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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING A REPORTING MECHANISM AND AN ASSIGNMENT OF AN IMPARTIAL PROSECUTOR FOLLOWING THE USE OF FORCE BY A PEACE OFFICER RESULTING IN GREAT BODILY HARM OR DEATH; DECLARING AN EMERGENCY.

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 FORCE BY A PEACE OFFICER RESULTING IN GREAT BODILY HARM OR DEATH--REQUIRED NOTIFICATION-- EVALUATION BY A RELEVANT PROSECUTING AUTHORITY--REQUIRING A REPORT FOR DECLINATION TO PROSECUTE--PROVIDING CONCURRENT JURISDICTION.--

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

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1 course of the peace officer's duties that results in great  
2 bodily harm or 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,  
22 victim information, peace officer information and a description  
23 of the incident.

24 D. Within seventy-two hours of receipt of the  
25 written notification pursuant to Subsection C of this section

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1 by the governor and the attorney general, the district attorney  
2 shall advise the attorney general of the district attorney's  
3 intent either to evaluate the matter for prosecution or to  
4 request that the attorney general select an assistant attorney  
5 general or appoint a district attorney from a different  
6 judicial district or a practicing member of the bar of this  
7 state as a special prosecutor to evaluate the matter for  
8 prosecution. An appointment and oath shall be required of  
9 special prosecutors in substantially the same form as that  
10 required for assistant district attorneys pursuant to Section  
11 36-1-2 NMSA 1978. Whoever proceeds with the evaluation  
12 pursuant to this subsection shall be considered the "relevant  
13 prosecuting authority".

14 E. The department of public safety shall be the  
15 default investigative agency charged with investigating  
16 instances of peace officers using force resulting in great  
17 bodily harm or death, unless the use of force is committed by  
18 or against a department of public safety employee, in which  
19 case the sheriff of the county or other competent investigative  
20 agency as otherwise provided by law or agreement shall be  
21 responsible for investigation. All law enforcement agencies  
22 shall fully cooperate with and promptly respond to requests for  
23 information from the relevant prosecuting authority and the law  
24 enforcement agency or independent investigator charged with  
25 authority over the investigation.

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1           F. The relevant prosecuting authority shall be  
2 responsible for determining whether the facts and applicable  
3 law allow for prosecution of the peace officer for criminal  
4 liability resulting from the alleged use of force resulting in  
5 great bodily harm or death. The relevant prosecuting authority  
6 may also assist a concurrent investigative grand jury to  
7 subpoena witnesses, records and physical items related to the  
8 investigation as otherwise permitted by law. The costs of the  
9 investigation shall be paid out of the general fund of the  
10 county in which the investigation is made, and the costs of any  
11 prosecution arising out of the investigation shall be paid as  
12 are the costs in cases prosecuted by district attorneys.

13           G. During an investigation, the relevant  
14 prosecuting authority shall provide quarterly reports to the  
15 attorney general, to the district attorney in whose judicial  
16 district the offense is alleged to have occurred and to the  
17 governor, providing any material updates that do not impair the  
18 investigation. These quarterly reports shall be considered  
19 public records pursuant to the Inspection of Public Records  
20 Act. Any declination of prosecution by the relevant  
21 prosecuting authority shall be documented in a detailed report  
22 citing all relevant evidence to the attorney general, to the  
23 district attorney in whose judicial district the offense is  
24 alleged to have occurred and to the governor and shall be  
25 considered a public record pursuant to the Inspection of Public

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Records Act.

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

I. As used in this section, "peace officer" means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes; "peace officer" also includes a correctional officer employed by a privately operated correctional facility."

SECTION 2. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.