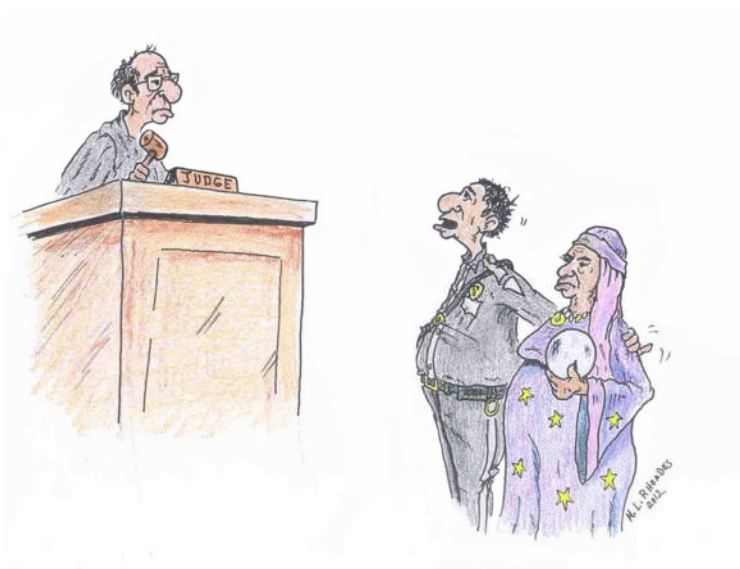


2014-2015 BIENNIUM IN-SERVICE: LEGAL UPDATE

Instructor Guide



She's the basis for my warrant yer Honor!



COURSE TITLE: 2014-2015 Biennium Legal Update

INSTRUCTIONAL GOALS: Update certified law enforcement officers on changes to New Mexico state statutes, New Mexico case law and law suits brought against New Mexico law enforcement officers.

INSTRUCTIONAL OBJECTIVES:

INSTRUCTIONAL METHODS: Lecture, Group discussion and review of media coverage

HANDOUTS: 2014-2015 Legal Update, current NMDPS Legal Update Newsletters

COURSE DURATION: 2.0 to 8.0 hours

CURRICULUM REFERENCES: NM State Statutes, NM Case Law

EQUIPMENT, PERSONNEL, AND SUPPLIES NEEDED: Classroom

TARGET AUDIENCE: Certified law enforcement officers

COURSE PREREQUISITES: None

INSTRUCTOR CERT.: General Police (Attorney highly recommended.)

INSTRUCTOR RATIO: Lecture based, no limit

EVALUATION STRATEGY: NMDPS Course/Instructor evaluation form

AUTHOR & ORIGINATION DATE: Elliott Guttman 04/11/2014



Part I: Legislative & Rule Changes affecting Law Enforcement.

Part II: New Cases and Trends affecting law enforcement.

PART I: LEGISLATIVE & RULE CHANGES

LAW ENFORCEMENT ACADEMY REFORMS

Note:

Many people have noticed a “creeping inflation” in the number of hours required for the police academy. Backed by strong support to reduce hours in order to have a more effective academy, this was accomplished in 2013.

News item: State reduces police training hours by 25%

Basic police training was reduced from 22 weeks to 16 weeks, as officials seek to eliminate redundant classroom time they say isn't needed for rookie cops.

The New Mexico Law Enforcement Academy Board, responsible for police training curriculum statewide, **voted unanimously** to make the change.

Albuquerque Journal, September 12, 2013

SUPREME COURT REFORMS

Often it's the simple things that frustrate officers. Why use two forms when one will do? In 2013, Supreme Court amended a few rules and forms to make the criminal justice system more efficient.

Two for one: Criminal Complaints (state statutes and municipal code)

Form 9—201 is the criminal complaint form used for persons who violate a statute. But if an offender violates a municipal ordinance, Form 9-202 has to

be used. The forms have been consolidated; Form 9-202 has been eliminated and Form 9-201 covers both.

Two for one: A criminal complaint form and a Statement of PC Form

A person is taken to jail. Is it really necessary to fill out a criminal complaint and Statement of Probable Cause? For many years Bernalillo County and others have put probable cause in the criminal complaint and used one form.

Supreme Court approved putting a probable cause determination section on the bottom of the complaint form (Form 9-201). Some officers like to use statutory language for the offense committed. Unless a judge or DA wants it, it's not required.

Police officers no longer will do jury trials

Officers prosecute more misdemeanor cases than they used to, but became upset when told to prosecute jury trials as well. Complaints poured in. The Rules of Criminal Procedure, 6-108, 7-108, and 8-111, were amended and officers no longer will prosecute jury trials, DWI trials, and most DV trials.

Note:

Reforms apply to cases filed after December 31, 2013.

Making the search warrant process easier . . .

Search Warrant - Convenient & Quick

An emergency has occurred and a judge's approval is needed quickly. What is an officer to do? Fortunately, the same courts that encourage warrants also believe in technology.

In 2012, the Supreme Court approved a new method to get a warrant. An officer may transmit an affidavit and search warrant to a judge by telephone, fax, electronic mail, or other electronic means. Rules of Criminal Procedure for District Courts, Rule 5-221 (F).

Search Warrant - Telephonic Approval

In Dona Ana County, an officer got a search warrant by telephone. The Judge gave an oath over the telephone and the officer read the written affidavit, word for word. Once approved, the warrant was immediately executed. The Judge signed the warrant later.

The constitution of New Mexico states no warrants shall issue without a written showing of probable cause. Supreme Court held a “showing” of a written statement can be done by visually seeing an affidavit or hearing it over the telephone. State v. Boyse (2013).

Note:

Although approved, it is recommended a search warrant be obtained in person, by fax or computer.

NEW MEXICO STATE LEGISLATURE: 2014

In even-numbered years, the session is only thirty days long and mainly devoted to budget issues. The main legislation passed that affects law enforcement was the driving while texting bill. State workers also got a three percent raise.

NEW MEXICO STATE LEGISLATURE: 2013

News item: More must now register in N.M. as sex offenders

More sex offenders from other states who relocate to New Mexico have to register. “If you’re convicted in other states as a sex offender, even if New Mexico doesn’t have an identical law, you’ll have to register. Albuquerque Journal, April 4, 2013.

- Giving misdemeanor violators of state parks and boating regulations the option of paying a penalty assessment rather than appearing in court.
- Allowing the State Game Commission to revoke hunting licenses for longer than three years.
- Expanding Sunday Alcohol Sales at Bars:

Permit alcohol sales at bars and restaurants on Sundays at 11:00 a.m. The extra hour of alcohol sales is for football fans watching Sunday games that begin earlier.

