

Fact Sheet: Unlawful Militias in New Mexico

What is a militia?

Federal and state laws generally use the term “militia” to refer to all able-bodied residents between certain ages who may be called forth by the government to defend the United States or an individual state. *See* 10 U.S.C. § 246. When not called forth, they are sometimes referred to as the “unorganized militia.” A group of people who consider themselves part of the able-bodied residents referred to as members of the militia under state or federal law is not legally permitted to activate itself for duty. A private militia that attempts to activate itself for duty, outside of the authority of the state or federal government, is illegal.

How do I know if a group of armed people is an unauthorized private militia?

Groups of armed individuals that engage in paramilitary activity or law enforcement functions without being called forth by a governor or the federal government and without reporting to any government authority are acting as unauthorized private militias. They sometimes train together and respond to events using firearms and other paramilitary techniques, such as staking out tactical positions and operating in military-style formations. They often purport to have authority to engage in military and law enforcement functions such as protecting property and engaging in crowd control.

These groups often engage in behaviors that show their intent to act as a private militia, such as wearing military-style uniforms, tactical gear, or identifying insignia; wielding firearms or other weapons; and operating within a coordinated command structure. Other factors—such as statements by leaders or members’ efforts to direct the actions of others—also may suggest that a group is acting as a private militia. Groups of armed individuals may engage in unauthorized militia activity even if they do not consider themselves to be “members” of a paramilitary organization.

Does the Second Amendment protect private militias?

No. In fact, the Supreme Court decided in 1886—and repeated in 2008—that the Second Amendment “does not prevent the prohibition of private paramilitary organizations.” *District of Columbia v. Heller*, 554 U.S. 570, 621 (2008) (citing *Presser v. Illinois*, 116 U.S. 252 (1886)).

Is it legal to act as a private militia in New Mexico?

No. All 50 states prohibit private, unauthorized militias and military units from engaging in activities reserved for the state militia, including law enforcement activities. Some states, including New Mexico, also prohibit paramilitary activity during or in furtherance of a civil disorder. New Mexico’s laws are described below:

New Mexico Constitution: The New Mexico Constitution forbids private military units from operating outside state authority, providing that “[t]he military shall always be in strict subordination to the civil power.” N.M. Const. art. II, § 9.

New Mexico Statutes

Prohibition on paramilitary activity: It is a felony in New Mexico under to either:

(1) teach or demonstrate how to use, apply, or make “any firearm, destructive device or technique capable of causing injury or death to any person with the intent that the knowledge or skill” will “be unlawfully used in furtherance of a civil disorder” *or*

(2) train, practice, or receive instruction in how to use “any firearm, destructive device or technique capable of causing injury or death,” intending that “the knowledge or skill” will be “used in furtherance of a civil disorder.” N.M. Stat. Ann. § 30-20A-3.

Prohibition on falsely assuming functions of law enforcement: In New Mexico, it is a crime for any person to “without due authority, exercis[e] or attempt[] to exercise the functions of a peace officer.” N.M. Stat. Ann. § 30-27-2.1. “Peace officer” includes “any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime.” *Id.*

What should I do if I see armed groups near a polling place or voter registration drive?

First, document what you see:

- What are the armed people doing?
- What are the armed people wearing?
- Are they carrying firearms? If so, what type? If not, are they carrying other types of weapons?
- Are they wearing insignia? If so, what does it say or look like?
- Are they bearing signs or flags?
- Do they seem to be patrolling like a law enforcement officer might do?
- Do they seem to be coordinating their actions?
- Do they have a leader?
- Are they stopping or talking to people outside of their group?
- Do they appear to be provoking or threatening violence? If so, what are they doing specifically?
- Are people turning away from the polling station after seeing or speaking with them?

Second, call Election Protection at 866-OUR-VOTE (866-687-8683) to report what you see.

Assistance is also available in **Spanish** at 888-VE-Y-VOTA (888-839-8682), in **Arabic** at 844-YALLA-US (844-915-5187), and **Asian languages** at 888-API-VOTE (1-888-174-8683). A video call number for **American Sign Language** is available at 301-818-VOTE (301-818-8683).

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