

HOUSE BILL 493

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

INTRODUCED BY

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AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING A NOTICE AND HEARING  
PROCEDURE FOLLOWING THE USE OF DEADLY FORCE BY A LAW  
ENFORCEMENT OFFICER; PROVIDING EXCLUSIVE AUTHORITY FOR RELATED  
INVESTIGATIONS; REQUIRING A WRITTEN DETERMINATION BY A DISTRICT  
COURT JUDGE; PRESERVING PROSECUTORIAL DISCRETION.

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

**SECTION 1.** A new section of Chapter 31 NMSA 1978 is  
enacted to read:

"[NEW MATERIAL] USE OF DEADLY FORCE BY A LAW ENFORCEMENT  
OFFICER RESULTING IN DEATH OR GREAT BODILY INJURY--REQUIRED  
NOTIFICATION--APPOINTMENT OF SPECIAL PROSECUTOR--PROBABLE CAUSE  
HEARING--RECOMMENDATION OF SPECIAL PROSECUTOR--PROSECUTORIAL  
DISCRETION.--

A. When in the course of a law enforcement

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1 officer's duties, a law enforcement officer uses deadly force  
2 against a person that results in the person's death or injury,  
3 the procedures provided in this section shall apply.

4 B. Within twenty-four hours of a person's death or  
5 injury, the sheriff or the chief of police of the jurisdiction  
6 in which the incident occurred shall report the incident to the  
7 district attorney of the county in which the incident occurred.

8 C. Within twenty-four hours of receiving notice  
9 pursuant to Subsection B of this section, the district attorney  
10 shall report the incident to the governor.

11 D. Within three days of receiving notification  
12 pursuant to Subsection C of this section, the governor shall  
13 select an assistant attorney general with experience in  
14 criminal prosecution to serve as a special prosecutor to  
15 represent the state at a probable cause hearing at which the  
16 special prosecutor shall present evidence of the law  
17 enforcement officer's use of deadly force and evidence of  
18 criminal offenses committed by the officer, including  
19 violations of:

- 20 (1) Section 30-2-1 NMSA 1978;  
21 (2) Section 30-2-3 NMSA 1978;  
22 (3) Section 30-3-2 NMSA 1978;  
23 (4) Section 30-3-3 NMSA 1978; and  
24 (5) Section 30-3-5 NMSA 1978.

25 E. The assistant attorney general shall supervise

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1 the investigation of the incident pending the probable cause  
2 hearing. The New Mexico state police division of the  
3 department of public safety shall assist the assistant attorney  
4 general in the investigation. All law enforcement agencies  
5 shall fully cooperate with and promptly respond to requests for  
6 information from the special prosecutor and the law enforcement  
7 agency with exclusive authority over the investigation.

8 F. The probable cause hearing provided for in  
9 Subsection D of this section shall:

10 (1) be held before a district court judge in  
11 the district court for the county in which the death or great  
12 bodily injury occurred;

13 (2) take place within ninety days of the  
14 appointment of the special prosecutor;

15 (3) be open to the public unless the district  
16 court judge finds good cause otherwise; and

17 (4) include an opportunity for the special  
18 prosecutor and the law enforcement officer to present relevant  
19 evidence not limited by the Rules of Evidence.

20 G. After hearing relevant evidence, the court shall  
21 determine whether there is probable cause to believe that the  
22 law enforcement officer committed a crime, including violations  
23 of:

24 (1) Section 30-2-1 NMSA 1978;

25 (2) Section 30-2-3 NMSA 1978;

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1 (3) Section 30-3-2 NMSA 1978;

2 (4) Section 30-3-3 NMSA 1978; and

3 (5) Section 30-3-5 NMSA 1978.

4 H. The court shall issue a written order that  
5 provides whether it found probable cause that a crime has been  
6 committed and the reasons for that finding. The court's order  
7 shall be a public record and the court shall provide a copy of  
8 the order to the district attorney of the county in which the  
9 death occurred.

10 I. Following the probable cause hearing and the  
11 issuance of the court's order, the special prosecutor shall  
12 make a recommendation to the district attorney of the county in  
13 which the incident occurred on whether the law enforcement  
14 officer should be prosecuted.

15 J. Nothing in this section, including the  
16 recommendation made by a special prosecutor, shall limit the  
17 discretion of the district attorney of the county in which the  
18 incident occurred with respect to determining whether to file  
19 charges against the law enforcement officer whose conduct was  
20 the subject of a probable cause hearing provided for in this  
21 section.

22 K. Any applicable filing or other procedural  
23 deadlines are tolled pending the hearing provided for in this  
24 section.

25 L. As used in this section:

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(1) "deadly force" means violent force known to create a substantial risk of causing death or great bodily injury; and

(2) "law enforcement officer" means a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes."