

Fact Sheet: “Constitutional Sheriffs” and Elections

Law enforcement plays an essential role in ensuring that our elections remain safe, free, and fair. Officers across the country help protect voters, election officials, and others involved in voting processes, and help maintain order and safety at polling places, ballot processing sites, and election offices. They are critical partners to the thousands of state and local officials who run our elections.

The vast majority of law enforcement officials understand that they must remain firmly apolitical in their work to protect public safety, and especially in their work to keep the public safe during election season. Law enforcement leaders across the country both lead by example in keeping politics out of their work and make clear to their personnel that they must do the same. The “constitutional sheriffs” movement and its effort to mobilize local law enforcement—and county sheriffs in particular—to intervene in election administration undermines the important norm of apolitical enforcement of laws. Those participating in this movement have threatened to interfere in elections, without any lawful basis to do so, under the false, disproven, but enduring claims that the 2020 presidential election was stolen and that there exists widespread voter fraud.

This view espoused by adherents of the “constitutional sheriffs” movement raises serious potential for voter intimidation and election meddling that poses a threat to free and fair elections. It has also prompted questions about the legitimate scope of authority possessed by local sheriffs; the limitations on their power, particularly in the election context; and how to remove sheriffs who abuse those powers. This Fact Sheet attempts to provide guidance on these important questions and others.

What is the “Constitutional Sheriffs” movement?

The “constitutional sheriffs” movement contends 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.”¹ Self-proclaimed “constitutional sheriffs” claim to derive this supreme authority from historical practice as well as the oath they swear to the Constitution (even though an oath pledging to uphold the Constitution is standard for many public officials and government employees). Thus, “constitutional sheriffs” assert that they have the power to determine 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, “constitutional sheriffs” have refused to enforce a host of public safety laws, from COVID-19-related mask mandates to state and federal gun laws and have affirmatively sought to frustrate federal land management and other government programs.²

¹ *About CSPOA*, CSPOA, <https://cspoa.org/about/> (last visited Jul. 22, 2024).

² *See, e.g.*, Jason Wilson, *US Sheriffs Rebel Against State Mask Orders Even As Covid-19 Spreads*, *The Guardian* (July 31, 2020, 5:00 PM), <https://www.theguardian.com/us-news/2020/jul/31/us-sheriffs-mask-orders-covid-19-blm>; Phil Ferolito, *Drawing a Line: Klickitat County Sheriff Says He Won’t Enforce Washington’s New Gun Law*, *Yakima Herald-Republic* (Jan. 28,

Over the past several years, the movement has turned to promoting unsubstantiated claims that the 2020 election was rigged or stolen. Following the 2020 election, the Texas-based organization True the Vote, which advanced disproven claims of significant election fraud, launched a partnership with coalitions of constitutional sheriffs to investigate supposed election irregularities—a role far outside the traditional scope of most county sheriffs’ duties.³

One group that announced a partnership with True the Vote was the Constitutional Sheriffs and Peace Officers Association (CSPOA), an organization that subscribes to the view that sheriffs are the supreme power in their counties.⁴ In the years since the 2020 election, these groups have called on sheriffs to investigate disproven claims of fraud tied to the 2020 election and to insert themselves into election administration going forward.

These efforts run contrary to core constitutional principles and the statutory authority of sheriffs as laid out in state law.

Is it true that sheriffs are the highest law of the land, answerable only to the U.S. Constitution?

No. The idea that sheriffs have authority that supersedes all other local, state, and federal law enforcement authorities within a county has no valid basis in the text or history of the U.S. Constitution. The word “sheriff” does not appear in the U.S. Constitution. Although the office of county sheriff, in most states, is specifically created by each state’s constitution as an elected office, sheriffs are still subject to other regulations, including those laid out by state constitutions and the U.S. Constitution. Indeed, as noted elsewhere in this Fact Sheet, many aspects of sheriffs’ roles are controlled by state constitutions and/or statutory law, including their duties, compensation, terms of elections, and procedures for removal. And, of course, sheriffs, like all other law enforcement officers, are subject to the constraints of their state constitutions and of the U.S. Constitution when it comes to the use and application of their law enforcement powers.⁵

2019), https://yakimaherald.com/news/local/drawing-a-line-klickitat-county-sheriff-says-he-wont-enforce-washingtons-new-gun-law/article_00e8a452-238f-11e9-be8e-5312c697f2a0.html; Tess Owen, *How a Small-Town Sheriff Ended Up on a Crusade to Radicalize American Law Enforcement*, Vice News (July 28, 2021, 11:17 AM), <https://www.vice.com/en/article/epnkgm/richard-mack-constitutional-sheriff-movement>.

