

HOUSE BILL 503

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

INTRODUCED BY

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AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE INDEPENDENT REVIEW OF
FORCE ACT; ESTABLISHING A PROCESS FOR THE INDEPENDENT
INVESTIGATION AND PROSECUTION OF DEADLY FORCE CASES; CREATING
THE DEADLY FORCE CITIZEN REVIEW BOARD; ESTABLISHING A SPECIAL
PROSECUTOR DATABASE FROM WHICH TO APPOINT A PROSECUTING
ATTORNEY IN A DEADLY FORCE CASE; ALLOWING THE APPOINTMENT OF A
MULTI-AGENCY TASK FORCE OR SEPARATE LAW ENFORCEMENT AGENCY TO
CONDUCT INVESTIGATIONS; EMPOWERING THE ATTORNEY GENERAL TO
REVIEW AND PROSECUTE DEADLY FORCE CASES IF DECLINED BY AN
APPOINTED SPECIAL PROSECUTING ATTORNEY; PROVIDING FOR CITIZEN
REVIEW OF DEADLY FORCE CASES AND RECOMMENDATIONS FOR
DISCIPLINARY ACTION; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1

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1 through 8 of this act may be cited as the "Independent Review
2 of Force Act".

3 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
4 Independent Review of Force Act:

5 A. "chokehold" means the use of the lateral
6 vascular neck restraint, carotid restraint, chokehold, neck
7 hold or any other action that involves placing any part of a
8 law enforcement officer's body on or around a person's neck;

9 B. "citizen review board" means the deadly force
10 citizen review board;

11 C. "deadly force" means violent force known
12 to create a substantial risk of causing death or great bodily
13 harm, including the discharge of a firearm, stun gun, tear gas,
14 chemical weapon or kinetic impact projectile from a propulsion
15 device, use of a chokehold, attacking a person using a police
16 dog or engaging in a physical altercation with a person;

17 D. "deadly force case" means an instance in which a
18 law enforcement officer in the course of the officer's duties
19 uses deadly force, there is an in-custody death or a citizen
20 submits a complaint of a law enforcement officer using deadly
21 force;

22 E. "great bodily harm" means injury to a person
23 that:

- 24 (1) results in serious disfigurement;
25 (2) results in permanent loss or protracted

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1 impairment of a bodily function, member, limb or organ; or

2 (3) creates a high probability of death;

3 F. "in-custody death" means a death that occurs
4 while an individual is being detained under color of law;

5 G. "law enforcement agency" means an agency of the
6 state or political subdivision of the state that employs
7 certified law enforcement officers and is authorized by law or
8 a government agency to engage in or supervise the prevention,
9 detection, investigation or enforcement of any violation of law
10 or ordinance or the police department of a tribe that has
11 entered into an agreement with the department of public safety
12 pursuant to Section 29-1-11 NMSA 1978;

13 H. "law enforcement officer" means a public
14 official or public officer vested by law with a duty to
15 maintain public order, enforce the law, seize evidence,
16 investigate crime, make arrests for crime, detain a person
17 suspected of or convicted of committing a crime, whether that
18 duty extends to all crimes or is limited to specific crimes, or
19 hold in custody a person accused of a criminal offense or
20 members of the national guard of New Mexico when called to
21 active duty by the governor; and

22 I. "stun gun" means a portable device or weapon,
23 regardless of whether it passes an electrical shock by means of
24 a dart or projectile via a wire lead, from which an electrical
25 current, impulse, wave or beam that is designed to incapacitate

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1 temporarily, injure or kill may be directed.

2 SECTION 3. [NEW MATERIAL] PROCEDURE--NOTIFICATION OF
3 DEADLY FORCE--SELECTION OF PROSECUTING ATTORNEY--CONFLICT OF
4 INTEREST.--

5 A. When a law enforcement officer, in the course of
6 the officer's duties, uses deadly force against a person and
7 the person suffers death or serious bodily injury, the
8 procedures in this section shall apply.

