

LEGAL UPDATE FOR LAW ENFORCEMENT (2024-25)

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Legal Update for NM Law Enforcement: 2024 – 2025

OBJECTIVES

- To understand recent trends affecting law enforcement in New Mexico.
- To understand recent cases affecting law enforcement in New Mexico.
- To become familiar with recent legislation affecting law enforcement in NM.

GOALS

- Know what ending qualified immunity means for police officers in NM.
- Know new proposals for police working with mentally ill and homeless.
- Explain how proactive policing may soon be changing for officers in NM.
- Explain how police should handle panhandling in New Mexico.
- Describe how changes in DNA technology can assist law enforcement in NM.
- Describe how automatic license plate readers can assist law enforcement in NM.
- Know arguments for and against legalization of marijuana in NM.
- Know how DWI forfeiture laws have changed in NM.
- Explain the difference between stop and frisk in New York and New Mexico.
- Explain limits on asking questions on a vehicle stop in New Mexico.
- Describe how to avoid a false confession in New Mexico.
- Describe changes in community caretaker exception in recent years in New Mexico.

SOURCES

- State and federal case law.
- Local and national news media, including google and YouTube.
- Books and news articles on policing.
- New Mexico Statutes Annotated.

ESTIMATED TIME Two hours – eight hours.

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DATE APPROVED _____

ACCREDITATION NUMBER _____

Note:

For officers who want to look up statutes and recent case law, there is a valuable resource and it's free.

NMOneSource.com

Go to the link that says: Current New Mexico Statutes Annotated, 1978.

The word “annotated” refers to recent cases that apply to a particular statute.

Every so often, the state legislature renumbers all the statutes. The last time this happened was 1978 which is why one sees “1978.”

Two chapters are helpful for law enforcement: Chapter 30 (Criminal Code) and Chapter 66 (Traffic Code).

INTRODUCTION

After George Floyd, law enforcement saw some of the biggest changes (and new trends) in a generation.

As we discuss trends, the “big picture,” we will also be mentioning new legal cases and news articles. These news articles, similar to footnotes, show where the information is coming from.

First, however, some good news: almost overnight, NM (because of oil and natural gas) became a very wealthy state. Sales from cannabis have also done very well.

This has led to billions of dollars in new money. Senator George Munoz called it a “once-in-a-century” opportunity.

News item: NM will have 3.48 billion in new money next year

Oil production has gone up 50% in NM in less than three years.
KRQE, December 11, 2023.

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PART ONE: MAJOR CHANGES IN POLICING

For many years Chiefs and Sheriffs said, “Officers are expected to do everything: be social workers, mental health workers, take care of the homeless, etc. Many argued, “This is too much!”

Changes came quickly and there was a transformation in policing. Among other things, we will be talking about these changes.

THE TOP TEN: NEW TRENDS FOR NM LAW ENFORCEMENT

- Changes in how Police interact with the Homeless.
- Changes in how Police interact with the mentally ill.
- Changes with Police and Sex Workers/Missing persons.
- Changes in how Police work with Panhandling.
- Changes with Police and domestic violence.
- Changes in how Police interact with drug users.
- Using civilians to assist officers and detectives.
- Changes Police have made to avoid lawsuits.
- Changes in how Officers are held accountable.

- Changes in pay parity of officers and dispatchers.

CHANGES IN HOW POLICE INTERACT WITH THE HOMELESS

The DOJ came to Albuquerque in 2014 and found a majority of officer involved shootings were the homeless (and mentally ill).

There was distrust between law enforcement and the homeless. We will look at two main reasons for this and what law enforcement is doing about it.

Asking for ID . . .

For many years a homeless person would see a police officer more often than any other state or city employee. Officers, when seeing a homeless person, would often ask for ID.

It was a consensual encounter and legal. The majority of homeless people would comply. A surprising number had warrants (usually for misdemeanors) and were taken to jail.

This led to great resentment by the homeless. Tension was high and encounters became more confrontational.

Legal change

Officers in Albuquerque (and elsewhere) no longer ask a homeless person for ID unless there is a reason to do so.

Moving homeless people from one place to another . . .

At community policing meetings, officers were often asked to “clear” the homeless from a particular area. Often, the homeless were in a public place, not committing a crime. More resentment.

Legal change:

News item: City responds to court clearing the encampments

A district judge in Albuquerque ruled the city can't force the homeless out of public places unless they have housing. Albuquerque is appealing to the Supreme Court. KOB, October 9, 2023. (on appeal)

Note: This is the law unless the Supreme Court rules otherwise.

Society makes a change:

News item: DOJ announces investigation of Phoenix PD

US Attorney Merrick Garland said DOJ will investigate how Phoenix PD responds to people who are homeless or have disabilities.

He noted these two categories "speak to an important issue that is broader" than Phoenix PD, referring to society becoming overly reliant on police officers to address all kinds of social ills.

"Too often we ask law enforcement officers to be the first and last option to address issues that they shouldn't handle. It makes their jobs more difficult, increases unnecessary confrontation, and hinders police safety." CNBC, August 5, 2022.

If people complain about the homeless problem, it's helpful to mention this is a "social problem, not a police problem."

Will the "social approach" work?

It may be difficult. Some of the "homeless people" are "street people" who do not want to be in shelters.

News item: 83% increase in homelessness in Albuquerque in one year

Increase noted between 2022 and 2023. Some have noticed homelessness increasing in other areas of NM. KOAT, Oct 6, 2023.

News item: US homelessness up 12% to highest reported level ever

Main reason for increase was increase in rent prices. NM had the second biggest increase in the country, just behind New Hampshire. US government (HUD) survey. KRQE, December 15, 2023.

CHANGES IN HOW POLICE INTERACT WITH THE MENTALLY ILL

For many years officers were dispatched to a residence when a family member was having a mental “episode.”

Often it would end in tragedy, the family member dead, the family horrified. Cities in NM paid out huge amounts in settlements and in several cases the officers were prosecuted.

But why was an officer dispatched? The simple answer was that no one thought to do things differently.

When it comes to the mentally ill, one now is more likely to see a firefighter than a police officer.

Dispatchers are now trained to determine those occasions when an officer is necessary. The idea is to avoid escalation.

News item: NYC to test **no-police mental crisis response** in Harlem

Officers will respond if there is a weapon or “imminent risk of harm.” Fire Department expressed support. AP, February 24, 2021.

News item: Los Angeles **police-free response teams** see success

Police Chief Michael Moore noted that in a department with fewer officers, it has enabled officers to have more time elsewhere. Los Angeles Daily News, April 6, 2022.

News item: Dispatchers in New Orleans and mental health workers

The concept is simple: “When your house is on fire, you get the fire department, when there is a violent incident you get the police department, if you’re having a heart attack, you get EMS.”

“What we don’t have, and where the system is falling apart, is when it is an emergency outside of these specific types.” Mental health workers are now an option. Police1, August 24, 2021.

In 2023, the London (England) Metro Police announced plans to stop a police response to medical emergencies unless there is an immediate threat to life.

Doing something different in New Mexico . . .

ALBUQUERQUE

In 2020, Albuquerque Police created the Albuquerque Community Safety Department. When possible, unarmed social workers handle calls with the mentally ill, homeless, and some non-violent crimes.

News item: Albuquerque takes police out of mental health calls

President Biden praised Albuquerque for taking the lead on a change in policing. For some mental health and homeless calls, social workers are dispatched instead. Washington Post, October 8, 2021.

Note:

The name of the Albuquerque Fire Department was changed to Albuquerque Fire Rescue.

News item: Albuquerque’s Community Safety Department a model

The new department has become a national model. Mostly responds to welfare checks and behavioral health emergencies. KOB, December 14, 2022.

News item: ACS leaders consider expansion to 24/7 service

In a little over two years Albuquerque Community Service (ACS) has handled more than 50,000 calls. KOB, January 3, 2024.

SANTA FE

News item: Santa Fe announces new Alternative Response Team

For mental illness calls and similar calls, a paramedic and a social worker. The social worker helps connect a person with needed resources. KRQE, April 20, 2021.

News item: Santa Fe expands Alternative Response Teams

Responding to low-level 911 calls has helped reduce police overload. Most calls, 37%, for disorderly conduct, 30% for welfare checks. So far, **an officer has not** been assigned to the team. Santa Fe New Mexican, December 21, 2021.

LAS CRUCES

News item: Las Cruces CIT to remove police from mental health calls

Previously, an officer would be sent to a mental health call.

Now there is a Crisis Intervention Team: a firefighter, a person for medical care, and a counselor. An officer is sent only if a person is at risk of hurting themselves or others.

Since calls often repeatedly come from the same households, a case manager (similar to a victim advocate) does follow up. KFOX – El Paso, TX, March 14, 2022.

CHANGES WITH POLICE AND SEX WORKERS

In just a few short years, the relationship of law enforcement and sex workers (aka prostitutes, hookers, etc.) has changed.

Previously, officers would arrest sex workers whenever possible. That's no longer the case. Instead, field officers work to protect sex workers.

Some of the attitudes changed in 2008 when NM passed a Human Trafficking statute. Chapter 30, Section 52.

Police now go after the "pimp" and charge that person with human trafficking. There are many benefits for "sex workers" to help change their lifestyle. NMSA 1978, Section 30-52-2.

Christine Barber, a "sex worker," said, "Before, police would ignore us if we were raped or attacked. The cops are so cool with us now. . . They're not trying to bust us." They put (accused rapists) in jail." Albuquerque Journal, February 8, 2013.

CHANGES WITH POLICE AND MISSING PERSONS

Many people have been concerned about missing indigenous (Native American) women. One problem was a lack of coordination between police departments, including tribal and non-tribal.

Legislation was passed in 2022 to increase cooperation between agencies and highlight what to do when meeting a missing person.

There is a parallel with missing children. An eleven-year-old Navajo girl was kidnapped near Shiprock, NM. Afterwards, state and tribal agencies began cooperating more closely on Amber alerts.

As officers come in contact with missing persons, the reporting agency is notified of the contact.

Legal:

It is not a crime to be a missing person. If a person is over eighteen (18), an officer can contact a police agency in the jurisdiction where the person was declared missing.

If a person a person is under 18, it's possible the person is a runaway.

CHANGES IN HOW POLICE WORK WITH PANHANDLING

Is Panhandling coming to your town?

Legal:

Some cities have laws against panhandling. Often, these laws have been declared to be unconstitutional.

News item: Fed Judge strikes down Albuquerque's panhandling law

Panhandling is here to stay. ACLU said ruling was a victory for free speech. Albuquerque Journal, July 19, 2019.

Apparently not everyone at APD got the word and officers continued to arrest panhandlers. ACLU sued and APD made another "donation" to the ACLU.

In 2021, the federal Court of Appeals upheld the District Court.

CHANGES WITH POLICE AND DOMESTIC VIOLENCE

In 2013, Supreme Court reviewed the misdemeanor DV statute.

. . . 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 . . . NMSA 1978, Section 31-1-7.

But what if the offender has left? The Supreme Court said if the offender isn't in close proximity, an arrest warrant is needed. Since then, there have been fewer arrests. State v. Almanzar (2013).