³ Peter Eisler & Nathan Layne, *Insight: Right-Wing U.S. Sheriffs Vow to Probe 2020 Voter-Fraud Claims*, Reuters (July 20, 2022, 12:20 PM), <https://www.reuters.com/world/us/right-wing-us-sheriffs-vow-probe-2020-voter-fraud-claims-2022-07-20/>; Alexandra Berzon & Nick Corasaniti, *2020 Election Deniers Seek Out Powerful Allies: County Sheriffs*, The New York Times (July 25, 2022), <https://www.nytimes.com/2022/07/25/us/politics/election-sheriffs-voting-trump.html>; see also David Gilbert, *Far-right Sheriffs Want a Citizen Army to Stop “Illegal Immigrant” Voters*, Wired (Apr. 18, 2024), <https://www.wired.com/story/constitutional-sheriffs-election-deniers-immigrants-voting/>.

⁴ CSPOA, *supra* note 1.

⁵ Some constitutional sheriffs claim to derive their power from a Supreme Court case, *Printz v. United States*, 521 U.S. 898 (1997), but *Printz* held only that the federal government may not compel state and local law enforcement officers to administer a federal regulatory program—in that case, federal background checks. The Supreme Court did not hold that the law enforcement authority of sheriffs is superior to that of other state or federal officers, or that they may violate state or federal law.

Do sheriffs have the authority to oversee the administration of elections?

No. Oversight of election administration or operations is ordinarily performed by other state or local officials.⁶

If a sheriff attempts to oversee election administration or operations by, for example, seeking information from local election officials about election administration or questioning them about their procedures, election officials should immediately consult with the municipal attorney (such as the city or county attorney), the district or commonwealth attorney, county or state election officials and their legal advisors, and/or the state attorney general. Left unaddressed, sheriffs who overstep their roles may not only violate the law, but also may give the impression of attempting to interfere in an election or preventing duly authorized election officials from fulfilling their responsibilities.⁷

Moreover, although sheriffs have general public safety responsibilities, many states have laws that restrict law enforcement officials from policing polling centers because of the potential that their presence will intimidate and deter voters.⁸ In general, sheriffs and other law enforcement officers should not be at polling places during voting, unless their presence is requested by election officials in order to maintain a safe voting environment and to protect against voter intimidation,⁹ which is a crime under state and federal law.¹⁰

Do sheriffs have the authority to investigate election fraud?

It depends. The authority to investigate alleged election fraud will depend on the authority given to sheriffs under state law, which varies from state to state as described below. In states that authorize sheriffs to investigate all state crimes, that authority likely would include election-related crimes in their county. In states that limit sheriffs' investigative authority or where sheriffs are required to defer to municipal law enforcement, the investigation of election-related crimes may be outside of sheriffs' jurisdiction. And even where sheriffs have general investigative authority over all state crimes, they are prohibited from taking actions that violate the state or U.S. constitution, including constitutional guarantees of due process, equal protection, and freedom from unreasonable searches and seizures. Investigations must be based on credible information, and the surveillance, search, or

⁶ State and local governments play the most significant role in conducting and monitoring all aspects of elections, from ballot access to voting provisions. This is usually done through a Secretary of State's office or a dedicated state-level election agency alongside local Boards of Elections. Some states also have ethics commissions, which are typically involved in the administration and/or enforcement of state-level campaign finance laws. Ballotpedia has published a directory of state-level election agencies, as well as links to additional information about local election officials organized by state. See *State Election Agencies*, Ballotpedia, https://ballotpedia.org/State_election_agencies (last visited July 22, 2024).

⁷ See Peg Trent, Letter to Sheriff Calvin Hayden (July 7, 2022), <https://dfv6pkw99pxmo.cloudfront.net/wp-content/uploads/2022/07/Election-Security-Letter.pdf> (where sheriff wanted to implement procedures such as surveillance of ballot boxes and observation of the election board as it counted ballots, county chief counsel warned that such activity could violate laws that entrusted election administration to the chief election officers of the county and the state).