9 B. The chief law enforcement officer of the law
10 enforcement agency that employs the law enforcement officer who
11 used deadly force shall within twenty-four hours of the use of
12 deadly force notify the attorney general and the secretary of
13 public safety. The notification shall include the time, date,
14 location and details of the incident, the name of any involved
15 law enforcement officers, the name and contact information of
16 the victim and the injuries sustained by the victim. A victim
17 of a use of deadly force pursuant to Subsection A of this
18 section or a victim's spouse, sibling, parent, guardian or
19 legal representative may submit a complaint to notify the
20 attorney general of the use of deadly force. Within twenty-
21 four hours of notice, the attorney general shall notify the
22 chair of the citizen review board.

23 C. Jurisdiction over the investigation and
24 prosecution of the law enforcement officer involved is divested
25 of the district attorney of the judicial district in which the

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1 incident occurred.

2 D. Within seventy-two hours of receiving
3 notification from the attorney general, the citizen review
4 board shall randomly select and appoint a prosecuting attorney
5 from the special prosecutor database. A prosecuting attorney
6 shall be disqualified from the case and another prosecuting
7 attorney shall be randomly selected from the database if the
8 prosecuting attorney:

9 (1) serves or has previously served the
10 judicial district where the incident occurred;

11 (2) has ever had a professional or personal
12 relationship with a law enforcement officer, witness or victim
13 involved in the incident;

14 (3) has a family member that has served the
15 judicial district where the incident occurred or has ever been
16 employed by the law enforcement agency that employs a law
17 enforcement officer involved in the incident; or

18 (4) has another conflict of interest, as
19 determined by attorney general rule.

20 E. Jurisdiction over the investigation and
21 prosecution of a law enforcement officer involved in the deadly
22 force case is vested in the appointed prosecuting attorney who
23 shall prosecute in the name of the state. The prosecuting
24 attorney shall investigate or cause the investigation of the
25 alleged use of deadly force, determine if sufficient grounds

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1 exist for the prosecution of criminal conduct and exercise
2 prosecutorial discretion within seventy-five days of being
3 appointed.

4 F. If the prosecuting attorney declines to
5 prosecute, the prosecuting attorney shall, within three days,
6 make public a detailed report of the investigative findings and
7 the reasoning not to prosecute, with the names of victims and
8 witnesses redacted, and transmit a copy of the report to the
9 chair of the citizen review board and the attorney general.

10 G. Within seven days of receiving a report from a
11 prosecuting attorney, the citizen review board shall review the
12 report and issue an approval or disapproval. Upon:

13 (1) approval, the jurisdiction and power to
14 investigate and prosecute are returned to the district attorney
15 of the judicial district in which the incident occurred; or

16 (2) disapproval, the citizen review board
17 shall within seventy-five days detail the reasons for the
18 disapproval in a written statement, notify the attorney general
19 and transmit to the attorney general a copy of the prosecuting
20 attorney's report and the citizen review board's written
21 disapproval statement. Jurisdiction and power to investigate
22 and prosecute are vested in the office of the attorney general,
23 and the attorney general shall review the case, conduct
24 additional investigations as needed, determine if sufficient
25 grounds exist for the prosecution of criminal conduct and

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1 exercise prosecutorial discretion within seventy-five days.

2 H. Nothing in the Independent Review of Force Act
3 shall be construed to limit prosecutorial discretion of an
4 appointed prosecuting attorney or the attorney general.

5 I. The department of public safety shall assist the
6 citizen review board and attorney general in any investigation
7 pursuant to the Independent Review of Force Act, and all law
8 enforcement agencies shall fully cooperate with and promptly
9 respond to requests for information from the appointed
10 prosecuting attorney or citizen review board.

11 J. A law enforcement agency that fails to comply
12 with Subsection I of this section or Section 5 of the
13 Independent Review of Force Act shall be ineligible to apply
14 for grants administered by any state agency. The attorney
15 general shall afford the law enforcement agency an opportunity
16 to contest a finding that the agency did not comply.

17 K. Any costs incurred by an investigatory task
18 force or a state agency to conduct the investigation shall be
19 reimbursed by the public entity that employs the law
20 enforcement officer whose use of force is being investigated or
21 the public entity in whose custody the in-custody death
22 occurred. Any costs incurred by the appointed prosecuting
23 attorney to conduct the prosecution shall be reimbursed by the
24 district attorney's office in the judicial district where the
25 conduct is alleged to have occurred.

