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HOUSE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE RESERVE POLICE OFFICER ACT; AUTHORIZING GOVERNMENTAL ENTITIES TO COMMISSION RESERVE POLICE OFFICERS TO ASSIST POLICE OFFICERS; DEFINING POWERS AND DUTIES OF RESERVE POLICE OFFICERS; ESTABLISHING QUALIFICATIONS OF RESERVE POLICE OFFICERS; PROVIDING FOR LICENSURE OF RESERVE POLICE OFFICERS; REQUIRING TRAINING; AMENDING SECTIONS OF THE PEACE OFFICERS', NEW MEXICO MOUNTED PATROL MEMBERS' AND RESERVE POLICE OFFICERS' SURVIVORS SUPPLEMENTAL BENEFITS ACT, THE CRIMINAL PROCEDURE ACT, THE TORT CLAIMS ACT AND THE MOTOR VEHICLE CODE TO INCLUDE RESERVE POLICE OFFICERS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Reserve Police .210889.3

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1 Officer Act".

2 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
3 Reserve Police Officer Act:

4 A. "board" means the New Mexico law enforcement  
5 academy board;

6 B. "director" means the director of the New Mexico  
7 law enforcement academy; and

8 C. "reserve police officer" means a person who is  
9 licensed as a reserve police officer by the board to assist  
10 police officers or who is a member of the New Mexico mounted  
11 patrol or the New Mexico rangers.

12 SECTION 3. [NEW MATERIAL] AUTHORIZATION TO COMMISSION  
13 RESERVE POLICE OFFICERS.--A governmental entity as defined in  
14 the Tort Claims Act is authorized to commission reserve police  
15 officers.

16 SECTION 4. [NEW MATERIAL] RESERVE POLICE OFFICER--SCOPE  
17 OF AUTHORITY.--

18 A. A reserve police officer commissioned by a  
19 governmental entity as defined in the Tort Claims Act and  
20 assigned to the prevention and detection of crime and the  
21 general enforcement of the laws of this state shall have the  
22 powers of a police officer when working with supervision from a  
23 full-time salaried on-duty certified police officer.

24 B. The powers and authority of a reserve police  
25 officer extend only for the scope and duration of the reserve

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1 police officer's specific assignment.

2 SECTION 5. [NEW MATERIAL] QUALIFICATIONS OF RESERVE  
3 POLICE OFFICERS--LICENSURE--REPORTS--ROSTER.--

4 A. An applicant for licensure as a reserve police  
5 officer shall provide evidence satisfactory to the board that  
6 the applicant:

7 (1) is a citizen of the United States;  
8 (2) has reached the age of majority;  
9 (3) holds a high school diploma or the  
10 equivalent;

11 (4) holds a valid New Mexico driver's license;  
12 (5) has not been convicted of or pled guilty  
13 to or entered a plea of nolo contendere to:

14 (a) any felony charge; or  
15 (b) any violation of any federal or  
16 state law or local ordinance relating to aggravated assault,  
17 theft, driving while intoxicated, controlled substances or  
18 other crime involving moral turpitude within the three-year  
19 period immediately preceding the application;

20 (6) has not been released or discharged under  
21 dishonorable conditions from any of the armed forces of the  
22 United States;

23 (7) after examination by a licensed physician,  
24 is free of any physical condition that might adversely affect  
25 performance as a reserve police officer;

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1 (8) after examination by a certified  
2 psychologist, is free of any emotional or mental condition that  
3 might adversely affect performance as a reserve police officer;

4 (9) is of good moral character;

5 (10) has been awarded a certificate of  
6 completion attesting to the applicant's completion of a reserve  
7 police officer training program approved by the board; and

8 (11) has met any other requirements for  
9 licensure prescribed by the board pursuant to regulations  
10 adopted by the board.

11 B. The board shall establish different levels of  
12 licensure of reserve police officers, with clearly defined  
13 duties at each level. One level shall require not more than  
14 five hundred total hours of training and provide that the  
15 reserve police officer is qualified to work independently  
16 without completing the training required for certified police  
17 officers.

18 C. A reserve police officer shall not be required  
19 to meet all of the physical fitness and agility requirements  
20 required for certification as a law enforcement officer;  
21 provided that a reserve police officer completes the fitness  
22 tests at fifty percent of what would be required for  
23 certification as a law enforcement officer at the time the  
24 reserve police officer is licensed.

