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HOUSE BILL 169

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Al Park

AN ACT

RELATING TO PUBLIC SAFETY OFFICERS; EXPANDING THE PEACE  
OFFICER'S EMPLOYER-EMPLOYEE RELATIONS ACT TO APPLY TO ALL  
PUBLIC SAFETY OFFICERS; ALLOWING AN OFFICER UNDER INVESTIGATION  
TO HAVE COUNSEL OR A REPRESENTATIVE DURING A GRIEVANCE PROCESS,  
INTERROGATION OR APPEAL; PROHIBITING INTERROGATORS FROM MAKING  
INTENTIONAL FALSE STATEMENTS; REQUIRING A BREAK DURING  
INTERROGATION; PROHIBITING DISCLOSURE OF FINANCIAL STATUS OF  
FAMILY MEMBERS OF AN OFFICER; REQUIRING REVIEW BY THE ATTORNEY  
GENERAL BEFORE ANY SANCTIONS MAY BE IMPOSED; PROVIDING A TIME  
LIMIT FOR INTERNAL INVESTIGATIONS OF CLAIMS OF EXCESSIVE FORCE.

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

**SECTION 1.** Section 29-14-1 NMSA 1978 (being Laws 1991,  
Chapter 117, Section 1) is amended to read:

"29-14-1. SHORT TITLE.--~~[Sections 1 through 11 of this~~

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1 ~~act]~~ Chapter 29, Article 14 NMSA 1978 may be cited as the  
2 "[~~Peace~~] Public Safety Officer's Employer-Employee Relations  
3 Act"."

4 SECTION 2. Section 29-14-2 NMSA 1978 (being Laws 1991,  
5 Chapter 117, Section 2) is amended to read:

6 "29-14-2. FINDINGS AND PURPOSE.--

7 A. The legislature finds and declares that  
8 [~~effective law enforcement~~] public safety is dependent upon the  
9 maintenance of stable relations between [~~peace~~] public safety  
10 officers and their employers. Moreover, the existence of  
11 stable relations between [~~peace~~] public safety officers and  
12 their employers will enhance [~~law enforcement~~] public safety  
13 services provided to the citizens of New Mexico.

14 B. The purpose of the [~~Peace~~] Public Safety  
15 Officer's Employer-Employee Relations Act is to prescribe  
16 certain rights for [~~peace~~] public safety officers, particularly  
17 when they are placed under investigation by their employer.

18 C. Provisions of [~~this~~] the Public Safety Officer's  
19 Employer-Employee Relations Act only apply to administrative  
20 actions and shall not apply to criminal investigations of a  
21 [~~peace~~] public safety officer except as provided in Section [~~8~~  
22 ~~of this act~~] 29-14-8 NMSA 1978."

23 SECTION 3. Section 29-14-3 NMSA 1978 (being Laws 1991,  
24 Chapter 117, Section 3) is amended to read:

25 "29-14-3. DEFINITION.--As used in the [~~Peace~~] Public

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1 Safety Officer's Employer-Employee Relations Act, "~~[peace]~~  
2 public safety officer" or "officer" means any employee of a  
3 ~~[police or sheriff's]~~ department or agency that is part of ~~[or~~  
4 ~~administered by]~~ the state or any political subdivision of the  
5 state who is ~~[responsible for the prevention and detection of~~  
6 ~~crime and the enforcement of the penal, traffic or highway laws~~  
7 ~~of the state]~~ or performs the functions of:

- 8 A. a law enforcement officer;
- 9 B. an adult corrections officer;
- 10 C. an adult probation and parole officer;
- 11 D. a juvenile corrections officer;
- 12 E. a juvenile probation and parole officer;
- 13 F. an animal control officer; or
- 14 G. a security officer."

15 SECTION 4. Section 29-14-4 NMSA 1978 (being Laws 1991,  
16 Chapter 117, Section 4) is amended to read:

17 "29-14-4. INVESTIGATIONS OF ~~[PEACE]~~ PUBLIC SAFETY  
18 OFFICERS--REQUIREMENTS--REVIEW BY ATTORNEY GENERAL.--When ~~[any~~  
19 ~~peace]~~ a public safety officer is under investigation by ~~[his]~~  
20 the officer's employer for alleged actions that could result in  
21 administrative sanctions being levied against the officer, the  
22 following requirements shall be adhered to:

- 23 A. any interrogation of an officer shall be  
24 conducted when the officer is on duty or during ~~[his]~~ the  
25 officer's normal waking hours, unless the urgency of the