- No More Forced Sharing of Passwords:

Prohibit employers from forcing workers to share passwords that grant access to workers’ social media sites, such as Facebook or Twitter.

In recent years little legislation that directly affects law enforcement has passed. A number of legislators (both parties) are hoping for major changes, possibly in 2015.

News item: Thinking outside the box on crime

Sen. Lisa Torraco and Rep Antonio “Moe” Maestas are co-chairs of the Criminal Justice Reform Committee, a bipartisan group of eight looking to reform the system.

Some goals include revising the criminal code (this has been done in other states), removing unnecessary laws, and putting more of an emphasis on violent crimes than drug crimes. Albuquerque Journal, November 11, 2013 (by Ms. Joline Gutierrez Krueger.)

Note:

When the legislature changes a law or makes a new one, it has a direct impact on law enforcement. Other legislative actions - education, jobs, PERA, etc. – can also affect law enforcement.

PERA changes affect law enforcement

- Prior to 2013, police officers in PERA worked twenty years to retire. In 2013, that was increased to twenty five years.
- Previously, retired officers would rejoin New Mexico law enforcement but that is no longer permitted.

Note:

For law enforcement nearing retirement, PERA is becoming a bigger issue than most people anticipated.

Will marijuana be legalized in New Mexico’s future?

Note:

Legalizing marijuana was discussed in 2013 and 2014 and is likely to come up again in 2015. Public sentiment has changed in recent years.

News item: Long lines greet recreational pot sales in Colorado

Activists hope the experiment in Colorado will prove to be an alternative to the War on Drugs and produce revenue for Colorado. Albuquerque Journal, January 2, 2014.

News item: CNN Poll Support for legal marijuana soaring

In a major turnaround, fifty-five percent of Americans said marijuana should be legal. Two-thirds of those 18 to 49 said it should be legal, but fewer seniors approved. CNN.com, January 6, 2014.

News item: Poll: More favor legal pot in U.S.

A majority of Americans support legalizing marijuana. By 52 percent- 45 percent, adult Americans back legalization, according to the survey by the Pew Research Center. As recently as a decade ago, only about one-third of American adults backed making marijuana legal.

Albuquerque Journal, April 5, 2013.

For young people, it's marijuana over cigarettes . . .

News item: Legal marijuana raises concerns about young users

A study by the National Institute on Drug Abuse showed the following occurred in 2012:

23% of high school seniors used marijuana while 17% smoked cigarettes. 17% of tenth graders used marijuana compared with 11% who had smoked cigarettes.

One concern is that legalized marijuana (Washington and Colorado) will convince more young people that marijuana is safe. Albuquerque Journal, September 24, 2013.

Medical marijuana: Private sector v. the government . . .

News item: Medical pot program can't flourish in dark (Editorial)
Supply isn't meeting demand. As of Oct 31, 2013, there are over 10,000 medical marijuana users but only 23 official providers.

The majority of prescriptions are for post traumatic stress and chronic pain.

According to a new Department of Health survey, suppliers are turning away thousands of users, forcing them to buy marijuana on the street.

One user said: "an ounce of marijuana on the street goes for \$60 but medical marijuana goes for \$265 an ounce." Which would you buy? Also the quality on the street is better." Albuquerque Journal, Nov, 2013.

News item: Post traumatic stress stays on list of marijuana
Post traumatic stress disorder will remain a qualifying condition for medical marijuana. PTSD is one of 17 medical conditions for medical marijuana in New Mexico. About 42% of marijuana patients qualified with a PTSD diagnosis. Albuquerque Journal, May 8, 2013.

Revenue in New Mexico and Law Enforcement

Note:

Because of an oil boom in SE New Mexico, there is more revenue for law enforcement and other programs.

News item: NM's Gusher of Good News

The good times just keep getting better in the oil patch in southeastern New Mexico. New Mexico is having its sixth consecutive year of growth, marking the longest expansion in at least four decades. State production is now at its highest levels since the late 1970's.

Albuquerque Journal, November 25, 2013.

Education in New Mexico

Note:

Education matters for many in law enforcement. Students who drop out or have low test scores are more likely to turn to crime.

New Mexico retains social promotion

The state legislature declined to end social promotion for children who can't read by the fourth grade. An idea of where education stands in New Mexico follows:

News item: N.M. Bottom in Vocabulary Scores

New Mexico's four-graders scored dead last among the 50 states in vocabulary skills, according to a report released this week from the National Assessment of Educational Progress. Albuquerque Journal, December 8, 2012.

News item: N.M. hits rock bottom in child well-being

New Mexico is now ranked the 50th worst state for child well-being, according to 2011 government data gathered by the Annie E. Casey Foundation. For fourth-graders not proficient to read, New Mexico is also 50th.

Mississippi usually has that title. Recently people in that state have been heard to say, "Thank God for New Mexico." Albuquerque Journal, June 24, 2013.

News item: New Mexico fails to improve

U.S. schools were handled the “nation’s report card” yesterday and, once again, New Mexico’s students remained at or near the bottom in all categories with no signs of improvement.

Nationwide, the scores rose slightly. This was not the case for New Mexico where math and reading results for fourth-grade and eighth-grade showed no change or dropped slightly. Albuquerque Journal, November 8, 2013.

FEATURE PRESENTATION: MISTAKEN EYEWITNESS IDENTIFICATION

In recent years, the Law Enforcement Academy has prepared policies for New Mexico law enforcement. Some policies in past years have included Hate Crimes, Illegal Immigration, and Profiling. This year’s policy is Mistaken Eyewitness Identification.

The Innocent Project, using DNA, has been successful in getting over three hundred people released from prison. In about 75% of the cases, the person in prison was wrongly identified.

There are some simple things law enforcement can do in a photo lineup to reduce the chances of this happening:

Double-blind identification

The most crucial reform is double-blind administration: the police officer showing the photo array should not know who the suspect is, and the witness should be told the officer does not know.

Sequential presentation of photos

Presenting photos one-by-one (sequential), rather than all at once (simultaneous) decreases the chances of an innocent person being identified.

When viewing several photos at once, witnesses tend to choose the person who looks the most like – but may not actually be – the offender.

