apply in subsequent two-year cycles. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[1-30-93, 12-15-93, 1-17-94, 12-7-95, 10-1-97, 1-1-98, 1-1-2000; 10.29.7.8 NMAC - Rn, 10 NMAC 29.7.8, 7/1/01; A, 1/1/02; A, 6/14/02; A, 01/01/04; A, 04/15/04; A, 12/30/05]

NOTE: This information was retrieved from the New Mexico Supreme Court Law Library at www.fscll.org.

NOTES

The NM EDGE

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A Collaborative Program of
NM Cooperative Extension Service & NM Association of Counties

This book is intended as a general guide.
Consult your County Attorney for matters specific to your County
or to the duties of your office.

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