

Fact Sheet: Sheriffs in Minnesota

What is a sheriff? What are the sheriff's duties?¹

A sheriff is the chief law enforcement officer for a county. Unlike in many other states, the Minnesota Constitution does not explicitly require, or even reference, the office of sheriff. Instead, it enables the state legislature to pass laws for the creation and administration of local government.² Minnesota state law provides for an elected sheriff in each county, sets the sheriff's term of office as four years,³ and creates the sheriff's duties, which are to:⁴

- Keep and preserve the peace;
- Pursue and apprehend all felons;
- Execute all processes, writs, precepts, and orders;
- Attend the district court;
- Investigate recreational vehicle accidents involving personal injury or death that occur outside the boundaries of a municipality, search and drag for drowned bodies, and search and look for lost persons;
- Purchase boats and other equipment, including the hiring of airplanes for search purposes when authorized by the board of county commissioners;
- Operate the county jail, safely keep therein all persons lawfully committed thereto, and not release any person therefrom unless discharged by due course of law; and
- Appoint, in writing, deputies and other employees, for whose acts the sheriff shall be responsible and whom the sheriff may remove at pleasure.

What is the relationship between sheriffs and other law enforcement such as local police departments?

Sheriffs have the authority to enforce criminal laws, investigate criminal matters, and maintain the peace within the whole county “regardless of any municipal borders within the county and regardless of whether any of these municipalities employ independent police forces.”⁵

The allocation of traditional law enforcement functions between the sheriff's office and any municipal police department within the county can vary. In Minneapolis, for example, the Minneapolis Police Department and the Hennepin County Sheriff's Office have laid out various circumstances and geographic areas of Minneapolis where the two agencies share responsibility or where one or the other is primarily responsible for police response and investigations, and

¹ This fact sheet catalogs the relevant Minnesota laws related to sheriffs' powers. It does not provide legal advice, and more research into the interpretation of these laws in a specific context or the interaction with other laws may be required. The position of sheriff existed prior to the founding of the United States and pre-dates the constitutions of many states; therefore, many of the original laws governing sheriffs may seem outdated and inconsistent with more modern rules governing the powers of law enforcement and the preservation of civil rights.

² [Minn. Const. art. XII, § 3.](#)

³ [Minn Stat. § 382.01.](#)

⁴ [Id. §§ 387.03, 387.05, 387.11, 387.14.](#)

⁵ [Minn. Off. of Att'y Gen., Opinion Letter No. 2681 \(October 14, 1997\).](#)

they have entered into a mutual aid agreement to share law enforcement resources in the event of unusual occurrences, such as natural and man-made disasters and civil disturbances.⁶

The sheriff of any county may contract to furnish police services to any other city or town if approved by a majority of the members of the governing body of the contracting city or town.⁷ Under such a contract, the sheriff may “exercise some or all of the police powers and duties of a police officer of the other contracting unit.”⁸

Can a sheriff deputize private individuals or summon a posse to assist in law enforcement duties? What are the limitations on this power?

In Minnesota, sheriffs have the power to summon a “posse” of private individuals to assist them. To preserve the peace of the county, the sheriff “may require the aid of such persons or power of the county as the sheriff deems necessary.”⁹ Several counties in Minnesota have formally established volunteer sheriff’s posses. These include, but are not limited to:

- Becker County¹⁰
- Carlton County¹²
- Clay County¹⁴
- Dodge County¹⁶
- Douglas County¹⁸
- Goodhue County²⁰
- Le Sueur County²²
- McLeod County¹¹
- Meeker County¹³
- Pope County¹⁵
- Steele County¹⁷
- Stevens County¹⁹
- Waseca County²¹

⁶ See Minneapolis Police Dep’t, *The Minneapolis Police Department Policy and Procedure Manual* (Oct. 13, 2023), <https://www.minneapolismn.gov/media/-www-content-assets/documents/MPD-Policy-and-Procedure-Manual.pdf>.

⁷ [Minn. Stat. § 436.05\(1\)](#).

⁸ [Id. § 436.05\(3\)](#).

⁹ [Id. § 387.03](#).