Additional recommendations:

- Prior to the photo array, get a description of the offender in the eyewitness's own words. Note things including location, time, distance, obstructions, lighting, weather conditions, etc.
- Ask eyewitness if she needs glasses or contacts and if they were using them at the time of the offense.
- Using technological tools, such as computer programs that can run photo arrays, are helpful.
- Inform the witness the offender may or may not be in the photo array.
- Tell the witness the investigation will continue whether or not an ID is made.

After the photo lineup . . .

- Confidence statements. Have the witness state, in her own words, how confident she was at the time identification was made.
- Eyewitnesses should not be permitted to communicate with each other until all ID procedures have been completed.

- Departments are encouraged to videotape the photo lineup.

PART II: **NEW CASES AND TRENDS**

These topics are determined by recent case law and legislation and are listed in alphabetical order.

TOPICS

- Burglary, Drugs and Gangs
- Civil Rights and Lawsuits
- Criminal Damage to Property
- Domestic Violence
- DWI
- Driving without Insurance
- Ethics
- Firearms
- Hate Crimes & Profiling
- Human Trafficking
- Juveniles
- Miranda
- Public Records

- Search & Seizure
- Search Warrants
- White Collar Crimes
- Violent Crimes
- Worker's Comp and Off-duty Peace Officers

BURGLARY, DRUGS AND GANGS

Note:

This section will show how a strategy for reducing burglaries has been successful in Albuquerque and Santa Fe.

First Albuquerque, then Santa Fe:

A few years ago, Albuquerque created a strategy to target burglaries which was highly successful. Santa Fe adopted a strategy (Operation Full Court Press) which had similar results.

News item: Santa Fe property crimes at 14-year low

Santa Fe Police are claiming improvement in their efforts to combat property crime. The Santa Fe metro area was first in the nation in 2010, but fell behind Pine Bluff, Ark., the following year.

Property crimes were down nearly twenty percent from 2012 to 2013. Similar results were noted in the county.

Police quickly noted a trend: Every burglar arrested was addicted to drugs. Police are hopeful of starting a program to get repeat offenders off drugs. Albuquerque Journal, January 9, 2014.

Note:

Many in law enforcement note a pattern: drug dealers sell to people who become addicted to drugs and commit burglaries (and other crimes) to support their habit

Many in law enforcement see the need to go after the source of crime: making the occupation of drug dealing less attractive. How bad is the drug problem in New Mexico?

New Mexico #1 for Drug Overdose . . .

News item: Doped-Up New Mexico is Overdose Champ

By Leslie Linthicum: The latest drug abuse data show New Mexico still leading the nation in deaths due to drug overdoses as we have for all but two of the past 20 years. We now die of drug ODs at a rate twice the national average. Albuquerque Journal, June 10, 2012.

News item: Overdose deaths in N.M. drop a bit

According to the NM state health department, the number of drug overdose deaths slipped slightly between 2011 and 2012. The number of drug overdoses, however, has increased.

The main reason for the reduction of deaths was due to Narcan (used to reverse overdoses) in the hands of first responders. Albuquerque Journal, September 4, 2013.

News item: Medication drop box popular

People with excess prescription pills can now drop them off in green boxes with white letters that look like mailboxes. The boxes already exist in 46 states, with a handful of them around New Mexico.

New Mexico Department of Public Safety is helping coordinate the program. Albuquerque Journal, August 19, 2013.

Note:

New Mexico is number one in the country for prescription drug abuse.

Note:

There is a perception that law enforcement in New Mexico is more interested in the user than the drug dealer.

In reality, many officers want a state-wide strategy to target drug dealers. State funding may be needed.

In the following story, State Police targeted a drug dealer and received positive press coverage.

News item: Suspected drug dealer arrested in teen's overdose death

A fourteen year old girl died from Ecstasy in Albuquerque. State Police talked to her two teenage friends and learned all three had purchased drugs from a dealer in Rio Rancho. He was arrested. KOB & KRQE News, November 26, 2013.

Note:

The story was on the front page (above the fold) of the Albuquerque Journal and the Santa Fe New Mexican. Governor Martinez released a statement supporting the arrest.

The public was impressed that law enforcement went after the drug dealer.

NEW TRENDS ON CIVIL RIGHTS & LAWSUITS

Some of the new programs or civil remedies used by law enforcement have been well received by the public. Other programs, however, have led to lawsuits.

Example of a program well received by public and held to be legal . . .

DWI Checkpoints:

Many states do not permit DWI checkpoints because there is no reasonable suspicion to stop a vehicle.

In 1987, the Court of Appeals approved DWI checkpoints in Las Cruces v. Betancourt. Strict guidelines were established: advance publicity, well marked DWI sobriety checkpoints, minimal intrusion.

DWI checkpoints, although causing inconvenience, are supported by a solid majority of the people of New Mexico.

Note:

Using civil remedies can be a good crime fighting tool. For success, however, the rules of law must be followed. The following examples will show the consequences when police plans, made with good intentions, don't follow the law.

Red light cameras in Albuquerque . . .

Fines were excessive and people felt they couldn't get due process – their day in court.

The cameras became so unpopular that the citizens of Albuquerque voted to get rid of them.

Misuse of public nuisance ordinance to shut down drug motels . . .

When drugs were found at a motel or apartment complex or there was a lot of crime, the City of Albuquerque would use code enforcement to shut it down. Albuquerque paid a total of \$1.7 million because due process wasn't followed.

News item: City Agrees to Pay \$495 Settlement

Albuquerque has agreed to settle part of a class-action lawsuit filed by residents who claimed the city's code enforcement policy caused significant damages, including displacement from their homes.

Their residence, often in run down motels, was red-tagged by code enforcement, compelling people to leave without a court order. The city is now required to provide a hearing before someone is evicted from their property. Albuquerque Journal, May 7, 2011.

Trying to reduce panhandling but not following the law . . .

News item: Homeless food case costs city \$120,000

Albuquerque Police arrested three people of a faith based group for feeding homeless people downtown.

Officers demanded a permit which they refused. They were arrested for inciting a riot, refusing to obey an officer, and failure to have a required permit (there is no law requiring a permit for giving away free food.)

Criminal charges were dismissed. The civil rights suit was settled when one person got \$45,000 and the other two got \$40,000 each.
Albuquerque Journal, August 20, 2013.

Trying to reduce DWI but not following the law . . .

Part of a DWI vehicle forfeiture law was declared unconstitutional in Albuquerque. It did not give an innocent owner – someone who lends his or her car to a sober person – a “meaningful” opportunity to contest the seizure.
Albuquerque Journal, November 23, 2013.

Trying to reduce prostitution . . .

