

1 HOUSE BILL 254

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIMINAL PROCEDURE; PROVIDING A REPORTING MECHANISM
12 AND AN ASSIGNMENT OF A PROSECUTOR FOLLOWING THE USE OF DEADLY
13 FORCE BY A PEACE OFFICER RESULTING IN GREAT BODILY HARM OR
14 DEATH; PROVIDING FOR AN INDEPENDENT INVESTIGATION.
15

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

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

19 "[NEW MATERIAL] USE OF DEADLY FORCE BY A PEACE OFFICER
20 RESULTING IN GREAT BODILY HARM OR DEATH--REQUIRED
21 NOTIFICATION--EVALUATION BY A RELEVANT PROSECUTING AUTHORITY--
22 REQUIRING A REPORT FOR DECLINATION TO PROSECUTE--PROVIDING
23 CONCURRENT JURISDICTION.--

24 A. The procedures provided in this section shall
25 apply when a peace officer uses deadly force against a person

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1 in the course of the peace officer's duties that results in
2 great bodily harm or death and any other death that occurs
3 while a person is in custody that is not the result of natural
4 causes.

5 B. Within twenty-four hours of a person suffering
6 great bodily harm or death as a result of a peace officer's
7 actions, the sheriff or the chief of police of the jurisdiction
8 in which the great bodily harm or death occurred shall report
9 the great bodily harm or death in writing to the district
10 attorney of the judicial district in which the great bodily
11 harm or death occurred. The sheriff or chief of police shall
12 report all instances of suspected great bodily harm to the
13 appropriate district attorney, even if a more thorough
14 assessment of great bodily harm will be undertaken at a later
15 date.

16 C. Within twenty-four hours of receiving written
17 notice pursuant to Subsection B of this section, the district
18 attorney shall report the incident in writing to the governor
19 and the attorney general. The governor shall keep a log of
20 reported incidents, which shall be considered public records
21 pursuant to the Inspection of Public Records Act. The log
22 shall, at a minimum, include the date of occurrence, the date
23 of the report made to the district attorney, the location,
24 victim information, peace officer information and a description
25 of the incident.

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1 D. The relevant prosecuting authority shall
2 represent the state at a probable cause hearing at which the
3 special prosecutor shall present evidence of the peace
4 officer's use of excessive or deadly force and evidence of
5 criminal offenses committed by the officer, including but not
6 limited to violations of:

- 7 (1) Section 30-2-1 NMSA 1978;
- 8 (2) Section 30-2-3 NMSA 1978;
- 9 (3) Section 30-3-2 NMSA 1978;
- 10 (4) Section 30-3-3 NMSA 1978; and
- 11 (5) Section 30-3-5 NMSA 1978.

12 Nothing in this subsection shall be construed to limit
13 prosecutorial discretion of the relevant prosecuting authority.

14 E. The department of public safety shall be the
15 default primary investigative agency charged with investigating
16 instances of peace officers using deadly force resulting in
17 great bodily harm or death and any other in-custody death.
18 This shall not preclude the department of public safety from
19 requesting assistance with the investigation from other
20 agencies as part of a task force agreement. If a task force is
21 utilized, the department of public safety shall remain the
22 primary agency, and the agency involved in the use of force may
23 assist but shall not have any type of lead role in the
24 investigation. When a use of deadly force resulting in great
25 bodily harm or death is committed by a member of the department

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1 of public safety, the lead role in the investigation shall be
2 maintained by the department of public safety, but members of
3 an outside agency shall be required to assist. A minimum of
4 two agents from the attorney general's office or another
5 competent investigative agency shall work the investigation in
6 conjunction with the department of public safety. All law
7 enforcement agencies shall fully cooperate with and promptly
8 respond to requests for information from the relevant
9 prosecuting authority and the law enforcement agency or
10 independent investigator charged with authority over the
11 investigation.

12 F. The relevant prosecuting authority shall be
13 responsible for determining whether the facts and applicable
14 law allow for prosecution of the peace officer for criminal
15 liability resulting from the alleged use of deadly force
16 resulting in great bodily harm or death and any other in-
17 custody death. The relevant prosecuting authority may also
18 assist a concurrent investigative grand jury to subpoena
19 witnesses, records and physical items related to the
20 investigation as otherwise permitted by law. The costs of the
21 investigation shall be paid out of the general fund of the
22 county in which the investigation is made, and the costs of any
23 prosecution arising out of the investigation shall be paid as
24 are the costs in cases prosecuted by district attorneys.

25 G. During an investigation, the relevant

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1 prosecuting authority shall provide quarterly reports to the
2 attorney general, to the district attorney in whose judicial
3 district the offense is alleged to have occurred and to the
4 governor, providing any material updates that do not impair the
5 investigation. These quarterly reports shall be considered
6 public records pursuant to the Inspection of Public Records
7 Act. Any declination of prosecution by the relevant
8 prosecuting authority shall be documented in a detailed report
9 citing all relevant evidence to the attorney general, to the
10 district attorney in whose judicial district the offense is
11 alleged to have occurred and to the governor and shall be
12 considered a public record pursuant to the Inspection of Public
13 Records Act.

14 H. At all times during an investigation pursuant to
15 this section, the attorney general shall have concurrent
16 jurisdiction to prosecute unlawful uses of deadly force
17 resulting in great bodily harm or death and in-custody deaths
18 and to prosecute any unlawful use of deadly force involved in a
19 failure to comply with the requirements for electronic
20 recordings of custodial interrogations pursuant to Section
21 29-1-16 NMSA 1978 or a failure to record the incident by using
22 a body-worn camera approved by the department of public safety.

23 I. As used in this section:

24 (1) "deadly force" means a degree of force
25 that is reasonably likely to cause death or great bodily harm

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1 and that is the direct cause of death or great bodily harm and
2 not merely a contributing factor in the death of a person with
3 a preexisting condition;

4 (2) "great bodily harm" means an injury to a
5 person from use of deadly force by a peace officer that creates
6 a high probability of death or results in permanent loss or
7 impairment of the function of any organ in the body;

8 (3) "in-custody death" means a death that
9 occurs while an individual is being detained under color of law
10 and is the result of specific action taken by a peace officer
11 or a breach of policy by a peace officer, but does not include
12 a death that is the result of natural causes;

13 (4) "peace officer" means any public official
14 or public officer vested by law with a duty to maintain public
15 order or to make arrests for crime, whether that duty extends
16 to all crimes or is limited to specific crimes; "peace officer"
17 also includes a correctional officer employed by a privately
18 operated correctional facility; and

19 (5) "primary investigative agency" means the
20 agency that is responsible for assigning a case agent to the
21 investigation, conducting a complete investigation and ensuring
22 the integrity and transparency of the investigation process."