But with the cases that go to court, the great majority are being dismissed. For everyone, there has been much frustration.

News item: Report: Funding fails to stop Domestic Violence

Law Enforcement in NM in 2018 responded to 19,000 reports of domestic violence, roughly the same as 2014. KOB, December 2, 2019.

Note:

The number of domestic violence cases dismissed in magistrate courts in NM in 2019 (the last full year before COVID) was 93%!

Many feel new ideas are needed. A possibility: Dispatch could ask if weapons are involved. If not, and it's a low-level DV, social workers or firefighters might be sent rather than police officers.

News item: US Supreme Court upholds reach of gun ban for DV

Supreme Court upheld a federal law that bars people with misdemeanor DV from owning guns for life. Defendant had slapped his girlfriend in the face while intoxicated. KOB-4, June 27, 2016.

CHANGES IN HOW POLICE INTERACT WITH DRUG USERS

While not related to George Floyd, how officers work with drug users has changed.

The War on Drugs . . . has it been a success?

In 1970:	7,200	(When the War on Drugs began)
In 2019:	71,000	overdose deaths
In 2020:	92,000	overdose deaths

In 2021: 107,000 overdose deaths
In 2022: 109,000 overdose deaths

News item: Overdose deaths continue to rise in US

If trends continue, 2023 is projected to have 112,000 overdose deaths in the US. CNN, October 12, 2023.

News item: Fentanyl frenzy driving up cartel employment

Drug cartels now Mexico's 5th largest employer, with more than 175, 000 people on the payroll. KRQE, October 4, 2023.

The War of Drugs reminds one of Prohibition (1920-1933); it led many people to have a negative view of law enforcement.

When we get to the next section on field officers, we will learn that there have been a lot of legal changes when it comes to officers and illegal drugs.

Cannabis --Marijuana

In 2021, NM became the 18th state to legalize cannabis. Sales began in 2022. There is no limit on # of licenses which is why there are so many cannabis (marijuana) stores.

Many believe law enforcement will benefit from not having to enforce unpopular (possession of cannabis) laws.

It allows two ounces of cannabis for those twenty-one and older for personal use. An ounce of cannabis fills a sandwich bag and can typically be rolled into nearly 30 joints or cigarettes.

One adult in a residence can have six plants, two adults, twelve plants.

Also in the statute: The odor of cannabis is not reasonable suspicion to stop, detain, or search a person.

Cannot search a vehicle based upon odor of cannabis since the odor of cannabis is no longer evidence of a crime. DWI is an exception.

News item: In NM, cannabis stores outnumber Starbucks five to one

Legislative committee learned that five months in, NM has more dispensaries per capita than Colorado, Oregon. Albuquerque Business First, September 1, 2022. (In June, 2023, Albuquerque had 185 stores.)

From the Joe Monahan blog (October 13, 2023):

Senator Cervantes and other legislators are upset about the marijuana situation in NM. The illegal market is bigger than ever; illegal marijuana is \$300 a pound, legal marijuana is \$1200 a pound plus a 12% tax. This is what happened in California, Oregon, and Washington.

Cannabis in NM and reporting of arrest and citations . . .

NM may be unique in having the following requirement:

Within 60 days of each fiscal year, every police and sheriff agency **shall** report the total number of arrests, citations, and penalty assessments for cannabis to DPS to include . . . **the race and ethnicity** of a person. NMSA 1978, Section 26-2C-33.

Each year DPS will put the totals on their website. The rationale is to see if there is profiling by officers.

Hard drugs

News item: Albuquerque police shootings of people on meth high

In 2010 36% of people killed by police in Bernalillo County had meth in their system; by 2017 it was 83%, the highest in the nation.

Special prosecutor Michael Cox noted bean bags and tasers often do not work on people on meth. KOAT, August 6, 2019. (a good video)
NOTE: This is stunning.

Drug Overdose Deaths in New Mexico

2021 – 1,025 (based upon preliminary stats from NM Dept. of Health.)
2020 - 801 (Fentanyl became the #1 drug for overdose deaths.)
2019 - 605
2018 - 537

News item: NM ranks as No. 1 state with worse drug use
Source: Wallethub. KRQE, May 5, 2023.

What is NM doing about hard drugs?

In 2017 New Mexico became the first state to require all officers to carry naloxone when agency funding became available.

News item: New law aims to reduce opioid overdose rate
NM now requires opioid prescriptions lasting five days or more to come with a 2nd prescription for naloxone. KRQE, June 19, 2019.

News item: Albuquerque combats fentanyl with overdose program
The Albuquerque Fire Rescue Dept. has a Narcan Leave Behind Program. They leave two doses of Narcan with family members. Use of Narcan in Abq. has gone up 42% in three years. KRQE, March 2, 2022.

News item: LA hands out 100,000 doses of naloxone
Los Angeles set up free vending machines and will send medical teams to go to homeless camps. Los Angeles Times, March 25, 2022.

A needle exchange program . . .

News item: NM's needle exchange program in 2018

The NM needle exchange program provided **9.8 million syringes** in 2018. Run by NM Dept. of Health, allows people to exchange dirty needles for sterile needles. 90% collection rate for needles. KOB, September 20, 2019.

NOTE: The population of NM is 2.1 million people.

Drug Overdose and Arrest

NM was the first state to have the following law. Officers at the scene of an overdose gather the drugs but do not charge the person.

- A person who, in good faith, seeks medical assistance for someone experiencing a drug-related overdose **shall not be charged or prosecuted** for possession if the evidence was gained as a result of medical attention.
- A person who experiences a drug-related overdose and is in need of medical assistance **shall not be charged or prosecuted** for possession if the evidence was gained as a result of the overdose and need for medical assistance. NMSA 1978, Section 30-31-27.1.

There is a trend across the country to make hard drugs legal or reduce them from a felony to a misdemeanor.

Whatever the merits of legalization, that's for others to decide. But it also seems to follow another trend: removing law enforcement from a potential area of controversy.

California and Oregon and illegal drugs . . .

In 2014, California reduced possession of drugs (heroin, cocaine, LSD, etc.) from a felony to a misdemeanor.

News item: Oregon 1st state to decriminalize possession of drugs

In 2020, Oregon voted to decriminalize street drugs (heroin, cocaine, meth, etc.). Offenders face a civil citation, similar to a traffic ticket. Maximum \$100 fine. Albuquerque Journal, Feb 2, 2021.

Note: It was thought people with a drug addiction would get help on their own. That didn't happen. Drug overdose deaths have gone up.

In Canada . . .

News item: Canada decriminalizes drugs in British Columbia

Not criminal (which is what 'decriminalization means) but civil for hard drugs. New York Times, May 31, 2022.

And in New Mexico . . .

News item: New DA drops felony drug possession to misdemeanors

The DA for the First Judicial District (Santa Fe, etc.) is reducing felony drug possession charges to misdemeanors. They make up a substantial % of the caseload. Will focus on other serious felonies. Northern New Mexico Independent, January 12, 2021.

If this trend continue, law enforcement will be less involved in drug possession cases.

USING CIVILIANS TO ASSIST OFFICERS AND DETECTIVES

After George Floyd, many departments had problems with recruiting and retention.

THE PROBLEM: RECRUITING & RETENTION

News item: Survey from Illinois Association of Chiefs of Police

Applicant numbers down, resignations up. Many of the new people are laterals. “We can only steal from each other for so long.” February of 2022.

Hundreds of officers have left the Portland (Oregon) Police Dept. One said, “The only difference between Portland PD and the Titanic is that the Titanic had desk chairs and a band.”

News item: 24 Boston police officers became firefighters this year.

A big increase in police officers who want to become firefighters. Boston Herald, October 9, 2022.

SOME SOLUTIONS TO RECRUIT AND RETAIN OFFICERS

Increase in funding for police departments in NM.

“Defund the police” never came to NM. In fact, there was a strong effort to increase funding. A look at legislation will show this:

News item: First day to pre-file bills for 30-day session

Governor MLG: “We’re going to continue to ask for resources (for NMSP) until we get to the 1,000 number.” KOB, January 2, 2024.

Note: NMSP presently has about 650 officers.

State funding to retain officers

Officers shall receive a retention disbursement in the amount of five percent of their salary upon reaching four, nine, fourteen and nineteen years of service. (Think of the Forty-Niners.)

The Law Enforcement Protection Fund (LEPF)

This comes from a percentage (10%) of insurance premiums. There will be a significant increase. Until 2021, depending upon the size of a department, an agency got \$20,000, \$30,000, or \$40,000.

In 2022, it went up to \$45,000; in 2023 and thereafter each agency will get \$95,000.

Until 2021, an agency got \$600 per officer. In 2022 that went to \$1,000 per officer; in 2023, \$1,500 per officer.

This has been expanded to include tribal and university police departments.

For 2023-24, the state legislature authorized \$57 million for the Law Enforcement Recruitment Fund.

Using civilians to assist officers and detectives.

The rest of the country . . .

Some departments began using civilian investigators (often retired officers) to help with a shortage of officers.

Phoenix (March, 2022):

Phoenix will hire 25 civilian investigators to assist in violent crimes, do follow-up leads and interview witnesses. They will not carry guns or make arrests. Act as a detective's assistant.

News item: 650 apply to be a Phoenix PD civilian investigator

The Assistant Chief said, "We need to evolve as an agency and as a profession. Officers must focus on higher priorities." Police1, March 24, 2022.

News item: Baltimore Police to hire civilian investigators to ease strain

Will hire 35 civilian investigators. Baltimore Sun, April 15, 2022.

News item: New Orleans PD hiring civilians to bolster force

New Orleans crime rate has been soaring. Some civilians will be detectives, some will collect evidence. Foxnews, September 25, 2022.

In New Mexico . . .

News item: Civilians recruited for internal affairs, desk jobs at APD

APD Chief Medina: “This is the wave of the future” and “civilians are helping our sworn officers.” Albuquerque Journal, Feb 6, 2023.

News item: APD unveils new strategy to investigate fatal crashes

Will be using more civilian investigators. KRQE, October 31, 2023.

News item: Hobb PD is adding new position to help investigators

Hobbs will start with its first civilian investigator. This person will type up search warrants and pursue leads. KRQE, December 13, 2023.

Using “Contract Officers” to assist with investigations.

In 2022, the legislators passed a bill to allow teachers to “return to work” for up to three years without giving up retirement benefits. In 2022 and 2023, a similar bill for officers failed.

A number of agencies, including the Attorney General and NMDPS, use “contract” attorneys. The courts are considering using retired judges “on contract” to help with a backlog. Will there be “contract police officers” in our future?

More cross-commissioning of officers

News item: Cross-commissioning adds police services for Dine (Navajo).

Five NMSP officers sworn in. They can enforce criminal and traffic laws on the Navajo Nation. They also took a two-day course to become familiar with Navajo traditions. Navajo Times, April 14, 2022.

CHANGES POLICE HAVE MADE TO AVOID LAWSUITS

How to avoid lawsuits? Good police work, good training, and constitutional law. Other changes have also been made.

