**MEMORANDUM**

To: Stephanie Salazar, Senior Policy Analyst

New Mexico Indian Affairs Department

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Date: March 13, 2020

Re: State Cross-Commissions for Tribal Law Enforcement

**Introduction**

This research memo was prepared at the request of the New Mexico Indian Affairs Department to address:

* Avenues and barriers that exist in state cross-commissioning of tribal law enforcement in New Mexico
* Models of cross-commissions that exist in other jurisdictions
* The role and effectiveness of public safety agreements and law enforcement memorandums of understanding between states and tribes.

In New Mexico, multiple governments exercise jurisdiction over criminal conduct in Indian Country[[1]](#footnote-1): tribal governments[[2]](#footnote-2), the State of New Mexico, and the federal government. Allocation of jurisdiction among these sovereigns depends on the type of criminal conduct alleged and the Indian or non‑Indian status of the alleged perpetrator and victim.

The State of New Mexico retains exclusive jurisdiction over (1) criminal conduct committed by a non-Indian against another non-Indian in Indian country and (2) victimless criminal conduct committed by non-Indians in Indian country.[[3]](#footnote-3) State cross-commissions[[4]](#footnote-4) allow tribal law enforcement to more effectively navigate the criminal jurisdictional labyrinth and better protect community safety in Indian Country, regardless of the Indian or non-Indian status of parties involved in criminal conduct.

1. **Avenues in New Mexico for Cross-Commissions of Tribal Law Enforcement**

Tribal law enforcement officers possess limited inherent authority over non-Indians in Indian Country; this authority can be enhanced through a cross-commission that allows tribal police to enforce state law on non-Indians in Indian Country. These cross-commissions can be issued through a sheriff’s historic authority, through a state cross-commission agreement, or through a mutual aid agreement.

1. **Inherent Authority of Tribal Law Enforcement**

Absent a cross-commission, tribal law enforcement officers possess inherent but limited authority over non-Indians in Indian Country. Tribal law enforcement may exercise *civil* jurisdiction over non-Indians in Indian Country, such as issuing civil citations[[5]](#footnote-5) for violations of civil traffic ordinances.[[6]](#footnote-6) However, without a cross-commissions, tribal law enforcement cannot “arrest, charge, jail, or prosecute non-Indian offenders for violation of state law[.]”[[7]](#footnote-7)

1. **Authority of Sheriffs to Cross-Commission Tribal Law Enforcement**

The New Mexico Supreme Court recently affirmed a county sheriff’s “traditional authority, going back to the common law and early territorial days, to appoint deputies, including tribal police officers[.]”[[8]](#footnote-8) This historic authority, also recognized in statute[[9]](#footnote-9), does not require any formal commission agreements, minimum training certification, or articulation of the division of liability between the sheriff and the tribe.

1. **Authority of State to Enter Cross-Commission Agreements**

The New Mexico State Police may cross-commission tribal law enforcement through formal written agreements that meet the requirements articulated in NMSA § 29-1-11 (2005). The statute requires tribes to “submit proof of adequate public liability and property damage insurance for vehicles operated by the peace officers and police professional liability insurance.”[[10]](#footnote-10) Additionally, tribal law enforcement officers cross-commissioned under these agreements must “successfully complete four hundred hours of basic police training that is approved by the director of the New Mexico law enforcement academy.”[[11]](#footnote-11) The statute limits use of these cross-commissions, requiring that “any citation issued pursuant to a commission authorized by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court.”[[12]](#footnote-12)

1. **Mutual Aid Agreements to Cross-Commission Tribal Law Enforcement**

The Mutual Aid Act authorizes state law enforcement agencies to enter into mutual aid agreements[[13]](#footnote-13) with tribes.[[14]](#footnote-14) These written agreements must be approved by the state agency, tribe, and the governor of New Mexico.[[15]](#footnote-15)

1. **Barriers in New Mexico for Cross-Commissions of Tribal Law Enforcement**

Coordination between law enforcement agencies and cross-commissioning of tribal law enforcement faces various difficulties, many specific to the history of individual communities. The following brief and preliminary overview of barriers is based on academic research and comments from tribal leadership on this topic, as shared at the May 2019 Annual Tribal Consultation conducted by the United States Attorney’s Office for the District of New Mexico.