¹⁰ *Becker County Posse*, Becker County, Minn., <https://www.co.becker.mn.us/dept/sheriff/posse/> (last visited Oct. 23, 2023).

¹¹ *Posse*, McLeod County, https://www.mcleodcountymn.gov/government/sheriff_s_office/posse.php (last visited Oct. 23, 2023).

¹² *Sheriff’s Posse*, Carlton County, Minn., <https://www.co.carlton.mn.us/282/Sheriffs-Posse> (last visited Oct. 23, 2023).

¹³ *Posse Members*, Meeker County, Minn., <https://www.co.meeker.mn.us/300/Posse-Members> (last visited Oct. 23, 2023).

¹⁴ *Posse*, Clay County, Minn., <https://claycountymn.gov/1778/Posse> (last visited Oct. 23, 2023).

¹⁵ *Posse*, Pope County, Minn., <https://www.popecountymn.gov/posse/> (last visited Oct. 23, 2023).

¹⁶ *Dodge County Sheriff Posse*, Dodge County, Minn., https://www.co.dodge.mn.us/new_departments/posse.php (last visited Oct. 23, 2023).

¹⁷ *Welcome to SCMP*, Steele County, Minn., Mounted Posse, <https://steelecountymountedposse.com> (last visited Oct. 23, 2023).

¹⁸ *Posse*, Douglas County, Minn., <https://www.douglascountymn.gov/posse> (last visited Oct. 23, 2023).

¹⁹ *Stevens County Law Enforcement Units*, Stevens County, Minn., <https://www.co.stevens.mn.us/914/Law-Enforcement-Units> (last visited Oct. 23, 2023).

²⁰ *Sheriff’s Posse*, Goodhue County, Minn., <https://www.co.goodhue.mn.us/302/Sheriffs-Posse> (last visited Oct. 23, 2023).

²¹ *Posse*, Waseca County, Minn., <https://www.wasecacounty.gov/269/Posse> (last visited Oct. 23, 2023).

²² *Sheriff’s Mounted Posse*, Le Sueur County, Sheriff’s Off., <https://www.co.le-sueur.mn.us/340/Sheriffs-Mounted-Posse> (last visited Oct. 23, 2023).

Duties of posse members vary by county, but members may perform search and rescue, crime scene security, natural disaster assistance, traffic control, emergency response, patrols, and crowd control.

In general, sheriffs' deputies and those assisting a sheriff may not exercise authority beyond that possessed by the sheriff. Sheriffs and county governments may be liable for the acts of those assisting them when those individuals are acting within the scope of their employment.²³

How can a sheriff be removed from office?

Sheriffs may be removed from office only for malfeasance or nonfeasance. Malfeasance is “the willful commission of an unlawful or wrongful act in the performance of a public official’s duties which is outside the scope of the authority of the public official and which infringes on the rights of any person or entity.” Nonfeasance is “the willful failure to perform a specific act which is a required part of the duties of the public official.”²⁴ Any registered voter may request a removal election by filing a petition with the county auditor at least 180 days prior to an election for sheriff. The petition must outline the sheriff’s malfeasance or nonfeasance in the performance of their duties and include signatures of registered voters within the county “totaling at least 25 percent of the number of persons who voted in the preceding election for” county sheriff.²⁵ The chief justice then reviews petitions and refers those with properly alleged factual claims to a special master for a hearing.²⁶ If the special master determines the sheriff committed malfeasance or nonfeasance, a removal election must occur within 30 days.²⁷ It does not appear that this removal authority has ever been invoked.²⁸

The Minnesota Board of Peace Officer Standards and Training (POST) can suspend or revoke a sheriff’s peace officer license. The sheriff is prevented from practicing law enforcement during such a suspension, but they may perform other duties such as county jail oversight. In 2022, there were calls for Hennepin County Sheriff Dave Hutchinson to resign following a drunk driving crash in his squad vehicle. He ultimately took a leave of absence, and POST suspended his peace officer license for 30 days.²⁹

What is the “constitutional sheriffs” movement? Are there sheriffs in Minnesota who are part of this movement?

