

ELECTED OFFICE OF THE SHERIFF

EXECUTIVE SUMMARY

Issues Presented for Study

In most of the states the long-standing historical practice has been that the sheriff is elected for a four-year term of office. An issue which periodically arises in various jurisdictions around the United States, often in response to a particularly current and unusual situation or one of local government political conflict, is whether or not the status of this office should be changed from elected to appointed.

A Historical Perspective

The question presented is not a new one, having been around in some form for at least 300 years. In 1682 the City of London and County of Middlesex were concerned with moves by the Crown that would deprive them of the right to elect their sheriffs. The American county itself has its antecedents in ninth century England when the King divided the country into "shires", or local government units. Three officials oversaw the shire: the earl, the sheriff, and the bishop. Of these, the shire-reeve, later called sheriff, was second in importance to the earl. Originally appointed, the English sheriff eventually became an elected official.

When English colonists set up local governments in America the units and types of officials were patterned after the English model but with adaptations including the appointment of local officials by the colonial governor. Appointment remained the norm until during the Jacksonian era when states switched to election of many county officials. Today the number of local positions still elected has been significantly reduced, but across most of the country the sheriff remains an elected official.

Present Elected Status of Sheriff

Across the country popular election is the almost uniform means of selection of the sheriff. Sheriffs are elected to four-year terms in 41 states, two-year terms in three states, a three-year term in one state and a six-year term in one state. The races are on a partisan ballot in 40 states and on a non-partisan basis in 6 states.

A few states do not have the office of sheriff as such. There are no sheriffs in Alaska and that office was essentially abolished in the year 2000 in Connecticut. Hawaii does not have the position traditionally associated with the office of sheriff. In Rhode Island, the governor appoints the sheriff. In two Colorado counties and Dade County, Florida, sheriffs are appointed by the county executive.

Some jurisdictions have explored switching to a system of appointed sheriffs and at least two have had an appointed sheriff and returned to a system of elections. In Multnomah County, Oregon the sheriff became appointed on January 1, 1967. From January 1, 1967, to late 1978 the county board appointed six different sheriffs. Due to dissatisfaction with that system, the voters returned to election of the sheriff. The position of sheriff in King County, Washington, which is the Seattle area, was elected until 1968. At that time the Home Rule Charter of the county was amended and the sheriff became appointed, serving at the pleasure of the elected executive. After

several years under this system the voters restored to position to being elected. Popular reports indicate that the voters felt that public safety and law enforcement services would be improved by the return to election of the sheriff.