25 D. The director shall waive the law enforcement

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1 training required by the Reserve Police Officer Act for an  
2 applicant who:

3 (1) furnishes evidence of satisfactory  
4 completion of law enforcement training that, in the director's  
5 opinion, is substantially equivalent to the board's law  
6 enforcement training for reserve police officers; or

7 (2) is a retired certified police officer.

8 E. A person commissioned as a reserve police  
9 officer prior to July 1, 2019 may be exempted from the law  
10 enforcement training required by the Reserve Police Officer Act  
11 at the director's discretion.

12 F. A person granted a waiver of law enforcement  
13 training required by the Reserve Police Officer Act shall meet  
14 all other requirements for licensure set forth in the Reserve  
15 Police Officer Act.

16 G. To maintain licensure, reserve police officers  
17 shall complete fewer hours of in-service law enforcement  
18 training courses prescribed by the board every two years than  
19 is required for certified police officers. The first  
20 in-service training course shall commence no later than twelve  
21 months after graduation from the initial law enforcement  
22 training program.

23 H. No later than March 1 of every year, a reserve  
24 police officer, or the governmental entity as defined in the  
25 Tort Claims Act that commissioned the reserve police officer,

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1 shall provide to the director proof of completion of in-service  
2 training for the previous year.

3 I. Every governmental entity as defined in the Tort  
4 Claims Act that has commissioned reserve police officers shall  
5 submit quarterly reports to the director on the status of each  
6 commissioned reserve police officer. The reporting forms and  
7 submission dates shall be prescribed by the director.

8 J. The director shall maintain a roster of all  
9 reserve police officers.

10 SECTION 6. [NEW MATERIAL] TRAINING.--

11 A. The board shall develop and adopt a law  
12 enforcement training program for reserve police officers  
13 tailored to each level of licensure.

14 B. The board shall develop in-service law  
15 enforcement training courses for reserve police officers.

16 C. Training shall be conducted by board-qualified  
17 instructors.

18 D. Domestic abuse incident training and training  
19 for ensuring child safety upon the arrest of a parent or  
20 guardian shall be included in the curriculum of the law  
21 enforcement training program for reserve police officers.

22 E. The director shall provide annual notice to all  
23 reserve police officers regarding in-service training  
24 requirements.

25 SECTION 7. [NEW MATERIAL] REFUSAL, SUSPENSION OR

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1 REVOCATION OF LICENSE.--

2 A. After consultation with the commissioning  
3 governmental entity as defined in the Tort Claims Act, the  
4 board may refuse to issue or may suspend or revoke a reserve  
5 police officer's license when the board determines that a  
6 person has:

7 (1) failed to satisfy the qualifications for  
8 licensure set forth in the Reserve Police Officer Act;

9 (2) committed acts that constitute dishonesty  
10 or fraud;

11 (3) been convicted of, pled guilty to or  
12 entered a plea of no contest to:

13 (a) any felony charge; or

14 (b) any violation of federal or state  
15 law or a local ordinance relating to aggravated assault, theft,  
16 driving while under the influence of intoxicating liquor or  
17 drugs, controlled substances or any law or ordinance involving  
18 moral turpitude; or

19 (4) knowingly made any false statement in the  
20 person's application for licensure.

21 B. Failure to complete required in-service training  
22 may be grounds for suspension of a reserve police officer's  
23 license.

24 C. A reserve police officer's license may be  
25 reinstated by the board when the reserve police officer, or the

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1 governmental entity as defined in the Tort Claims Act that  
2 commissioned the reserve police officer, provides the board  
3 with evidence of satisfactory completion of required in-service  
4 training.

5 D. The board shall promulgate rules and  
6 administrative procedures for the suspension or revocation of a  
7 reserve police officer's license that include:

8 (1) notice and an opportunity for the affected  
9 reserve police officer to be heard; and

10 (2) procedures for review of the board's  
11 decision.

12 SECTION 8. [NEW MATERIAL] SPECIAL DEPUTY COMMISSIONS.--  
13 Nothing in the Reserve Police Officer Act shall restrict a  
14 sheriff's power to issue special deputy commissions.