Pursuit chases

News item: Panhandler who fell and broke neck awarded \$100 million

Officer chased a 65-year-old panhandler in Chicago. He fell and hit his head on concrete and was paralyzed. This was later reduced to \$40 million dollars. USA Today, August 29, 2022.

News item: "Police Departments have long resisted change, Insurance companies are successfully forcing them to change."

The article mentions how insurers are telling departments to change their policies (foot and vehicle pursuits, etc.) or face possible cancellation or a steep rise in insurance.

The article noted that "the risk pool that insures 30 of the 33 counties in NM saw coverage shrink while rates shot up 50% over the past two years. Washington Post, September 15, 2022.

News item: APD equipped with new device to stop fleeing vehicles

The Grappler is a police bumper tool that attaches to a suspect's vehicle. Already being used in Colorado, Arizona, and the Border Patrol. For now, it's used mainly for a stolen vehicle or violent crime.

What happens if someone steals a government vehicle?

News item: NM could be liable for crash involving stolen state car

A state vehicle was running and unattended in Albuquerque. A man on meth stole vehicle, drove at high speed, and killed a young girl. State may be liable. KOAT, March 28, 2023.

News item: Study: NM tops list of pedestrian traffic deaths

Note: NM has had this title for a number of years. KRQE, July 3, 2023.

End of choke-holds

Across the country, as a result of George Floyd, laws were passed eliminating choke holds.

New Mexico has not taught choke holds for years. It surprised many people when a Las Cruces police officer in 2020 chased someone and said, "I'm going to choke you out." The suspect died.

The officer was terminated and charged with second degree murder. Las Cruces paid the family \$6.5 million dollars.

Note: After the state presented its evidence, the judge said there wasn't not evidence for 2nd degree murder and dismissed the case.

NMSA 1978, Section 29-7-4.4: use of force training shall include the elimination of vascular neck restraints. Became law in 2022.

"shall not use a vascular neck restrain, unless a person's attack poses a threat of imminent harm to the officer or another person . . ."
NMSA 1978, Section 29-7D-3. Became law in 2023.

Knock and announce . . .

In the 1990s the Court of Appeals in NM said officers must knock and announce before serving an arrest warrant or search warrant.

Although an issue in other states, knock and announce did not become an issue in New Mexico.

In the rest of the United States . . .

No more tear gas

A judge in Seattle issued a ban against the use of tear gas by riot police.

In Philadelphia, the Chief said tear gas would no longer be used. An officer who used it on a protestor **was suspended for 30 days**. His Deputy Chief was demoted. ABC News, June 26, 2020.

Precision Immobilization Technique aka the “PIT” maneuver.

News item: Deadly Force behind the wheel

Police vehicles send a vehicle into a spin, ending a pursuit. Nine have already died in 2020, thirty since 2016, including passengers and bystanders. Washington Post, August 24, 2020.

NOTE:

In Los Angeles it's banned after 35 mph, North Carolina at 55 mph. Albuquerque allows over 35 mph if deadly force is warranted.

Will traffic stops be handled differently in the future?

In Berkeley, California the city council voted to have unarmed civilians rather than officers conduct traffic stops.

News item: Minneapolis moves toward unarmed traffic enforcement

The Traffic Safety Bureau will be separate from the Minneapolis Police Department. Police One, April 19, 2021.

News item: Most traffic enforcement in LA should be done by civilians.

The study, noting the problem of over-policing, felt unarmed civilians should enforce safety-related offenses. LA Times, 5-15-2023.

News item: North Carolina law to use civilians for minor traffic cases

Statewide, state funded. Only property damage. Civilians will issue citations, not arrest, will not be armed. Will be state certified, have 4 weeks OJT with officers experienced in traffic crash investigations. Greensboro (North Carolina) News, June 27, 2023.

Arrests have gone down . . .

Across the country, police are backing off from “pro-active” policing. Recommended video: Chicago police activity declines as murders spike, data shows. CBS – YouTube.

An officer in the video notes that as officers became more concerned about possible disciplinary action, “proactive” policing went down.

In 2005, arrests made in nearly 31% of crimes in Chicago; in 2021, arrests made in only 12% of reported crimes, the lowest ever.

News item: Arrests for low-level crimes plummeting

Major police departments across the country are arresting far fewer people for minor crimes. In New York City, arrests are down 50%. For black men, it’s the lowest since 1990. For black men in St. Louis from 2015-2017, misdemeanor arrests down 80%. Wall Street Journal, October 7, 2019. (Note: This report came out prior to COVID.)

News item: Analysts: Crime in NM jumped as arrests fell

The number of violent crimes in NM climbed 32% from 2014 to 2020 while arrests for such crimes fell by 32%. Analysts working for the Legislative Finance Committee said the “swiftness of justice” is slowing. Albuquerque Journal, July 21, 2022.

Less arrests for bench warrants . . .

News item: New Jersey cops no longer arrest people for some warrants

New Jersey will not arrest for “bench warrants” under \$500. People will be given a new court date and released. Support came state association of Chiefs, the state’s largest union, ACLU, and others. Police1, May 31, 2022.

News item: NM sees fewer youths entering juvenile justice system

Between 2009 and 2022, references of youths into justice system dropped 76%, from 20,000 to 5,000 per year. KRQE, June 30, 2023.

News item: A ‘coin flip: Nearly half of US murders go unsolved

In the 1970s, police solved about 7 of every 10 murders. In 2020, they solved only about half. CBS, June 29, 2022.

CHANGES IN HOW OFFICERS ARE HELD ACCOUNTABLE

After George Floyd, there was a strong demand to hold officers accountable. The changes came quickly.

That shouldn’t be a surprise; good officers know the damage a bad officer can do for law enforcement. Not one officer in the country supported what Derek Chauvin did to George Floyd.

This is not a topic one enjoys covering but we need to do so to learn from it.

News item: Poll finds most Americans want police reform

Majority of people (June 18-22, 2020) believe change must be made in law enforcement. Want police accountability. Also limit the scope of policing to more serious crimes. USA Today, June 29, 2020.

Body-worn cameras required for all NM law enforcement officers

A special session of the legislature was held within a month of the death of George Floyd. A law was passed requiring all law enforcement officers in New Mexico to have cameras. NMSA 1978, Section 29-1-18.

“DUTY TO INTERVENE”

George Floyd was handcuffed, lying face down, and not resisting. One officer had his knee on his neck while two others held him down. A fourth officer did crowd control.

All four officers were charged with homicide. Many officers were not aware of a “duty to intervene.”

Derek Chauvin got decades in prison. The other three officers, for failure to intervene, got years in prison.

New Mexico . . .

NMSA 1978, Section 29-7D-5. Intervention.

A law enforcement observing another officer using excessive force shall intervene to prevent it, unless doing so would result in imminent harm to the officer or another individual.

An officer who observes another officer using excessive force shall report it to the officer’s supervisor no later than the end of the shift.

Revocation of certification

“If any officer is convicted of or pleads guilty or no contest to a crime involving the unlawful use of force (battery) or threatened use of physical force (assault) or a crime involving the failure to intervene in the use of unlawful force, the LEA Board shall permanently revoke the police officer’s certification.” NMSA 1978, Section 29-7-15.

Florida

News item: Florida officer on video grabbing fellow officer’s throat

He was a senior officer, with 22 years, getting ready to pepper spray a handcuffed subject. A junior officer, with two years, grabbed his duty belt. Enraged, he spun around and grabbed her by her throat. South Florida Sun-Sentinel, January 18, 2022.

News item: Sergeant who grabbed officer's throat arrested (Video)
Florida police Sergeant charged after allegedly grabbing female officer by the neck during arrest. (YouTube). (Video)
Note: The Sergeant is facing eleven years.

Colorado

YouTube – Judge sentences former Aurora police officer.

CBS News: Colorado officers charged in connection to deaths of Christian Glass in Clear Creek County. November 17, 2023.

Note: Six (6) officers were charged with failure to intervene. In the civil lawsuit, the family was given nineteen (19) million dollars.

The end of qualified immunity in New Mexico . . .

Qualified immunity was created by the US Supreme Court. The idea was to make it more difficult to sue officers since officers have to make split second decisions. Think of it this way:

Total immunity: Judges and legislators have this (can't be sued).
Qualified immunity: "In-between" immunity.
No immunity: Much easier to sue.

Less than a year after George Floyd, NM ended qualified immunity. The agency, not the officer, is financially liable.

News item: Governor MLG signs Civil Rights Act into Law

The Governor said, “New Mexicans are guaranteed certain rights by our state constitution . . . but when violations occur, we as Americans know that the victims tend to be people of color.” KOB, April 7, 2021. NMSA 1978, Section 41-4A-4. (no more qualified immunity).

Note:

This makes it easier to sue police officers in NM. Some examples:

News item: Bennie Hargrove’s family settles with APS for \$900K

One thirteen-year-old killed another thirteen-year-old at a school in Albuquerque. Albuquerque Public Schools was sued. This was one of the first cases under the NM Civil Rights Act which makes it easier to sue. KOB, November 13, 2023.

News item: Local family sues APD, claims mistakes in double homicide.

Lawsuit: “two people could be alive (no interrogation of primary suspect done) if it weren’t for a string of investigative mistakes.” Violation of NM Civil Rights Act. KOB, November 9, 2022.

News item: Lawsuit sheds light on 2018 rape case involving child

Lawsuit says negligence led to suspect being able to plead to much lesser charges. Santa Fe PD had lost rape kit. Family said civil and constitutional rights violated. KRQE, November 10, 2022.

Easier to sue for malicious prosecution . . .

News item: US Supreme Court makes it easier to sue police officers

In some states, a person could sue for malicious prosecution only if the person suing was declared innocent. US Supreme Court (Thompson v. Clark) said a plaintiff need only show prosecution ended without a conviction. National Public Radio, April 4, 2022.

ADA’s in NM also no longer have qualified immunity. Some ADAs are reluctant to give legal advice to police officers.

The end of qualified immunity holds law enforcement to a higher standard, but NM law enforcement accepts the challenge.

Officer misconduct – Ethics

In Brady v. Maryland (1965) the US Supreme Court said the prosecution must turn over all evidence that might exonerate or aid the defendant.

In Giglio v. United States (1972), the US Supreme Court said the prosecution must disclose to the defense attorney information that might impeach a prosecution witnesses.

This includes, among other things, past misconduct of bias, use of force or truthfulness, and criminal charges.

Until recently, defense attorneys would ask for this information on a case-by-case basis. The DA's Office in Bernalillo County now requires it.

In 2021, the DA's Office in Bernalillo County became one of the first in the country to do the following:

News item: Bernalillo County DA tracking police misconduct

The DA's Office sends what is called a Giglio (named for a Supreme Court case) questionnaire to officers asking about integrity. **The information is then posted on the DA website (District Attorney – Bernalillo County) under the tab: Transparency and accountability.**

The DA said this will help hold officers accountable. KRQE, October 29, 2021.

Watching officers more closely

News item: APD has 61 officers investigating other officers

At APD, Crimes against Children has six officers, the Gang unit has six officers, and Narcotics has 5 officers. Meanwhile, **sixty-one (61) officers** investigate other officers. KOAT, August 13, 2019.

(Video: 61 officers investigate other cops, leaving few to investigate other crimes.)