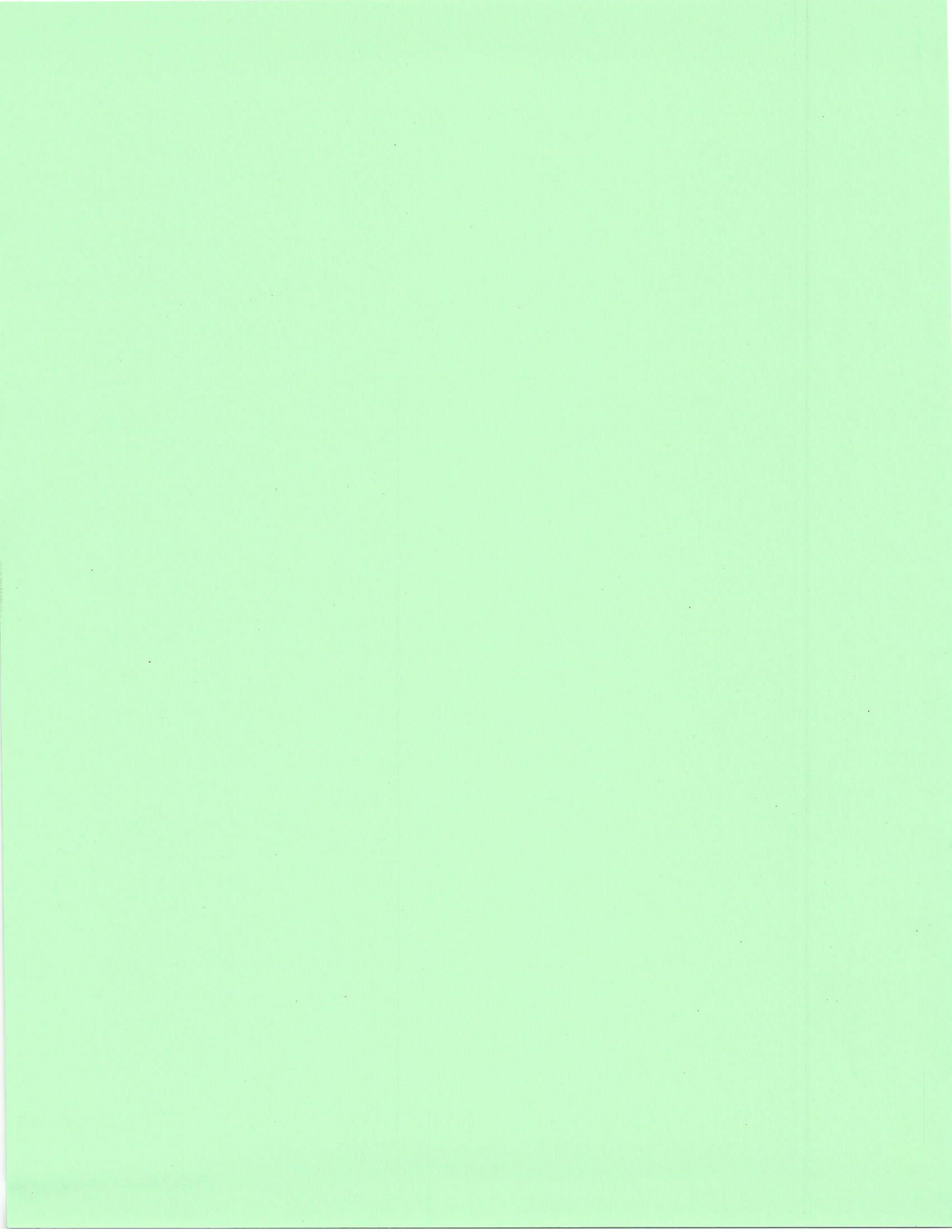
In nearly 3100 other jurisdictions throughout the country, the sheriffs are elected, although in some jurisdictions sheriffs are appointed to fill out unexpired terms if there is a death or resignation of the incumbent. In 20 states a vacancy in office is filled by appointment by the county board of commissioners. The office of governor fills a vacancy by appointment in 9 states and a variety of other means are used in the remaining states to fill a vacancy, including special election, appointment of the chief deputy and appointment by the political party of the former sheriff. Several states use a combination of appointment and special elections, depending on when the vacancy occurs.

Efforts to place the issue of appointment before the voters have rarely resulted in a change from elected status. In 1994 Iowa held a referendum to change the status of sheriff from elected to appointed. That initiative was heavily defeated by the voters.

Election is the best option.

There are at least four reasons to support election of the sheriff.

- 1) The sheriff provides a check and balance as an elected county official directly responsible to the citizens that protects from undue influence by members of the county board or by other county officials. There are also several checks upon the unfettered discretion of the sheriff. The voters can remove the sheriff from office during the election; the county board, subject in some states to appellate review, controls the budget and salary of the sheriff; and in extreme cases statutes authorize the removal of the sheriff from office for misfeasance or nonfeasance of duty.
- 2) In our democracy, we should have the right to choose who is to be sheriff. In many counties the sheriff is the single most powerful individual and institution. Despite the efforts of appointment proponents, voters who have had a chance to decide the issue have nearly universally decided to keep the office elective. Citizens should have the freedom to choose their sheriff and direct election is the best means to accomplish that.
- 3) The election of the sheriff is consistent with national traditions and practices. Election of sheriffs is nearly uniform throughout the United States. History has shown in those jurisdictions in which the sheriff is appointed there is a decrease in quality and continuity of law enforcement services and administration. When the sheriff is subject to the whims and caprices of the board of commissioners, the office becomes more politicized, not less.
- 4) There is stability and continuity of office. Sheriffs at the county level and city police departments at the municipal level handle local law enforcement. While city police departments on the whole do a good job, comparison of the continuity, innovation and public responsiveness of the office sheriff to city police demonstrates the perils of appointment. There is no objective, empirical data that proves city police departments headed by an appointed law enforcement official are any more creative, innovative, stable or cost-effective than the office of sheriff.



PRESERVE THE OFFICE OF SHERIFF BY CONTINUING THE ELECTION OF OUR NATION'S SHERIFFS

The Right to Vote is the Essence of America's Democracy:

It is the long-standing popular democratic practice of our American Republic to "elect all local, state and federal executive offices." A political issue arises periodically in various local jurisdictions around the United States as to whether or not the present status of the Office of Sheriff should be changed from "elected" to "appointed." The elected Office of Sheriff is "directly" accountable and responsible to eligible voters and an "elected" Office of Sheriff is **not** directly controlled by local county board/commissioners, supervisors, mayor, etc.

