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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 CERTIFICATION 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 .210889.2

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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 certified as a reserve police officer by the board to assist
10 police officers and who is not a member of the New Mexico
11 mounted patrol.

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--CERTIFICATION--REPORTS--ROSTER.--

4 A. An applicant for certification as a reserve
5 police officer shall provide evidence satisfactory to the board
6 that 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 certification prescribed by the board pursuant to regulations
10 adopted by the board.

11 B. The board shall establish different levels of
12 certification of reserve police officers, with clearly defined
13 duties at each level. One level shall provide that the reserve
14 police officer is qualified to work independently without
15 completing the training required for police officers.

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

22 D. The director shall waive the law enforcement
23 training required by the Reserve Police Officer Act for
24 applicants who furnish evidence of satisfactory completion of
25 law enforcement training that, in the director's opinion, is

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1 substantially equivalent to the board's law enforcement
2 training for reserve police officers.

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

7 F. A person granted a waiver of law enforcement
8 training required by the Reserve Police Officer Act shall meet
9 all other requirements for certification set forth in the
10 Reserve Police Officer Act.

11 G. To maintain certification, reserve police
12 officers shall complete in-service law enforcement training
13 courses prescribed by the board every two years. The first
14 in-service training course shall commence no later than twelve
15 months after graduation from the initial law enforcement
16 training program.

17 H. No later than March 1 of every year, a reserve
18 police officer, or the governmental entity as defined in the
19 Tort Claims Act that commissioned the reserve police officer,
20 shall provide to the director proof of completion of in-service
21 training for the previous year.

22 I. Every governmental entity as defined in the Tort
23 Claims Act that has commissioned reserve police officers shall
24 submit quarterly reports to the director on the status of each
25 commissioned reserve police officer. The reporting forms and

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1 submission dates shall be prescribed by the director.

2 J. The director shall maintain a roster of all
3 reserve police officers.

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

5 A. The board shall develop and adopt a law
6 enforcement training program for reserve police officers
7 tailored to each level of certification.

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

10 C. Training shall be conducted by board-qualified
11 instructors.

12 D. Domestic abuse incident training and training
13 for ensuring child safety upon the arrest of a parent or
14 guardian shall be included in the curriculum of the law
15 enforcement training program for reserve police officers.

16 E. The director shall provide annual notice to all
17 reserve police officers regarding in-service training
18 requirements.

19 SECTION 7. [NEW MATERIAL] REFUSAL, SUSPENSION OR
20 REVOCATION OF CERTIFICATION.--

21 A. After consultation with the commissioning
22 governmental entity as defined in the Tort Claims Act, the
23 board may refuse to issue or may suspend or revoke a reserve
24 police officer's certification when the board determines that a
25 person has:

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1 (1) failed to satisfy the qualifications for
2 certification set forth in the Reserve Police Officer Act;

3 (2) committed acts that constitute dishonesty
4 or fraud;

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

7 (a) any felony charge; or

8 (b) any violation of federal or state
9 law or a local ordinance relating to aggravated assault, theft,
10 driving while under the influence of intoxicating liquor or
11 drugs, controlled substances or any law or ordinance involving
12 moral turpitude; or

13 (4) knowingly made any false statement in the
14 person's application for certification.

15 B. Failure to complete required in-service training
16 may be grounds for suspension of a reserve police officer's
17 certification.

18 C. A reserve police officer's certification may be
19 reinstated by the board when the reserve police officer, or the
20 governmental entity as defined in the Tort Claims Act that
21 commissioned the reserve police officer, provides the board
22 with evidence of satisfactory completion of required in-service
23 training.

24 D. The board shall promulgate rules and
25 administrative procedures for the suspension or revocation of a

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1 reserve police officer's certification that include:

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

4 (2) procedures for review of the board's
5 decision.