⁸ The Brennan Center for Justice has identified some of these legal restrictions. See Sean Morales-Doyle et al., *Voters Should Not Be Intimidated*, Brennan Ctr. for Just. (Oct. 6, 2020), <https://www.brennancenter.org/our-work/research-reports/voters-should-not-be-intimidated>.

⁹ One notable exception is Florida, which authorizes sheriffs and deputy sheriffs to "attend elections on election days." See [Fla. Stat. § 30.09\(4\)\(a\) \(2024\)](#).

¹⁰ For further information, see generally Inst. for Const. Advocacy & Prot., *Fact Sheet: Protecting Against Voter Intimidation* (Oct. 2, 2020), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/08/Voter-Intimidation-Fact-Sheet.pdf>.

seizure of persons or things—including voting machines or ballot boxes—generally requires a warrant approved by a judge based on probable cause of a crime.

Can sheriffs deputize private citizens to assist in election fraud investigations?

Likely not. To the extent sheriffs have the power to deputize private citizens or call up citizen “posses,” the authority granted to these individuals cannot exceed that of a sheriff, and in many states is further limited. Thus, if a sheriff lacks authority under state law to investigate election fraud, deputized private citizens also lack that authority. Moreover, use of deputized private citizens in an investigation into alleged voter fraud would not seem to be an appropriate use of the traditional power of “posse comitatus” (Latin for “power of the county”) under any circumstances.

In general, a sheriff’s power to summon members of the public to aid in law enforcement as a “posse comitatus” may be authorized under state law or as a residual power under common law.¹¹ Depending on state law, posse members or deputized private citizens may assist the sheriff with tasks ranging from service of process to security at county events, hostage situations and wildfires, and/or pursuing fugitives. Some states limit the role of posse members or deputized private citizens to particular functions (e.g., serving process or executing warrants).¹² States have also imposed procedural restrictions, requiring appointments to be made in writing and/or recorded in a register showing the terms and circumstances of such appointment.¹³ Although some states require training for members of organized citizen posses, others allow sheriffs to call upon citizens on a more ad hoc basis to provide backup during situations involving combative suspects, felony stops, in-progress crimes, or search and rescue.¹⁴ In some states, members of a sheriff’s volunteer posse may be authorized to carry firearms.¹⁵ States may also require the posting of a bond or proof of insurance for liability purposes.¹⁶

¹¹ This authority existed at common law and has been incorporated into state laws but is not to be confused with the federal Posse Comitatus Act, 18 U.S.C. § 1385, which prohibits any part of the U.S. military from being used as a posse or called to the aid of local law enforcement unless specifically authorized by law. See Joseph Nunn, *The Posse Comitatus Act Explained*, Brennan Ctr. for Just. (Oct. 14, 2021), <http://www.brennancenter.org/our-work/research-reports/posse-comitatus-act-explained>.

¹² E.g., [Ga. Code Ann. § 17-4-24 \(2024\)](#) (limiting law enforcement’s power to “summon to his assistance . . . any of the citizens of the neighborhood or county” to assist in the execution of penal warrants); [Or. Rev. Stat. § 206.050 \(2024\)](#) (limiting power to “command as many adult inhabitants of the county . . . as the officer may think necessary and proper” to aid in process serving).

¹³ See, e.g., [Fla. Stat. § 30.09\(4\) \(2024\)](#) (requiring appointment of any “special deputy sheriff” to be recorded in a “register . . . showing the terms and circumstances of such appointment”).

¹⁴ See, e.g., [N.D. Cent. Code § 12-63-03 \(2023\)](#) (exempting from ordinary peace officer training requirements members of posse who are not delegated “arrest powers or peace officer authority”).

¹⁵ See, e.g., [Ariz. Rev. Stat. Ann. § 11-441\(H\) \(2024\)](#) (sheriff may authorize posse members to carry deadly weapons if they have “received and passed firearms training that is approved by the Arizona peace officer standards and training board”); [Mich. Comp. Laws § 28-425o\(5\)\(f\) \(2024\)](#) (exempting members of a sheriff’s posse from concealed carry regulations if they are licensed to carry a firearm).