Charging police officers with criminal offenses

As recently as a few years ago, officers were seldom prosecuted for criminal offenses.

Officers using force while doing their jobs (riot control, etc.) were rarely charged criminally.

A trend to prosecute officers began shortly before George Floyd (May, 2020) but has accelerated since then.

News item: AG charges former Farmington Police Officer

A school resource officer who “roughed up” an 11-year-old girl was charged with battery and felony child abuse. KOB, August 26, 2020. He eventually pled guilty to both charges.

News item: Rio Arriba settles teen’s tasing for \$1.3 million dollars

The teen was a special needs student. The deputy was indicted for child abuse and false imprisonment. KOB, Feb 28, 2020.

Note: He pled to false imprisonment. Sentence included 30 days in jail.

News item: Former Chaves County deputy found guilty of five felonies.

Time sheet fraud. Using GPS data from his patrol vehicle showed deputy received overtime pay unlawfully. KRQE, March 15, 2023.

News item: Las Cruces officer charged with voluntary manslaughter.

Officer got into a scuffle with suspect, shot and killed him. AG filed charges. There is also a civil lawsuit. KOAT, October 4, 2023.

News item: APD officer charged for disabled man's arrest

AG felt there wasn't probable cause for the arrest. Officer is facing felony charges. July 17, 2023. (video)

Officer misconduct – Certification

Previously, the NMLEA Board (consisting mainly of police officers) would oversee education requirements and officer misconduct.

In 2023, the legislature created a Board separate from the LEA to focus on officer misconduct only.

One state senator said, "we don't want police policing the police." The new Board has more citizens and lawyers on it.

CHANGES IN PAY PARITY OF OFFICERS AND DISPATCHERS

For many years NMLEA has been on the forefront emphasizing officers and dispatchers are one team, working together.

Legislation in 2022 added two dispatchers to the LEA Board.

In 2022, Rio Rancho PD gave raises to officers and dispatchers. This may be a sign of things to come: (1) officers and dispatchers included together and (2) new dispatchers will make 80% (called pay parity) of what a new officer will make.

PART TWO: A GUIDE FOR FIELD OFFICERS

For a long time, officers would ask for ID (to check for warrants) or use a traffic stop as a pretext (excuse) to look for drugs. Officers did this because they were trained to do this.

There has been a lot of new case law about asking people for ID and asking about drugs on a traffic stop.

STOPPING PEOPLE ON THE STREET TO ASK FOR ID

In Santa Fe, three women were standing on the road, next to the State Pen, looking at horses. NMSP demanded ID. One woman refused. Handcuffed for about 45 minutes. No reasonable suspicion. She sued and got \$300,000. Santa Fe New Mexican, September 21, 2020.

STOPPING PEOPLE ON THE STREET TO CHECK FOR WARRANTS

In Silver City, Defendant was walking home from work late at night. No suspicion of criminal activity. Officer shined his spotlight and asked for name and DOB. Said it was department policy to stop all people late at night to get a data base.

Defendant had a warrant. During search, found meth. Court of Appeals said this was a detention. Evidence suppressed. State v. Ramey (2020).

STOP AND FRISK

- A stop & frisk is permitted when there is reasonable suspicion a person is armed and dangerous, a threat to an officer.
- A frisk is done on the outer clothing to look for weapons.
- If during a pat down one finds drugs, and it is immediately apparent that it is drugs, the drugs will usually be admissible.
- The expression “Officer Safety” will not justify a stop and frisk; an officer should articulate or give reasons why a stop and frisk was done.
- Stop and frisk should not be used to control or reduce crime.

The controversy on “proactive policing”

A number of years ago New York City (NYC) started proactive policing on a grand scale. Based upon “broken windows,” the idea was to target misdemeanors as much as possible. There was a lot of emphasis on stats (called CompStat).

The heart of the program was “Stop-question-frisk.” Crime went down dramatically. Thousands of lives were saved. In other words, there was a positive side to it.

But then the complaints poured in. People felt targeted, especially young Black males. It led to great resentment against law enforcement.

Mayor Bloomberg, in a public apology, admitted NYPD had used stop & frisk to profile young Black males.

Recommended video: YouTube: “This Week’s ‘Stop & Frisk’ backlash.”

“Proactive policing” may work in the short term but some segments of the population (poor, racial, etc.) see harassment. Police call it “proactive policing”; some citizens call it “over-policing.”

News item: Former California officer awarded 2.8 million in lawsuit

His lawsuit was against ticket quotas by the Riverside Police Department. California State Vehicle Code, Section 41600 prohibits quotas for arrests or traffic citations. Mercury News, September, 2023.

Some good news for NM. Of the twenty cities DOJ was monitoring in 2024, Albuquerque was the **only** city found not to have profiling or abuse of stop & frisk.

STOPPING VEHICLES

Reasonable Suspicion – How much?

In McKinley County, a deputy saw Defendant driving. Three months before, he had two encounters with Defendant having a suspended/revoked license. A month before, on the police radio, it was confirmed again.

Court of Appeals held that there were enough facts for reasonable suspicion to stop the vehicle. State v. James (2017).

Reasonable Suspicion – Cracked Windshield

NMSA 1978, Section 66-3-801: It is a penalty assessment misdemeanor for a person to drive any vehicle in such unsafe manner as to endanger any person . . .

In Dona Ana County, a deputy stopped a vehicle with a cracked windshield. The deputy felt that was enough for reasonable suspicion (not true). It has to obstruct the vision enough to be a safety hazard, to be in an unsafe condition. State v. Munoz (1998).

ASKING QUESTIONS OF A DRIVER ON A VEHICLE STOP

Note:

In many states and under federal law, one can ask any question on a traffic stop if it doesn't prolong the stop. Not so in NM where there are guidelines on what kind of questions one can ask.

Facts:

Officer in San Juan County stopped Defendant's vehicle for littering. While doing a warrants check, he asked Defendant if he had any guns, alcohol, or illegal drugs in the vehicle.

Defendant gave consent to search his vehicle and the officer found drugs. Court of Appeals held the questions went beyond the scope of investigation. Evidence suppressed. State v. Taylor (1999).

Facts:

A Ruidoso Downs officer stopped a vehicle for a possible forgery. A passenger in the front seat was the suspect. The officer found drugs on him.

He asked the driver two questions: Is there anything in the vehicle I need to know about? Mind if I search your vehicle? Consent was given and the officer found meth.

These two questions went all the way to the Supreme Court. They felt the questions were appropriate: the officer had just found drugs on the passenger and officer wanted to search the vehicle, not the driver. Evidence was admitted. State v. Funderburg (2008).

Facts:

A NMSP officer on 1-40 near Grants saw Defendant's vehicle pass two semi-trucks. Driver briefly touched yellow line and was stopped. Officer, looking for drugs, got consent to search. Meth found.

Court of Appeals said briefly touching the left passing lane, especially when passing two semis, was not reasonable suspicion. Trafficking charges dismissed. State v. Valenzuela (2017).

Facts:

In Las Cruces, an officer stopped Defendant for running a stop sign. "Where are you coming from?" "A friend's house." "What his name?" "Josh Dimas." And then the officer remembered: Dimas, the convicted drug dealer!

Officer asked to search his vehicle and to do a pat down. Found meth. Court of Appeals held questions were not reasonably related to the stop. Evidence (the meth) suppressed. State v. Tuton (2020).

In 2021 Supreme Court of NM said a tail-light not in perfect working order is not reasonable suspicion to stop a vehicle. State v. Farish (2021).

News item: California police can no longer ask this at a traffic stop

Officers no longer can say, “do you know why I pulled you over?” Instead, must state the purpose of the stop before asking any other questions (unless something unusual comes up). State law, Jan 1, 2024. KRON – San Francisco, December 27, 2023.

The reason for the law is to prevent a pretext stop where officers use a stop to look for a more serious crime unrelated to the initial stop. A suggestion: may want to make it a habit to advise motorists in NM of the purpose of a stop to avoid the need for similar legislation here.

The controversy about asking additional questions on a traffic stop:

Two questions on traffic stops in New Mexico attract a lot of attention: “Do you have drugs in your vehicle?” and “Don’t mind if I search your car, do you?”

As much as anyone, officers know how bad illegal drugs are for NM. Officers who ask these questions want to do the right thing.

In New Mexico the courts will look carefully at these questions. Some people resent these questions and others believe it is used to profile certain groups of people.

News item: BCSO settles racial profiling lawsuit for \$100,000

A Black female was stopped three times in one month by the same two deputies: 1) Following too close, 2) Driving too slowly, and 3) license plate wasn’t in the system.

No citations, no drugs found. ACLU won \$100,000. She was a federal law enforcement officer. KRQE, Feb. 11, 2020. (Video)

News item: Two BCSO deputies face 2nd race profiling lawsuit

Five months later, another lawsuit involving two Black females and the same two deputies. Deputies, looking for marijuana, called for a drug dog, detained them for almost an hour. No drugs found.

Albuquerque Journal, July 8, 2020. (In 2024, County paid out \$95,000).

Note: The deputies were stopping vehicles as a pretext (excuse) to look for drugs. BCSO said they would do more training.

Recommendation:

- Do not use traffic stops to look for drugs (unless there is a reason to do so).
- If an officer asks about something unrelated to the purpose of a stop, the officer should be able to articulate reasons why he or she asked those questions.

ASKING QUESTIONS OF PASSENGERS TO CHECK FOR WARRANTS

In 2004, NM became one of the first states to curtail officers asking passengers for ID.

Facts:

In Chaves County, an officer stopped a vehicle for a faulty license plate light. He asked the passenger for ID and found he had a warrant. During the pat down the officer found meth. Court of Appeals felt asking passenger for ID was not justified. Evidence (the meth) suppressed. State v. Affsprung (2004).

Facts:

Just before dawn, in Clovis, an officer stopped a vehicle with a broken tail-light. In the back seat he saw a partially open backpack. It had bolt cutters, gloves, and a camouflage mask that went over the entire head. The driver, a minor, did not have a driver's license.

Officer asked passenger for ID to see if he could drive. Supreme Court said that was OK. Because both the driver and passenger were extremely nervous and the backpack, Supreme court said additional questions were permissible. State v. Vasquez- Salas (2023).

The Controversy on asking Passengers for ID

For many years, officers would ask everyone in a vehicle for ID. A passenger had a warrant. Another warrant, another arrest! In the short term, a good tool for law enforcement.

The great majority of people do not have warrants. In the long-term, looking at the big picture, law enforcement lost.

There may be reasons to ask a passenger for ID; perhaps an officer sees something (example: a passenger appears to be hiding something) or is a witness (example: DWI).

The support of citizens is essential. For most traffic stops, officers no longer ask passengers for ID.

VEHICLE STOP – OPENING A DOOR

Note:

In the following two cases, the courts held there was a violation of constitutional rights.

In Taos County, a NMSP officer stopped Defendant for speeding. He was standing by the window which wasn't rolled all the way down.

Within three seconds, he opened the door to speak to the driver. He noticed the odor of alcohol which led to a DWI arrest.

Court of Appeals held opening the door was a violation of the Fourth Amendment. Evidence suppressed. State v. Martinez (2019).