Present Elected Status of Office of Sheriff:

Across our country, popular election is the uniform means of selection of the Office of Sheriff in 46 states. Sheriffs are elected to four (4) year terms in 41 states, two-year terms in 3 states, a three (3) year term in one state and a six-year term in one state. The election to the Office of Sheriff is on a partisan ballot in 40 states and is elected on a non-partisan basis in 6 states. Throughout the nation, the Office of Sheriff is the "**Chief Law Enforcement Office.**"

Limited Power of Appointment to the Office of Sheriff:

There are no Sheriffs only in Alaska and Connecticut. In Rhode Island, the governor appoints the Sheriff. In two Colorado counties and in Dade County, Florida, Sheriffs are appointed by the county executive. In New York, the Sheriff of New York City is appointed by the Mayor of New York City; and in New York State's Westchester and Nassau Counties, these County Sheriffs are appointed by the Governor.

Currently, some local jurisdictions are exploring switching to a system of "appointed" Sheriffs; however, at least two major local jurisdictions that had an "appointed" Sheriff have returned to an "electoral" Office of Sheriff. In Multnomah County Oregon, the Sheriff was appointed from January 1,

1967 to late 1978, during which time the local county's board appointed six (6) different Sheriffs. Due to the dissatisfaction with the "appointment" system, the voters returned to the election of the Office of Sheriff. The position of Sheriff in King County, Washington (i.e. the Seattle area) was elected until 1968. At that time, the Home Rule Charter of King County was amended and the Sheriff became an appointed "Departmental" position, serving at the pleasure of the elected local county executive. After several years under this appointment system, the voters restored their Sheriff to an elected office. The local voters of King County felt their "Chief Law Enforcement Officer" should be elected to perform safety and law enforcement services.

Filling a Vacancy in the Office of Sheriff on an Interim Basis:

In over 99% of 3,088 local jurisdictions throughout the nation, the Sheriffs are elected, although in some local jurisdictions Sheriffs are appointed to fill out unexpired terms if there is a death or resignation of the incumbent, etc. In 20 states, a vacancy in the Office of Sheriff is filled by an interim appointment by the county board of commissioners. The Office of Governor fills a vacancy by interim appointment in 9 states; and a variety of other means are used in the remaining states to fill a vacancy in the Office of Sheriff, including special election, appointment of the chief deputy and appointment by the political party of the former Sheriff, etc. Several states use a combination of appointment and special elections, depending on when the vacancy occurs during an "election" cycle (i.e. how many months/year remain until the next regularly scheduled election to the Office of Sheriff).

Ongoing Election of the Office of Sheriff in the 21st Century:

There are at least four (4) primary reasons to support the ongoing election of the Office of Sheriff:

1. The Office of Sheriff provides a "check and balance" as an "elected" law enforcement officer who is "directly responsible" to the citizens and the Office of Sheriff protects the populace from undue political influence by members of the county board/supervisors, etc. on local law enforcement and public safety issues. Nevertheless, there are a number of checks and balances imposed on the

absolute discretion of the Office of Sheriff. The local voters can remove a Sheriff from office through the electoral process or by special referendum. Moreover, the county board/supervisors, etc. (which are subject in some states to appellate review), control the overall budget and salary(ies) of the Office of Sheriff; and in extreme cases various state statutes authorize the direct removal of a Sheriff for misfeasance or nonfeasance of duty while in office.

2. Under our republican form of government, "voters" have the right to choose who is to "serve" as their Sheriff, their local "chief law enforcement officer." Despite the efforts of appointment proponents, local voters have nearly universally decided to maintain the Office of Sheriff as an "elective" office.

3. The ongoing "election" of the Office of Sheriff in cities, counties, parishes, etc. is consistent with our nation's democratic history, traditions and historical practices. In local jurisdictions in which a Sheriff is "appointed," there can be a decrease in the quality and continuity in the law enforcement services and administration of a Sheriff's Department. When the Sheriff is subject to the political/economic whims and caprices of a county board/commissioners, etc. as an "appointed" head of a "Department" (not an "elected" Office), local law enforcement often becomes "politicized" to the public's detriment.

4. The American "electoral" experience has lead to an ongoing stability and continuity in the Office of Sheriff. To a large extent, Sheriffs at the county level and city police departments at the municipal level provide, operate and administer our nation's local law enforcement programs and activities. Finally, there is no objective empirical data that proves that "police departments" headed by an appointed law enforcement official are any more professional, creative, innovative, or cost-effective than an "elected" Office of Sheriff.

