

1 SENATE BILL 236

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Nicole Tobiassen and Crystal Brantley

10 AN ACT

11 RELATING TO TORTS; PROVIDING A TORT CLAIMS ACT EXCEPTION TO
12 IMMUNITY FOR INSTANCES OF A CHILD ABUSED OR NEGLECTED IN THE
13 CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT IN
14 CERTAIN CIRCUMSTANCES.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 **SECTION 1.** Section 41-4-4 NMSA 1978 (being Laws 1976,
18 Chapter 58, Section 4, as amended) is amended to read:

19 "41-4-4. GRANTING IMMUNITY FROM TORT LIABILITY--
20 AUTHORIZING EXCEPTIONS.--

21 A. A governmental entity and any public employee
22 while acting within the scope of duty are granted immunity from
23 liability for any tort except as waived by the New Mexico
24 Religious Freedom Restoration Act and by Sections 41-4-5
25 through [41-4-12] 41-4-12.1 NMSA 1978. Waiver of this immunity

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1 shall be limited to and governed by the provisions of Sections
2 41-4-13 through 41-4-25 NMSA 1978, but the waiver of immunity
3 provided in those sections does not waive immunity granted
4 pursuant to the Governmental Immunity Act.

5 B. Unless an insurance carrier provides a defense,
6 a governmental entity shall provide a defense, including costs
7 and attorney fees, for any public employee when liability is
8 sought for:

9 (1) any tort alleged to have been committed by
10 the public employee while acting within the scope of [his]
11 duty; or

12 (2) any violation of property rights or any
13 rights, privileges or immunities secured by the constitution
14 and laws of the United States or the constitution and laws of
15 New Mexico when alleged to have been committed by the public
16 employee while acting within the scope of [his] duty.

17 C. A governmental entity shall pay any award for
18 punitive or exemplary damages awarded against a public employee
19 under the substantive law of a jurisdiction other than New
20 Mexico, including other states, territories and possessions and
21 the United States of America, if the public employee was acting
22 within the scope of [his] duty.

23 D. A governmental entity shall pay any settlement
24 or any final judgment entered against a public employee for:

25 (1) any tort that was committed by the public

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1 employee while acting within the scope of [his] duty; or
2 (2) a violation of property rights or any
3 rights, privileges or immunities secured by the constitution
4 and laws of the United States or the constitution and laws of
5 New Mexico that occurred while the public employee was acting
6 within the scope of [his] duty.

7 E. A governmental entity shall have the right to
8 recover from a public employee the amount expended by the
9 public entity to provide a defense and pay a settlement agreed
10 to by the public employee or to pay a final judgment if it is
11 shown that, while acting within the scope of [his] duty, the
12 public employee acted fraudulently or with actual intentional
13 malice causing the bodily injury, wrongful death or property
14 damage resulting in the settlement or final judgment.

15 F. Nothing in Subsections B, C and D of this
16 section shall be construed as a waiver of the immunity from
17 liability granted by Subsection A of this section or as a
18 waiver of the state's immunity from suit in federal court under
19 the eleventh amendment to the United States constitution.

20 G. The duty to defend as provided in Subsection B
21 of this section shall continue after employment with the
22 governmental entity has been terminated if the occurrence for
23 which damages are sought happened while the public employee was
24 acting within the scope of duty while the public employee was
25 in the employ of the governmental entity.

H. The duty to pay any settlement or any final judgment entered against a public employee as provided in this section shall continue after employment with the governmental entity has terminated if the occurrence for which liability has been imposed happened while the public employee was acting within the scope of [his] duty while in the employ of the governmental entity.

I. A jointly operated public school, community center or athletic facility that is used or maintained pursuant to a joint powers agreement shall be deemed to be used or maintained by a single governmental entity for the purposes of and subject to the maximum liability provisions of Section 41-4-19 NMSA 1978.

J. For purposes of this section, a "jointly operated public school, community center or athletic facility" includes a school, school yard, school ground, school building, gymnasium, athletic field, building, community center or sports complex that is owned or leased by a governmental entity and operated or used jointly or in conjunction with another governmental entity for operations, events or programs that include sports or athletic events or activities, child care or youth programs, after-school or before-school activities or summer or vacation programs at the facility.

K. A fire station that is used for community activities pursuant to a joint powers agreement between the

1 fire department or volunteer fire department and another
2 governmental entity shall be deemed to be operated or
3 maintained by a single governmental entity for the purposes of
4 and subject to the maximum liability provisions of Section
5 41-4-19 NMSA 1978. As used in this subsection, "community
6 activities" means operations, events or programs that include
7 sports or athletic events or activities, child care or youth
8 programs, after-school or before-school activities, summer or
9 vacation programs, health or education programs and activities
10 or community events."

11 SECTION 2. A new section of the Tort Claims Act, Section
12 41-4-12.1 NMSA 1978, is enacted to read:

13 "41-4-12.1. [NEW MATERIAL] LIABILITY--CHILDREN, YOUTH AND
14 FAMILIES DEPARTMENT.--The immunity granted pursuant to
15 Subsection A of Section 41-4-4 NMSA 1978 does not apply to
16 liability for abuse of a child caused by the negligence of
17 employees of the children, youth and families department while
18 acting within the scope of the employees' duties when the child
19 is in the custody of that department and was removed from the
20 child's home because the child was abused or neglected by the
21 child's parents pursuant to the provisions of the Abuse and
22 Neglect Act."