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SENATE BILL 8

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2020

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING CERTAIN LAW ENFORCEMENT AGENCIES TO USE BODY-WORN CAMERAS; REQUIRING LAW ENFORCEMENT AGENCIES TO ADOPT CERTAIN POLICIES AND PROCEDURES; REVOKING A POLICE OFFICER'S CERTIFICATION AFTER CONVICTION OR MAKING CERTAIN PLEAS; ADDING A CAUSE OF ACTION FOR SPOILIATION BY A LAW ENFORCEMENT OFFICER IN THE TORT CLAIMS ACT; CLARIFYING APPLICABILITY OF CERTAIN PROVISIONS OF THE TORT CLAIMS ACT; DECLARING AN EMERGENCY.

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

SECTION 1. ~~[NEW MATERIAL]~~ REQUIRING CERTAIN LAW ENFORCEMENT AGENCIES TO USE BODY-WORN CAMERAS WHILE ON DUTY-- ADOPTION OF POLICIES AND PROCEDURES GOVERNING USE.--

A. A law enforcement agency shall require peace officers the agency employs and who routinely interact with the

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1 public to wear a body-worn camera while on duty. Each law
2 enforcement agency subject to the provisions of this section
3 shall adopt policies and procedures governing the use of
4 body-worn cameras, including:

5 (1) requiring activation of a body-worn camera
6 whenever a peace officer is responding to a call for service or
7 at the initiation of any other law enforcement or investigative
8 encounter between a peace officer and a member of the public;

9 (2) prohibiting deactivation of a body-worn
10 camera until the conclusion of a law enforcement or
11 investigative encounter;

12 (3) prohibiting the recording of general
13 activity;

14 (4) requiring that any video recorded by a
15 body-worn camera shall be retained by the law enforcement
16 agency for not less than one hundred twenty days; and

17 (5) establishing disciplinary rules for peace
18 officers who:

19 (a) fail to operate a body-worn camera
20 in accordance with law enforcement agency policies;

21 (b) intentionally manipulate a body-worn
22 camera recording; or

23 (c) prematurely erase a body-worn camera
24 recording in violation of law enforcement agency policies.

25 B. Peace officers who fail to comply with the

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1 policies and procedures required to be adopted pursuant to
2 Subsection A of this section shall be deemed liable for the
3 independent tort of negligent spoliation of evidence or the
4 independent tort of intentional spoliation of evidence.

5 C. As used in this section:

6 (1) "body-worn camera" means an electronic
7 device worn on a person's body that records both audio and
8 video data;

9 (2) "law enforcement agency" means the police
10 department of a municipality, the sheriff's office of a county,
11 the New Mexico state police or the department of public safety;
12 and

13 (3) "peace officer" means any full-time
14 salaried or certified part-time salaried officer who by virtue
15 of office or public employment is vested by law with the duty
16 to maintain the public peace.

17 SECTION 2. A new section of the Law Enforcement Training
18 Act is enacted to read:

19 "[NEW MATERIAL] REVOKE POLICE OFFICER CERTIFICATION AFTER
20 CONVICTION OR MAKING CERTAIN PLEAS.--Notwithstanding any other
21 provision of law, if any police officer is convicted of or
22 pleads guilty or nolo contendere to a crime involving the
23 unlawful use or threatened use of physical force or a crime
24 involving the failure to intervene in the use of unlawful force
25 or is found to be civilly liable for the use of unlawful

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1 physical force or for failure to intervene in the use of
2 unlawful force, the board shall permanently revoke the police
3 officer's certification. The board shall not, under any
4 circumstance, reinstate the police officer's certification or
5 grant new certification to the police officer unless the police
6 officer is exonerated by a court."

7 SECTION 3. Section 41-4-12 NMSA 1978 (being Laws 1976,
8 Chapter 58, Section 12, as amended) is amended to read:

9 "41-4-12. LIABILITY--LAW ENFORCEMENT OFFICERS--
10 RETROACTIVE APPLICATION--

11 A. The immunity granted pursuant to Subsection A of
12 Section 41-4-4 NMSA 1978 does not apply to liability for
13 personal injury, bodily injury, wrongful death or property
14 damage resulting from assault, battery, false imprisonment,
15 false arrest, malicious prosecution, abuse of process, libel,
16 slander, defamation of character, violation of property rights,
17 the independent tort of negligent spoliation of evidence or the
18 independent tort of intentional spoliation of evidence, failure
19 to comply with duties established pursuant to statute or law or
20 any other deprivation of any rights, privileges or immunities
21 secured by the constitution and laws of the United States or
22 New Mexico when caused by law enforcement officers while acting
23 within the scope of their duties. For purposes of this
24 section, "law enforcement officer" means a public officer or
25 employee vested by law with the power to maintain order, to

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1 make arrests for crime or to detain persons suspected of or
2 convicted of committing a crime, whether that duty extends to
3 all crimes or is limited to specific crimes.

4 B. The provisions of this section apply to all
5 cases pending or on appeal on or after May 20, 2020."

6 SECTION 4. EMERGENCY.--It is necessary for the public
7 peace, health and safety that this act take effect immediately.

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