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Oregon State Sheriffs' Association

Conservators of the Peace

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The list is not all inclusive, but what following represents more than 110 statutes specific to Sheriffs responsibilities and duties.

The information is provided to increase your knowledge of the Office of Sheriff.

ORS - Oregon Revised Statutes

ORCP – Oregon Rules of Civil Procedure

ORS 1.180	Sheriff shall serve on court security advisory board
ORS 10.125	Security for jury sequestered or kept overnight
ORS 10.235 & ORCP 57B	Sheriff may be ordered to summon additional jurors
Multiple ORS in Chapter 18	Judgments – Civil Proceedings
ORCP 55D	Sheriff must have a designated person available during normal business hours to accept service of subpoenas.
ORCP 84 & 85	Provisional Process - various duties'
ORS Chp 18	Enforcement of Judgments - various including service of notices, seizure and securing property, and sales of property
ORS 21.410	Sheriff must serve and collect fee for service of summons, subpoena, citation, order, notice, including notice of seizure and sale of personal or real property, notice of restitution and notice of seizure under writ of attachment or execution and for entering and processing distraint warrants of State agencies
ORS 22.030	Certain County Officers must accept deposits in lieu of Bonds or security.
ORS 24.190	Sheriff must enter foreign restraining orders into LEDS
ORS Chp 34	Writs of Habeas Corpus - Various Duty's including service of writs, transport of persons and compliance with writ.
ORS 87.306	Sheriff to conduct sale for foreclosure by advertisement and sale
ORS 87.326	Sheriff to act as receiver for certain property under lien
ORS 90.440	Removal of group home tenant given notice termination notice
ORS 98.179	Sheriff to conduct sale of unclaimed consigned or bailed property

ORS 107.700 to 107.735	Family Abuse Prevention Act (FAPA) - various duties'
ORS Chp 124	Abuse prevention - various duties relating to service, LEDS entry and enforcement
ORS 131.415	In criminal cases, the Sheriff must convey the defendant to the new place of venue for trial if the venue has been changed.
ORS 131.594	Disposition and distribution of forfeited property when seizing agency not the state
ORS 133.455	Addresses the requirement to provide receipts for property taken from persons in custody.
ORS 133.460 to 133.495	Seizure and handling of stolen live meat food animal or fowl, any meat food animal or fowl carcass, or any part thereof, or any wool, hides, grain or any other article as well as vehicle or other conveyance used to transport them.
ORS 133.515	Provision of interpreters to disabled arrestees.
ORS 135.215	Sheriff to detain defendant not released prior to trial.
ORS 135.767	The Sheriff is required to take and then return inmates, and pay costs of transporting such inmates, when transported from state correctional facilities to the county for criminal proceedings.
ORS 135.770	Sheriff cannot release prisoners in his custody under ORS 135.767.
ORS 136.585	Criminal subpoenas shall be served by the sheriff when delivered to the sheriff by either the prosecution or the defense.
ORS 136.585	A person can be confined in another county or state facility if the county has entered into an IGA or is located within an intergovernmental corrections entity.
ORS 136.603	Sheriff to transport out of state prisoner witness and pay any costs incurred while in the custody of the sheriff
ORS 136.611	Sheriff to take material witness into custody
ORS 137.076	Blood or buccal sample and thumbprint of certain convicted defendants required;
ORS 137.124	Felon sentenced to 12 months or less to be sentenced to County jail.
ORS 137.320	Sheriff to deliver defendant committed to DOC
ORS 137.463	Sheriff to transport defendant sentenced to death to institution designated by DOC.
ORS 146.121	Sheriff of county of less than 400,000 to dispose of unclaimed body when death investigated by a medical examiner
ORS 146.145	Sheriff to select prospective jurors for inquest
ORS 156.450	Sheriff to jail individual committed for trial in Justice Court
ORS 163.741	Sheriff shall enter stalking orders into LEDS
ORS 166.274	Relief from prohibition against possessing or purchasing firearm