15 SECTION 9. Section 29-4A-3 NMSA 1978 (being Laws 1995,  
16 Chapter 59, Section 3, as amended) is amended to read:

17 "29-4A-3. DEFINITIONS.--As used in the Peace Officers',  
18 New Mexico Mounted Patrol Members' and Reserve Police Officers'  
19 Survivors Supplemental Benefits Act:

20 A. "fund" means the peace officers', New Mexico  
21 mounted patrol members' and reserve police officers' survivors  
22 fund;

23 B. "New Mexico mounted patrol" means units or  
24 troops officered and manned to assist with law enforcement  
25 pursuant to the provisions of Sections 29-6-1 and 29-6-4 NMSA

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1 1978, Subsection A of Section 29-6-5 NMSA 1978 and Section  
2 29-6-6 NMSA 1978;

3 C. "peace officer" means any full-time salaried and  
4 commissioned or certified law enforcement officer of a police  
5 or sheriff's department or a conservation officer of the  
6 department of game and fish as used in Chapter 17 NMSA 1978  
7 that is part of or administered by the state or any political  
8 subdivision of the state;

9 D. "reserve police officer" means a ~~[volunteer or a~~  
10 ~~temporary or part-time employee of a state or local law~~  
11 ~~enforcement agency]~~ person who is ~~[accepted by that agency as a~~  
12 ~~reserve law enforcement officer after receiving a background~~  
13 ~~check and training as needed by that agency]~~ licensed as a  
14 reserve police officer by the New Mexico law enforcement  
15 academy board to assist police officers and who is not a member  
16 of the New Mexico mounted patrol; and

17 E. "secretary" means the secretary of public  
18 safety."

19 SECTION 10. Section 31-1-2 NMSA 1978 (being Laws 1972,  
20 Chapter 71, Section 5, as amended) is amended to read:

21 "31-1-2. DEFINITIONS.--Unless a specific meaning is  
22 given, as used in the Criminal Procedure Act:

23 A. "accused" means any person charged with the  
24 violation of any law of this state imposing a criminal penalty;

25 B. "bail bond" is a contract between surety and the

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1 state to the effect that the accused and the surety will appear  
2 in court when required and will comply with all conditions of  
3 the bond;

4 C. "defendant" means any person accused of a  
5 violation of any law of this state imposing a criminal penalty;

6 D. "felony" means any crime so designated by law or  
7 if upon conviction thereof a sentence of death or of  
8 imprisonment for a term of one year or more is authorized;

9 E. "person", unless a contrary intention appears,  
10 means any individual, estate, trust, receiver, cooperative  
11 association, club, corporation, company, firm, partnership,  
12 joint venture, syndicate or other entity;

13 F. "police officer", "law enforcement officer",  
14 "peace officer" or "officer" means ~~any~~ a full-time salaried  
15 ~~or~~ officer, certified part-time salaried officer or  
16 commissioned reserve police officer, a licensed New Mexico  
17 mounted patrol officer or a licensed New Mexico ranger who by  
18 virtue of office or public employment is vested by law with the  
19 duty to maintain the public peace;

20 G. "recognizance" means any obligation of record  
21 entered into before a court requiring the accused to appear at  
22 all appropriate times or forfeit any bail and be subject to  
23 criminal penalty for failure to appear;

24 H. "release on personal recognizance" or "release  
25 on own recognizance" means the release of a defendant without

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1 bail, bail bond or sureties upon the defendant's promise to  
2 appear at all appropriate times;

3 I. "rules of civil procedure" means rules of civil  
4 procedure for the district courts of the state of New Mexico,  
5 as may be amended from time to time;

6 J. "rules of criminal procedure" means rules of  
7 criminal procedure for the district courts, magistrate courts  
8 and municipal courts adopted by the New Mexico supreme court,  
9 as may be amended from time to time;

10 K. "misdemeanor" means any offense for which the  
11 authorized penalty upon conviction is imprisonment in excess of  
12 six months but less than one year; and

13 L. "petty misdemeanor" means any offense so  
14 designated by law or if upon conviction a sentence of  
15 imprisonment for six months or less is authorized."

16 SECTION 11. Section 35-6-3 NMSA 1978 (being Laws 1968,  
17 Chapter 62, Section 94, as amended) is amended to read:

18 "35-6-3. MAGISTRATE COSTS--ADVANCE PAYMENT.--

19 A. Except for parties granted free process because  
20 of indigency, any party filing any civil action or requesting  
21 services from the magistrate court shall pay in advance the  
22 costs required by law to be collected by magistrates.