In Albuquerque, an officer saw three people in a parked vehicle. The motor wasn't running. He opened the door and saw drugs. Court of Appeals said no reasonable suspicion to open the door. Evidence suppressed. State v. Murry (2014).

VEHICLE SEARCHES - CONSENT

News item: New limits on police searches

Police no longer conduct voluntary searches of vehicles without written permission. City wants to reduce racial disparities. Asheville (North Carolina) Citizen Times, October 7, 2019.

Note: NM as of now does not require written permission for consent.

VEHICLE STOP - INVENTORY SEARCH

Facts:

In Farmington, Defendant's truck was impounded. Officer did an inventory search and found a **locked** gun safe under the right seat. Using a key from Defendant's key ring, they opened it, found drugs.

Court of Appeals felt the search wasn't reasonable: how is looking into a safe safer than putting the safe into evidence? Evidence suppressed. State v. Jim (2022).

Facts:

In Farmington, officer stopped vehicle and learned driver had a revoked license. Vehicle registered to driver's grandmother; driver parked in her space in a trailer park. Officer, who has a personal policy to tow every vehicle upon arrest, found drugs.

Court of Appeals felt department policy, which called for discretion, wasn't followed. Also felt it wasn't reasonable to seize the vehicle since it was parked at grandmother's location. Evidence suppressed. State v. Ontiveros (2022).

We will now show two success stories for field officers in NM: (1) DWI, and (2) License Plate Readers.

DWI: A SUCCESS STORY FOR FIELD OFFICERS

In the 1980's NM was number one in the country for vehicular homicide. **Nearly four hundred people** were killed by drunk drivers each year.

This went on year after year, with no end in sight. And then things started coming together. NM is no longer #1 for DWI fatalities.

How did it happen? Answer: Leadership +strategy + vision.

Field officers made the difference. They saw DWI as a major challenge and knew their efforts would save lives.

Once nearly four hundred a year, the number of people killed by drunk drivers fell to one hundred a year.

Thousands of families have not had to hear that knock on the door at night, to see an officer with a death notification.

News item: NM worst in nation for deaths due to alcohol

Success in reducing DWI but NM has an alcohol problem. In 2020, five people died every day due to alcohol. No other state is even close to NM. Senator Cervantes: "We're not just worse, we're off the charts." Albuquerque Journal, August 28, 2022.

News item: NM ranks #1 for road rage shootings
Study from 2018-2022. KOAT, October 13, 2023.

RUNNING LICENSE PLATES: A SUCCESS STORY FOR FIELD OFFICERS

What is it like to be number one in the country for auto theft? If you were curious, until recently, you went to Albuquerque, NM. And then, with new cases and a strategy, things began to change . . .

Running license plates

Before 2010, it was "hit or miss" on running plates in New Mexico. It depended upon which part of the state you were in or what judge you were in front of.

Defense attorneys had two powerful arguments:

- "My client has an "expectation of privacy" in his or her license plate." (Not true)
- "The officer needs to verify that the driver of the vehicle is the owner of the vehicle." (Not true)

New court cases support running license plates:

Facts:

In San Juan County, a deputy "ran" a license plate of a vehicle which indicated the owner had a revoked driver's license. The officer stopped the vehicle without making an effort to visually observe the driver prior to the stop. The driver was DWI.

Court of Appeals, using the state constitution, held the notice of revocation was reasonable suspicion for the stop. The owner of a vehicle is presumed to be the driver. State v. Hicks (2013).

Facts:

In San Juan County, NMSP stopped a vehicle when a license plate came back “insurance unknown.” Testimony was given that approximately 90 percent of “unknown” returns do not have insurance.

Supreme Court, noting the percentage, said “unknown” is reasonable suspicion to make a stop. State v. Yazzie (2016).

Facts:

Driver’s license suspended. US Supreme Court held that was reasonable suspicion to stop a vehicle. Kansas v. Glover (2020).

Note:

- There is no expectation of privacy in a license plate.
- A stolen license plate, no insurance, or insurance unknown is reasonable suspicion to stop a vehicle.
- The owner of the vehicle is presumed to be the driver.
- An auto thief has no expectation of privacy in a stolen vehicle. Byrd v. US (2018).

In January of 2018, APD put together a strategy to reduce crime. It involved running license plates to target auto theft and bait cars. Primary partners were BCSO and NMSP and Insurance Fraud.

News item: Auto theft falls in Albuquerque Metro

For auto theft, Albuquerque in 2015 was #2 in the country. For the next three years (2016-2018) Albuquerque was #1.

Between 2018 and 2022, crime went down dramatically. Property crimes – 40%, Larceny – 44%, Robbery – 46%, etc. Having a strategy made a difference. KRQE, March 16, 2023.

Lessons learned:

Targeting auto theft (one of the few areas where police can be proactive) through traffic stops led to a major decrease in auto theft and other crimes.

Recommendation: Agencies should consider license plate readers.

(Video: New Mexico Village using technology to solve crimes. KOAT, November 29, 2021.

News item: Bernco Commission approves millions in public safety.

A contract between BCSO and Axon Enterprises. Will include automatic license plate readers. KOB, June 20, 2023.

News item: A Crime Wave Carmakers Enabled

Most cars have electronic immobilizers, devices that prevent cars from starting unless they detect a radio ID code associated with the car's rightful key.

But Hyundai and Kia did not install this basic device for about nine million cars sold between 2011 and 2022. The result, of course, is they account for many of the vehicles stolen. New York Times, Sept 3, 2023.

PART THREE: STRATEGIES TO REDUCE CRIME IN NM

In the military, one has limited resources and wants to win. There is an expression called the "force multiplier" which means finding ways (strategy, technology, etc.) to make better use of limited resources.

The following are ideas now being used by law enforcement.

- Using technology to reduce crime.
- Working with federal agencies to reduce crime.
- Looking at the NM Court system: is there room for reform?

- A strategy that includes “proactive” policing

STRATEGY: NM USING TECHNOLOGY TO MOVE AHEAD

DNA testing . . .

News item: New DNA facial testing aids police in Albuquerque

One drop of blood and new DNA technology created an image of what a suspect might look like. It led APD to arrest Justin Hanson, involved in a brutal beating. KRQE, July 25, 2017. (Video).

Note:

Justin Hanson pled to attempted murder and aggravated burglary. In 2018, he was sentenced to eighteen years.

News item: “Little Miss Nobody” finally has a name

The body of a very young girl was found in 1960 west of Phoenix. **After 62 years**, DNA revealed she was four-year-old Sharon Lee Gallegos of Alamogordo, NM. KOAT, March 15, 2022. (Video)

News item: California victim identified **nearly thirty years later**

She was dumped on the side of a road near San Francisco. Police had help from the **DNA DOE Project**, a group that uses volunteers to identify “Jane Doe” or “John Doe” through DNA profiles of possible relatives. Victim a mother from Oregon. FOX News, April 19, 2022.

News item: Cold murder case over **a half century old** solved by DNA

A 16-year-old girl killed near Baltimore in 1970. FBI, with the help of a DNA data base, identified the suspect in 2023. He died in 2018. WBAL-TV, March 13, 2023.

News item: Genealogy used to make first arrest of its kind in NM

Matched DNA taken after a crime to DNA submitted by relatives. Cold case, four years old. KOAT, January 16, 2020.

News item: Albuquerque man arrested in connection with cold case

Law enforcement used family databases & genealogy to connect Defendant's DNA to a 1997 rape case. KOB, December 21, 2021.

News item: How to save lives with DNA testing

In Virginia Sheriff Harding (Albemarle County) worked with the Innocence Project **to add serious misdemeanors** for DNA testing.

Liberals and conservatives supported more DNA testing. Wall Street Journal, August 2, 2017.

In 2011 DNA testing in NM was expanded to all felony arrests. NMSA 1978, Section 29-3-10.

News item: Nation's 1st Rapid DNA rolls out in Florida

It's being used at a detention facility. DNA is taken from a subject and electronically submitted to the FBI CODIS (Combined DNA Index System) to see if DNA is connected to an unsolved crime anywhere in the nation.

Suspects not released until DNA search results come back. WUSF (University of South Florida) News, February 27, 2020.

News item: New device streamling DNA testing in Dona Ana County

Sheriff's office has a rapid DNA testing device that allows deputies to test DNA in 90 minutes. Before the wait was months, sometimes more than a year. Federal funding help pay for it. KRQE, June 3, **2022**.

Note:

As of January of 2020, the Innocence Project documented nearly 400 DNA exonerations in the US.

Twenty-one of these had previously been sentenced to death. The average sentence served was fourteen (14) years in prison.

The vast majority (97%) of these people were wrongly convicted of rape and murder. Source: The Innocence Project.

Suggestions and recommendations:

Often a suspect is released while awaiting DNA testing. With a rapid DNA machine, results can be returned in less than two hours.

New Mexico may want to consider recent advances in DNA testing and legislation to add serious misdemeanors for DNA testing.

NM may also want to consider more money for DNA testing.

DNA Identification Act

Court of Appeals held DNA is similar to fingerprinting and constitutional. Samples are for identification purposes only and do not reveal genetic or medical tests. State v. Blea (2018).

New drone technology . . .

Video:

APD uses drone to catch hiding suspect. KRQE, January 20, 2022.

News item:

Man with warrant flees from (BCS) deputies, caught using drones. KRQE, December 19, 2023.

News item: Drone locates missing hunter, 92

A hunter was lost in a heavily wooded area in Virginia. Search & Rescue deployed a drone and found him within 20 minutes.

The drone has an antenna under the **Project Lifesaver** program, designed to locate people with medical conditions that may cause them to wander. Participants wear a wristband that emits a locating signal that the drone can pick up. Albuquerque Journal, December 19, 2017.

News item: More law enforcement agencies using drones

Police and fire departments continue to find new uses for drones. Examples: photos of vehicle crash scenes, map crime scenes, officer safety. Associated Press (AP), May 28, 2018.

News item: 300 drones create aerial light show at Balloon Fiesta

Although not police-related, this story gives an idea of what drones can do. In some cities drones are being used for vehicle pursuits. KOAT, October 4, 2022. (good video)

Detecting gun shots . . .

News item: New tech could stop a shooting before it starts

Detects a gunshot the moment it occurs, locks doors in buildings within seconds. Alerts everyone nearby through social media. Can detect anyone carrying a gun, even if a gun is pointed a certain way.

Developed in Albuquerque by an immigrant from Israel. Tested by SWAT at Albuquerque airport. Used in UNM-Valencia, Artesia schools, and world-wide. Albuquerque Journal, September 4, 2022.

News item: New technology helps police arrest Albuquerque woman

Technology uses an acoustic sensor that identifies and reports gunshots within seconds of shots being fired. Called **ShotSpotter**. KRQE, October 26, 2020.

News item: Shotspotter helping with a number of investigations

The technology has helped with many cases. KRQE, October 25, 2022.

Facial recognition . . .

News item: 4 Investigates: Police Use of facial recognition.

Picture of a suspect at a crime scene compared to picture from social media, news stories, mug shots, etc. The company doing this in NM has 40 billion photos. It's an investigative lead, not probable cause.