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1 SECTION 4. [NEW MATERIAL] INVESTIGATIONS OF DEADLY
2 FORCE--MULTI-AGENCY TASK FORCE.--

3 A. The department of public safety shall assist and
4 support the investigations of a prosecuting attorney appointed
5 by the citizen review board or attorney general, including
6 conducting investigations or, if requested, assigning a multi-
7 agency task force or law enforcement agency to lead
8 investigations.

9 B. The law enforcement agency that employs a law
10 enforcement officer being investigated shall not lead
11 investigations or be part of an investigatory task force, but
12 may provide assistance as requested.

13 C. If the law enforcement officer being
14 investigated is employed by the department of public safety,
15 the prosecuting attorney shall request a law enforcement agency
16 or multi-agency task force to conduct the investigations, and
17 the secretary of public safety shall appoint the agency or
18 members of the task force to conduct investigations.

19 SECTION 5. [NEW MATERIAL] BOARD REVIEW--DISCIPLINARY
20 ACTION.--After the procedures of Section 3 of the Independent
21 Review of Force Act have been completed and:

22 A. an involved law enforcement officer is convicted
23 of a crime, the officer shall be decommissioned, terminated and
24 decertified;

25 B. an involved law enforcement officer is charged

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1 and prosecuted but not convicted of a crime, the citizen review
2 board shall review the investigation and any reports created,
3 perform research or investigation as needed and consult with
4 the officer's supervisor to determine a binding disciplinary
5 action, including a letter of reprimand, suspension without
6 pay, suspension with pay, demotion, reassignment within a
7 department, termination, involuntary restitution,
8 decertification, restorative justice or mediation. The binding
9 disciplinary action shall be implemented by the law enforcement
10 agency that employs the law enforcement officer; or

11 C. an involved law enforcement officer is not
12 charged and prosecuted:

13 (1) the citizen review board shall review the
14 investigation and all findings and reports prepared, perform
15 research or investigation as needed and consult with the
16 officer's supervisor to make a non-binding recommendation for a
17 disciplinary action. If the law enforcement agency that
18 employs the law enforcement officer declines to take the
19 disciplinary action, the agency shall make public its reasoning
20 and transmit a copy of such reasoning to the citizen review
21 board; and

22 (2) jurisdiction and power to investigate and
23 prosecute shall be vested with the district attorney of the
24 district in which the incident occurred.

25 SECTION 6. [NEW MATERIAL] DEADLY FORCE CITIZEN REVIEW

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1 BOARD--CREATED--MEMBERS--TERMS.--

2 A. The "deadly force citizen review board" is
3 created to ensure independent investigation and prosecution in
4 deadly force cases, review results of deadly force cases and
5 recommend or mandate disciplinary action against a law
6 enforcement officer involved in a deadly force case. The
7 citizen review board is administratively attached to the office
8 of the attorney general.

9 B. The citizen review board shall be composed of
10 the following members:

11 (1) a chair appointed by the attorney general
12 as a non-voting member, except to break a tie vote, and who
13 shall preside over meetings of the board;

14 (2) a vice chair appointed by the governor;

15 (3) a vice chair appointed by the department
16 of public safety; and

17 (4) one citizen resident from each judicial
18 district.

19 C. Except as provided in Subsection D of this
20 section, members of the citizen review board shall be appointed
21 initially within ninety days of the effective date of the
22 Independent Review of Force Act, with one-half of the citizen
23 resident members appointed for a term of two years and the
24 other one-half appointed for a term of four years. After the
25 initial appointments, all members shall be appointed for four-

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1 year terms. A vacancy resulting from the death or resignation
2 of a member shall be filled in the same manner as the member
3 was initially appointed.

4 D. The chair and vice chairs shall be appointed
5 initially by July 31, 2023. The chair and vice chair appointed
6 by the office of the attorney general shall be appointed
7 initially for a term of four years, and the vice chair
8 appointed by the department of public safety shall be appointed
9 initially for a term of two years.

10 E. The chair and vice chairs shall solicit and
11 collect applications for and appoint the citizen resident board
12 members. Appointment of a citizen resident board member shall
13 be made by majority vote of the chair and vice chairs.

14 F. The board shall meet at the call of the chair.
15 A majority of the appointed board members shall constitute a
16 quorum for the transaction of business. Members of the citizen
17 review board shall receive, for their service as members of the
18 board, per diem and mileage as provided in the Per Diem and
19 Mileage Act.