¹⁶ See generally Jeffrey S. Price et al., *The Public Officials Bond—A Statutory Obligation Requiring “Faithful Performance.” “Fidelity.” and Flexibility*, 12 Fidelity L. Ass’n J. 151, 188-98 (2006) (cataloguing state law bond requirements); see also [Tex. Loc. Gov’t Code § 85.004\(b\)-\(c\) \(2023\)](#) (allowing sheriff to call “reserve deputies” into service to “preserve the peace and enforce the law” but requiring such reserve deputies to post a bond before beginning duties).

Most of the laws that authorize sheriffs to form posses or to deputize civilians require such individuals to be citizens or residents of the county.¹⁷ A few states, like Kentucky, explicitly prohibit bringing “any armed person” into the state to help preserve the peace.¹⁸ These sorts of provisions prevent, for example, sheriffs from importing like-minded members of unlawful private militias or other domestic extremist groups into the county to assist with investigations, surveillance, or security.¹⁹

Can sheriffs obtain voter information in their jurisdictions?

States have varied requirements governing who may request a list of registered voters, what information such a list contains, what information must remain confidential, and how the shared information may be used.

Sensitive personal information on voters, such as their social security and driver’s license numbers, are protected from disclosure by either statute or constitutional privacy rights. Many states have specific protections against the disclosure of any information for certain categories of voters, such as law enforcement officers or public health or safety personnel, or have created Address Confidentiality Programs (ACP), through which those who have been victims of domestic violence, sexual assault, stalking, or other crimes can pre-register to protect their personal information.²⁰ Some states also allow for records to be made confidential upon the voter’s request. The National Conference of State Legislatures has compiled a state-by-state list of information²¹ on the laws governing access to voter registration lists.

If a sheriff is not responsible for investigating election fraud, then who is?

State and local authorities, such as secretaries of state, district attorneys, commonwealth attorneys, and some state attorneys general, have authority to enforce state- and local-level election laws, and to utilize state and local law enforcement agencies to investigate such violations and arrest perpetrators. This may, in jurisdictions where it is authorized, include the county sheriff’s office, but the roles of law enforcement should be limited to investigating whether a crime occurred and may not extend into overseeing or monitoring election administration, as that is beyond the authority of sheriffs. Federal law enforcement authorities, including U.S. Attorneys, have broad power both to investigate and prosecute a wide variety of federal election law violations, as described by the U.S. Department of Justice, including credible allegations of voting more than once, fraudulent registration or voting, and voting by non-citizens, and to enforce civil rights statutes that protect the

¹⁷ See David B. Kopel, *The Posse Comitatus and the Office of the Sheriff: Armed Citizens Summoned to the Aid of Law Enforcement*, 104 J. Crim. L. & Criminology 761, 804 (2015).

¹⁸ [Ky. Rev. Stat. Ann. § 432.550 \(2024\)](#).

¹⁹ For further information on unlawful private militias, see Inst. for Const. Advocacy & Prot., *Prohibiting Private Armies at Public Rallies*, (Sept. 2020), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>; Inst. for Const. Advocacy & Prot., *State Fact Sheets* (Sept. 18, 2020), <https://www.law.georgetown.edu/icap/our-work/addressing-the-rise-of-unlawful-private-militias/state-fact-sheets/>.

²⁰ For a list of state address and voter registration protection programs, see *Address Confidentiality Laws by State*, Nat’l Network to End Domestic Violence (Apr. 2020), https://nnedv.org/wp-content/uploads/2019/07/Library_Safety_Net_ACP_Chart_April_2020.pdf.

²¹ See *Access to and Use of Voter Registration Lists*, Nat’l Conf. of State Legislatures (last updated Sept. 1, 2023), <https://www.ncsl.org/research/elections-and-campaigns/access-to-and-use-of-voter-registration-lists.aspx>.

right to vote and impose recordkeeping requirements.²² The U.S. Department of Justice has issued guidance to ensure that post-election audits conducted pursuant to state law do not run afoul of federal laws regulating elections.²³

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

In cases of overreach, attorneys (state, county, municipal, district, or commonwealth) should intervene to curtail such overreach using legal options available under state law, in order to protect election integrity and the right to vote. Other means of accountability may also be available under the applicable law in the relevant county or state, so election officials or voters should explore if there are other avenues in which to raise concerns about sheriff overreach.