1. **Liability**

Absent formal agreements to the contrary, state and county governments are liable for the actions of tribal law enforcement officers made pursuant to a state cross-commission. Where tribes may be required to assume liability insurance policies in order to receive cross-commissions, this cost represents a significant financial barrier.

Tribal governments possess immunity from suit that can only be waived through express waivers.[[16]](#footnote-16) When enforcing tribal law, tribal law enforcement officers cannot be held liable under § 1983, the Federal Tort Claims Act, or *Bivens*.[[17]](#footnote-17) In contrast, when tribal law enforcement exercise authority pursuant to a state cross-commission, tribal law enforcement officers are “public employees” for the purposes of the New Mexico Tort Claims Act and therefore the commission-issuing county must defend and indemnify the tribal law enforcement officers as it would a full-time law enforcement employee of the county.[[18]](#footnote-18)

When tribes enter into formal agreements with state law enforcement agencies, either pursuant to a cross-commission agreement or a mutual aid agreement, liability for actions of tribal law enforcement may be expressly allocated as the parties see fit. However, absent an express agreement to the contrary, county and state governments are liable for the actions of tribal law enforcement made pursuant to a state cross-commission.

1. **Political Tensions**

Tribal, county, and state officials are subject to the demands of constituents and must often navigate local politics, cultural tensions, and complex negotiations in order to reach cross-commissioning agreements. Because of the ever-changing nature of government, agreements reached in the past might be rescinded after the next election.

Some tribal leaders shared experiences of difficulties working with their local sheriffs, facing standstills without seeming avenues for progress, based more on difficult local politics than substantive issues of coordinating public safety. For example, Rio Arriba County Sheriff James Lujan publicly called Ohkay Owingeh Tribal Police civil traffic citations “a shakedown of [] non-native citizens,” despite the then-recent ruling from the New Mexico Supreme Court explicitly affirming the authority of tribal law enforcement to issue civil traffic citations to non-Indians.[[19]](#footnote-19)

1. **Law Enforcement Costs and Allocation of Revenues**

Though the study is somewhat dated, the Department of Justice 2001 report on policing in Indian Country succinctly noted that “[i]nadequate funding is an important obstacle to good policing in Indian Country. Existing data suggest that tribes have between 55 and 75 percent of the resource base available to non-Indian communities. . . . Few, if any, departments in Indian Country have ratios of more than 2 officers per thousand residents.”[[20]](#footnote-20)

Generally speaking, tribes do not receive funds to pay for law enforcement costs associated with prosecuting criminal conduct in state court pursuant to a cross-commission. In state court, this may include testimony at pre-trial hearings, pre-trial interviews, and at trial. Not only does this impact already underfunded tribal law enforcement budgets, but the time spent in state court represents a direct reduction in time that small tribal law enforcement teams can spend in the community.

Additionally, criminal and civil fines can represent significant revenues. When a tribal law enforcement officer cites a non-Indian into state court under a cross-commission agreement, the cost of law enforcement is born by the tribe, but all potential fines and court costs are given to the state. Notably, cross-commission agreement pursuant to NMSA § 29-1-11 (2005) are expressly limited to state court jurisdiction. “[A]ny citation issued pursuant to a commission authorized by this section shall be to a magistrate court of New Mexico; except that any citations issued to Indians within the exterior boundaries of an Indian reservation shall be cited into tribal court[.]” NMSA § 29-1-11(C) (2005).

1. **Models of Cross-commissioning Agreements**

Determining jurisdiction over certain crimes can be complicated. For example, “on the New Mexico side of the [Navajo] Nation, lands are ‘checkerboarded’ outside the formal boundary of the Navajo Reservation between state, tribal, and federal lands, creating doubt whenever a crime occurs as to whether it is committed in Navajo or state territory.”[[21]](#footnote-21) The relationships that tribes have with local, state, and federal governments color how Indian Country jurisdictional gaps are addressed. While the relationships between tribal, state, and federal law enforcement agencies is sometimes governed by federal statute like Public Law 280, which gave states jurisdiction on reservations, there are many examples of tribal-state government and tribal-local government agreements.[[22]](#footnote-22) Here, the focus is on the latter where these relationships are not governed by federal law.

