
Bill Analysis 2018 Regular Session

SPONSOR: Representatives Greg Nibert, Monica Youngblood, Bill Rehm

SHORT TITLE: Law Enforcement Officer Liability

SYNOPSIS OF BILL: This bill is designed to provide police officers with greater immunity in instances when they harm another person. Specifically, it gives officers the same qualified immunity provided under federal civil rights laws, meaning they must violate a person's clearly established statutory or constitutional rights to be held liable for harming another person. The bill also changes existing language in New Mexico's Tort Claims Act, making officers liable for injuries to other people that they "committed," rather than "caused."

WEAKNESSES: In practice, this bill would make it much harder for people who are unjustly injured by police officers to receive damages for the harm they experienced. In pushing for this bill Governor Martinez has emphasized that officers shouldn't be held liable when they are following police department policy. Yet this bill makes no mention of department policy, focusing entirely on statutory and constitutional rights. It's important to note that police officers themselves are rarely held personally liable for their misconduct anyway, because tax payers generally foot the bill for negligent or intentional injuries caused by officers. Also, the New Mexico Tort Claims Act already includes draconian caps on damages.

ADDITIONAL INFO: This bill is an attempt to mirror the requirements under federal law 42 U.S.C. Sec. 1983 and corresponding U.S. Supreme Court cases that require officers to violate a clearly established constitutional right before they can be held liable for their actions. HB 279 would make it much more difficult for officers to be held accountable for negligent behavior that injures another person.

Unfortunately, we have seen such negligent behavior by officers in New Mexico. In 2017, Albuquerque Police Department Officer Jonathan McDonnell was driving a police cruiser at twice the posted speed limit when he crashed into another car resulting in the death of a six-year-old child.¹ During his nine years as a policeman, Officer McDonnell had been disciplined six times for at least six prior driving-related incidents.² In 2018, the family of the child filed suit against the officer and APD.³

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
To protect public safety, officers should be held accountable for negligent behavior that results in harm to other people.	Given that it is an election year, and several regions in New Mexico are experiencing problems with crime, it might make smart political sense to take a public stand in support of law enforcement. But this bill is a misguided vehicle for accomplishing that goal.	The best way to avoid expensive lawsuits is for law enforcement agencies to put systems of accountability in place ensure that their officers are performing to adequate professional standards.	The problem we are currently facing, both in New Mexico and across the country, is that it's <i>too difficult</i> to hold police accountable for misconduct. It would be a big mistake to make it even more difficult to hold them accountable. ⁴	F

1 See <http://krqe.com/2017/09/22/apd-officer-driving-78-80-mph-before-deadly-crash-no-charges-recommended/>

2 See <https://www.abqjournal.com/1001674/apd-officer-in-crash-that-killed-6-year-old-had-been-disciplined-6-times-for-traffic-incidents.html>

3 See <https://www.abqjournal.com/1123395/family-files-suit-in-apd-crash-that-killed-6-year-old.html>

4 See <https://www.vox.com/cards/police-brutality-shootings-us/police-use-of-force-convictions>