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HOUSE BILL 185

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO LAW ENFORCEMENT; EXPANDING THE DEFINITIONS OF "LAW ENFORCEMENT OFFICER" IN THE CRIMINAL PROCEDURE ACT AND THE TORT CLAIMS ACT TO INCLUDE COMMISSIONED NONSALARIED OFFICERS; PROVIDING FOR FREE PROCESS IN MAGISTRATE COURT; ALLOWING NONSALARIED COMMISSIONED PEACE OFFICERS TO MAKE ARRESTS FOR MISDEMEANOR VIOLATIONS OF THE MOTOR VEHICLE CODE AND TO ARREST WITHOUT A WARRANT IN CERTAIN CIRCUMSTANCES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

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

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

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

A. "accused" means any person charged with the

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1 violation of any law of this state imposing a criminal penalty;

2 B. "bail bond" is a contract between surety and the
3 state to the effect that the accused and the surety will appear
4 in court when required and will comply with all conditions of
5 the bond;

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

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

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

15 F. "police officer", "law enforcement officer",
16 "peace officer" or "officer" means any full-time salaried or
17 certified part-time salaried or commissioned nonsalaried
18 officer who by virtue of office or public employment is vested
19 by law with the 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 2. 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, a campus security
3 officer, a municipal police officer, an Indian tribal or pueblo
4 law enforcement officer or from a [~~full-time, salaried~~
5 commissioned county or state law enforcement officer filing the
6 complaint."

7 Section 3. Section 41-4-1 NMSA 1978 (being Laws 1976,
8 Chapter 58, Section 1, as amended) is amended to read:

9 "41-4-1. SHORT TITLE.--[~~Sections 41-4-1 through 41-4-27~~]
10 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort
11 Claims Act"."

12 Section 4. Section 41-4-3 NMSA 1978 (being Laws 1976,
13 Chapter 58, Section 3, as amended by Laws 2009, Chapter 8,
14 Section 2 and by Laws 2009, Chapter 129, Section 2 and also by
15 Laws 2009, Chapter 249, Section 2) is amended to read:

16 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

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

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

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

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1 D. "law enforcement officer" means a full-time
2 salaried public employee of a governmental entity, or a
3 certified part-time salaried police officer employed by a
4 governmental entity, or a police officer commissioned by a
5 governmental entity, whose principal duties under law are to
6 hold in custody any person accused of a criminal offense, to
7 maintain public order or to make arrests for crimes, or members
8 of the national guard when called to active duty by the
9 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; and

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

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1 H. "state" or "state agency" means the state of New
2 Mexico or any of its branches, agencies, departments, boards,
3 instrumentalities or institutions."

4 Section 5. Section 66-8-124 NMSA 1978 (being Laws 1961,
5 Chapter 213, Section 3, as amended) is amended to read:

6 "66-8-124. ARRESTING OFFICER TO BE IN UNIFORM.--

7 A. No person shall be arrested for violating the
8 Motor Vehicle Code or other law relating to motor vehicles
9 punishable as a misdemeanor except by a commissioned [~~salaried~~]
10 peace officer working under the supervision of a law
11 enforcement agency who, at the time of arrest, is wearing a
12 uniform clearly indicating the peace officer's official status.

13 B. Notwithstanding the provisions of Subsection A
14 of this section, a municipality may provide by ordinance that
15 uniformed private security guards may be commissioned by the
16 local police agency to issue parking citations for violations
17 of clearly and properly marked fire zones and access zones for
18 persons with significant mobility limitation. Prior to the
19 commissioning of any security guard, the employer of the
20 security guard shall agree in writing with the local police
21 agency to the commissioning of the employer's security guard.
22 The employer of any security guard commissioned under the
23 provisions of this section shall be liable for the actions of
24 that security guard in carrying out the security guard's duties
25 pursuant to that commission. Notwithstanding the provisions of

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1 the Tort Claims Act, private security guards commissioned under
2 this section shall not be deemed public employees under that
3 act."

4 Section 6. Section 66-8-125 NMSA 1978 (being Laws 1978,
5 Chapter 35, Section 533) is amended to read:

6 "66-8-125. ARREST WITHOUT WARRANT.--

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

10 (1) present at the scene of a motor vehicle
11 accident;

12 (2) on a highway when charged with theft of a
13 motor vehicle; or

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

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

23 C. Members of the New Mexico state police, sheriffs
24 and their [~~salaried~~] commissioned deputies and members of any
25 municipal police force may not make [~~arrest~~] arrests for

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1 traffic violations if not in uniform; however, nothing in this
2 section shall be construed to prohibit the arrest, without
3 warrant, by a peace officer of any person when probable cause
4 exists to believe that a felony crime has been committed or in
5 non-traffic cases."

6 Section 7. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2010.

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