“Many gaps remain in police coverage in states without full jurisdiction over reservations.”[[23]](#footnote-23) The Minnesota Supreme Court determined that questions about jurisdiction should not be determined at the time of arrest, but later pushing jurisdictional questions onto the courts.[[24]](#footnote-24) Because there are a variety of operating agreements throughout Indian Country, there is ample latitude to tailor agreements to address jurisdictional gaps at the state or local level. “Over half of states with a federally recognized Indian tribe grant some form of authority to tribal police officers to enforce state laws.”[[25]](#footnote-25) States and local governments should take into consideration historical and contemporary relations between each tribe and outside governments when forging these agreements. Tribes, as sovereigns, do exercise their authority to limit the presence of state and local governments on Indian lands and will have their own goals for such agreements. To successfully establish new or broaden existing cross-commissioning agreements in New Mexico, it is important for each party to have their concerns addressed by the agreement.

**A. State-wide measures**

New Mexico may wish to have all functioning agreements fall under a single framework with some latitude to address the needs and concerns of individual tribes and pueblos. Most states have addressed this issue through statutes and agreements.

Despite wide variety in the scope and administration of authority, almost all state statutes that grant power to tribal police require that before tribal officers can take advantage of the state's grant of power, they undergo some sort of state training and certification process as well as hold a certain level of insurance, and tribes must assume all liability for the actions of their officers and agree to waive their sovereign immunity in claims arising from that liability.[[26]](#footnote-26)

State-wide agreements can offer consistency throughout the state and alleviate some jurisdictional concerns. “Fifteen states expressly grant authority to tribal law enforcement officers to enforce state laws.”[[27]](#footnote-27) “Four states [including New Mexico] require a cross-deputization agreement between a tribe and the state or a state subdivision.”[[28]](#footnote-28) Conversely, “non-members and Indians who have been critical of tribal governments have feared that tribal police forces would be used to intimidate opponents and have not wanted such forces to be state-sanctioned.”[[29]](#footnote-29)

Several states have operating cross-commissioning agreements with federally recognized tribes. These states may serve as models moving forward. Generally, state agreements require that tribal police meet some minimal training requirements. “Only Nevada authorizes tribal officers to pursue suspects onto state land without meeting some requirement.”[[30]](#footnote-30)

Arizona authorizes certain tribal police to have the same authority as other Arizona peace officers.[[31]](#footnote-31) Arizona law provides that qualifying tribal officers “shall possess and exercise all law enforcement powers of peace officers in [the] state.”[[32]](#footnote-32) Eligible officers include both those appointed by the Bureau of Indian Affairs or serving in tribal police forces.[[33]](#footnote-33)

This grant of authority however is not automatic. “Arizona tribal police officers must be certificated through the state Peace Officer Standards and Training Board [“Board”] to have general police authority.”[[34]](#footnote-34) Arizona law sets forth the duties and responsibilities of the Board and provides that the Board may establish standards for tribal peace officers, assess their readiness to assume state authority and discipline officers for misconduct.[[35]](#footnote-35)

In Oklahoma, the Council on Law Enforcement Education and Training [“CLEET”] “ensure[s] the professional training and continuing education of law enforcement officers in the State of Oklahoma.”[[36]](#footnote-36) This state agency includes “[o]ne member appointed by the Governor who shall be a law enforcement administrator representing a tribal law enforcement agency.”[[37]](#footnote-37) CLEET has an oversight role over “tribal law enforcement agenc[ies] that [have] peace officers commissioned by an Oklahoma law enforcement agency pursuant to a cross-deputization agreement with the State of Oklahoma or any political subdivision of the State of Oklahoma pursuant to the provisions of Section 1221 of Title 74 of the Oklahoma Statutes.”[[38]](#footnote-38) Section 1221 permits political subdivisions to enter into agreements with tribes which are subject to approval by the “Joint Committee on State-Tribal Relations and the Governor, or the designee of the Governor.”[[39]](#footnote-39) Additionally, CLEET issues the certification to such peace officers.[[40]](#footnote-40) Tribal police officers throughout the state are eligible for the same training as any other state law enforcement officer except that they must pay a fee of $3.16 per hour of training.[[41]](#footnote-41) Further, “Oklahoma . . . passed laws granting tribal law enforcement officers authority to enforce state laws in 2013.”[[42]](#footnote-42) Oklahoma House Bill 1871 modified the 21 Okl.St.Ann. § 99 definition of peace officer to include tribal law enforcement officers.[[43]](#footnote-43)

