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SENATE BILL 100

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

Antoinette Sedillo Lopez

AN ACT

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

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 EXCESSIVE OR DEADLY FORCE BY A LAW  
ENFORCEMENT OFFICER RESULTING IN DEATH OR BODILY INJURY--  
REQUIRED NOTIFICATION--APPOINTMENT OF SPECIAL PROSECUTOR--  
PROBABLE CAUSE HEARING--PENDING DETERMINATION BY A DISTRICT  
COURT.--

A. The procedures provided in this section shall

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1 apply when a law enforcement officer uses excessive or deadly  
2 force, in the course of the law enforcement officer's  
3 employment, against a person that results in the person's  
4 injury or death.

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

10 C. Within twenty-four hours of receiving notice  
11 pursuant to Subsection B of this section, the district attorney  
12 shall report the incident to the governor and the attorney  
13 general. The governor shall keep a log of reported incidents.

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

- 22 (1) Section 30-2-1 NMSA 1978;  
23 (2) Section 30-2-3 NMSA 1978;  
24 (3) Section 30-3-2 NMSA 1978;  
25 (4) Section 30-3-3 NMSA 1978; and

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

2 E. The special prosecutor shall determine if the  
3 investigation shall be done by a law enforcement agency or an  
4 independent investigator, and the special prosecutor shall  
5 assign exclusive authority of the investigation to a law  
6 enforcement agency or an independent investigator. All law  
7 enforcement agencies shall fully cooperate with and promptly  
8 respond to requests for information from the special prosecutor  
9 and the law enforcement agency with exclusive authority over  
10 the investigation.

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

13 (1) be held before a district court judge in  
14 the district court for the county in which the bodily injury or  
15 death occurred;

16 (2) take place within ninety days of the  
17 appointment of the special prosecutor;

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

20 (4) include an opportunity for the special  
21 prosecutor and the law enforcement officer to present relevant  
22 evidence not limited by the New Mexico Rules of Evidence.

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

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1 of:

- 2 (1) Section 30-2-1 NMSA 1978;
- 3 (2) Section 30-2-3 NMSA 1978;
- 4 (3) Section 30-3-2 NMSA 1978;
- 5 (4) Section 30-3-3 NMSA 1978; and
- 6 (5) Section 30-3-5 NMSA 1978.

7 The court shall issue a written order that provides  
8 whether it found probable cause that a crime has been committed  
9 and the reasons for that finding. The court's order shall be a  
10 public record and the court shall provide a copy of the order  
11 to the attorney general and the governor.

12 H. Following the probable cause hearing and the  
13 issuance of the court's order, if the court does not find  
14 probable cause that the law enforcement officer committed a  
15 crime, then the special prosecutor may not pursue a criminal  
16 case against the law enforcement officer. If the court  
17 determines that there is probable cause a crime has been  
18 committed, then the special prosecutor shall begin prosecuting  
19 the law enforcement officer in the district court of the  
20 jurisdiction in which the injury or death occurred, unless the  
21 law enforcement officer can show that a change of venue is  
22 necessary to receive fair process.

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

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J. As used in this section:

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