Local election officials should contact their local or state legal counsel (such as city or county attorneys, district or commonwealth attorneys, or the state attorney general) if asked to provide information to a sheriff about election processes or if asked to allow sheriff involvement in the administration of elections. Counsel should then consult their state constitution and state laws to determine the scope of sheriffs' authority in their state and any limitations or exceptions thereto before giving advice to election officials and employees. Requesting a state attorney general opinion or guidance should also be considered.

Persons who are concerned about investigative overreach by a sheriff may also seek clarification of the sheriff's role from their local or state counsel listed above. And, in appropriate circumstances, as noted below, procedures are available for seeking to remove, suspend, or recall a sheriff.

²² See *Federal Prosecution of Election Offenses*, U.S. Dep't of Just. (Richard C. Pilger et al. eds., 8th ed. 2017), <https://www.justice.gov/criminal/file/1029066/download>.

²³ See *Federal Law Constraints on Post-Election "Audits"*, U.S. Dep't of Just. (2021), <https://www.justice.gov/opa/file/1156216/dl?inline=>.

Background Information on Sheriffs

What is a sheriff and how is a sheriff different from a police chief?

There is significant variation from state to state as to the laws that create the offices of county sheriff and that provide for overseeing and holding those offices accountable. In most states, the office of county sheriff is created by the state constitution.²⁴ Sheriffs are the chief law enforcement officers of counties, whereas police chiefs exercise law enforcement authorities in cities and incorporated municipalities. Sheriffs are elected, whereas police chiefs generally are appointed by local officials or municipal or county boards. There are approximately 3,000 sheriffs throughout the United States as compared to some 13,000 police chiefs.²⁵

Most sheriffs have authority throughout the county (although often with an understanding that they will not exercise this authority where municipal police departments have jurisdiction), whereas police chiefs generally exercise authority only in their municipalities. Sheriffs are county officials, but they often do not directly answer to any official in the counties where they serve other than the electorate which votes for them. Police chiefs, on the other hand, are generally authorized by state law, but are created at the local level and answerable to local authorities that hold them accountable through hiring, firing, and resource allocation. Sheriffs tend to serve longer in office than police chiefs: the average police chief serves for three years, whereas the average sheriff serves for eleven.²⁶

²⁴ Wyoming and Montana are examples of states where the office of county sheriff is not created by the state constitution but instead is established by state legislation. See [Mont. Const. art. XI, § 3](#) (describing sheriff as an optional component of county government formation, to be further defined by the legislature); [Wyo. Stat. Ann. § 18-3-601 \(2024\)](#) (creating office of county sheriff). In 2000, Connecticut abolished the constitutional office of sheriff by a statewide referendum. See Dave Altamari, *Voters Abolish Centuries-Old Sheriff System*, Hartford Courant (Nov. 8, 2000), <https://www.courant.com/2000/11/08/voters-abolish-centuries-old-sheriff-system/> [<https://web.archive.org/web/20220813150334/https://www.courant.com/news/connecticut/hc-xpm-2000-11-08-0011081022-story.html>] (updated Sept. 2, 2021).

²⁵ See Nat'l Sheriffs' Ass'n, *FAQ*, <https://www.sheriffs.org/about-nsa/faq> (last visited Sept. 29, 2022); Connor Brooks, Bur. of Just. Stat., NCJ 307507, *Primary State Law Enforcement Agencies: Personnel, 2020* (Jan. 2024), <https://bjs.ojp.gov/document/psleap20.pdf>.