The term "peace officer" means any sheriff, police officer, federal law enforcement officer, tribal law enforcement officer, or any other law enforcement officer whose duty it is to enforce and preserve the public peace. Every United States Marshal, Marshals Service deputy or other federal law enforcement officer who is employed full-time as a law enforcement officer by the federal government or is otherwise acting under the authority of a Federal Bureau of Indian Affairs Commission and has been certified by the Council on Law Enforcement Education and Training, who is authorized by federal law to conduct any investigation of, and make any arrest for, any offense in violation of federal law shall have the same authority, and be empowered to act, as peace officers within the State of Oklahoma in rendering assistance to any law enforcement officer in an emergency, or at the request of any officer, and to arrest any person committing any offense in violation of the laws of this state.[[44]](#footnote-44)

Arizona and Oklahoma are two states with multiple federally recognized tribes. As such, the jurisdictional gap created by several parcels of land considered Indian Country within the exterior boundaries of each state is apparent. These two states have adopted methods of addressing the gap at the state level which preserves tribal sovereignty as well as offers consistency for nonmembers throughout the state. While this approach is successful in these states, there are instances where the it is more appropriate to address the jurisdictional gap at the local level.

**B. Local measures**

Statewide statutes offer consistency and help alleviate concerns about jurisdictional ambiguity. Alternatively, cross-commissioning agreements can be established at the local level with nearby law enforcement agencies. When determining the most appropriate path, it is important to weigh the pros and cons of each avenue. “On the one hand, statewide agreements are unlimited in duration, wider in reach, and less susceptible to the whims of local politics. On the other hand, agreements between states and tribes are often complicated or even blocked by longstanding animosity between the governments and statewide hostility from non-Indians.”[[45]](#footnote-45)

Statutes that impact a select area and agreements between local and tribal governments afford tribes the opportunity to exercise sovereignty in how they choose to interact with local law enforcement agencies. For example, the New York Senate expanded the jurisdiction of the St. Regis Mohawk tribal police to encompass an area called Hogansburg Triangle.[[46]](#footnote-46) It is located within the tribe’s existing and historic St. Regis Reservation.[[47]](#footnote-47) At about 2,000 acres, Hogansburg Triangle is a relatively small area of land with a majority Indian population.[[48]](#footnote-48) These demographics and location, contributed to the state’s decision to expand the tribe’s jurisdiction.

“In 1997, Minnesota adopted the Tribal Peace Officers Act, which allows localities and tribes to form cooperative law-enforcement services.”[[49]](#footnote-49) This act requires tribes to waive their sovereign immunity and be insured to cover the liability for certain acts of tribal officers as well as comply with the state’s policies regarding sensitive data.[[50]](#footnote-50) Further, tribal officers are only considered employees of the tribe, not the state and “do not have the same rights as state employees.”[[51]](#footnote-51)

The eastern portion of the Navajo Reservation lies in New Mexico. Here, successful cooperation between governments is exemplified in the coordinated efforts between the Nation, the state, and a federal agency, the Bureau of Indian Affairs, to operate schools.[[52]](#footnote-52)

“Similarly, the Navajo Nation and various levels of state, county, and city government collaborate to provide emergency and other support services to the residents . . . Emergency telephone calls requesting police . . . are directed to and received by McKinley County Metro Dispatch, an organization funded by McKinley County and the City of Gallup. Emergency law enforcement services are provided by the Navajo Nation, the McKinley County Sheriff's Office, and the New Mexico State Police . . . Thus, . . . [there is] a cooperative approach between federal, state, local, and Navajo governments to provide for the safety and welfare of the people.”[[53]](#footnote-53)

A similar arrangement exists with Socorro County in New Mexico.[[54]](#footnote-54)

New Mexico may take into consideration the advantages of a blanket state policy for cross-commissions or may desire local governments to take a more active role in working with the tribes in their vicinity. Looking to existing agreements in other states should provide some guidance moving forward. Each state’s approach to addressing the jurisdictional gap must take into consideration state and local politics as well as existing relations between tribes and non-members.