The “constitutional sheriffs” movement claims that “[t]he law enforcement powers held by the sheriff supersede those of any agent, officer, elected official or employee from any level of government when in the jurisdiction of the county.”³⁰ So-called “constitutional sheriffs” assert

²³ See *Leaon v. Washington County*, 397 N.W.2d 867, 874 (Minn. 1986).

²⁴ See [Minn. Stat. §§ 351.14-351.16](#).

²⁵ [Id. § 351.16\(1\)](#).

²⁶ [Id. § 351.17](#).

²⁷ [Id. § 351.20](#).

²⁸ The only known occurrence of a sheriff being removed from office in Minnesota was in 1941, before the current statutory removal scheme was put in place. Governor Harold Stassen removed Scott County Sheriff Arthur Messenbrink from office for neglect of duty following claims that he was ignoring illegal gambling. See Tom Lyden, *Sheriff Removal Is Problematic*, Fox 9 (July 15, 2022), <https://www.fox9.com/news/sheriff-removal-is-problematic>.

²⁹ WCCO Staff, *Hennepin Co. Sheriff Hutchinson's License Temporarily Suspended by POST Board*, CBS Minn. (Oct. 4, 2022), <https://www.cbsnews.com/minnesota/live-updates/hennepin-co-sheriff-hutchinsons-license-temporarily-suspended-by-post-board/>. Hutchinson’s license was suspended for 180 days, of which 150 days were stayed.

³⁰ Const. Sheriffs & Peace Officers Ass’n, *About CSPOA*, CSPOA, <https://cspoa.org/about/> (last visited Oct. 28, 2023).

that they have the power to decide the constitutionality of the laws they are entrusted with enforcing and to refuse to enforce any law that they believe is unconstitutional. Although only a small fraction of the nation’s sheriffs is part of the movement, in recent years they have refused to enforce a host of public safety laws, from COVID-19-related mask mandates to state and federal gun laws, and they have affirmatively sought to frustrate federal land management and other government programs. For further information about the “constitutional sheriffs” movement, please see [ICAP and States United Democracy Center’s Fact Sheet](#).³¹

There is some indication that the “constitutional sheriffs” movement is attempting to make inroads in Minnesota. Recent media coverage related to this issue includes:

- [“Former sheriff tries to enlist Minnesota law enforcement in his far-right crusade,” Minnesota Reformer](#) (Oct. 13, 2023)
- [“Right wing ‘constitutional sheriffs’ movement comes to Minnesota,” Minnesota Reformer](#) (Sep. 29, 2023)
- [“West, central Minnesota Republican Senate district BPOUs sponsor Sheriff Richard Mack,” Bluestem Prairie](#) (Aug. 21, 2023)
- [“Will sheriffs in Minnesota enforce a new ‘red flag’ gun law?,” MinnPost](#) (May 25, 2023)
- [“Anoka County sheriff’s office won’t issue citations for mask mandate violations,” Pioneer Press](#) (July 27, 2020)
- [“Enforcement of mask mandate varies by county,” West Central Tribune](#) (July 28, 2020)

Do sheriffs in Minnesota have any specific election administration authority? Who has authority for election administration in Minnesota?

Recently, the Constitutional Sheriffs and Peace Officers Association (CSPOA), an organization which claims to represent “constitutional sheriffs” nationwide, has called on sheriffs to investigate disproven claims of fraud tied to the 2020 election and to insert themselves into election administration going forward.³² A second group, True the Vote, has echoed this call, distributing a “Sheriff’s Toolkit” in an attempt to persuade sheriffs to intervene in local election administration.³³

Sheriffs in Minnesota do not appear to have any specific authority with respect to elections.³⁴ In fact, Minnesota law forbids sheriffs and other peace officers from entering or standing within 50 feet of the entrance of a polling place unless an election judge calls for their assistance to restore the peace.³⁵ Election judges “may appoint a sergeant-at-arms when necessary to keep the peace or otherwise to assist them.” An election judge may request a sergeant-at-arms or a peace officer to arrest or remove anyone engaging in disorderly conduct, but “a sergeant-at-arms or a peace officer shall not otherwise interfere in any manner with voters.”³⁶

³¹ Institute for Constitutional Advocacy and Protection & States United Democracy Center, *Fact Sheet: “Constitutional Sheriffs” and Elections*, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/09/Constitutional-Sheriffs-Fact-Sheet.pdf>.