23 B. Any person filing a complaint in a criminal  
24 action in the magistrate court shall pay in advance the costs  
25 required by law to be collected by magistrates, except that no

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1 costs shall be collected from a person filing a complaint in a  
2 criminal action alleging domestic violence or from a campus  
3 security officer, a municipal police officer, an Indian tribal  
4 or pueblo law enforcement officer, a commissioned reserve  
5 police officer, a licensed New Mexico mounted patrol officer, a  
6 licensed New Mexico ranger or [~~from~~] a full-time, salaried  
7 county or state law enforcement officer filing the complaint."

8 SECTION 12. Section 41-4-1 NMSA 1978 (being Laws 1976,  
9 Chapter 58, Section 1, as amended) is amended to read:

10 "41-4-1. SHORT TITLE.--~~[Sections 41-4-1 through 41-4-27]~~  
11 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort  
12 Claims Act"."

13 SECTION 13. Section 41-4-3 NMSA 1978 (being Laws 1976,  
14 Chapter 58, Section 3, as amended) is amended to read:

15 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

16 A. "board" means the risk management advisory  
17 board;

18 B. "governmental entity" means the state or any  
19 local public body as defined in Subsections C and H of this  
20 section;

21 C. "local public body" means all political  
22 subdivisions of the state and their agencies, instrumentalities  
23 and institutions and all water and natural gas associations  
24 organized pursuant to Chapter 3, Article 28 NMSA 1978;

25 D. "law enforcement officer" means a full-time

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1 salaried public employee of a governmental entity, [or] a  
2 certified part-time salaried police officer employed by a  
3 governmental entity, a reserve police officer commissioned by a  
4 governmental entity, a licensed New Mexico mounted patrol  
5 officer or a licensed New Mexico ranger whose principal duties  
6 under law are to hold in custody any person accused of a  
7 criminal offense, to maintain public order or to make arrests  
8 for crimes, or members of the national guard when called to  
9 active duty by the governor;

10 E. "maintenance" does not include:

11 (1) conduct involved in the issuance of a  
12 permit, driver's license or other official authorization to use  
13 the roads or highways of the state in a particular manner; or

14 (2) an activity or event relating to a public  
15 building or public housing project that was not foreseeable;

16 F. "public employee" means an officer, employee or  
17 servant of a governmental entity, excluding independent  
18 contractors except for individuals defined in Paragraphs (7),  
19 (8), (10), (14) and (17) of this subsection, or of a  
20 corporation organized pursuant to the Educational Assistance  
21 Act, the Small Business Investment Act or the Mortgage Finance  
22 Authority Act or a licensed health care provider, who has no  
23 medical liability insurance, providing voluntary services as  
24 defined in Paragraph (16) of this subsection and including:

25 (1) elected or appointed officials;

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- 1 (2) law enforcement officers;
- 2 (3) persons acting on behalf or in service of
- 3 a governmental entity in any official capacity, whether with or
- 4 without compensation;
- 5 (4) licensed foster parents providing care for
- 6 children in the custody of the human services department,
- 7 corrections department or department of health, but not
- 8 including foster parents certified by a licensed child
- 9 placement agency;
- 10 (5) members of state or local selection panels
- 11 established pursuant to the Adult Community Corrections Act;
- 12 (6) members of state or local selection panels
- 13 established pursuant to the Juvenile Community Corrections Act;
- 14 (7) licensed medical, psychological or dental
- 15 arts practitioners providing services to the corrections
- 16 department pursuant to contract;
- 17 (8) members of the board of directors of the
- 18 New Mexico medical insurance pool;
- 19 (9) individuals who are members of medical
- 20 review boards, committees or panels established by the
- 21 educational retirement board or the retirement board of the
- 22 public employees retirement association;
- 23 (10) licensed medical, psychological or dental
- 24 arts practitioners providing services to the children, youth
- 25 and families department pursuant to contract;

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1 (11) members of the board of directors of the  
2 New Mexico educational assistance foundation;

3 (12) members of the board of directors of the  
4 New Mexico student loan guarantee corporation;