Departments so far include APD, Eddy County Sheriff's Office, Las Cruces PD, NMSP, and Rio Rancho PD. KOB, December 3, 2023.

STRATEGY: WORKING WITH FEDERAL AGENTS TO REDUCE CRIME

Many officers in NM believe the federal system works but the state system “is broken.”

Since 2019, federal agents and agencies have been providing more help for New Mexico law enforcement.

News item: NM DA gets grant for prosecutor to target gun crimes

Federal government is providing a \$278,000 grant to hire a full-time local prosecutor to try firearms cases in federal court. It will go to the 13th Judicial District which covers Cibola, Sandoval & Valencia. Associated Press, October 24, 2020.

STRATEGY: LOOKING AT THE NM COURT SYSTEM . . .

A major frustration for officers in New Mexico is the inefficiency of the criminal justice system. New Mexico is one of few states where MVD hearings turn into mini-trials and officers prosecute cases.

An idea working well elsewhere . . .

News item: It can take months for DAs to bring charges

NM Constitution requires a Grand Jury or Preliminary Hearing to determine if there is probable cause for a felony case to go to trial.

Fourteen states (including Arizona, California, and Washington) use an Informational Process. Paperwork is given to a Judge to approve. KOAT, July 25, 2019.

Officers prosecuting misdemeanor cases . . .

New Mexico is one of the few states where officers, not attorneys, prosecute misdemeanor cases.

In New Mexico, with the exception of jury trials, DWI, and Domestic Violence, officers prosecute misdemeanor cases.

News item: We've made a major change prosecuting shoplifting

DA Sam Bregman noted that in 2022, with officers prosecuting shoplifting cases, there was only a 15% conviction rate. ADA's will now prosecute the cases. Albuquerque Journal, September 24, 2023.

Pretrial interviews . . .

Bernalillo County Raul Torrez noted only 5 to 10 states require pretrial interviews. Albuquerque Journal, January 28, 2018.

Note:

In 2022, Supreme Court began working on reforms to have fewer pretrial interviews for misdemeanors.

A criminal complaint . . .

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 nearly forty years officers in Bernalillo County have put probable cause in the criminal complaint and use just one form.

Note:

The Statement of Probable Cause form notes it is not necessary to use it if a criminal complaint has been used. Many believe the Statement of Probable Cause (for adults) should be eliminated.

Some things that are being talked about:

- Use an Informational Process rather than a Grand Jury or Preliminary Hearing.
- If possible, have attorneys prosecute more misdemeanor cases, not police officers.

- With the criminal complaint and statement of probable cause forms, use the criminal complaint form only.

IS IT BAIL REFORM OR IS IT CATCH & RELEASE?

This is an issue of great interest to law enforcement. It went into effect July 1, 2017.

Efforts were made in 2022 and 2023 to end it but the state legislature voted to continue it.

There has also been a trend not to put juveniles in custody. For officers, this means a longer trip to a juvenile detention center.

News item: Rio Arriba, Los Alamos counties send youths to San Juan

There are six juvenile centers in NM and two may be closing. Fewer juveniles being detained; 40% of beds empty in 2019. Farmington Daily Times, February, 2020.

In parts of NM, it sometimes takes a drive of two hours or more to put a juvenile into custody.

A strategy also means being proactive . . .

There are four main ways for a law enforcement agency to be proactive: (1) target auto theft (recommend automatic license plate readers), (2) target repeat offenders and serving arrest warrants (recommend working closely with federal agencies), (3) target drug dealers, and (4) traffic enforcement.

PART FOUR: RECENT LEGISLATION IN NEW MEXICO

In even-numbered years, the session is thirty days long and devoted to budget issues. In odd-numbered years it is sixty days long.

We're including legislation for the last five years to make officers aware of recent legislation that has an impact on law enforcement.

2023 Legislature

HB 9. One teenager in Albuquerque took his father's gun and killed another teenager (both were 13 years old). Benny Hargrove Safety Act holds an adult responsible for a minor's negligent use of a firearm.

HB 234. Organized retail theft crimes. Shoplifting offenses over a year can be used together to become a felony.

News item: Sticky fingers: 327 shoplifters, 6,000 arrests

In New York City nearly a third of shoplifting arrests in one year involved just 327 people. 18 stores and 7 pharmacy locations accounted for 20 of complaints. New York Times, April 16, 2023.

HB 306. Prohibits "straw" purchases of guns. (Buying guns for another).

SB 43. Acts of intimidation against election clerks and agents. 4th felony – to threaten or use force or violence or threat or to induce fear or attempt to induce fear.

SB 102. Semi-trucks can use the fast lane to pass but otherwise must stay in the right lane. \$250 fine.

SB 133. Dealer needs documentation of someone selling catalytic converter. Will also keep track of people selling them.

2022 Legislature

SB 12. A new position in the AG's Office – a missing persons specialist – with a focus on missing indigenous women.

SB 13. An annual Missing in New Mexico event to connect families of missing New Mexicans with law enforcement.

HB 52. Allows use of test strips that can detect the presence of fentanyl in heroin.

Teachers got significant raises. NMSP officers got a 16% raise.
The most important crime bill was HB 68. Some of the highlights:

Two Boards instead of one

There are now two separate Boards: (1) Law Enforcement Certification Board (for officer misconduct) and (2) Law Enforcement Standards and Training Council (for training).

Requirements for training for officers **and** dispatchers

New topics, among others, include de-escalation, peer-to-peer intervention (this has to do with the duty to intervene), racial sensitivity, and reality-based situational training.

Note:

There has been concern that police academies rely too much on PowerPoint and rote memorization.

Second degree murder

NM has now joined forty-nine (49) states and will no longer have a statute of limitations for second degree murder. Also, the penalty increased from 15 to 18 years.

If, regrettably, the ultimate occurs and an officer dies in the line of duty

Families, until now, got \$250,000 dollars. That was increased to one million dollars.

New crimes created

Threatening a Judge – fourth degree felony. (18 months)

Operating a Chop Shop – Third degree felony. (36 months)

Note:

The following few pages includes legislation that has passed in recent years.

2021 LEGISLATURE (60 day session)

- HB255. Allows restaurants to deliver alcoholic drinks with food. Prohibits sale of miniatures for off-site consumption. Lifts restrictions on selling alcohol on Sunday.

2019 LEGISLATURE (60 day session)

- B 328. Orders of Protection and Firearm Ownership. Requires court to enter an order of protection in domestic abuse cases, ordering restrained party to turn over firearms.
- SB 517. DWI with Minor in Vehicle. "Minor" is younger than thirteen years of age. This is a misdemeanor.
- HB 230. Child Abuse Reporting and Safe Care Plans. Amends the Abuse and Neglect Act to prohibit a report of child abuse based solely on a finding that a pregnant woman is using drugs.
- HB 237. Extends University Police Officers Authority Boundaries. Extends authority to include public streets and highways that are immediately adjacent to a campus.
- HB 312. Seizure and disposition of forfeited property. For forfeitures under local law, requires conviction by a criminal court. Forfeitures under local law must follow the same rules as forfeitures under state law. (Main impact was DWI forfeiture).
- HB 631. Use of flashing lights by Recovery Vehicles. Prohibits recovery or repair vehicles from displaying flashing lights unless stopped on a roadway.

2018 LEGISLATURE (30 day session)

- HB 40. In-service training each year for strangulation in domestic abuse training for officers.
- HB 52. Electronic system for salvage yards and other recyclers to access a data base that keeps track of stolen vehicles. Failure to check is a misdemeanor.

- HB 67. Misrepresentation of military service to get something of value is now a misdemeanor.
- SB 61. Adds definition of “suffocation” and “strangulation” which can result in Aggravated Battery (DV), a 3rd degree felony.

2017 LEGISLATURE (60 day session)

- HB 110. In a county with a municipal court violation, an arrest or service of process can be made in adjacent counties.
- SB 76. Requires drivers to move away from the lane adjacent to (or slow down) for emergency vehicles (including tow trucks) displaying hazard lights.

FAILED

- A bill to establish minimum standards for Sheriff.

2016 LEGISLATURE

- “Racheal’s Law” allows judges to grant orders of protection to rape victims for any length of time, including permanently. Victims won’t have to appear in court. Rachael was raped as a child by her father. HB 27.
- Brittany Alerts. Named for a person missing from parent’s house for 18 days but later found safe. Similar to Silver and Amber Alerts, will notify public when a person with a physical or mental disability is missing.
- Vehicular homicide: Penalty increased from six to fifteen years.

PART FIVE: NEW LEGAL CASES IN NEW MEXICO

Part Six covers a number of topics, in alphabetical order: Child Abuse, Civil Rights, DWI, Firearms, Hate Crimes, IPRA, Laws of Arrest, Miranda, Mistaken Eyewitness ID, Property Crimes, Red Flag Law, Search & Seizure, and Violent Crimes.

CHILD ABUSE

News item: CYFD portal to assist law enforcement agencies

Officers can use a portal to see if CYFD has ever been involved with a family. Can also access from laptops in vehicles. Available to all law enforcement agencies in New Mexico. KRQE, July 26, 2019.

CIVIL RIGHTS AND CIVIL LIABILITY ISSUES

Litigation can be expensive . . .

Making it easier for the public to know what is going on . . .

News item: NM State gov't to put lawsuits settlements online

Previously, lawsuit settlements could be kept secret. Public can now learn who filed lawsuit, who it was against, and the settlement. KRQE, June 21, 2019.

News item: NM launches website listing lawsuit settlements

The website: www.sunshineportalnm.com. At the bottom of the main page, a box titled "Risk Settlements/Awards" will take users to the lawsuit settlement portal. KRQE, August 30, 2019.

DWI

Asking for consent for a breath or blood test . . .

DWI Consent (Breath & Blood)

When a DWI suspect failed field tests, a Bernalillo County Sheriff's deputy read the implied consent act to her. She gave a breath test (.04, .05) but refused a blood test. She was charged with DWI.

Supreme Court of New Mexico said a person who refuses a **breath** test can be charged with Aggravated DWI; a person who refuses a **blood** test cannot. State v. Vargas (2017).

Recommendations and suggestions:

If an officer wants a blood sample, recommend a search warrant. The law, however, states a search warrant is possible only if there is death or great bodily injury to another or there has been a felony. NMSA 1978, Section 66-8-111.

Facts:

Driver Debra Gallegos was stopped at a NMSP checkpoint. A surprise: her breath test results were .000.

Officer Vernier took her to a local hospital and ordered personnel to draw blood. She was booked for DWI, first offense, a misdemeanor.

Court of Appeals held it was an illegal seizure (drawing of blood) and that her Fourth Amendment rights had been violated. Lawsuit permitted to go forward. Gallegos v. Vernier (2019).

A request for independent blood test . . .

After telling a DWI suspect of a right to their own blood test, it is sufficient for an officer to give a suspect a telephone book and a phone. A suspect can also call a friend or family member for help.

The officer is not required to do more than that. NMSA 1978, Section 66-8-109 (B). State v. Chakerian (2018).