²⁶ See Emma Tucker, *Police Chiefs are Leaving Departments at a Higher Rate Than Previous Years*, CNN (Oct. 12, 2021), <https://www.cnn.com/2021/10/12/us/police-chief-turnover/index.html>. Compare Joel F. Shults, *Protect Our Police Chiefs*, Nat'l Police Ass'n, <https://nationalpolice.org/main/protect-our-police-chiefs/> (last visited Sept. 9, 2024) (noting the average tenure of police chiefs is 2-3 years), and Chuck Wexler et al., *Police Chiefs Compensation and Career Pathways: PERF's 2021 Survey* 15-16, Police Executive Research Forum (June 2022), <https://www.policeforum.org/assets/ChiefsCompensation.pdf> (finding that the average chief has served for about four years but highlighting tenures ranging from less than one year to more than 20 years, with 61% of 347 respondents having been at their position for fewer than five years and over 42% for fewer than three years). See Office of Sheriff State-by-State Elections Information, Nat'l Sheriffs' Ass'n (Aug. 13, 2015), <https://www.sheriffs.org/sites/default/files/uploads/documents/GovAffairs/State-by-State%20Election%20Chart%20updated%2008.13.15.pdf> (noting that the average term length is four years, that most jurisdictions do not have term limits, and that in jurisdictions with term limits the average is two or three terms). While there is a significant incumbency advantage, research suggests that a sheriff tends to serve two to three terms. See Michael Zoorob, *There's (Rarely) a New Sheriff in Town: The Incumbency Advantage for County Sheriffs*, 80 Electoral Studies 102550 (Dec. 2022).

What are the duties of a sheriff?

The duties of sheriffs vary by state. In most states, the duties of sheriffs reflect the common law powers that sheriffs had at the nation's founding, which included preserving the peace; preventing and suppressing all public disturbances (called "affrays" at common law), breaches of the peace, riots, and insurrections; arresting and taking before the courts persons who attempted to commit or who committed a public offense; attending court, providing court security, and serving court process; and administering the county jails.

Most state constitutions authorize the state legislature to prescribe the duties of sheriffs.²⁷ Thus, in most states, sheriffs' duties are set out in state law,²⁸ and, in some states, have been narrowly interpreted or limited.²⁹ In other states, sheriffs retain the full scope of their common law duties, although state legislatures may alter or prescribe limitations on those duties in certain circumstances.³⁰ Where a state constitution does not provide the legislature with the authority to define or change the powers of county sheriffs, the legislature (or any other state or local official) may not be able to diminish the powers traditionally recognized at common law or by the state constitution, or transfer them to others, without amending the state constitution.³¹

The allocation of traditional law enforcement responsibilities between a county sheriff's office and any municipal police department within that county varies from state to state and even from county to county. Ordinarily, the jurisdiction of both a sheriff's office and police department is concurrent,³²

²⁷ See, e.g., [Va. Const. art. VII, § 4](#); [Idaho Const. art. XVIII, §§ 6, 11](#); [Wash. Const. art. XI, § 5](#).

²⁸ See, e.g., [Ariz. Rev. Stat. Ann. § 11-441 \(2024\)](#); [Or. Rev. Stat. § 206.010 \(2024\)](#); [Wash. Rev. Code § 36.28.010 \(2024\)](#).

²⁹ For example, the Colorado Attorney General has interpreted the sheriff's authority to "keep and preserve the peace in their respective counties" as limited to issuing summonses and making arrests for violations of criminal statutes, and not to include actions such as commandeering private property or directing the action of private citizens, absent specific legislative authority providing for broader powers. See [Colo. Att'y. Gen., Opinion Letter No. 99-7 \(Sept. 8, 1999\)](#); see also [42 Pa. Cons. Stat. § 2921 \(2024\)](#) (limiting the powers and duties of the sheriff to "serv[ing] process and execut[ing] orders directed to him pursuant to law"); *Commonwealth v. Copenhagen*, 229 A.3d 242, 246 (Pa. 2020) (limiting "breach of the peace" to activity that "causes harm to persons or property, or has a reasonable potential to cause such harm, or otherwise to provoke violence, danger, or disruption to public order"); *Kopko v. Miller*, 892 A.2d 766, 778 (Pa. 2006) (finding that sheriffs have common law arrest authority limited to breaches of the peace occurring in their presence, but "do not have investigative powers").

³⁰ See, e.g., *Kocken v. Wis. Council 40, AFSCME, AFL-CIO*, 732 N.W.2d 828, 838, 844 (Wis. 2007) (finding that the "powers, rights, and duties of the office of sheriff that are 'mundane and commonplace' 'internal management and administrative'" functions can be altered by legislature; powers, rights, and duties that are "immemorial and distinctive" are constitutionally "protected ... from legislative interference").