ORS 166.279	Forfeiture of Deadly Weapons
ORS 166.291	Issuance of concealed handgun license
ORS 166.292	Procedure for issuing concealed handgun license
ORS 166.293	Denial or revocation of license
ORS 166.295	Renewal of license
ORS 166.297	Annual report regarding revocation of licenses
ORS 167.162	Sheriff to hold seized gambling device and comply with court order to destroy
ORS Chp. 169	Jails – Numerous statutes in operating a jail.
ORS 179.655	Sheriff to levy on assets to pay distraint warrant issued by DHS or DOC
ORS 181.585 to 181.606	Sex offender notification & Registration
ORS 181.610 to 181.712	Training of deputies
ORS 181.781 to 181-796	Use of Force policy requirements
ORS 184.644	Levy and sale of property for payment of liquidated and delinquent debt owed to department; fees; levy on funds of debtor
Chapter 206	19 statutes describing general and specific duties of Sheriff
ORS 275.110 to 275.200	Sheriff's sell of county property
ORS 206.355	Unauthorized use of uniform prohibited. No person other than a county sheriff, person designated by a county sheriff, or regularly salaried sheriff's deputy shall wear, use, copy or imitate in any manner the uniform of that county sheriff. [1979 c.492 §2]
ORS 314.430	Sheriff to levy on assets to pay warrant issued by Revenue Department for
ORS 319.182	Sheriff to levy on assets to pay warrant issued by DTD for unpaid fuel tax
ORS 320.080	Sheriff to levy on assets to pay warrant issued by Revenue Department for unpaid amusement device tax
ORS 320.130	Sheriff required to enforce ORS 320.005-320.150 and to assist the Revenue Department
ORS 323.240	Law enforcement to search execute search warrant obtained by Revenue Department for illegally sold cigarettes
ORS 323.390	Sheriff to levy on assets to pay warrant issued by Revenue Department for unpaid cigarette tax
ORS 323.610	Sheriff to levy on assets to pay warrant issued by Revenue Department for unpaid Tobacco Products

	tax
ORS 324.190	Sheriff to levy on assets to pay warrant issued by Revenue Department for unpaid Oil and Gas tax
ORS 327.470	Sheriff shall notify County Commissioners when real property is foreclosed to pay loan from common school fund
ORS 401.560	States the search and rescue activities responsibilities of the Sheriff.
ORS 401.573	Sheriff required to adopt search and rescue plan & procedures.
ORS 401.720	Every law enforcement agency in the state shall participate in a 9-1-1 emergency reporting system, using enhanced 9-1-1.
ORS 404.110	Search and rescue activities; responsibilities of sheriff; delegation of sheriff's duties
ORS 404.115	Restriction of access to search and rescue area.
ORS 404.120	County sheriff to adopt search and rescue plan; contents; annual review
ORS 404.125	Critique of search and rescue incident; filing amended search and rescue plan with Office of Emergency Management.
ORS 419B.020(1) ORS 430.743(2)	The Sheriff shall investigate or assist in the investigation of reports of child abuse.
ORS 419B.845	Restraining Orders (Sheriff shall serve the person to be restrained personally unless the person is at the hearing; sheriff shall enter order into LEDS immediately).
ORS 421.215	Inmate confined out of state needed as witness in judicial proceeding in Oregon shall be delivered to custody of Sheriff of County of conviction.
ORS 423.560	Sheriff shall serve on local public safety coordinating council
ORS 423.475 to 423.565	States that the County shall enter into an agreement with the state Department of Corrections for a local community corrections program of post-prison supervision and parole. As part of this program, the County shall convene a local public safety coordinating council.
ORS 426.190	Mental health commitments (person shall be transported by sheriff or someone authorized by the county health offices to the state hospital).
ORS 433.355	The Sheriff must execute court orders to impound animals that have bitten persons.
ORS 608.400	Sheriff shall cause publication in newspaper notice of livestock killed by train



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THE DUTY OF THE SHERIFF

In each of the 36 counties in Oregon, the Sheriff is the chief law enforcement officer. His primary duty is to give full police protection to the unincorporated areas of the county. However, he maintains full police jurisdiction in all municipalities.

His responsibilities cover the entire spectrum of law enforcement – criminal investigation, search and rescue, service of legal process of the courts, operation of the county jail, and total police services on a 24 hour basis. The Sheriff's Office must provide court security, transport all criminals to and from penal institutions and is also called upon to handle mental patients within their jurisdiction.

The Sheriffs maintain well trained reserves to aid regular deputies and to assist them in any way possible. As an unpaid service unit, volunteer deputies are required to have law enforcement education.

In many counties the Oregon Sheriff is directing large numbers of personnel, and managing budgets in excess of several million dollars. The efficient and effective management of the Sheriff's Office demands a highly trained and experienced Sheriff.

The state law sets the qualifications for Sheriff as: Not less than 21 years of age, be certified or eligible for certification by the Department of Public Safety Standards and Training, and have at least four years' experience in law enforcement or two years post high school education, or any combination of experience and education for at least four years.

All Sheriffs have full police authority in any county in Oregon when requested by another Sheriff. In this respect, these men have established great working rapport. The communication between the respective Sheriffs is effective, efficient, and a true service to the people of Oregon.