- Some people feel DWI should be a felony on the third arrest. They note that:
- Third offense domestic violence (assault and battery) is a felony; second offense telephone harassment and stalking is a felony; and Issuing Worthless Checks over \$25 is a felony.

FIREARMS

News item: Supreme Court strikes down New York gun law

One had to show a special need to get a concealed carry permit; stating one wished to protect themselves or property not enough. Supreme Court struck down these requirements. NY State Rifle and Pistol Association v. Bruen. CBS, June 23, 2022.

News item: District Court rules to restrict NM Civil Guard

Militia people, in uniforms and carrying guns, went to a protest in Albuquerque claiming they were there to keep the peace.

Court held people cannot organize as a paramilitary or police unit. They had no statutory or constitutional authority. DA's office in Albuquerque took them to court. KOB, October 18, 2022.

Felon in Possession – Double Jeopardy

A felon in possession of a stolen firearm. Court of Appeals held it was **not** double jeopardy to charge Felon in Possession and Receiving Stolen Property (Retain).

They are two different charges. A felon can possess a gun which may be stolen or not stolen; a person who possesses stolen property may or may not be a felon. State v. Cummings (2018).

HATE CRIMES

News item: Study reveals NM only state to have zero hate groups

In 2004, 2005, and 2018, NM had zero hate groups. NM was the only state in 2018 to have zero hate groups. Study by Southern Law Poverty Center. KOAT, January 14, 2020.

Legislation to include additional groups such as the homeless or police officers at the legislature has not been successful.

US Attorney and FBI have been very helpful on hate crime cases.

INSPECTION OF PUBLIC RECORDS ACT (IPRA)

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.

News item: Gov't paying big bucks for public documents

Albuquerque City Clerk said requests increasing 10-30% a year. One lawyer in Albuquerque made \$266,000 on IPRA requests alone! Each day records are not released is a \$100 fine. KOAT, April 14, 2022.

News item: Rio Rancho secrecy costs taxpayers \$43,000

A 4-year-old shot his 2-year-old brother. Rio Rancho felt they didn't have to release records because children were involved; District Court Judge disagreed. City to pay \$43,000 in legal fees. Albuquerque Journal, November 4, 2022.

News item: Judge awards damages, fees in records suit

A former Santa Fe lieutenant sued the city for failing to comply with IPRA. Awarded \$11,550 in attorney fees and \$4,275 in damages. Santa Fe New Mexican, March 11, 2021.

News item: Albuquerque pays over \$300K on lawsuit settlements

An APD officer fired for failing to turn on his body camera sued because the city did not respond to an open records request. City paid him \$85,000. KRQE, April 6, 2021.

News item: Justices: Cops Can't Hide behind "ongoing investigation"

Editorial: Law enforcement records exempt from IPRA include those that "reveal confidential sources, methods and uncharged individuals." Supreme Court said IPRA did not create an exception for "an ongoing criminal investigation." Albuquerque Journal, July 25, 2020.

News item: Rio Grande Sun settles Records suit with NMDPS

For failure to comply with IPRA, DPS will pay the newspaper \$250,000. Rio Grande Sun, October 11, 2019.

News item: Public Records Suit costs NM town a hefty amount

It's a big payday for a local newspaper. The city of Jal is agreeing to pay more than \$400,000, a tenth of its budget, for withholding public documents. KRQE, April 15, 2019.

News item: City of Albuquerque pays out thousands in lawsuits

APD escorted Deyontae Williams away from a protest. They didn't give him the records he asked for. They had three weeks to comply. He got \$60,000. KRQE, September 12, 2022.

News item: Albuquerque pays more than one million dollars settling IPRA lawsuits. KOB, October 2, 2023.

LAWS OF ARREST

Misdemeanor arrest rule

Previously, it was felt an officer could arrest for certain misdemeanors – assault, battery, public affray, criminal damage – only if they occurred in a bar. Court of Appeals said crimes not limited to specific location. State v. Veith (2022).

Reasonable Suspicion – Hunch

In Clovis, a NMSP officer, with over twenty years, watched for drug activity at a gas station. He saw a car drive up and park. A person got in the back seat, stayed a few moments, and left. A few minutes later, same thing happened.

Supreme Court said there was reasonable suspicion to stop the vehicle. State v. Martinez (2020).

MIRANDA

Reading Miranda rights

Facts:

In San Juan County, suspect was told “you have the right to a lawyer, if you cannot afford one, one will be provided for you. Court of Appeals said this wasn’t enough; an officer has to advise a suspect that they have a right to a lawyer prior to and during questioning. Conviction for CSP reversed. State v. Atencio (2021)

News item: Evidence tossed in Muslim killings case

District Court found Albuquerque Police did not inform defendant he had a right to a lawyer prior to questioning. Albuquerque Journal, December 21, 2023.

We’re including this section on ‘false confessions’ again because it can be devastating when it happens.

Why would anyone confess to something they didn’t do?

One also wonders: how did officers, usually senior detectives, fall for it? Coercion? How many other false confessions are out there?

The following high-profile homicides are from Albuquerque. Cases like these, of course, have occurred elsewhere.

The Victoria Martens case . . .

She was ten years old. At school she presented a happy, cheerful face, perhaps to compensate for the nightmare at home.

She was used for prostitution (trafficking) but then they killed her and set fire to her body. Veteran APD officers were stunned. APD Chief said it was “the most gruesome act of evil” in his career.

News item: A shocker in Martens case

Her mother, Michelle Martins said she and her boyfriend, Fabian Gonzales, did it. He denied it.

Even though she gave three different versions of how she died, police believed her. DA’s Office was skeptical.

After two years, cell phone technology showed both were not there when she was killed. Murder charges dropped. Albuquerque Journal, June 30, 2018.

The Jacqueline Vigil case . . .

A lady was in her vehicle, ready to go to the gym, when she was killed. In a year (2019) that had 82 homicides, this shocked the community. At the time, she had two sons who were NMSP officers.

APD got a false confession from Zachary Barranca who said he was present but on his cell phone. Records said this wasn’t true. He told DA investigators an officer got angry so he confessed to the crime. He has since been cleared of all charges. KOB, Nov 12, 2020.

Suggestions and recommendations:

People falsely confess, even to horrible crimes. In any class on interrogation, recommend a segment on false confessions.

Miranda – Public Safety Exception

As an APD officer put on his protective gloves, he asked Defendant, who was in custody, “Is there anything on your person that I need to know about?” Answer: “I have meth.”

No Miranda warnings given but Supreme Court said the answer was admissible under the Public Safety Exception to Miranda. State v. Widner (2020)

The Miranda two step. . .

An officer in Silver City, without reading Miranda, questioned a juvenile in custody about a homicide. The juvenile confessed and the officer told him to give a statement to a detective. Detective read Miranda and the juvenile confessed again.

Supreme Court held this was a continuing confession, interrupted by a midstream warning. Second statement inadmissible. One remedy might be to tell suspects anything previously said will not be used against them. State v. Filemon V. (2018)

Police Officers exercising Miranda rights . . .

Editorial: How do you get answers and protects cops' rights?

Several officers in a fatal shooting in Santa Fe invoked their Miranda rights and did not give statements to NMSP investigators.

“Welcome to the new normal, where sworn law enforcement officers not only read the Miranda rights but invoke them. Can you blame them?” Albuquerque Journal Editorial, September 15, 2015.

Right to an attorney – Child

A brutal murder in Hobbs, NM. Child was 15. A petition, similar to a complaint was filed and he was assigned an attorney. Later, an officer read him Miranda rights and he gave a statement.

Supreme Court held once an attorney is involved, a Child may not waive rights unless an attorney is present. The statement was suppressed. State v. Rivas (2017).
For now, an adult in NM can make a waiver.

Trial – Comment on Silence

In Las Cruces, Defendant stopped for DWI. BAT showed no alcohol. She was read Miranda rights and asked to take a DRE (drug recognition expert) exam. She refused.

The prosecutor at trial talked about her silence. Supreme Court said one cannot mention that a suspect refused to give a statement after being read Miranda rights. Because there was a lot of other evidence, a new trial was ordered. City of Las Cruces v. Carbajal (2023).

Voluntary Statement – Hospital

BCSO interviewed driver (DWI) at the hospital where she gave a statement. Later, she said her statement wasn't voluntary because of her state of mind.

Court of Appeals said for a statement to be suppressed, there also has to be **police coercion**. Her statement was properly admitted. State v. Bregar (2017).

MISTAKEN EYEWITNESS IDENTIFICATION

Since 1989, when DNA became available, over 2500 people have been exonerated (conviction overturned). Many of these cases involved a mistaken ID. Source: National Registry of Exonerations.

There are some simple things law enforcement officers 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) may decrease the chance of an innocent person being identified. (Video: CBS Sixty Minutes: Picking Cotton)

When viewing several photos at once, witnesses tend to choose the person who looks the most like – but may not actually be – the offender. NMSA 1978, Section 29-3B (Accurate Eyewitness ID Act).

News item: ACLU Files lawsuit the City of Albuquerque

A 17-year-old girl spent a week in custody as a homicide suspect before APD realized they made a mistake.

She went to one high school but the detective sent a Facebook photo of the suspect to another high school. A school resource officer at the second school wrongly identified Giselle Estrada as the suspect.

What did the innocent person and the suspect have in common? Both were Hispanic, female, and teenagers. ACLU Press Release, December 3, 2020.

PROPERTY CRIMES

Burglary – Dwelling

In San Juan County, offender broke into a home. It was complete on the outside but needed work on the inside. It lacked electricity and water. Owner stayed in a small part of the house but was often gone to work in the oilfields.

Court of Appeals said it was a “dwelling” and the break-in was a residential burglary. State v. Shelby (2021).

Burglary – Double Jeopardy

In Farmington, Defendant broke a window to a store and entered. He pulled out the cash drawer and threw money on the floor. The state charged burglary and breaking & entering.

Supreme Court said it was double jeopardy to charge two crimes for the same act. Cannot charge both crimes. State v. Begaye (2023).

Possession of Burglary Tools – Intent

Possession of Burglary tools has two parts: Possession and Intent. APD officer, while doing a pat down, found two car keys filed down to “jiggle keys” or “bump keys,” commonly used in auto burglary.

However, couldn’t prove intent. Court of Appeals reversed conviction. State v. Montoya (2021).

“RED FLAG” LAW

Also known as the Extreme Risk Firearm Protection Act, NMSA 1978, Section 40-17-1 through 13.

. . . upon credible information from a reporting party that gives an officer probable cause to believe a person poses a significant danger of causing imminent personal injury to self or others by having a firearm, the officer can seek a temporary protection order for the firearm(s).

The person has a number of safeguards: The reporting party must give a sworn affidavit. To get a one-year order, a hearing must be held within 10 days. During that year, at any time, the person can petition to have his or her firearm(s) returned.

When an officer goes to a person's residence, they will show the person a sworn affidavit and a court date for a hearing where the person can tell their side of the story (within ten days).

The officer can ask for weapons but the officer cannot seize weapons. That's because this is a civil matter, not a criminal matter.

The officer, however, can tell the person it is a misdemeanor if the person retains a firearm once a court order has been issued.

Note: The "red flag" law had not been used very often.