³¹ *Compare Christopher v. Sussex Cnty.*, 77 A.3d 951, 953 (Del. 2013) ("[T]he General Assembly may not abrogate a constitutional office or take away [his] core duties ... without enacting an amendment pursuant to the Delaware constitution.") and *State ex rel. Kennedy v. Brunst*, 26 Wis. 412, 415 (Wis. 1870) ("[I]t was not competent for the legislature to take from the constitutional office of sheriff a part of the office itself, and transfer it to an officer appointed in a different manner"), with *Cain v. Woodruff Cnty.*, 117 S.W. 768, 769 (Ark. 1909) ("There is no provision in our Constitution that inhibits the Legislature from adding to or varying the duties of the office of sheriff.").

³² See, e.g., [Idaho Code § 31-2227 \(2021\)](#) ("Irrespective of police powers vested by statute in state, county and municipal officers, is hereby declared to be the policy of the state of Idaho that the primary duty of enforcing all the penal provisions of any and all statutes of this state, in any court, is vested in the sheriff and prosecuting attorney of each of the several counties."); [61-62 Wash. Att'y Gen. Op. No. 25 \(Apr. 28, 1961\)](#) ("We conclude, therefore, that the sheriff, as the chief law enforcement officer in the county, with jurisdiction coextensive with the county, including municipalities and townships, has the authority to investigate upon his own initiative all felony cases which occur within cities ... and towns in his county.").

but the relationship between these two entities may be controlled by state law, regulated by memoranda of understanding or contracts executed between the entities, or divided as a matter of long-standing practice.³³

Who can remove a sheriff?

The authority to remove or suspend a sheriff varies from state to state. Because sheriffs are elected officials, the ultimate power resides with voters, who, in states with recall procedures, can vote to recall a sheriff or can vote a sheriff out of office at the end of their term.

In some states, the governor can suspend an elected county official, including a sheriff, for cause, but removal requires action by the legislature.³⁴ In other states, state constitutions provide that the governor can remove an elected sheriff.³⁵ In some states, a sheriff can be removed through a voter petition process with court review.³⁶ In some states, there is no authority for removal beyond elections.³⁷ In some jurisdictions, in responses to various actions taken by sheriffs, governors and other public officials are seeking to create authority to remove or terminate the sheriff.³⁸

This Fact Sheet was prepared jointly by the States United Democracy Center and the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center.

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³³ For example, Virginia is one of the states that divides responsibility by law: counties are required to elect a sheriff, which is an office provided for in the Virginia Constitution, see [Va. Const. art. VII, § 4](#), and the sheriff acts as the chief law enforcement officer for the county with the powers ordinarily accorded by common law. See [Va. Code Ann. § 15.2-1609 \(2022\)](#). But a locality may create a police department by ordinance and the chief of police then becomes the chief law enforcement officer in that locality. See [Va. Code Ann. § 15.2-1701](#). Counties may also create county-wide police departments, although this must be done by referendum; this would have the effect of “reliev[ing] [the sheriff] of primary law-enforcement responsibilities.” See [id. § 15.2-1702](#).

³⁴ See, e.g., [Fla. Const. art I, § 7](#).

³⁵ See, e.g., [N.Y. Const. art. XIII, § 13](#) (requiring a public hearing); [Mich. Const. art. V, § 10](#); [Me. Const. art. IX, § 10](#).

³⁶ See, e.g., [Va. Code Ann. § 24.2-233 \(2024\)](#) (requiring signatures equal in number to 10 percent of voters in last election and specifying that court decides if qualifications for removal are met); [Minn. Stat. §§ 351.14-351.23 \(2024\)](#) (requiring 25 percent of voters in last election to sign petition and specifying that court decides if there is cause for a recall election).

³⁷ See, e.g., [Colo. Rev. Stat. § 1-12-101 \(2024\)](#); [Nev. Rev. Stat. § 306.020 \(2023\)](#).

³⁸ In Texas, for example, where there is a little-used law that allows citizens to remove elected sheriffs on grounds of incompetency, official misconduct, or intoxication, by filing a lawsuit in the state courts and proceeding to a trial, [Tex. Loc. Gov't Code §§ 87.011-87.032 \(2023\)](#), the governor has sought passage of new laws that would allow him to remove elected sheriffs in certain circumstances.