

1 SENATE BILL 274

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

3 INTRODUCED BY

4 Antoinette Sedillo Lopez and Patricia Roybal Caballero

5  
6  
7  
8  
9  
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

.218831.1

underscored material = new  
[bracketed material] = delete

underscoring material = new  
~~[bracketed material] = delete~~

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.

.218831.1

underscoring material = new  
~~[bracketed material] = delete~~

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

underscoring material = new  
~~[bracketed material] = delete~~

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

.218831.1

underscoring material = new  
~~[bracketed material] = delete~~

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

.218831.1

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."