

INTRODUCTION TO LAW - ONLINE

Law enforcement in New Mexico

PRESENTED BY:

DPS – Law Enforcement Academy
Santa Fe, New Mexico

Date: _____

Class includes: Authority & Jurisdiction, Criminal Procedure, and NM Criminal Justice.

GOALS

- For students to have an overall understanding of the criminal justice system and the role of law enforcement officers within it.

OBJECTIVES

Upon completion of this course, students will be able to:

- List the most important parts of the US Constitution as it applies to law enforcement.
- Know the sources of law from the Constitution to the three branches of government: Executive, Legislature, and Judicial.
- Understand the differences between court systems in New Mexico.
- Explain the difference between a misdemeanor and felony.
- Be able to find a statute in the New Mexico state statutes.
- Know the rules of criminal procedure and how to find them.
- Know the different court systems in NM from municipal court to the Supreme Court.
- Define venue and jurisdiction.
- Explain what happens to a criminal case from arrest to conviction.
- Articulate what happens before trial: arraignment, preliminary hearing, Grand Jury, plea bargaining, pretrial motions, suppression hearings.
- Articulate what happens during a trial: the role of the Judge, defense, and prosecution.
- Articulate what happens post-conviction: the role of corrections, probation and parole.

SOURCES

- New Mexico Criminal and Traffic Manual
- New Mexico Statutes Annotated
- State and federal case law.

ESTIMATED TIME Authority & Jurisdiction (6), NM Criminal Justice (2) = Eight hours
Criminal Procedure is included in Authority & Jurisdiction.

PREPARED BY

Legal Instructor – Elliott Guttman
Department of Public Safety
Law Enforcement Academy
Santa Fe, New Mexico

DATE OUTLINE APPROVED _____ **ACCREDITATION NUMBER** _____

INTRODUCTION TO LAW

INTRODUCTION

Few professions are as exciting or noble as law enforcement. What motivates us is a desire to serve others. It may be protecting a frightened child from abuse or a terrified homeowner from a burglar, rescuing a tearful hostage, helping a worried store clerk feel safer, or returning property to a hapless victim. The examples are endless.

But there's more . . .

We serve the country. We are a nation of laws, founded on the Constitution. Officers are entrusted with the responsibility to uphold the laws and the Constitution. We need to remember, of course, that it is our fellow citizens who gave us this responsibility.

To become a professional officer, an outstanding officer, requires a number of things. It may not be number one but it's certainly toward the top of any list: a clear understanding of the laws, the legal system, and the Constitution that we have sworn to uphold and protect.

And now we begin . . .

1. Sources of Law (includes Constitution, Legislative, and Case Law)
2. Different Court Systems in New Mexico
3. The Criminal Case - From Arrest to Conviction
4. The Law Enforcement Family
5. Conclusion

SOURCES OF LAW

The law that a law enforcement officer will enforce and uphold is derived from three major categories: 1) the US and New Mexico Constitutions, 2) the legislative branch, and (3) the judiciary or judges.

SOURCE OF LAW: US AND NEW MEXICO CONSTITUTIONS

After the Revolutionary War, a rare moment occurred, a chance for people to create their own government. A number of delegates met in Philadelphia, in the hot summer of 1787, to draft a constitution.

- The Constitution begins, "WE, THE PEOPLE."
- A major goal is to protect the rights of the people.
- One of the most important documents in history, it unifies the American people.
- The position of a law enforcement officer is a sacred honor entrusted by fellow citizens.

- Each Chief owes her or his position to an elected official; a Sheriff is an elected official.
- Every law enforcement officer takes an oath to protect and uphold the constitution.
- Constitutional Policing is based upon knowing case law and following the constitution.

Three Branches of Government . . .

The Constitution created not one but three branches of government. The reason for this is so that each branch could operate as a check and balance on the other.

- Legislature - make laws
- Executive - enforce laws
- Judicial - interpret laws

And yet the Constitution, when first proposed, wasn't enough . . .

The American people wanted more. They wanted certain rights – Constitutional rights – in writing. The result was the first ten amendments also known as the Bill of Rights.

Looking at the Constitution, we see two main parts:

- The Constitution, and
- The Bill of Rights (as law enforcement officers, we will learn a lot about this).

Note:

[When people talk about Constitutional rights, they're referring to the Bill of Rights.](#)

State Constitution

New Mexico has a state constitution. Judges on the state level may give more rights than Judges on the federal level but not fewer rights.

SOURCE OF LAW: THE LEGISLATURE BRANCH

Laws are written to give people notice that certain behavior is criminal.