News item: DWI forfeiture ruling a reason to drop ‘johns’ law

Editorial: The “johns” ordinance allows Albuquerque police to seize a vehicle used in a prostitution crime when a ‘john’ is arrested. A conviction isn’t required. What if a person is wrongly accused of a crime or the car used was a borrowed one? Forfeiture programs need to follow due process. Albuquerque Journal, November 27, 2013.

Seizing money on a vehicle stop. . .

News item: County to pay \$3 million

A state Judge has ordered Bernalillo County to pay more than \$3 million in damages to individuals whose cash was seized by law enforcement officers. The

City of Albuquerque settled a similar lawsuit for \$882,000 in 2009. Albuquerque Journal, March 5, 2011.

Note:

Forfeiture programs can be very helpful but rules (set out in the state statutes) and due process must be followed.

Lawsuits can be expensive . . .

News item: Lawsuits against APD have cost city \$23M since 2010

The lawsuits (up to March of 2014) were for excessive force and wrongful death. More pending cases will likely to raise this amount. Albuquerque Journal, April 11, 2014.

Avoiding lawsuits . . .

News item: You're free to go

APD has new witness detention policy; woman claims she was held anyway.

Her fiancé had been shot by APD. She went to the scene. She said she ended up sitting in a police vehicle for five hours, part of the time in handcuffs. "I felt like I was the suspect, not just somebody looking for information." Her detention came three weeks after a new policy that prohibits witnesses from being placed in police vehicles without their consent and allows witnesses to leave the scene at any time if they ask to do so.

The policy was changed to comply with federal case law, according to the city attorney. Albuquerque Journal, Nov 26, 2013.

Note:

To detain any citizen, reasonable suspicion is the standard.

NEW CASE ON CRIMINAL DAMAGE TO PROPERTY

Determining value

Husband was living with his new girlfriend. His wife entered the girlfriend's house and destroyed a lot of property (over \$1,000). Typically, the state has to present evidence of the property's age and condition to prove the value of property.

Supreme Court held where common household items have been totally destroyed, it is sufficient for the state to introduce evidence of the item's purchase price. State v. Cabrera (2013).

NEW CASES AND TRENDS IN DOMESTIC VIOLENCE

Misdemeanor DV Arrest Authority

The statute on arrest authority for misdemeanor domestic violence has some restrictive language. The statute reads:

NMSA 1978, Section 31-1-7: Arrest without warrant; liability.

Notwithstanding the provisions of any other law to the contrary, a peace officer may arrest a person and take that person into custody without a warrant when the officer is at the scene of a domestic disturbance and has probable cause to believe that person has committed an assault or a battery upon a household member.

What if the suspect has left?

FACTS:

Defendant kicked his girlfriend at the State Fair parking lot. Albuquerque police arrested him within seven minutes at a store across the street. A pat down was done and drugs were found.

Supreme Court upheld arrest for domestic violence because it was in close proximity of the incident. The arrest occurred within minutes of the incident and was a short distance away. State v. Almanzar (December 2, 2013).

What does this mean for a field officer?

If not in close proximity, an arrest warrant will be needed. The most important thing is the safety of the victim.

Note:

In regard to the underlined words in the statute – officer must be at the scene of the crime to make the arrest – this is the only statute in the criminal code that has that requirement

Many officers believe efforts to reduce domestic violence have not been successful. They note the many misdemeanor DV cases dismissed in court. They also sense that domestic violence is increasing and becoming more violent.

News item: Domestic Violence Cases Up 50 Percent

According to the District Attorney's office in Bernalillo County, felony domestic violence cases – those involving violent and even deadly attacks – have jumped 50 percent in the past two years (2009-2011). Albuquerque Journal, November 11, 2012.

News item: Report shows domestic violence still big problem

A new report shows an increase in weapons involved in domestic violence.

Bernalillo County: 2011 – 80% 2012 – 83%
New Mexico: 2011 - 61% 2012 – 65%

The number of people requesting protection orders went down significantly. Many felt the protection orders were not helpful. KOB News, October 9, 2013.

News item: Jail Rare for Domestic Violence

People involved in domestic violence have a pretty good chance of escaping jail time. A study in Santa Fe found that out of 174 domestic violence reports (from January through March of 2010), only two people spent more than a week in jail.

The study also found that if police show up at a domestic violence scene and the offender is no longer there, the chances of that person being picked up is about 50-50. Deputy Chief Gillian Alessio said “it’s pretty disturbing.”

The study found there was a lot of frustration among officers. One said, “I’ve been doing this for years, but I’ve never been called to court for a domestic.” Albuquerque Journal, January 19, 2012.

Note:

For many officers, the present system of confronting domestic violence is very frustrating.

NEW CASES AND TRENDS ON DWI

News item: DWI fatalities decrease in New Mexico

New data from the NM Department of Transportation shows the number of DWI fatalities dropped significantly in the past ten years. As recently as the

early 1990's, 300-350 New Mexicans were victims, Albuquerque Journal, March 14, 2014.

The 2013 figure (133) represents a 10-year decline of 38 percent since 2003 (214)

2003	-	214
2004	-	219
2008	-	143
2011	-	152
2012	-	155
2013	-	133

Vehicle Forfeiture can be helpful

Vehicle forfeiture began in Albuquerque. Since then it has expanded to Bernalillo County, Santa Fe, and Santa Fe County. It has proven to be an effective tool against DWI.

News item: DWI arrests declining yearly, KOB News, January 1, 2014:

In Bernalillo County

2009	-	6,776
2010	-	5,325
2011	-	4,988
2012	-	4,711
2013	-	4,003

News item: Santa Fe sees revenue from DWI Forfeitures

A Santa Fe ordinance forcing drunk drivers to give up their vehicles has given the city a bump in revenues. It has led to more than \$230,000 going into the city coffers.

The Department of Transportation has granted the city \$320,000 over three years to get the forfeiture program off the ground. Santa Fe New Mexican, October 19, 2012.

The impact of vehicle forfeiture on Santa Fe . . .

News item: Santa Fe Police cited for DWI work

The Santa Fe Police Department has been recognized as number one in the state for its work to stop drunken drivers.

The NM Traffic Safety Division and Safer NM Now named Santa Fe the most productive of about 70 agencies utilizing a DWI grant.

A number of reasons were given for the award including seizure of vehicles of drunken drivers. Albuquerque Journal, May 24, 2013.

Santa Fe County added to NM jurisdictions that seize vehicles . . .