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

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

11 "29-4A-3. DEFINITIONS.--As used in the Peace Officers',
12 New Mexico Mounted Patrol Members' and Reserve Police Officers'
13 Survivors Supplemental Benefits Act:

14 A. "fund" means the peace officers', New Mexico
15 mounted patrol members' and reserve police officers' survivors
16 fund;

17 B. "New Mexico mounted patrol" means units or
18 troops officered and manned to assist with law enforcement
19 pursuant to the provisions of Sections 29-6-1 and 29-6-4 NMSA
20 1978, Subsection A of Section 29-6-5 NMSA 1978 and Section
21 29-6-6 NMSA 1978;

22 C. "peace officer" means any full-time salaried and
23 commissioned or certified law enforcement officer of a police
24 or sheriff's department or a conservation officer of the
25 department of game and fish as used in Chapter 17 NMSA 1978

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1 that is part of or administered by the state or any political
2 subdivision of the state;

3 D. "reserve police officer" means a ~~[volunteer or a~~
4 ~~temporary or part-time employee of a state or local law~~
5 ~~enforcement agency]~~ person who is ~~[accepted by that agency as a~~
6 ~~reserve law enforcement officer after receiving a background~~
7 ~~check and training as needed by that agency]~~ certified as a
8 reserve police officer by the New Mexico law enforcement
9 academy board to assist police officers and who is not a member
10 of the New Mexico mounted patrol; and

11 E. "secretary" means the secretary of public
12 safety."

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

15 "31-1-2. DEFINITIONS.--Unless a specific meaning is
16 given, as used in the Criminal Procedure Act:

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

19 B. "bail bond" is a contract between surety and the
20 state to the effect that the accused and the surety will appear
21 in court when required and will comply with all conditions of
22 the bond;

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

25 D. "felony" means any crime so designated by law or

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1 if upon conviction thereof a sentence of death or of
2 imprisonment for a term of one year or more is authorized;

3 E. "person", unless a contrary intention appears,
4 means any individual, estate, trust, receiver, cooperative
5 association, club, corporation, company, firm, partnership,
6 joint venture, syndicate or other entity;

7 F. "police officer", "law enforcement officer",
8 "peace officer" or "officer" means ~~[any]~~ a full-time salaried
9 ~~[or]~~ officer, certified part-time salaried officer or
10 commissioned reserve police officer who by virtue of office or
11 public employment is vested by law with the duty to maintain
12 the public peace;

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

17 H. "release on personal recognizance" or "release
18 on own recognizance" means the release of a defendant without
19 bail, bail bond or sureties upon the defendant's promise to
20 appear at all appropriate times;

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

24 J. "rules of criminal procedure" means rules of
25 criminal procedure for the district courts, magistrate courts

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1 and municipal courts adopted by the New Mexico supreme court,
2 as may be amended from time to time;

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

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

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

11 "35-6-3. MAGISTRATE COSTS--ADVANCE PAYMENT.--

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

16 B. Any person filing a complaint in a criminal
17 action in the magistrate court shall pay in advance the costs
18 required by law to be collected by magistrates, except that no
19 costs shall be collected from a person filing a complaint in a
20 criminal action alleging domestic violence or from a campus
21 security officer, a municipal police officer, an Indian tribal
22 or pueblo law enforcement officer, a commissioned reserve
23 police officer or [~~from~~] a full-time, salaried county or state
24 law enforcement officer filing the complaint."

25 SECTION 12. Section 41-4-1 NMSA 1978 (being Laws 1976,

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1 Chapter 58, Section 1, as amended) is amended to read:

2 "41-4-1. SHORT TITLE.--[Sections 41-4-1 through 41-4-27]
3 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort
4 Claims Act"."