20 SECTION 7. [NEW MATERIAL] DUTIES--DEADLY FORCE CITIZEN
21 REVIEW BOARD.--The citizen review board shall:

22 A. establish and maintain a database of special
23 prosecutors in each of the judicial districts;

24 B. randomly assign a special prosecutor to a deadly
25 force case and verify that there is no conflict of interest;

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1 C. receive complaints from civilians regarding the
2 alleged use of deadly force by a law enforcement officer;

3 D. review reports on the investigation, findings
4 and prosecution of deadly force cases;

5 E. refer cases to the attorney general in which an
6 appointed prosecuting attorney declined to prosecute;

7 F. vote on whether to approve or disapprove of an
8 appointed prosecuting attorney's declination to prosecute;

9 G. concordant with a deadly force case investigated
10 or prosecuted pursuant to the Independent Review of Force Act
11 and after consultation with an involved law enforcement
12 officer's direct supervisor, make a binding or recommended
13 disciplinary determination for an officer involved in a deadly
14 force case and communicate such determination to the law
15 enforcement agency employing the officer;

16 H. recommend an independent task force or law
17 enforcement agency to conduct investigations;

18 I. review investigations conducted pursuant to the
19 Independent Review of Force Act and issue findings regarding
20 the accuracy, completeness and impartiality of the
21 investigations and the sufficiency of any prosecution or
22 discipline resulting from the investigations;

23 J. make public reports on the activities of the
24 citizen review board, including investigations, findings,
25 approvals, disapprovals, recommendations, determinations and

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1 oversight activities; and

2 K. perform other duties as reasonably necessary to
3 effectuate the citizen review board's lawful purpose.

4 SECTION 8. [NEW MATERIAL] SPECIAL PROSECUTOR DATABASE.--

5 A. The citizen review board shall establish and
6 maintain a special prosecutor database with at least three
7 qualified prosecuting attorneys from each judicial district.
8 The attorney general shall promulgate rules for the minimum
9 required experience and expertise to qualify for the special
10 prosecutor database beyond being an attorney licensed to
11 practice in the state, in good standing and with past
12 prosecutorial experience.

13 B. The citizen review board shall solicit and
14 review applications from prosecuting attorneys to compose the
15 special prosecutor database. The governor and attorney general
16 shall each nominate at least ten prosecuting attorneys and a
17 district attorney of each judicial district shall nominate at
18 least three prosecuting attorneys for the consideration of the
19 citizen review board. Prosecuting attorneys shall be accepted
20 into the special prosecutor database upon majority vote of the
21 citizen review board.

22 SECTION 9. Section 36-1-18 NMSA 1978 (being Laws 1909,
23 Chapter 22, Section 2, as amended) is amended to read:

24 "36-1-18. DUTIES OF DISTRICT ATTORNEY.--

25 A. Each district attorney shall:

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1 (1) prosecute and defend for the state in all
2 courts of record of the counties of [~~his~~] the district
3 attorney's district all cases, criminal and civil, in which the
4 state or any county in [~~his~~] the district may be a party or may
5 be interested, except as provided in the Independent Review of
6 Force Act;

7 (2) represent the county before the board of
8 county commissioners of any county in [~~his~~] the district
9 attorney's district in all matters before the board whenever
10 requested to do so by the board, and [~~he~~] the district attorney
11 may appear before the board when sitting as a board of
12 equalization without request;

13 (3) advise all county and state officers
14 whenever requested; and

15 (4) represent any county in [~~his~~] the district
16 attorney's district in all civil cases in which the county may
17 be concerned in the supreme court or court of appeals, but not
18 in suits brought in the name of the state.

19 B. A district attorney may contract with an Indian
20 nation, tribe or pueblo within the boundaries of the district
21 attorney's judicial district for the purpose of authorizing the
22 district attorney or [~~his~~] the district attorney's staff to:

23 (1) serve as a tribal prosecutor; or

24 (2) prosecute alleged violations of tribal
25 codes by tribal members in tribal courts."

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SECTION 10. APPROPRIATION.--Two million dollars (\$2,000,000) is appropriated from the general fund to the office of the attorney general for expenditure in fiscal years 2024 through 2026 for the purposes of the Independent Review of Force Act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2026 shall revert to the general fund.

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.