An example of how laws have different names:

- US Congress - Laws
- State Legislature - State Statutes
- County Commission - County Ordinances
- City Council - City Ordinances

The state statutes have many chapters. Two important chapters for law enforcement officers are:

- An interpretation of law by an appellate court is binding. Lawyers and other judges under the jurisdiction of the appellate court use the decision as guidance for their cases.
- What guides court decisions? While looking at legislative intent, a major goal of a court is to uphold the Constitution and protect the rights of citizens.
- Law enforcement officers have a similar goal: protect the public while respecting the constitutional rights of citizens.

Judges serve an important role in protecting our rights.

- Miranda rights
- Search & Seizure cases
- Segregation cases

An oath to the Constitution, taken by every officer, includes a commitment to follow judicial decisions that interpret the Constitution.

Court Rules

Court rules are important and begin at the time of arrest. They deal with everything from the filing of a criminal complaint to time limits and discovery requirements.

For example, District Court Rules of Criminal Procedure, Rule 5-211 deals with search warrants. It states a search warrant shall be executed within ten (10) days after it's signed.

Rule 5: Rules of Criminal Procedure for District Courts.

Rule 6: Rules of Criminal Procedure for Magistrate Courts.

Rule 7: Rules of Criminal Procedure for Metropolitan Courts.

Rule 8: Rules of Criminal Procedure for Municipal Courts.

Note:

These rules can be found in the New Mexico Criminal and Traffic Law Manual.

DIFFERENT COURT SYSTEMS

Criminal v. Civil - What is the difference?

- In criminal cases, the state is prosecuting someone and wants a fine or incarceration. In civil cases it's normally one person suing another, usually for money.

Adult v. Juvenile - What is the difference?

- The juvenile system is different from the adult system. A juvenile, for example, will be booked into a D-home as opposed to an adult detention center.

- What is the age limit that separates a juvenile from an adult? (18)
- Until the 1990's, maximum incarceration for a juvenile was two years. Age limit has since been lowered for certain violent crimes and a juvenile may be tried as an adult.

Administrative Courts

This is a subcategory of the civil system which includes administrative hearings. Examples include revocation hearings, forfeiture hearings, etc.

CLASSIFICATION OF CRIMES

Definition of Crime

An act or **omission** forbidden by law and for which, upon conviction, a sentence of either death, imprisonment, or a fine is authorized. NMSA 1978, Section 30-1-4.

- An example of how an **omission** can be a crime: failure to report child abuse.

Definition of Felony - NMSA 1978, Section 30-1-6

A crime is a felony if it is so designated by law or if upon a conviction thereof a sentence of imprisonment for a term of one year or more is authorized.

Degrees of Felonies - NMSA 1978, Section 30-1-7

<u>Degree of felony</u>	<u>No Death</u>	<u>Death</u>
Capital felony		Death penalty
1 st degree felony	18 years	Life = 30 years
2 nd degree felony	9 years	15 years
3 rd degree felony	3 years	6 years
4 th degree felony	18 months	18 months

- The death penalty was repealed in New Mexico in 2009.

Definition of Misdemeanor - NMSA 1978, Section 30-1-6

A crime is a misdemeanor if it is so designated by law or upon conviction thereof a sentence of imprisonment in excess of six months, but less than one year is authorized.

“six months to 364 days”

Definition of Petty Misdemeanor - NMSA 1978, Section 30-1-6

A crime is a petty misdemeanor if it is so designated by law or upon conviction thereof a sentence or imprisonment for six months or less is authorized.

“six months or less”

MISDEMEANORS AND FELONIES - SOME MORE DIFFERENCES

MISDEMEANOR

Maximum sentence of 364 days.
Sentence served in local jail.

FELONY

One year or more.
Sentence - State Penitentiary or prison.
Loses right to certain occupations.
Cannot carry a firearm for 10 years.
No voting while serving sentence
Case heard in District Court.

Can a person convicted of a felony vote in New Mexico? Yes, once their sentence is served.
NMSA 1978, Section 31-13-1.

- There is a federal law that says if you're convicted of domestic violence, misdemeanor or felony, you cannot carry a firearm for life.

THE STATE COURT SYSTEM IN NEW MEXICO

- Trials are heard in the lower courts: Magistrate, Municipal, Metro, and District Court.

TRIAL COURTS

Municipal Court - NMSA 1978, Section 35-14-1

- Generally refers to an incorporated municipality.
- Will hear violations of city or municipal ordinances.
- Petty Misdemeanors only.

Magistrate Court - NMSA 1978, Section 35-3-1

- Generally refers to the County.
- Misdemeanors and Petty Misdemeanors.

Metropolitan Court - NMSA 1978, Section 34-8A-1

- Established in counties with a population of more than 200,000 people.
- Albuquerque used to have a Municipal Court and Bernalillo County a Magistrate Court. The two courts combined and became Metro Court.