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

7 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

8 A. "board" means the risk management advisory
9 board;

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

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

17 D. "law enforcement officer" means a full-time
18 salaried public employee of a governmental entity, [or] a
19 certified part-time salaried police officer employed by a
20 governmental entity or a reserve police officer commissioned by
21 a governmental entity whose principal duties under law are to
22 hold in custody any person accused of a criminal offense, to
23 maintain public order or to make arrests for crimes, or members
24 of the national guard when called to active duty by the
25 governor;

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E. "maintenance" does not include:

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

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

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

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

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1 (5) members of state or local selection panels
2 established pursuant to the Adult Community Corrections Act;

3 (6) members of state or local selection panels
4 established pursuant to the Juvenile Community Corrections Act;

5 (7) licensed medical, psychological or dental
6 arts practitioners providing services to the corrections
7 department pursuant to contract;

8 (8) members of the board of directors of the
9 New Mexico medical insurance pool;

10 (9) individuals who are members of medical
11 review boards, committees or panels established by the
12 educational retirement board or the retirement board of the
13 public employees retirement association;

14 (10) licensed medical, psychological or dental
15 arts practitioners providing services to the children, youth
16 and families department pursuant to contract;

17 (11) members of the board of directors of the
18 New Mexico educational assistance foundation;

19 (12) members of the board of directors of the
20 New Mexico student loan guarantee corporation;

21 (13) members of the New Mexico mortgage
22 finance authority;

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

25 (15) members of the board of directors of the

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1 small business investment corporation;

2 (16) health care providers licensed in New
3 Mexico who render voluntary health care services without
4 compensation in accordance with rules promulgated by the
5 secretary of health. The rules shall include requirements for
6 the types of locations at which the services are rendered, the
7 allowed scope of practice and measures to ensure quality of
8 care;

9 (17) an individual while participating in the
10 state's adaptive driving program and only while using a
11 special-use state vehicle for evaluation and training purposes
12 in that program;

13 (18) the staff and members of the board of
14 directors of the New Mexico health insurance exchange
15 established pursuant to the New Mexico Health Insurance
16 Exchange Act; and

17 (19) members of the insurance nominating
18 committee;

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

23 H. "state" or "state agency" means the state of New
24 Mexico or any of its branches, agencies, departments, boards,
25 instrumentalities or institutions."

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

3 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM.--

4 A. No person shall be arrested for violating the
5 Motor Vehicle Code or other law relating to motor vehicles
6 punishable as a misdemeanor except by a commissioned salaried
7 peace officer or a commissioned reserve police officer who, at
8 the time of arrest, is wearing a uniform clearly indicating the
9 peace officer's official status.

10 B. Notwithstanding the provisions of Subsection A
11 of this section, a municipality may provide by ordinance that
12 uniformed private security guards may be commissioned by the
13 local police agency to issue parking citations for violations
14 of clearly and properly marked fire zones and access zones for
15 persons with significant mobility limitation. Prior to the
16 commissioning of any security guard, the employer of the
17 security guard shall agree in writing with the local police
18 agency to the commissioning of the employer's security guard.
19 The employer of any security guard commissioned under the
20 provisions of this section shall be liable for the actions of
21 that security guard in carrying out the security guard's duties
22 pursuant to that commission. Notwithstanding the provisions of
23 the Tort Claims Act, private security guards commissioned under
24 this section shall not be deemed public employees under that
25 act."

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

3 "66-8-125. ARREST WITHOUT WARRANT.--

4 A. Members of the New Mexico state police, sheriffs
5 and their salaried deputies, [~~and~~] members of any municipal
6 police force and commissioned reserve police officers may
7 arrest without warrant any person:

8 (1) present at the scene of a motor vehicle
9 accident;

10 (2) on a highway when charged with theft of a
11 motor vehicle; or

12 (3) charged with crime in another
13 jurisdiction, upon receipt of a message giving the name or a
14 reasonably accurate description of the person wanted, the crime
15 alleged and a statement [~~he~~] that the person is likely to flee
16 the jurisdiction of [~~the~~] this state.

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

21 C. Members of the New Mexico state police, sheriffs
22 and their salaried deputies, [~~and~~] members of any municipal
23 police force and commissioned reserve police officers may not
24 make [~~arrest~~] arrests for traffic violations if not in uniform;
25 however, nothing in this section shall be construed to prohibit

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1 the arrest, without warrant, by a peace officer of any person
2 when probable cause exists to believe that a felony crime has
3 been committed or in non-traffic cases."

4 SECTION 16. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2019.

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