**Conclusion**

Cooperation between tribal, state, and local governments can take many forms and should reflect the needs of the involved parties. When there is a question as to which law enforcement agency has jurisdiction in a criminal matter, the wheels of justice are slowed. Moving forward, governments seeking cross-commissioning agreements should weigh the costs of not appropriately addressing jurisdictional gaps against the costs of creating agreements that recognize the sovereignty of tribes.

1. Indian Country is defined as any Indian reservation under the jurisdiction of the United States Government, all dependent Indian communities within the borders of the United States, and all Indian allotments. 18 U.S.C. § 1151. [↑](#footnote-ref-1)
2. Tribe or tribal government in the memorandum refers to all federally recognized Indian nations within the state of New Mexico. [↑](#footnote-ref-2)
3. *See* Pub.L. No. 109–133, 119 Stat. 2573 (2005); *U.S. v. McBratney*, 104 U.S. 621 (1881). [↑](#footnote-ref-3)
4. Cross-commissions in this memorandum refer to grants of state law enforcement commissions to tribal law enforcement and is not used to imply any granting of tribal law enforcement authority to state law enforcement. [↑](#footnote-ref-4)
5. The regulatory authority of tribes over nonmembers is limited to regulating those activities by nonmembers that may interfere with the tribe’s ability to self-govern or to “‘control internal relations.’” Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. at 332 (quoting Montana v. U.S., 450 U.S. at 564). Montana provides exceptions to the strong presumption that tribes lack regulatory authority over nonmembers. Id. at 329. One exception is that tribes “may regulate through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” Montana v. U.S., 450 U.S. at 565 (1981). Additionally, tribes “may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” Id. at 566. [↑](#footnote-ref-5)
6. *Loya v. Gutierrez*, 2015-NMSC-017, ¶ 5 (citing *Duro v. Reina*, 495 U.S. 676, 696–97, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990)). [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Loya*, 2015-NMSC-017, ¶ 27. *See also* National Sheriffs’ Association*, Cross-Deputization in Indian Country*, Washington, DC: Office of Community Oriented Policing Services (2018). https://itcaonline.com/wp-content/uploads/2018/04/Cross-Deputization-in-Indian-Country.pdf [↑](#footnote-ref-8)
9. NMSA 1978, § 4-41-5. [↑](#footnote-ref-9)
10. NMSA § 29-1-11 (2005). [↑](#footnote-ref-10)
11. *Id.* [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. The Office of the Attorney General has provided guidance on mutual aid agreements. Mutual aid agreements under the Mutual Aid Act are appropriate when “assistance from city and county law enforcement agencies [is necessary] to enforce . . . regulations.” N.M.A.G. Op. No. 87-48 (Aug. 24, 1987). [↑](#footnote-ref-13)
14. NMSA § 29-8-3 (1971). [↑](#footnote-ref-14)
15. *Id.* *See also* *Loya*, 2015-NMSC-017, ¶ 24. [↑](#footnote-ref-15)
16. *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). [↑](#footnote-ref-16)
17. *See Dry v. United States*, 235 F.3d 1249, 1258 (10th Cir. 2000). [↑](#footnote-ref-17)
18. *See* *Loya*, 2015-NMSC-017. [↑](#footnote-ref-18)
19. *Loya v. Gutierrez*, 2015-NMSC-017, ¶ 5 (citing *Duro v. Reina*, 495 U.S. 676, 696–97, 110 S.Ct. 2053, 109 L.Ed.2d 693 (1990)); *Sheriff Challenges Tribal Police: James Lujan believes non-natives are being 'shaken down' on State Road 68 and U.S. 84/285*, Barron Jones and Wheeler Cowperthwaite, Rio Grande Sun, August 27, 2015 http://www.riograndesun.com/news/sheriff-challenges-tribal-police/article\_ba00fad7-aba1-5fa2-81fe-fa56a20391d8.html (last accessed March 3, 2020). *See also* International Association of Chiefs of Police, *Promising Practices in Tribal Community Policing*, Washington, DC: Office of Community Oriented Policing Services (2016).