District Court - Felonies

- There are thirteen (13) judicial districts in New Mexico; some cover multiple counties.
- Each Judicial District has a district courthouse.
- Misdemeanor cases may be appealed to District Court.

APPELLATE COURTS

Note:

A case can be appealed to the Court of Appeals and the Supreme Court. Once these courts issue an opinion, it is binding throughout New Mexico.

Court of Appeals

- Reviews cases on appeal from District Court.

Supreme Court

- Typically hears cases on appeal from the Court of Appeals.
- Final appeal in New Mexico.
- A case appealed from here may go to the Supreme Court of the United States.

THE FEDERAL COURT SYSTEM

- Cases include bank robberies, immigration cases, cases from Indian reservations, federal civil rights lawsuits, multi-state crimes, violations of federal laws, etc.

Venue

The geographic location in which a case is tried. Venue usually is in the city or county where a crime occurred. Either party may request a change of venue in order to avoid prejudice. This may occur in a high profile case. NMSA 1978, Section 30-1-14.

Jurisdiction

The authority of a particular court to hear a case. Magistrate, Municipal, and Metro Court have jurisdiction over misdemeanors while district court has jurisdiction over felony cases.

THE CRIMINAL CASE - FROM ARREST TO CONVICTION

1. Before trial,
2. During trial,
3. After trial.

BEFORE TRIAL

The Statute of Limitations

An indictment or information or complaint that begins the prosecution process must be filed within a certain time period. NMSA 1978, Section 30-1-8 gives some examples:

- A misdemeanor must be prosecuted within two years.
- A 3rd or 4th degree felony must be prosecuted within five years.
- There is no statute of limitations for a first degree felony.

Ways in which the Statute of Limitations may be tolled or suspended

- If a defendant conceals him or herself or flees the jurisdiction.
- If the indictment, information or complaint is quashed. NMSA 1978, Section 30-1-9.

A crime has been committed . . . to arrest or not to arrest

- For felonies, generally an arrest will be made.
- For misdemeanors, must be in presence of officer (there are a few exceptions).

To cite or arrest . . .

For some misdemeanor offenses a citation is used in lieu of arrest. In traffic cases some people refer to this as a “traffic ticket.”

- An arrest takes place when an officer takes a suspect into custody in order to transport the suspect to the police station or jail to charge the person with a crime.

Booking

At booking, the suspect’s name, offense, and other information is noted. Miranda warnings are not required for routine booking questions. Suspect may be photographed and fingerprinted.

Filing a complaint

- A complaint that includes the charges and probable cause is prepared.
- A copy of the complaint is given to the suspect.

First Appearance Arraignment

- Defendant appears before Judge within forty-eight hours (includes weekends, holidays).
- Court decides if criminal complaint has probable cause.
- Defendant advised of charges and potential punishment.
- Court reviews conditions of release.

Felony:

If person is in jail, Grand Jury within ten days or person will be released.

Misdemeanor:

Case must go to trial within 182 days (six months rule) unless there is a continuance.

Bail

Bail ensures the appearance of the accused in court and allows persons who haven’t been convicted to remain free. The Eighth Amendment prohibits excessive bail.

District Attorney Screening

The DA’s office may refer a case to a Pre-Prosecution Program (PPP).

Cases may be dismissed for a number of reasons:

- Insufficient evidence.
- Too old to prosecute.
- Legal issues such as Miranda, search and seizure problems, etc.
- A felony offense may be refilled as a misdemeanor.

Felonies only: A Grand Jury or Preliminary Hearing

Is there enough probable cause for a felony charge to go to trial? Some counties in New Mexico use a Grand Jury and some use a Preliminary Hearing.

Grand Jury

- A right to a Grand Jury is provided by the Fifth Amendment.
- Eight out of twelve people are needed to vote for probable cause.
- If the vote is for probable cause, it's a true bill; if not, it's a no bill.
- The form signed by the Grand Jury foreman is called an Indictment.
- People in Grand Jury include a prosecutor, witnesses, jurors, and a recording secretary.
- Not open to the public.

Preliminary Hearing

- A Judge hears evidence in open court to determine if probable cause exists.
- If probable cause exists, the Judge will "bind over" the defendant for trial.

Arraignment

- Once an indictment or information has been filed (this is for felonies only), Defendant is arraigned" on the information or indictment.
- Includes reading charges, entering a plea of guilty or not guilty, and review of conditions of release.

Motion hearings

Normally defense attorneys file motions. If a confession or evidence can be suppressed, it helps their case.

Examples of motion hearings:

- Motion to change venue (used in high profile cases)
- Motion to suppress evidence (Example: search & seizure issues)
- Motion to suppress confession (Example: Miranda rights not read)
- Discovery issues (to get police reports or witness interviews)

Discovery means each side provides the other side with their materials. No ambush, no surprises. Each side must give the other a witness list of whom they intend to call.

