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HOUSE BILL 107

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

INTRODUCED BY

William "Bill" R. Rehm

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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 .210889.4

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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.

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

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

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

23 B. The powers and authority of a reserve police
24 officer extend only for the scope and duration of the reserve
25 police officer's specific assignment.

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1 SECTION 5. [NEW MATERIAL] QUALIFICATIONS OF RESERVE

2 POLICE OFFICERS--LICENSURE--REPORTS--ROSTER.--

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

- 6 (1) is a citizen of the United States;
7 (2) has reached the age of majority;
8 (3) holds a high school diploma or the
9 equivalent;
10 (4) holds a valid New Mexico driver's license;
11 (5) has not been convicted of or pled guilty
12 to or entered a plea of nolo contendere to:
13 (a) any felony charge; or
14 (b) any violation of any federal or
15 state law or local ordinance relating to aggravated assault,
16 theft, driving while intoxicated, controlled substances or
17 other crime involving moral turpitude within the three-year
18 period immediately preceding the application;
19 (6) has not been released or discharged under
20 dishonorable conditions from any of the armed forces of the
21 United States;
22 (7) after examination by a licensed physician,
23 is free of any physical condition that might adversely affect
24 performance as a reserve police officer;
25 (8) after examination by a certified

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1 psychologist, is free of any emotional or mental condition that
2 might adversely affect performance as a reserve police officer;

3 (9) is of good moral character;

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

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

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

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

24 D. The director shall waive the law enforcement
25 training required by the Reserve Police Officer Act for an

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1 applicant who:

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

6 (2) is a retired certified police officer.

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

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

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

22 H. No later than March 1 of every year, a reserve
23 police officer, or the governmental entity as defined in the
24 Tort Claims Act that commissioned the reserve police officer,
25 shall provide to the director proof of completion of in-service

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1 training for the previous year.

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

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

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

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

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

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

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

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

24 SECTION 7. [NEW MATERIAL] REFUSAL, SUSPENSION OR
25 REVOCATION OF LICENSE.--

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

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

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

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

12 (a) any felony charge; or

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

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

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

23 C. A reserve police officer's license may be
24 reinstated by the board when the reserve police officer, or the
25 governmental entity as defined in the Tort Claims Act that

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1 commissioned the reserve police officer, provides the board
2 with evidence of satisfactory completion of required in-service
3 training.

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

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

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

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

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

16 "29-4A-3. DEFINITIONS.--As used in the Peace Officers',
17 New Mexico Mounted Patrol Members' and Reserve Police Officers'
18 Survivors Supplemental Benefits Act:

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

22 B. "New Mexico mounted patrol" means units or
23 troops officered and manned to assist with law enforcement
24 pursuant to the provisions of Sections 29-6-1 and 29-6-4 NMSA
25 1978, Subsection A of Section 29-6-5 NMSA 1978 and Section

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1 29-6-6 NMSA 1978;

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

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

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

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

20 "31-1-2. DEFINITIONS.--Unless a specific meaning is
21 given, as used in the Criminal Procedure Act:

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

24 B. "bail bond" is a contract between surety and the
25 state to the effect that the accused and the surety will appear

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1 in court when required and will comply with all conditions of
2 the bond;

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

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

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

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

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

22 H. "release on personal recognizance" or "release
23 on own recognizance" means the release of a defendant without
24 bail, bail bond or sureties upon the defendant's promise to
25 appear at all appropriate times;

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

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

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

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

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

16 "35-6-3. MAGISTRATE COSTS--ADVANCE PAYMENT.--

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

21 B. Any person filing a complaint in a criminal
22 action in the magistrate court shall pay in advance the costs
23 required by law to be collected by magistrates, except that no
24 costs shall be collected from a person filing a complaint in a
25 criminal action alleging domestic violence or from a campus

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1 security officer, a municipal police officer, an Indian tribal
2 or pueblo law enforcement officer, a commissioned reserve
3 police officer or [~~from~~] a full-time, salaried county or state
4 law enforcement officer filing the complaint."

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

7 "41-4-1. SHORT TITLE.--~~[Sections 41-4-1 through 41-4-27]~~
8 Chapter 41, Article 4 NMSA 1978 may be cited as the "Tort
9 Claims Act"."

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

12 "41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

13 A. "board" means the risk management advisory
14 board;

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

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

22 D. "law enforcement officer" means a full-time
23 salaried public employee of a governmental entity, [~~or~~] a
24 certified part-time salaried police officer employed by a
25 governmental entity or a reserve police officer commissioned by

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1 a governmental entity whose principal duties under law are to
2 hold in custody any person accused of a criminal offense, to
3 maintain public order or to make arrests for crimes, or members
4 of the national guard when called to active duty by the
5 governor;

6 E. "maintenance" does not include:

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

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

12 F. "public employee" means an officer, employee or
13 servant of a governmental entity, excluding independent
14 contractors except for individuals defined in Paragraphs (7),
15 (8), (10), (14) and (17) of this subsection, or of a
16 corporation organized pursuant to the Educational Assistance
17 Act, the Small Business Investment Act or the Mortgage Finance
18 Authority Act or a licensed health care provider, who has no
19 medical liability insurance, providing voluntary services as
20 defined in Paragraph (16) of this subsection and including:

21 (1) elected or appointed officials;

22 (2) law enforcement officers;

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

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

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

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

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

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

15 (9) individuals who are members of medical
16 review boards, committees or panels established by the
17 educational retirement board or the retirement board of the
18 public employees retirement association;

19 (10) licensed medical, psychological or dental
20 arts practitioners providing services to the children, youth
21 and families department pursuant to contract;

22 (11) members of the board of directors of the
23 New Mexico educational assistance foundation;

24 (12) members of the board of directors of the
25 New Mexico student loan guarantee corporation;

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1 (13) members of the New Mexico mortgage
2 finance authority;

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

5 (15) members of the board of directors of the
6 small business investment corporation;

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

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

18 (18) the staff and members of the board of
19 directors of the New Mexico health insurance exchange
20 established pursuant to the New Mexico Health Insurance
21 Exchange Act; and

22 (19) members of the insurance nominating
23 committee;

24 G. "scope of duty" means performing any duties that
25 a public employee is requested, required or authorized to

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1 perform by the governmental entity, regardless of the time and
2 place of performance; and

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

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

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

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

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

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1 that security guard in carrying out the security guard's duties
2 pursuant to that commission. Notwithstanding the provisions of
3 the Tort Claims Act, private security guards commissioned under
4 this section shall not be deemed public employees under that
5 act."

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

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

9 A. Members of the New Mexico state police, sheriffs
10 and their salaried deputies, [~~and~~] members of any municipal
11 police force or commissioned reserve police officers may arrest
12 without warrant any person:

13 (1) present at the scene of a motor vehicle
14 accident;

15 (2) on a highway when charged with theft of a
16 motor vehicle; or

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

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

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

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