News item: 2nd DWI means vehicle seized

The Santa Fe Commission approved a measure that will allow the county to seize the vehicle of anyone caught driving drunk a second time. Albuquerque Journal, August 28, 2013.

Note:

Many people recommend that proceeds from forfeiture be used for worthwhile causes rather than go to the general fund. Examples: police training, victims of crimes groups, etc.

DWI CASES

DWI – Blood Test

An example of state law differing from federal law:

The US Supreme Court in Missouri v. McNeely (2013) held the natural dissipation of blood may support a finding of exigent circumstances in specific cases. It added that whether a warrantless blood test of a drunk-driving suspect is reasonable must be determined case-by-case based on the totality of circumstances.

In New Mexico, the state legislature and courts have a different view:

- If a person under arrest for violation of the Motor Vehicle Code refuses a request of a law enforcement officer to submit to chemical tests, none shall be administered except when a municipal judge, magistrate or district judge issues a search warrant upon probable cause the person is under the influence and caused death or great bodily injury to another person or has committed a felony and the tests will produce material evidence in a felony prosecution. NMSA 1978, Section 66-8-111.
- Regarding search and seizure, New Mexico courts often use the state constitution and strongly encourage search warrants.
- Unlike federal courts, New Mexico does not have the good faith exception. In other words, failure to get a search warrant in a high profile case when one is required may result in loss of evidence.

Note:

If a person refuses to give blood, a search warrant is needed. If consent is given, recommend written or recorded consent.

DWI – Child Abuse

Several important cases came down involving DWI and child abuse.

DWI – Child Abuse – Knowing the victim

A person in Albuquerque, drunk and driving recklessly, plowed into the back of a vehicle. A child in the backseat of the other vehicle was killed. Instead of vehicular homicide, prosecutors chose the more serious charge of child abuse.

Defendant's drinking and reckless driving is a threat to all people on the road. Child abuse, however, requires more: specific criminal conduct directed towards children or a particular child. It involves a Defendant placing a child within a zone of danger and knowing the child is in a zone of danger.

Court of Appeals reversed the jury conviction of negligent child abuse. State v. Gonzales (2011).

DWI – Child Abuse – Moving Vehicle

In Eddy County, an intoxicated person drove a vehicle with his nine-year-old. In addition to DWI, he also was charged with child abuse by endangerment. NMSA 1978, Section 30-6-1.

Child abuse by endangerment, unlike child abuse, doesn't require physical harm. It occurs when a child is exposed to a significant risk of harm. An example would be placing a child in a situation that endangers life and health, with a substantial and foreseeable risk of injury, and with a reckless disregard to consequences.

Court of Appeals held that driving while intoxicated – standing alone – is sufficient to support child abuse by endangerment. Defendant put his child within a moving zone of danger. State v. Orquiz (2012).

But for child abuse, the vehicle must be moving . . .

DWI – Child Abuse – Non Moving Vehicle

State police officers in Farmington approached a pickup truck outside of a residence. Sitting in the driver's seat was the Defendant, his wife in the middle, and his four-year-old child on the other end. The vehicle was not running but Defendant held the keys in his hand. He said they had just stepped out of the house and he was getting ready to drive. His breath alcohol test was .15.

His conviction for DWI was upheld. What about child abuse? Court of Appeals said no. Stopped a few moments later, a conviction for child abuse would have been upheld. But the child was simply sitting in a non moving vehicle. The child could have been in danger but that's not the standard. State v. Etsitty (2012).

DWI – Driver sitting in a vehicle while intoxicated

Around 2010, a few cases gave guidance for an officer who approaches a vehicle with a drunk driver in it.

DWI - Physical Control

In a commercial parking lot, Defendant was passed out behind the wheel of his vehicle. The keys were on the front passenger seat. An Albuquerque Police Officer, upon waking him up, determined he was under the influence.

Previously, DWI was charged because an intoxicated driver, once awake, might start driving. The Supreme Court held more is needed; it must be shown that the driver had the intent to drive. Here, it appeared he had decided **not** to drive. DWI charge dismissed. State v. Sims (2010).

Note:

Intent can be shown in a number of ways: an admission by the driver, keys in the ignition, etc.

DWI - Inference of Past Driving

An officer in San Juan County saw driver inside a vehicle at a convenience store parking lot, intoxicated. Driver admitted consuming five beers and driving to the store.

One can use circumstantial evidence to infer a person was driving while intoxicated. This can be shown by admissions of the driver, location of the vehicle next to the highway, etc. Supreme Court upheld his conviction. State v. Mailman (2010).

Note:

For an intoxicated driver sitting in a vehicle, in addition to intent, DWI can be charged by showing the person drove to the location while intoxicated.

The importance of asking the right questions . . .

Facts:

Lea County Sheriff's deputies were dispatched to a possible domestic incident in a van parked on a roadside in Hobbs, New Mexico. Defendant was in the driver's seat and his girlfriend in the passenger seat, both intoxicated. The keys were not in the ignition.

Defendant admitted consuming twenty-four ounces of beer about an hour earlier. He failed the field tests. At trial, he was convicted after the state argued the jury could infer Defendant drove to the roadside location while intoxicated.

Court of Appeals disagreed, reversing Defendant's DWI conviction. Defendant did admit consuming alcohol one hour before speaking to the

Deputy. But there was no evidence **when** he parked the van or if he drove **after** consuming alcohol. State v. Cotton (2011).

Recommendation:

- We can learn from cases like this. In this situation, had the deputy asked a few more questions (when did you have your last drink?), there might have been a different outcome.

A crime lab analyst still has to testify in person

Can an analyst from the State’s Scientific Laboratory Division (SLD) testify at trial via a video conference as to the results of a blood test?

Court of Appeals said no, holding this was a violation of the right to confront witnesses. State v. Smith (2013).

Liquor Control Act

Administrative Hearing

Another tool against DWI is an admin hearing. Agents of the Special Investigations Division, NMDPS, did a sting operation at two stores in Clovis, New Mexico. A minor successfully purchased beer. Both stores and clerks were issued citations for violating the Liquor Control Act. NMSA 1978, Section 60-3A-1.

The NM Regulation & Licensing Division imposed a \$1,000 fine and a one day suspension of alcohol sales. There had been no conviction but the Court of Appeals held a criminal conviction isn’t required to impose an administrative fine. Town & Country Food Stores v. NM Regulation & Licensing Dept (2012).

Young people in New Mexico and alcohol . . .

News item: Website targets teen drinking

Since 2005, New Mexico high school students have been more likely to try alcohol before their 13th birthday than teens in any other state. Albuquerque Journal, May 6, 2013.