SEARCH & SEIZURE

CELL PHONES

The first US Supreme Court case to discuss cell phones and privacy was a search incident to arrest case. Officers can empty pockets, look through wallets, cigarette packages, etc., without a warrant. But what about a cell phone or smart phone?

The Supreme Court noted the incredible amount of information stored in a cell phone. Because of this, they said a search warrant is needed to look at the contents or data of a cell phone.

True, bad guys can use technology, but so can law enforcement. NM was one of the first states to approve electronic warrants to make it easier for an officer to get a warrant. Riley v. California (2014).

United States Supreme Court on cell phone location data:

Each time a cell phone connects to a cell site, it generates a time-stamped record. Police used this to get robbery convictions in Detroit.

In 2018, US Supreme Court said a person has a privacy interest in their physical location and movements. To get cell phone location data, police need a search warrant. Carpenter v. United States (2018)

The following year the state legislature in New Mexico passed the Electronics Communications Privacy Act. NMSA 1978, Article 16F, Section 1-6. This little-known section provides guidance to use when getting a search warrant for cell phone data.

COMMUNITY CARETAKER EXCEPTION

Note: There have been major changes involving “welfare checks.”

An important exception that has seen changes in recent years. It has three main categories, known as doctrines:

- Public service doctrine - applies to vehicles.
- Emergency aid doctrine - applies to homes.
- Impoundment & Inventory- mainly for impounding vehicles.

Impoundment and Inventory doctrine

In Farmington, a NMSP Sergeant did an “EMS assist” to assist emergency medical services about a man “slumped over the steering wheel.” He was taken to the hospital. The vehicle was in the parking lot of a Mini-Mart and left there.

Sergeant did an inventory search. Saw a closed backpack in the backseat, opened it, and found drugs. Driver charged with trafficking. Court of Appeals held it was a good search. State v. Byrom (2017).

Public Service Doctrine and Stopping Vehicles

Shortly after midnight, in Lincoln County, an officer saw a Jeep parked on the shoulder of a road. Two people were inside and a woman in the passenger's seat appeared to be unconscious. The driver drove away and was stopped. There was no suspicion of a crime.

Upon investigation, driver was arrested for DWI. Court of Appeals said a vehicle can be stopped for a specific, articulable safety concern. It was a good stop. State v. Sheehan (2014).

Emergency Aid Doctrine – Welfare Check

For many years officers were told it's OK to enter a residence (without a warrant or consent) to do a welfare check.

Often, one would hear an officer say, "if this involves a kid, I'm going in."

However, need to be careful about entering houses . . .

News item: Court of Appeals overturns conviction in fatal DWI case

A drunk driver killed a motorcyclist and left his truck at the scene. Rio Arriba deputies went to his residence, entered, and found suspect.

No evidence suspect has been injured. Key in his pocket matched the vehicle and he gave incriminating statements.

Court of Appeals said emergency assistance doctrine did not apply. Evidence suppressed. State v. Cordova, Albuquerque Journal, June 17, 2015. Note: Found guilty in second trial in 2017.

Facts:

Victim was outside her boyfriend's house where she had stayed three or four days. She wanted to get her personal things. Ruidoso police officers went in, got her clothing, and saw drugs nearby.

Court of Appeals said emergency aid doctrine is similar to exigent circumstances but no emergency here. Evidence suppressed. State v. Ramos (2017).

Facts:

In Farmington, an officer was dispatched when a neighbor heard a loud “thumping” sound from the apartment above. Officer heard a young child hollering, “Mommy! Mommy, wake up!” An infant was crying. He did not hear the mother or any adult moving around.

Officer’s entry in the residence was good. State v. Yazzie (2019).
Note: A high standard for entering a residence without a warrant.

CONSENT

Facts:

NMSP officer was doing a “knock & talk” and asked for consent to search a residence. He told Defendant he had asked for over 200 warrants and never been turned down and he had probable cause. Defendant gave consent and drugs were found.

Supreme Court determined there was no probable cause to search and the officer’s assertion that he did was coercion. Evidence suppressed. State v. Lovato (2020).

DETAINING WITNESSES

In Iowa, a victim was stabbed outside his residence. Witnesses included family members who wanted to go to the hospital. Police took them to the police station. While there, the victim died. The federal court in Iowa said they could sue the police. Davis v. Dawson (2022).

Transporting a witness to a crime to a police station must be based upon voluntary consent or probable cause a witness has committed a crime.

Forcing a witness to go to a police station without consent is an arrest that must be supported by probable cause.

SEARCH INCIDENT TO ARREST

In Clovis, Defendant was arrested in an alley. A purse was hanging from her purse. Officer put handcuffs on her, checked her purse, and found drugs. He said it was a search incident to arrest.

Supreme Court said a search incident to arrest is a search of a person or the area in their immediate control. This went beyond that. Evidence suppressed. Police officers at a police station or prior to going at jail can do an inventory search. State v. Ortiz (2023).

SERVING WARRANTS

NM has not used “no knock” since the 1990s. As to how long to wait outside when serving a warrant, NM has no set time limit.

Other parts of the country are using set time limits. In Minneapolis, police have to wait 20 seconds outside before entering a residence, 30 seconds at night. Associated Press, March 15, 2022.

Facts: Defendant was in vehicle playing loud music and honking his horn. Officer tried to stop him, but Defendant ran into his residence. Officer followed. Defendant was DWI.

US Supreme Court held fast pursuit doesn’t always justify an entry when a misdemeanor is involved. Case sent back to the lower court to decide if there were exigent circumstances. Lange v. California (2022).

VEHICLE STOPS

Aggravated fleeing – Marked vehicle

Aggravated fleeing requires the officer stopping the vehicle **be in uniform in a marked vehicle**.

Curry County Sheriff's Deputy stopped defendant for Aggravated Fleeing. He was dressed as a detective, wearing dress shirt with tie, dress slacks, and dress shoes. His badge was displayed on his pocket.

Was the officer in uniform? (No). A badge is not clothing which means the deputy was not in uniform.

Was officer in appropriately marked law enforcement vehicle? (No)

The vehicle had flashing lights and a siren but nothing to indicate it was a law enforcement vehicle. Supreme Court reversed conviction. State v. Montano (2020).

Note: In 2022 the legislative deleted "marked vehicle" and substituted "authorized emergency vehicle."

Aggravated fleeing – Another person

In Las Cruces, a NM State University Police Officer in a high-speed chase. It was 0300, the roads slippery and wet, as Defendant raced down a main street, going over 70 mph. He crashed into a road sign.

"Aggravated fleeing a law enforcement officer consists of a person willfully and carelessly driving a vehicle in a manner that endangers the life of another person after being given a visual or audible signal to stop . . ." NMSA 1978, Section 30-22-1.1 (A).

Supreme Court held it doesn't mean another specific person has to be put at risk. Instead, we ask: Was his driving so dangerous that another person could have been hurt? (Yes). Conviction affirmed. State v. Vest (2021).

Note: In 2022 the legislature said it would still be a 4th degree felony if there is a generalized harm to the community. If there is harm to a victim, it would be a 3rd degree felony.

Aggravated fleeing – Felony murder

In Albuquerque, after stealing a van, Defendant led police on a high-speed chase. Driving at nearly 80 mph, she ran a stop sign and smashed into another car. Two people in the other car died.

Not all felonies lead to felony murder but in this case it did. Supreme Court sent case back to District Court. State v. Groves (2020).

In March of 2022, a lady in Santa Fe claimed she had been kidnapped at knifepoint and forced into a car.

It was hoax and she led officers on a high-speed chase. A Santa Fe Police Officer (Officer Duran) crashed into a vehicle driven by a retired firefighter (Mr. Lovato) from Las Vegas, NM. Both died.

Because she was driving a stolen vehicle, she was charged with felony murder.

Note:

Had it not been a stolen vehicle (or a felony), she would have been charged with Vehicle Homicide – Reckless Driving, which has a maximum sentence of six years. Vehicle Homicide – DWI has a maximum sentence of fifteen (15) years.

VIOLENT CRIMES

Agg Assault – “Use” of a Deadly Weapon

A principal in Clovis learned Defendant (Child) had a weapon on campus. He saw what appeared to be a gun under his waist band. As

the Child emptied his pockets, there was a Co2 cartridge, the kind used in a BB gun. That's when the child asked a few questions:

"How would you feel if a twelve-year-old shot you?" "What would happen if somebody shot up the school?" "Are you afraid to die?"

Aggravated assault with a deadly weapon is "unlawfully assaulting or striking someone with a deadly weapon." Child didn't take the gun out, but the presence of the gun was "used" to make his threats more dangerous. Supreme Court upheld charge. State v. Zachariah G. (2021).

Battery on Healthcare Workers . . .

Battery on a healthcare worker is a fourth degree felony if she or he is in the law discharge of duties. NMSA 1978, Section 30-3-9-2.E.

Court of Appeals said this covers all employees of a health care facility, including a security guard. State v. Vilino (2012).

Criminal Sexual Contact – Adult or Minor?

In San Juan County, a man entered a candy store where sixteen-year-old K.B. was working. He shook her hand, forced her into a hug, and squeezed her breast.

She said she did not want the hug but didn't know how to pull away. For minors, consent is irrelevant. Court of Appeals upheld conviction for CSCM. State v. Begaye (2022).

Human sex trafficking – Juvenile

In Albuquerque, a "pimp" forced a seventeen-year-old girl into prostitution. His defense was he didn't know she was under eighteen.

Court of Appeals said whether he knew her age or not doesn't matter. Conviction upheld. State v. Carson (2020).

Interference with educational process . . .

In Capitan, a principal told a middle school student he heard the student had a "hit list." The student replied, "not a hit list, it's a kill list." The student had said something similar to another student.

NMSA 1978, Section 30-20-13(D) states "no person shall willfully interfere with the educational process . . . by threatening to commit any act . . . which would disrupt or interfere with the school."

Police investigation took about four hours. Court of Appeals held there was enough evidence to go to trial. State v. Quintin C. (2019).

Robbery . . .

Robbery – Can you rob a dead man?

Normally you can't rob a person already dead; however, if a person kills another and then robs the victim, robbery can be charged. State v. Montoya (2017).

CONCLUSION

Professor Rod Brunson, University of Maryland, noted a concern in Black communities with "over-policing" and "under-policing."

In other words, police are aggressive in frequent encounters with residents yet do not appear to be solving a lot of crimes.

The challenge for law enforcement: "Downsize and refocus." Combine police reform (downsizing) **and** also reduce crime.

Peter Drucker, a person who taught management to many, once noted the longer you wait to do something, the worse a crisis will get.

- If you don't know a crisis is brewing, you're guilty of ignorance.

- If you fail to act once it arrives, you're guilty of negligence, and
- If you fail to act properly once it arrives, you're guilty of incompetence.

Another person put it this way: "To fix a problem, we must recognize the problem, identify the cause of the problem, and determine the course of action."

A Chief or Sheriff, with leadership and a vision, can have a good department. It takes, however, everyone working together to make it a great department.

Whether you're a new deputy or new officer, you can make a difference.

Much has changed in law enforcement and a lot of challenges face us. Now is the time to act and move forward.