³² Const. Sheriffs & Peace Officers Ass’n, *CSPOA Strongly Encourages Sheriffs and Local Law Enforcement to Investigate Alleged Election Fraud in Their Jurisdictions*, CSPOA (May 24, 2022), <https://cspoa.org/elections/> (last visited Nov. 1, 2023).

³³ True the Vote, *Sheriff’s Toolkit*, <https://www.truethethevote.org/sheriffs-toolkit/> (last visited Nov. 2, 2023).

³⁴ Elections in Minnesota are governed by [Minn. Const. art. VII](#) and [Minn. Stat. § 200-12](#).

³⁵ [Minn. Stat. § 204C.06\(6\)](#).

³⁶ [Id. § 204C.06\(5\)](#).

The secretary of state, as the chief election officer of the state, has primary authority for administering elections, and each county auditor and municipal clerk is responsible for administering local elections.³⁷ The governing body of each municipality appoints election judges for each precinct.³⁸ The election judges constitute each precinct’s election board and are responsible for securing election materials throughout voting.³⁹ The officials responsible for election administration in Minnesota do not appear to have any independent authority to investigate claims of election fraud or other irregularities but may refer suspicious activity to an appropriate law enforcement agency for investigation.

Have sheriffs in Minnesota expressed interest in overseeing or investigating election-related activity?

There is no current information as to whether or to what extent sheriffs intend to intervene in or assert authority over elections in Minnesota, although calls for intervention have been made. At events hosted by the Liberty Tea Party Patriots, the husband of unsuccessful 2022 Secretary of State candidate Kim Crockett called on sheriffs and sheriffs’ deputies to act as a “SWAT team” to police alleged violations of elections laws.⁴⁰ In addition, a civilian employee of the Ramsey County Sheriff’s Office, Omar Jamal, appeared in a video claiming he was part of an investigation to expose ongoing election fraud in Minnesota, although Ramsey County Sheriff Bob Fletcher said that Jamal was not acting in his role as an employee of the sheriff’s office.⁴¹

What do I do if I think a county sheriff is acting outside their authority?

Election officials and Minnesota residents who are concerned about overreach by a sheriff should seek clarification of the sheriff’s role and authority from the county or city attorney, local district attorney, or Minnesota attorney general. In cases of overreach, government attorneys should intervene using legal options available under state law, in order to protect the rule of law and the right to vote. Complaints about officer misconduct can also be filed with the Minnesota Board of Peace Officer Standards and Training.⁴² And, in appropriate circumstances, as noted above, there are procedures available for seeking to remove or suspend a sheriff.

This Fact Sheet was prepared by the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center in January 2024. ICAP’s mission is to use the power of the courts to defend American constitutional rights and values. Visit us at www.law.georgetown.edu/icap/. Contact us at reachICAP@georgetown.edu.

³⁷ See *id.* §§ 204B.146, 204B.27, 204B.28, 204B.47.

³⁸ *Id.* § 204B.21.

³⁹ *Id.* §§ 204B.20, 204B.29.

⁴⁰ See Deena Winter, *Crockett’s husband says ‘we need’ sheriffs, deputies ready to respond to election fraud*, Minnesota Reformer (Nov. 3, 2022), <https://minnesotareformer.com/briefs/crocketts-husband-says-we-need-sheriffs-deputies-ready-to-respond-to-election-fraud/>.

⁴¹ *Hennepin County Attorney Says No Reports of ‘Ballot Harvesting’ Prior to Allegations from Project Veritas, MPD Evaluating ‘Validity,’* KSTP (Feb. 9, 2021), <https://kstp.com/politics/elections-news/hennepin-county-attorney-says-no-reports-of-ballot-harvesting-prior-to-allegations-from-project-veritas-mpd-evaluating-validity/>.

⁴² Minn. Bd. of Peace Officer Standards & Training, *File a Complaint*, <https://mn.gov/post/applicants/public/copy-of-copy-of-policies/> (last visited Oct. 23, 2023).