Proposals for DWI on the national levelNews item: Safety Board wants tougher DWI threshold

The National Transportation Safety Board recommends cutting the threshold for drunken driving by nearly half – from a .08 blood alcohol level to .05. More than 100 countries have adopted the .05 alcohol standard or lower. Albuquerque Journal, May 15, 2013.

On the state level . . .

In 2013, the state legislature failed to pass a state-wide vehicle forfeiture program.

In 2014, bills to increase sentences for repeat DWI offenders did not pass.

Some DWI advocates believe DWI should be a felony on the third offense. Twenty-one states now make DWI a felony on the third offense and four states on the second offense. Some people have noted:

- Third offense domestic violence (assault and battery) is a felony; second offense telephone harassment and stalking is a felony.
- Issuing Worthless Checks over \$25 is a felony.

DRIVING WITHOUT INSURANCE

Editorial: It's Up to Lawmakers to Fix License Problem

The impact of the 2003 law giving driver's licenses to illegal immigrants was revealed in a New Mexico State University study.

NM is second in the nation in uninsured drivers at 25.7 percent, and according to the Insurance Research Council, NM's number of uninsured drivers was between 25 and 30 percent from 2002-2008 despite the law. Albuquerque Journal, September 6, 2011.

Note:

Uninsured drivers include citizens and non-citizens. It had been hoped that giving driver's licenses to undocumented immigrants would lower the number of people driving without insurance.

ETHICS**News item: DA won't pursue charges against former Judge Murdoch**

Former Chief Judge in Bernalillo County Pat Murdoch was originally with CSP, intimidation of a victim, and other charges.

The DA's decision was three years in the making. "There won't be a prosecution," said DA "Spence" Pacheco. "The charges are weak." Albuquerque Journal, March 13, 2014.

News item: APD's case against former judge was 'terrible'

The District Attorney said she and her office had reviewed the case numerous times. It was a "bad case with bad facts."

Judge Murdoch was a favorite among prosecutors and defense attorneys alike – and of law enforcement. KRQE, March 17, 2014.

NEW TRENDS IN FIREARMS

Every gun is presumed to be a loaded gun . . .

News item: State settles lawsuit over Tasered child

The state will pay over a half a million dollars on behalf of a 10-year-old boy. Joking around, an MTD officer in Tularosa pointed his taser at the boy and pulled the trigger. Hit with 50,000 volts of electricity, the boy, who weighs less than 100 pounds, passed out.

Albuquerque Journal, August 15, 2013.

Open Carry & Camera

Scam artists like to target unwitting and gullible victims. In New Mexico, there's a new scam and it's all over YouTube. Who are the victims? Police officers!

A few things to know first:

- Need reasonable suspicion to stop and detain people.
- If there is no reasonable suspicion, a person can refuse to give ID to a police officer.
- People in New Mexico can “open carry” loaded firearms almost everywhere.
- People have a right to film police officers.

How the Scam Works

- A citizen walks brazenly down the street, firearm on hip, and citizens are concerned. What are you going to do?

- Many officers ask for ID and the majority of people furnish it. Some people refuse.
- These people may start to ask you questions: Am I being detained? Am I free to go? Have I committed a crime?

If you handcuff a person or detain a person without reasonable suspicion, we lose. You may find yourself on YouTube.

What to do

There may be other factors that indicate this person is a threat. If not, be polite and wish this (law abiding) person a nice day.

Note:

It's the field officer who pays the price when trying to resolve a problem of someone walking down the street openly carrying a gun.

One suggestion has been for legislation that such a person would have to present ID to an officer (like a driver of a vehicle) upon demand.

NEW TRENDS ON HATE CRIMES & PROFILING

- Good news: According to the FBI 2012 Hate Crime Statistics (Table 11), after Wyoming, New Mexico had the lowest number of hate crimes in the United States.

Profiling

In 2012 a civil rights group complained that many New Mexico towns and cities didn't have a profiling policy.

The NM Model Profiling Policy can be found on the DPS website: nmlea.dps.state.nm.us.

The NM Model Immigration & Consular Notification Policy can be found on the DPS website: nmlea.dps.state.nm.us.

HUMAN TRAFFICKING & PROSTITUTION

Law enforcement is looking at those who promote prostitution in a new way. Charges in the past would be promoting prostitution or accepting the earnings of prostitution. But there is another charge that is dramatic and having more of an impact.

Human trafficking targets (among other things) those “recruiting, soliciting, enticing, or transporting . . . another person with the . . . knowledge that force, fraud, or coercion will be used to subject the person to . . . commercial sexual activity. NMSA 19778, Section 30-52-1.

Note:

Victims can be eligible for benefits, regardless of immigration status, but have to cooperate in the investigation or prosecution of the offender.

News item: ABQ pimp gets one year

A man who forced a 17-year-old girl into prostitution has been sentenced to one year behind bars. Dante McKay pled guilty to human trafficking. KOB News, January 13, 2012.

News item: Albuquerque man pleads guilty to human trafficking

An Albuquerque man who forced a 17-year-old girl into prostitution pled guilty to human trafficking. Kendell Morrel was sentenced to three years in prison and two years probation when he is released. KOB News, January 19, 2012.

News item:

FBI rescues more than 100 children, arrests 150 pimps in sex-trafficking raid.

The FBI, joining forces with 230 agencies from around the country, launched a 72-hour operation targeting pimps who prey on children, mostly teens from 13 to 17 years old.

Since 2003, over 2,700 children have been rescued in similar operations. FOX News.com, July 29, 2013.

News item: Carlsbad Man get 3 years for trafficking

Father called his sixteen year old daughter, saying he needed money to pay a (drug) debt. At the motel he said they would give him \$500 and she could choose to do whatever she wanted to. She refused; father convicted of attempting trafficking and also as a habitual offender. Carlsbad Current-Argus, October 10, 2013.

News item: Agencies, adult clubs discuss sex trafficking

Joining a shift among law enforcement agencies across the country, a group of New Mexico sheriffs, federal agents and a dozen Texas state troopers

met with adult club owners in Albuquerque to discuss ways to battle sex trafficking.

According to the National Human Trafficking Resource Center, sex trafficking involves prostitution induced by force, fraud, or coercion. Albuquerque Journal, July 29, 2013.

Lesson to be learned:

It's a new approach to prostitution. The "pimp" is charged with trafficking and the prostitute is treated as a victim. Efforts are made to assist the victim.