    https://www.theiacp.org/resources/document/promising-practices-in-tribal-community-policing [↑](#footnote-ref-19)
20. Policing on American Indian Reservations, National Institute of Justice, Department of Justice (2001), vii. [↑](#footnote-ref-20)
21. Paul Spruhan*, Standard Clauses in State-Tribal Agreements: The Navajo Nation Experience*, 47 Tulsa L. Rev. 503, 509 (2012). [↑](#footnote-ref-21)
22. Oliver Kim, *When Things Fall Apart: Liabilities and Limitations of Compacts Between State and Tribal Governments*, 26 Hamline L. Rev. 48, 59 (2002). [↑](#footnote-ref-22)
23. Kevin Morrow, *Bridging the Jurisdictional Void: Cross-Deputization Agreements in Indian Country*, 94 N.D.L. Rev. 65, 75 (2019). [↑](#footnote-ref-23)
24. Kim, *supra* at 73. [↑](#footnote-ref-24)
25. Morrow, *supra* at 76. [↑](#footnote-ref-25)
26. *Fresh Pursuit from Indian Country: Tribal Authority to Pursue Suspects Onto State Land*, 129 Harv. L. Rev. 1685, 1698 (2016). [↑](#footnote-ref-26)
27. Morrow, *supra* at 76. [↑](#footnote-ref-27)
28. *Id*. [↑](#footnote-ref-28)
29. Kim, *supra* at 71. [↑](#footnote-ref-29)
30. Morrow, *supra* at 83. [↑](#footnote-ref-30)
31. Fresh, *supra* at 1698. [↑](#footnote-ref-31)
32. Ariz. Rev. Stat. Ann. § 13-3874 [↑](#footnote-ref-32)
33. *Id*. [↑](#footnote-ref-33)
34. Morrow, *supra* at 76. [↑](#footnote-ref-34)
35. Ariz. Rev. Stat. Ann. § 41-1822 [↑](#footnote-ref-35)
36. Okla. Stat. Ann. tit. 70, § 3311. [↑](#footnote-ref-36)
37. *Id*. [↑](#footnote-ref-37)
38. *Id*. [↑](#footnote-ref-38)
39. Okla. Stat. Ann. tit. 74, § 1221. [↑](#footnote-ref-39)
40. *Id*. [↑](#footnote-ref-40)
41. *Id*. [↑](#footnote-ref-41)
42. Morrow, *supra* 77. [↑](#footnote-ref-42)
43. 2013 Oklahoma House Bill No. 1871, Oklahoma First Regular Session of the Fifty-Fourth Legislature, 2013 Oklahoma House Bill No. 1871, Oklahoma First Regular Session of the Fifty-Fourth Legislature. [↑](#footnote-ref-43)
44. Okla. Stat. Ann. tit. 21, § 99. [↑](#footnote-ref-44)
45. Fresh, *supra* at 1697. [↑](#footnote-ref-45)
46. N.Y. Indian Law § 114 (8)(a). [↑](#footnote-ref-46)
47. Canadian St. Regis Band of Mohawk Indians v. New York, 2013 WL 3992830, at 15 (N.D.N.Y. July 23, 2013). [↑](#footnote-ref-47)
48. Canadian St. Regis Band of Mohawk Indians v. New York, 2012 WL 8503274, at 19-20 (N.D.N.Y. Sept. 28, 2012), report and recommendation adopted in part, rejected in part, Canadian St. Regis Band of Mohawk Indians v. New York, 2013 WL 3992830 (N.D.N.Y. July 23, 2013). [↑](#footnote-ref-48)
49. Kim, *supra* at 71. [↑](#footnote-ref-49)
50. *Id*. at 75. [↑](#footnote-ref-50)
51. *Id*. at 77. [↑](#footnote-ref-51)
52. *State v. Steven B*., 2015-NMSC-020, ¶ 44, 352 P.3d 1181, 1192 [↑](#footnote-ref-52)
53. *Id*. [↑](#footnote-ref-53)
54. Spruhan, *supra* at, 510. [↑](#footnote-ref-54)