

1 HOUSE BILL 493

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 Christine Trujillo

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10 AN ACT

11 RELATING TO CRIMINAL PROCEDURE; PROVIDING A NOTICE AND HEARING
12 PROCEDURE FOLLOWING THE USE OF DEADLY FORCE BY A LAW
13 ENFORCEMENT OFFICER; PROVIDING EXCLUSIVE AUTHORITY FOR RELATED
14 INVESTIGATIONS; REQUIRING A WRITTEN DETERMINATION BY A DISTRICT
15 COURT JUDGE; PRESERVING PROSECUTORIAL DISCRETION.

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

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

20 "[NEW MATERIAL] USE OF DEADLY FORCE BY A LAW ENFORCEMENT
21 OFFICER RESULTING IN DEATH OR GREAT BODILY INJURY--REQUIRED
22 NOTIFICATION--APPOINTMENT OF SPECIAL PROSECUTOR--PROBABLE CAUSE
23 HEARING--RECOMMENDATION OF SPECIAL PROSECUTOR--PROSECUTORIAL
24 DISCRETION.--

25 A. When in the course of a law enforcement

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1 officer's duties, a law enforcement officer uses deadly force
2 against a person that results in the person's death or injury,
3 the procedures provided in this section shall apply.

4 B. Within twenty-four hours of a person's death or
5 injury, the sheriff or the chief of police of the jurisdiction
6 in which the incident occurred shall report the incident to the
7 district attorney of the county in which the incident occurred.

8 C. Within twenty-four hours of receiving notice
9 pursuant to Subsection B of this section, the district attorney
10 shall report the incident to the governor.

11 D. Within three days of receiving notification
12 pursuant to Subsection C of this section, the governor shall
13 select an assistant attorney general with experience in
14 criminal prosecution to serve as a special prosecutor to
15 represent the state at a probable cause hearing at which the
16 special prosecutor shall present evidence of the law
17 enforcement officer's use of deadly force and evidence of
18 criminal offenses committed by the officer, including
19 violations of:

- 20 (1) Section 30-2-1 NMSA 1978;
- 21 (2) Section 30-2-3 NMSA 1978;
- 22 (3) Section 30-3-2 NMSA 1978;
- 23 (4) Section 30-3-3 NMSA 1978; and
- 24 (5) Section 30-3-5 NMSA 1978.

25 E. The assistant attorney general shall supervise

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1 the investigation of the incident pending the probable cause
2 hearing. The New Mexico state police division of the
3 department of public safety shall assist the assistant attorney
4 general in the investigation. All law enforcement agencies
5 shall fully cooperate with and promptly respond to requests for
6 information from the special prosecutor and the law enforcement
7 agency with exclusive authority over the investigation.

8 F. The probable cause hearing provided for in
9 Subsection D of this section shall:

10 (1) be held before a district court judge in
11 the district court for the county in which the death or great
12 bodily injury occurred;

13 (2) take place within ninety days of the
14 appointment of the special prosecutor;

15 (3) be open to the public unless the district
16 court judge finds good cause otherwise; and

17 (4) include an opportunity for the special
18 prosecutor and the law enforcement officer to present relevant
19 evidence not limited by the Rules of Evidence.

20 G. After hearing relevant evidence, the court shall
21 determine whether there is probable cause to believe that the
22 law enforcement officer committed a crime, including violations
23 of:

24 (1) Section 30-2-1 NMSA 1978;

25 (2) Section 30-2-3 NMSA 1978;

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

4 H. The court shall issue a written order that
5 provides whether it found probable cause that a crime has been
6 committed and the reasons for that finding. The court's order
7 shall be a public record and the court shall provide a copy of
8 the order to the district attorney of the county in which the
9 death occurred.

10 I. Following the probable cause hearing and the
11 issuance of the court's order, the special prosecutor shall
12 make a recommendation to the district attorney of the county in
13 which the incident occurred on whether the law enforcement
14 officer should be prosecuted.

15 J. Nothing in this section, including the
16 recommendation made by a special prosecutor, shall limit the
17 discretion of the district attorney of the county in which the
18 incident occurred with respect to determining whether to file
19 charges against the law enforcement officer whose conduct was
20 the subject of a probable cause hearing provided for in this
21 section.

22 K. Any applicable filing or other procedural
23 deadlines are tolled pending the hearing provided for in this
24 section.

25 L. As used in this section:

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(1) "deadly force" means violent force known to create a substantial risk of causing death or great bodily injury; and

(2) "law enforcement officer" means a state or municipal police officer, county sheriff, deputy sheriff, conservation officer, motor transportation enforcement officer or other state employee authorized by state law to enforce criminal statutes."