Both sides can interview witnesses of the other side with one exception: the State does not have the right to interview the defendant.

After a motion hearing, the District Attorney has numerous options:

- If important evidence is excluded, may have to dismiss a case.
- A plea agreement
- Go to trial.

Plea bargaining

The great majority of cases are plea bargained. Advantages for a prosecutor include:

- To use the testimony of one defendant against another
- To save courtroom time
- To get a guaranteed conviction

Advantage for the defendant: To obtain a guarantee for sentencing.

DURING TRIAL

A common theme in every trial is the protection of individual rights. It is a theme that guides Judges in their decisions and is the basis for a number of legal principles that guide the trial process. Some of the legal principles follow:

The “Big Picture” - Judge, Prosecutor and Defense Attorney

- Role of the Judge - to be impartial
- Role of Prosecutor - to seek justice, represents state.
- Role of Defense Attorney - to zealously represent his or her client

A prosecutor – and police officers are often prosecutors – needs to remember that it is justice that guides us.

Evidence that helps the defendant is known as exculpatory evidence. If a prosecutor has exculpatory evidence, this needs to be given to the defendant. Brady v. Maryland (1963).

Some people question defense attorneys and ask how they can defend people they know are guilty. But that’s the wrong question.

It's not the role of defense attorneys to decide the guilt or innocence of their clients. Their role is to challenge the State, to make sure the State has met its burden of proof.

Burden of Proof

- The State has the Burden of Proof, to bring forth evidence to prove a defendant is guilty.
- Defendant does not have to prove he or she is not guilty or didn't do the crime.

Presumed Innocent

A criminal defendant at trial is presumed innocent. This presumption remains until the State presents evidence to refute this.

The Jury System

The Constitution guarantees a jury trial for most criminal cases.

Legal Standards for a verdict in the Courtroom

Beyond a Reasonable Doubt

- Highest standard of proof. Needed to convict a defendant in a criminal trial.

Preponderance of the Evidence

- A standard a plaintiff must meet to prevail in a civil trial.

Trial verdicts

What happens during a trial will be covered extensively in another class (Trial testimony, Peace Officer as Prosecutor).

- In a jury trial, need twelve out of twelve for a verdict of guilty or not guilty. When jurors cannot reach a decision, it's called a hung jury. A judge will declare a mistrial. The prosecutor will decide whether to retry the case or not.

POSSIBLE VERDICT

1. Guilty.
2. Not guilty.
3. Not guilty by insanity.

Note the verdict says NOT GUILTY instead of innocent. The jury may feel the person did the crime but that the prosecution didn't provide enough evidence to find the defendant guilty beyond a reasonable doubt.

In some jurisdictions the possible verdicts are GUILTY or NOT PROVEN.

There used to be a verdict of Guilty but Mentally Ill but this was eliminated in 2010.

AFTER TRIAL

Sentencing is done by the Court.

Probation and Parole

- Instead of jail or prison, a person is given probation.
- Parole is given to a person after release from prison to help adjust or reintegrate with the community.

Serving time

- Juvenile offenders will serve time in a juvenile facility.
- Misdemeanor offenders will be sentenced to the local detention center (jail).
- Felony offenders will be sentenced to a state penitentiary (prison).
- Female inmates are in a separate prison.

THE LAW ENFORCEMENT FAMILY

One thing that surprises new officers is how extensive the law enforcement family is. There are many different agencies. We need to work with each agency, to share credit and respect the other person, and remember that our duty and responsibility is to serve the public. Some of the agencies follow:

The Prosecution

Prosecutors have different names depending on which agency they work for:

City	Assistant City Attorney
County	Assistant County Attorney
District	Assistant District Attorney
State	Assistant Attorney General
Federal	Assistant US Attorney

- The Attorney General represents the State in civil or criminal actions against the state. The AG also acts as a legal advisor to state agencies and provides investigative assistance to local agencies.

Telecommunications

An extremely important part of the Law Enforcement Family.

Federal and Tribal Agencies

To name a few: FBI, BIA, IRS, Postal Inspectors, DEA, US Forest Service, ATF, US Marshall, military police, and many others.

State Agencies

To name a few: Game and Fish, Livestock Inspectors, State Parks, Board of Pharmacy, state regulatory agencies, and many others.

Department of Public Safety

There are three main agencies in the Department of Public Safety (DPS) which merged in 2015: New Mexico State Police, the Special Investigations Division (SID), and the Motor Transportation Division (MTD).

Also under DPS is the nationally recognized and highly respected Law Enforcement Academy.

CONCLUSION

Knowing the law and applying the constitution – constitutional policing – is the heart of law enforcement reform.