

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 274

3 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

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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.

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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 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 in-custody death.

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

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

23 D. The relevant prosecuting authority shall
24 represent the state at a probable cause hearing at which it
25 shall present evidence of the peace officer's use of excessive

1 or deadly force and evidence of criminal offenses committed by
2 the officer, including but not limited to violations of:

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

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

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

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1 two agents from the attorney general's office or another
2 competent investigative agency shall work the investigation in
3 conjunction with the department of public safety. All law
4 enforcement agencies shall fully cooperate with and promptly
5 respond to requests for information from the relevant
6 prosecuting authority and the law enforcement agency or
7 independent investigator charged with authority over the
8 investigation.

9 F. The relevant prosecuting authority shall be
10 responsible for determining whether the facts and applicable
11 law allow for prosecution of the peace officer for criminal
12 liability resulting from the alleged use of deadly force
13 resulting in great bodily harm or death and any other in-
14 custody death. The relevant prosecuting authority may also
15 assist a concurrent investigative grand jury to subpoena
16 witnesses, records and physical items related to the
17 investigation as otherwise permitted by law. Any costs
18 unexpended by a county or municipal law enforcement agency as a
19 result of the department of public safety's conducting of the
20 investigation shall be reimbursed to the department, and any
21 costs unexpended by the district attorney's office in the
22 judicial district where the conduct is alleged to have occurred
23 as a result of the attorney general's office conducting the
24 prosecution shall be reimbursed to the attorney general's
25 office.

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1 G. During an investigation, the relevant
2 prosecuting authority shall provide quarterly reports to the
3 attorney general, to the district attorney in whose judicial
4 district the offense is alleged to have occurred and to the
5 governor, providing any material updates that do not impair the
6 investigation. These quarterly reports shall be considered
7 public records pursuant to the Inspection of Public Records
8 Act. Any declination of prosecution by the relevant
9 prosecuting authority shall be documented in a detailed report
10 citing all relevant evidence to the attorney general, to the
11 district attorney in whose judicial district the offense is
12 alleged to have occurred and to the governor and shall be
13 considered a public record pursuant to the Inspection of Public
14 Records Act. Nothing in the subsection shall be construed to
15 allow the disclosure of information that is otherwise excepted
16 from disclosure by the Inspection of Public Records Act.

17 H. When a district attorney declines to exercise
18 original prosecutorial jurisdiction pursuant to Section 36-1-18
19 NMSA 1978, the attorney general shall have jurisdiction to
20 prosecute unlawful uses of deadly force resulting in great
21 bodily harm or death and in-custody deaths and to prosecute any
22 unlawful use of deadly force involved in a failure to comply
23 with the requirements for electronic recordings of custodial
24 interrogations pursuant to Section 29-1-16 NMSA 1978 or a
25 failure to record the incident by using a body-worn camera

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1 approved by the department of public safety.

2 I. As used in this section:

3 (1) "deadly force" means a degree of force
4 that is reasonably likely to cause death or great bodily harm
5 and that is the direct cause of death or great bodily harm and
6 not merely a contributing factor in the death of a person with
7 a preexisting condition;

8 (2) "great bodily harm" means an injury to the
9 person that creates a high probability of death; causes serious
10 disfigurement; or results in permanent or protracted loss or
11 impairment of the function of any member or organ of the body;

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

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

23 (5) "primary investigative agency" means the
24 agency that is responsible for assigning a case agent to the
25 investigation, conducting a complete investigation and ensuring

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1 the integrity and transparency of the investigation process."

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