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SENATE BILL 265

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

Antoinette Sedillo Lopez

AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING A REPORTING MECHANISM AND AN ASSIGNMENT OF A PROSECUTOR FOR AN IN-CUSTODY DEATH OR WHEN A PERSON SUFFERS GREAT BODILY HARM OR DEATH AFTER A PEACE OFFICER USES FORCE AGAINST THE PERSON; PROVIDING FOR AN INDEPENDENT INVESTIGATION; REQUIRING A QUARTERLY INVESTIGATION REPORT; REQUIRING A DETAILED REPORT FOR A DECLINATION OF PROSECUTION.

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] IN-CUSTODY DEATH--GREAT BODILY HARM OR DEATH--PEACE OFFICER USE OF FORCE--REPORTING MECHANISM AND INVESTIGATION--REPORTS--PROVIDING JURISDICTION.--

A. The procedures provided in this section shall

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1 apply for an in-custody death and when a person suffers great  
2 bodily harm or death after a peace officer uses force on the  
3 person in the course of the peace officer's duties.

4 B. Within twenty-four hours of an in-custody death  
5 or a person suffering great bodily harm or death after a peace  
6 officer uses force on the person, the sheriff or the chief of  
7 police of the jurisdiction in which the great bodily harm,  
8 death or in-custody death occurred shall report the great  
9 bodily harm, death or in-custody death in writing to the  
10 district attorney of the judicial district in which the great  
11 bodily harm, death or in-custody death occurred. The sheriff  
12 or chief of police shall report all instances of suspected  
13 great bodily harm to the appropriate district attorney, even if  
14 a more thorough assessment of great bodily harm will be  
15 undertaken at a later 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 name of any  
24 officers involved who used physical force, the location, a  
25 description of the incident and injuries to the person

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1 suffering great bodily harm or death.

2 D. The relevant prosecuting authority shall  
3 represent the state at a probable cause hearing at which it  
4 shall present evidence of the peace officer's use of force and  
5 evidence of criminal offenses committed by the officer,  
6 including 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 E. Nothing in Subsection D of this section shall be  
13 construed to limit prosecutorial discretion of the relevant  
14 prosecuting authority.

15 F. The department of public safety shall be the  
16 default primary investigative agency and shall investigate, as  
17 soon as practicable, instances of in-custody death and  
18 instances of a person suffering great bodily harm or death  
19 after a peace officer used force on that person. This shall  
20 not preclude the department of public safety from requesting  
21 assistance with the investigation from other agencies as part  
22 of a task force agreement. If a task force is utilized, the  
23 department of public safety shall remain the primary agency,  
24 and the agency involved in the use of force may assist but  
25 shall not have any type of lead role in the investigation. All

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1 law enforcement agencies shall fully cooperate with and  
2 promptly respond to requests for information from the relevant  
3 prosecuting authority and the law enforcement agency or  
4 independent investigator charged with authority over an  
5 investigation.

6 G. When an in-custody death or use of force against  
7 a person who then suffers great bodily harm or death is  
8 allegedly committed by a member of the department of public  
9 safety, the department shall maintain the lead role in the  
10 investigation, but members of an outside agency shall be  
11 required to assist. A minimum of two agents from the attorney  
12 general's office or another competent investigative agency  
13 shall work the investigation in conjunction with the department  
14 of public safety.

15 H. The relevant prosecuting authority shall be  
16 responsible for determining whether the facts and applicable  
17 law allow for prosecution of the peace officer for criminal  
18 liability resulting from the alleged use of force against a  
19 person who then suffers great bodily harm or death or an in-  
20 custody death. The relevant prosecuting authority may also  
21 assist a concurrent investigative grand jury to subpoena  
22 witnesses, records and physical items related to the  
23 investigation as otherwise permitted by law. Any costs  
24 incurred by the department of public safety to conduct the  
25 investigation shall be reimbursed to the department by the

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1 public entity that employs the peace officer whose use of force  
2 is being investigated or the public entity in whose custody the  
3 in-custody death occurred. Any costs incurred by the attorney  
4 general's office to conduct the prosecution shall be reimbursed  
5 to the attorney general's office by the district attorney's  
6 office in the judicial district where the conduct is alleged to  
7 have occurred.

8 I. During an investigation, the relevant  
9 prosecuting authority shall provide quarterly reports to the  
10 attorney general, to the district attorney in whose judicial  
11 district the offense is alleged to have occurred and to the  
12 governor, providing any material updates that do not impair the  
13 investigation. These quarterly reports shall be considered  
14 public records pursuant to the Inspection of Public Records  
15 Act. Any declination of prosecution by the relevant  
16 prosecuting authority shall be documented in a detailed report  
17 that includes the reasons for declination and cites all  
18 relevant evidence, a copy of which report shall be provided to  
19 the attorney general, the district attorney in whose judicial  
20 district the offense is alleged to have occurred and the  
21 governor and shall be considered a public record pursuant to  
22 the Inspection of Public Records Act. Nothing in this  
23 subsection shall be construed to allow the disclosure of  
24 information that is otherwise excepted from disclosure by the  
25 Inspection of Public Records Act.

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1           J. When a district attorney declines to exercise  
2 original prosecutorial jurisdiction pursuant to Section 36-1-18  
3 NMSA 1978, the attorney general shall have jurisdiction to  
4 prosecute unlawful uses of force and in-custody deaths and to  
5 prosecute any unlawful use of force involved in a failure to  
6 comply with the requirements for electronic recordings of  
7 custodial interrogations pursuant to Section 29-1-16 NMSA 1978  
8 or a failure to record the incident by using a body-worn camera  
9 approved by the department of public safety.

10           K. As used in this section:

11                   (1) "great bodily harm" means an injury to the  
12 person that creates a high probability of death; causes serious  
13 disfigurement; or results in permanent or protracted loss or  
14 impairment of a bodily function, member, limb or organ;

15                   (2) "in-custody death" means a death that  
16 occurs while an individual is being detained under color of  
17 law;

18                   (3) "peace officer" means any public official  
19 or public officer vested by law with a duty to maintain public  
20 order, enforce the law, hold in custody a person accused of a  
21 criminal offense or to make arrests for crime, whether that  
22 duty extends to all crimes or is limited to specific crimes;  
23 "peace officer" includes a correctional officer employed by a  
24 privately operated correctional facility and a detoxification  
25 police-service aide; and

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