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1 investigation requires otherwise;

2 B. any interrogation of an officer shall be  
3 conducted at the employer's facility, unless the urgency of the  
4 investigation requires otherwise;

5 C. prior to commencement of any interrogation  
6 session:

7 (1) an officer shall be informed of the name  
8 and rank of the person in charge of the interrogation and all  
9 other persons who will be present during the interrogation;

10 (2) an officer shall be informed of the nature  
11 of the investigation, and the names of all known complainants  
12 shall be disclosed to the officer, unless the chief  
13 administrator of the officer's employer determines that the  
14 identification of the complainant shall not be disclosed  
15 because it is necessary for the protection of an informant or  
16 because disclosure would jeopardize or compromise the integrity  
17 or security of the investigation; and

18 (3) a reasonable attempt shall be made to  
19 notify the officer's commanding officer of the pending  
20 interrogation;

21 D. during any interrogation session, the following  
22 requirements shall be adhered to:

23 (1) each interrogation session shall not  
24 exceed two hours, unless the parties mutually consent to  
25 continuation of the session, and there shall be at least a

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1 fifteen-minute rest period between the two hours;

2 (2) there shall be not [~~be~~] more than two  
3 interrogation sessions within a twenty-four hour period, unless  
4 the parties mutually consent to additional sessions; provided  
5 that there shall be at least a one-hour rest period between the  
6 sessions;

7 (3) the combined duration of an officer's work  
8 shift and any interrogation session shall not exceed fourteen  
9 hours within a twenty-four hour period, unless the urgency of  
10 the investigation requires otherwise;

11 (4) there shall not be more than two  
12 interrogators at any given time;

13 (5) an officer shall be allowed to attend to  
14 physical necessities as they occur in the course of an  
15 interrogation session; and

16 (6) an officer shall not be subjected to  
17 offensive language or illegal coercion by [~~his~~] an interrogator  
18 in the course of an interrogation session;

19 E. an interrogator shall not intentionally make a  
20 false statement in the course of an interrogation. If an  
21 interrogator intentionally makes a false statement during an  
22 investigation, the interrogator shall be subject to discipline  
23 from the interrogator's employer, including termination;

24 F. an officer may have counsel or a representative  
25 present during an interrogation session. The officer's counsel

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1 or representative may object to any question posed, state the  
2 reason for the objection on the record and request a recess at  
3 any time to consult with the officer;

4 ~~[E.]~~ G. any interrogation of an officer shall be  
5 recorded, either mechanically or by a stenographer, and the  
6 complete interrogation shall be published as a transcript;  
7 provided that any recesses called during the interrogation  
8 shall be noted in the transcript; ~~[and~~

9 ~~F.]~~ H. an accurate copy of the transcript or tape  
10 shall be provided to the officer or the officer's counsel or  
11 representative, upon ~~[his]~~ written request, no later than  
12 ~~[fifteen]~~ five working days after the investigation has been  
13 completed; and

14 I. an accurate copy of the transcript or tape and  
15 all evidence relevant to the investigation shall be provided to  
16 the office of the attorney general no later than ten days after  
17 the investigation has been completed. The office of the  
18 attorney general shall review all the evidence and no  
19 administrative sanctions shall be levied against the officer  
20 unless the office of the attorney general agrees that such  
21 sanctions are appropriate."

22 SECTION 5. Section 29-14-5 NMSA 1978 (being Laws 1991,  
23 Chapter 117, Section 5) is amended to read:

24 "29-14-5. POLYGRAPH EXAMINATIONS.--After reviewing all  
25 the information collected in the course of an investigation of

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1 a [~~peace~~] public safety officer, the chief administrator of the  
2 officer's employer may order the officer to submit to a  
3 polygraph examination administered by a licensed polygraph  
4 examiner, provided that:

5 A. all other reasonable investigative means have  
6 been exhausted; and

7 B. the officer has been advised of the administrator's  
8 reasons for ordering the polygraph examination."

9 SECTION 6. Section 29-14-6 NMSA 1978 (being Laws 1991,  
10 Chapter 117, Section 6) is amended to read:

11 "29-14-6. INVESTIGATION OF ADMINISTRATIVE MATTERS.--When  
12 any [~~peace~~] public safety officer is under investigation for an  
13 administrative matter, the officer shall be permitted to have  
14 counsel or a representative present at all proceedings and to  
15 produce any relevant documents, witnesses or other evidence to  
16 support [~~his~~] the officer's case and [~~he may~~] to cross-examine any  
17 adverse witnesses during any grievance process or appeal involving  
18 disciplinary action."