JUVENILES

Contributing to Delinquency - Tattoo

Defendant drove her daughter and her friend Nicole (age fifteen) to a tattoo parlor in Ruidoso. Nicole had never met Defendant before. She said her mother had given her permission to get her tongue pierced (not true). New Mexico law (NM Admin Code 16.36.5.11) requires a minor to have a parent or guardian's consent and their presence during a piercing.

It seemed like a cool thing to do. Defendant signed a release form indicating she was Nicole's parent or guardian. Nicole got her tongue pierced.

Court of Appeals upheld the jury verdict of contributing to the delinquency of a minor. NMSA 1978, Section 30-6-3. True, Defendant did not actively encourage the piercing. But in transporting Nicole to the tattoo parlor, and falsely signing the release form, she helped Nicole to get a piercing by deceiving her mother. State v. Webb (2012).

If you're going to get into extortion, it helps to know the law . . .

News item: Teen is accused in sexual extortion

A 43-year-old man in Santa Fe had sex with a 17-year-old girl, but she's the one who got arrested for extortion.

She demanded \$1,500 or she would claim rape for his having sex with a minor. She was unaware 16 is the age of consent in New Mexico.

Had the man been in a position of authority, it would have been a criminal offense.

Depending upon the age of the couple, the age of consent can be even less. Albuquerque Journal, May 17, 2013.

MIRANDA

A few years ago, New Mexico had two extraordinary "false confession" cases. As of 2014, one of the cases is waiting to be settled. Both cases are important and need to be reviewed again.

News item: DA drops Murder Charges Against 2

Two men were released after spending fifteen months in jail. One had confessed to the murder of an elderly Korean couple (Mr. and Mrs. Yi) in Albuquerque. DNA collected from under the victim's fingernails was matched to a career criminal in prison for another homicide.

Albuquerque Journal, March 12, 2009.

News item: Albuquerque to Pay \$950K in Yi Murders

The city of Albuquerque has agreed to pay \$950,000 to a door-to-door salesman who once faced a potential death penalty prosecution for a murder committed by another man.

A false confession by a co-worker helped put both in jail for 15 months. Albuquerque Journal, June 22, 2011.

News item: [Slaying Suspect Freed, DNA matches to Another Man](#)

In Albuquerque, a mentally challenged young man (Robert Gonzales) falsely confessed to the brutal rape and murder of a young girl. She was eleven-years-old. He spent thirty-two months in jail when DNA pointed to another person. [Albuquerque Journal](#), June 28, 2008.

News item: [Lawyer says it never had to happen](#)

The city of Albuquerque is paying \$1.3 million to Robert Gonzales. Another person confessed to the crime. The new confession was corroborated.

The state paid \$45,000 on behalf of the District Attorney's Office for malicious prosecution. [Albuquerque Journal](#), August 14, 2010.

Lesson learned:

For two false confession cases, Albuquerque will pay a little over three million dollars. Mistakes were made; other police departments need to learn from those mistakes.

Miranda – Waiver: “Not at the moment.”

After Defendant said he understood his rights, a Farmington police detective asked if he wished to answer questions. Defendant replied, “Not at the moment. I’m kind of intoxicated.”

The detective said intoxication was not a reason. In one way or another, the detective told the defendant to sign the (waiver of rights) form six times before he actually signed. He gave an incriminating statement and was charged with murder.

Supreme Court noted a person doesn’t need a reason to invoke his right to remain silent. They added Defendant was clear when he said he didn’t want to give a statement. The statement was suppressed.

State v. King (2013).

Note:

If an individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.

PUBLIC RECORDS

New Mexico has an Inspection of Public Records Act (IPRA) which empowers private citizens to enforce public records laws. Attorney fees can be awarded to attorneys who prevail in cases under IPRA.

Lincoln County, with the backing of Governor Richardson, did an investigation to determine whether the person in a grave in Fort Sumner is really Billy the Kid. A DNA analysis was done for blood stains left on a bench where the Kid reportedly was laid after his 1881 shooting. When the investigation was done, no one said anything.

The De Baca County News and a private citizen sought records or results of the investigation under IPRA but Lincoln County refused. A District Court Judge awarded upwards of \$195,000 in attorney fees. Albuquerque Journal, June 17, 2013.

But nobody told BCSO . . .

News item: County must pay \$140K for records request failures

A judge had ordered Bernalillo County to pay almost \$140,000 – and counting – for failing to provide public records quickly and completely to a person trying to gather information for a whistleblower suit against the Sheriff's office. Albuquerque Journal, Nov 22, 2013.

NEW CASES ON SEARCH & SEIZURE

Consent – Being Professional

New Mexico State Police utilized helicopters and ground teams in Taos County to look for marijuana plantations. They saw a greenhouse and marijuana in Defendant's backyard.

An officer asked for permission to search the residence. Defendant: "What happens if I say no?" The officer said he would secure the residence and try to get a warrant at the DA's office. Defendant: "Well, I guess I don't really have any options, do I?" Officer said it was his decision. Consent was given and marijuana plants seized.

Supreme Court held consent was voluntary. Only one officer spoke to Defendant, in a polite manner. Defendant could move around freely. All officers remained outside until consent was given. Telling Defendant he would try to get a warrant was a reasonable explanation of what the officer was going to do. State v. Davis (2013).

Dogs and Houses

Use of a trained sniffing dog on the front stairs of a home was a search under the Fourth Amendment.

United States Supreme Court held that entering the curtilage of a person's home for the purposes of conducting a search violates the Fourth Amendment, even if the officer is in an area where visitors are normally permitted. Florida v. Jardines (2013).

Expectation of Privacy

Vehicle stops based upon knowledge driver has revoked license

Officer in San Juan County "ran" a license plate of a vehicle which indicated the owner had a revoked license. The officer stopped the vehicle

without making any effort to visually observe the driver prior to the stop. The driver was DWI.

Court of Appeals, relying upon the state constitution, held the notice of revocation was sufficient reasonable suspicion for the stop. Conviction upheld. State v. Hicks (2013).

News item: Who's Watching you Now

In Albuquerque, thousands of license plates are photographed, stamped with time and location, and sent to a federal database. Within 0.017 seconds, computers determine whether the plate belongs to a stolen car or if the owner has an arrest warrant or is a missing person.

Previously, the information was stored for six months. After complaints about privacy, APD reduced the time for storage from six months to 14 days. Albuquerque Journal, August 25, 2013.