5 (13) members of the New Mexico mortgage  
6 finance authority;

7 (14) volunteers, employees and board members  
8 of court-appointed special advocate programs;

9 (15) members of the board of directors of the  
10 small business investment corporation;

11 (16) health care providers licensed in New  
12 Mexico who render voluntary health care services without  
13 compensation in accordance with rules promulgated by the  
14 secretary of health. The rules shall include requirements for  
15 the types of locations at which the services are rendered, the  
16 allowed scope of practice and measures to ensure quality of  
17 care;

18 (17) an individual while participating in the  
19 state's adaptive driving program and only while using a  
20 special-use state vehicle for evaluation and training purposes  
21 in that program;

22 (18) the staff and members of the board of  
23 directors of the New Mexico health insurance exchange  
24 established pursuant to the New Mexico Health Insurance  
25 Exchange Act; and

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1 (19) members of the insurance nominating  
2 committee;

3 G. "scope of duty" means performing any duties that  
4 a public employee is requested, required or authorized to  
5 perform by the governmental entity, regardless of the time and  
6 place of performance; and

7 H. "state" or "state agency" means the state of New  
8 Mexico or any of its branches, agencies, departments, boards,  
9 instrumentalities or institutions."

10 SECTION 14. Section 66-8-124 NMSA 1978 (being Laws 1961,  
11 Chapter 213, Section 3, as amended) is amended to read:

12 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM.--

13 A. No person shall be arrested for violating the  
14 Motor Vehicle Code or other law relating to motor vehicles  
15 punishable as a misdemeanor except by a commissioned salaried  
16 peace officer, a commissioned reserve police officer, a  
17 licensed New Mexico mounted patrol officer or a licensed New  
18 Mexico ranger who, at the time of arrest, is wearing a uniform  
19 clearly indicating the peace officer's official status.

20 B. Notwithstanding the provisions of Subsection A  
21 of this section, a municipality may provide by ordinance that  
22 uniformed private security guards may be commissioned by the  
23 local police agency to issue parking citations for violations  
24 of clearly and properly marked fire zones and access zones for  
25 persons with significant mobility limitation. Prior to the

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1 commissioning of any security guard, the employer of the  
2 security guard shall agree in writing with the local police  
3 agency to the commissioning of the employer's security guard.  
4 The employer of any security guard commissioned under the  
5 provisions of this section shall be liable for the actions of  
6 that security guard in carrying out the security guard's duties  
7 pursuant to that commission. Notwithstanding the provisions of  
8 the Tort Claims Act, private security guards commissioned under  
9 this section shall not be deemed public employees under that  
10 act."

11 SECTION 15. Section 66-8-125 NMSA 1978 (being Laws 1978,  
12 Chapter 35, Section 533) is amended to read:

13 "66-8-125. ARREST WITHOUT WARRANT.--

14 A. Members of the New Mexico state police, sheriffs  
15 and their salaried deputies, ~~[and]~~ members of any municipal  
16 police force, commissioned reserve police officers, licensed  
17 New Mexico mounted patrol officers and licensed New Mexico  
18 rangers may arrest without warrant any person:

- 19 (1) present at the scene of a motor vehicle  
20 accident;
- 21 (2) on a highway when charged with theft of a  
22 motor vehicle; or
- 23 (3) charged with crime in another  
24 jurisdiction, upon receipt of a message giving the name or a  
25 reasonably accurate description of the person wanted, the crime

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1 alleged and a statement [~~he~~] that the person is likely to flee  
2 the jurisdiction of [~~the~~] this state.

3 B. To arrest without warrant, the arresting officer  
4 must have reasonable grounds, based on personal investigation,  
5 which may include information from eyewitnesses, to believe the  
6 person arrested has committed a crime.

7 C. Members of the New Mexico state police, sheriffs  
8 and their salaried deputies, [~~and~~] members of any municipal  
9 police force, commissioned reserve police officers, licensed  
10 New Mexico mounted patrol officers and licensed New Mexico  
11 rangers may not make [~~arrest~~] arrests for traffic violations if  
12 not in uniform; however, nothing in this section shall be  
13 construed to prohibit the arrest, without warrant, by a peace  
14 officer of any person when probable cause exists to believe  
15 that a felony crime has been committed or in non-traffic  
16 cases."

17 SECTION 16. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2020.