19 SECTION 7. Section 29-14-7 NMSA 1978 (being Laws 1991,  
20 Chapter 117, Section 7) is amended to read:

21 "29-14-7. PERSONNEL FILES.--

22 A. No document containing comments adverse to a  
23 [~~peace~~] public safety officer shall be entered into [~~his~~] the  
24 officer's personnel file, unless the officer has read and signed  
25 the document. When an officer refuses to sign a document

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1 containing comments adverse to [~~him~~] the officer, the document may  
2 be entered into an officer's personnel file if:

3 (1) the officer's refusal to sign is noted on  
4 the document by the chief administrator of the officer's employer;  
5 and

6 (2) the notation regarding the officer's refusal  
7 to sign the document is witnessed by a third party.

8 B. A [~~peace~~] public safety officer may file a written  
9 response to any document containing adverse comments entered into  
10 [~~his~~] the officer's personnel file and the response shall be filed  
11 with the officer's employer within thirty days after the document  
12 was entered into the officer's personnel file. A [~~peace~~] public  
13 safety officer's written response shall be attached to the  
14 document."

15 SECTION 8. Section 29-14-8 NMSA 1978 (being Laws 1991,  
16 Chapter 117, Section 8) is amended to read:

17 "29-14-8. CONSTITUTIONAL RIGHTS--NOTIFICATION.--When any  
18 [~~peace~~] public safety officer is under administrative  
19 investigation and a determination is made to commence a criminal  
20 investigation, [~~he~~] the officer shall be immediately notified of  
21 the investigation and shall be afforded all the protections set  
22 forth in the bill of rights of the United States and New Mexico  
23 constitutions."

24 SECTION 9. Section 29-14-9 NMSA 1978 (being Laws 1991,  
25 Chapter 117, Section 9) is amended to read:

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1 "29-14-9. FORCED DISCLOSURE OF FINANCIAL STATUS  
2 PROHIBITED.--A [~~peace~~] public safety officer or a member of the  
3 officer's family or household shall not be required by [~~his police~~  
4 ~~or sheriff's department~~] the officer's employer or any internal  
5 investigation unit to disclose information regarding [~~his~~]  
6 financial status, [~~unless all other reasonable investigative means~~  
7 ~~have been exhausted or except as~~] property, income, sources of  
8 income, assets, debts or expenditures, unless the disclosure is  
9 otherwise required by state or federal law."

10 SECTION 10. Section 29-14-10 NMSA 1978 (being Laws 1991,  
11 Chapter 117, Section 10) is amended to read:

12 "29-14-10. POLITICAL ACTIVITY.--

13 A. A [~~peace~~] public safety officer shall not be  
14 prohibited by [~~his police or sheriff's department~~] the officer's  
15 employer from engaging in any political activity when the officer  
16 is off duty, except as otherwise required by law.

17 B. Notwithstanding the provisions of Subsection A of  
18 this section, any [~~peace~~] public safety officer employed by the  
19 New Mexico state police [~~department~~] division shall be governed by  
20 the provisions of regulations adopted by the department of public  
21 safety regarding political activity."

22 SECTION 11. Section 29-14-11 NMSA 1978 (being Laws 1991,  
23 Chapter 117, Section 11) is amended to read:

24 "29-14-11. [~~EXERCISE OF RIGHTS~~] RETALIATION PROHIBITED.--A  
25 [~~peace~~] public safety officer shall not be subjected to any

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1     retaliation, including discharge, discipline, demotion, denial of  
2     promotion, transfer, reassignment or any discriminatory or adverse  
3     employment action or threat of such action by [~~his~~] the officer's  
4     employer due to the officer's lawful exercise of [~~his~~] the  
5     officer's rights under the [~~Peace~~] Public Safety Officer's  
6     Employer-Employee Relations Act or the constitution and laws of  
7     New Mexico or the United States."

8             SECTION 12. A new section of the Public Safety Officer's  
9     Employer-Employee Relations Act is enacted to read:

10            "[NEW MATERIAL] COMPLAINTS OF EXCESSIVE FORCE--TIME LIMIT.--  
11     A complaint against a public safety officer that alleges excessive  
12     force or brutality by the officer shall not be investigated by the  
13     officer's employer unless it is brought within fifteen days after  
14     the alleged incident occurred."

15            SECTION 13. EFFECTIVE DATE.--The effective date of the  
16     provisions of this act is July 1, 2012.