Officers recording one another

Officers sometimes ask: Should there be a policy regarding people in a law enforcement agency recording one another?

The following policy has been adopted by the New Mexico Department of Public Safety. If your agency doesn't have a policy, you may wish to use it. (Use of Recording Equipment, paragraph 10):

- Under no circumstances, except those instances involving criminal investigations of Department personnel, will a conversation between DPS employees be recorded without all parties to the conversation being aware of the fact that the conversation is being recorded.

NEW CASES ON SEARCH WARRANTS

Probable Cause

Search Warrant – Controlled buy

To establish probable cause in a search warrant, when a confidential informant is used, we need to show (1) the CI is reliable, and (2) how the CI got its information. One way to show reliability is the CI provided reliable information in the past.

On an affidavit from Logan, New Mexico (Quay County) it noted: “Affiant believes this information to be credible because the CI has performed at least two controlled purchases of quantities of controlled substances.”

This indicates the CI cooperated with officers to make a controlled buy. It does not indicate if the CI provided information in the past that proved to be reliable or true and correct.

Because the affidavit failed to establish reliability, Court of Appeals suppressed the evidence (drugs, scales, packaging materials).
State v. Vest (2011).

Execution

Search Warrant - Curtilage

After three controlled buys, Santa Fe police obtained a search warrant for a “residence and surrounding curtilage.” Curtilage is the enclosed space of grounds and buildings immediately surrounding a dwelling house. A person has an expectation of privacy in this space which means it needs to be included in a search warrant.

Executing the warrant, officers were surprised to see a detached guesthouse (where Defendant lived) in the backyard. A wall surrounded the residence and guesthouse. They saw Defendant leave the guesthouse and searched it. All drugs found were in the guesthouse.

Two residences, separately occupied, on the same property. Court of Appeals held the guesthouse had its own expectation of privacy. To search it, another warrant was required. Drugs suppressed; trafficking charges dismissed. State v. Hamilton (2012).

VIOLENT CRIMES

News item: Albuquerque's notorious crimes of 2013

Despite a juvenile killing five members of his family, the number of homicides in Albuquerque was the lowest in over twenty years. In 1996, there were 70 homicides; in 2013, there were 29 homicides.

Albuquerque Journal, January 2, 2014.

A nationwide trend but other states are doing better. .

News item: NM is 4th Most dangerous state

New Mexico is 4th worse in violent crime. Topping the list is Alaska, Nevada, and Tennessee. KRQE NEWS, October 6, 2013

WHITE COLLAR CRIMES

News item: Cost of audit, remedy: \$21 million

An audit of 15 providers that showed big problems in the New Mexico's behavioral health system cost \$3 million and future audits of the troubled nonprofits could cost almost \$18 million more.

The department cut off funding to the 15 New Mexico nonprofits after a review showing \$36 million in overpayments raised questions about their business practices. Albuquerque Journal, June 28, 2013.

Debit Cards

Victim's house was burglarized in Clovis, New Mexico. Her purse and debit card were among the items stolen. That same morning, Defendant used her debit card to make \$83 worth of purchases at two convenience stores and a Lowe's Hardware store. A fourth attempt at Walgreens was unsuccessful.

Defendant argued a debit card is a credit card and he should be charged with fraudulent use of a credit card, a petty misdemeanor. But there is another, more appropriate charge.

Remote Financial Service Unit Act (RFSUA) – where do they come up with these names? – NMSA 1978, Section 58-16-16-B, a fourth degree felony, applies when a debit card, an ATM card, or a credit card with a pre-approved credit line, is used.

Court of Appeals upheld four convictions of violation of RFSUA and identity theft, also a felony. State v. Castillo (2011).

Note:

- For debit cards or ATM cards use RFSUA, a fourth degree felony.
- In such cases, also recommend charging identity theft, a fourth degree felony.
- A violation of RFSUA does not require an offender be successful or to obtain something.

WORKER’S COMP AND OFF-DUTY PEACE OFFICERS

A legal win arises from a tragedy . . .

In 2002, Pojoaque tribal police officer Kevin Schultz took a day off from work to chaperone a group of children. He lost his life while saving a twelve-year-old boy in the Rio Grande near Pilar, New Mexico.

Supreme Court overturned a decision by the workers’ compensation judge that the widow wasn’t entitled to benefits because her husband wasn’t performing the duties of his job when he died. The case was sent to the Court of Appeals for additional review. Schultz v. Pojoaque Tribal Police Department (2013).

News item: Officer’s widow granted benefits

Court of Appeals held the widow of an off-duty tribal police officer who died while saving another from drowning is entitled to workers’ compensation benefits.

The court said benefits will be provided for off-duty officers injured or killed in emergency situations “reasonably calling for police officer assistance.”

Albuquerque Journal, August 21, 2013.

CONCLUSION

Law enforcement in New Mexico has had a number of victories but there is more to be done. This can come about if we support our Chiefs and Sheriffs and push for reform. But we need to also utilize our officers and deputies who are a valuable source for new ideas.

Wide-spread support is needed if we are to achieve reform, for new legislation on gangs, forfeiture, DWI, etc.

There is much work to be done. Together, we can make it happen.

Legal outlines and newsletters (legal cartoons) of New Mexico cases can be found on the DPS Law Enforcement Academy website:

<http://nmlea.dps.nm.us>

COURSE AUDIT

PRIMARY INSTRUCTOR:

SECONDARY INSTRUCTOR:

SUPPORT STAFF (i.e.: Scenario Managers, Role Players, etc):

DATE(S)/ TIME(S) OF INSTRUCTION:

LOCATION OF INSTRUCTION:

RECOMMENDED CURRICULUM CHANGES: Identify inaccurate information, outdated information, new information to be added to update material, etc. (Use additional pages if necessary)

COURSE AUDIT (Continued)

ADDITIONAL INSTRUCTOR COMMENTS: (If any portion of the course content was not presented, indicate the specific content here)

If course content other than the NMDPS TRD approved Basic or PST academy curriculum is taught, the alternative curriculum must be submitted to the Law Enforcement Academy Deputy Director's office and approved prior to delivery of the alternative instructional materials.

Alternative curriculum was taught.

Accreditation number of alternative curriculum:

	SIGNATURE	DATE
Primary Instructor	<input type="text"/>	<input type="text"/>
Reviewed by Program Coordinator	<input type="text"/>	<input type="text"/>
Reviewed by Bureau Chief	<input type="text"/>	<input type="text"/>
Reviewed by LEA Director or Designee	<input type="text"/>	<input type="text"/>



