SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR THE INSPECTION OF
LAW ENFORCEMENT MISCONDUCT INVESTIGATIONS; REQUIRING REPORTING
OF OFFICER-INVOLVED INJURIES OR DEATHS; AMENDING THE CRIME OF
JUSTIFIABLE HOMICIDE BY A PUBLIC OFFICER OR PUBLIC EMPLOYEE;
ENACTING THE LAW ENFORCEMENT OFFICER PROCEDURES ACT; REGULATING
THE USE OF PHYSICAL FORCE BY OFFICERS; ESTABLISHING A DUTY OF
OFFICERS TO INTERVENE; REQUIRING USE OF FORCE POLICIES;
PREScribing STANDARDS FOR SERVING SEARCH WARRANTS.

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

SECTION 1. Section 14-2-1 NMSA 1978 (being Laws 1947,
Chapter 130, Section 1, as amended) is amended to read:

"14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--
Every person has a right to inspect public records of this
state except:

.218622.4
A. records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;
B. letters of reference concerning employment, licensing or permits;
C. letters or memoranda that are matters of opinion in personnel files or students' cumulative files; provided that records describing the disposition of law enforcement misconduct investigations shall not be exempt from inspection;
D. portions of law enforcement records that reveal:
   (1) confidential sources, methods or information; or
   (2) before charges are filed, names, address, contact information or protected personal identifier information [as defined in this act] of individuals who are:
      (a) accused but not charged with a crime; or
      (b) victims of or non-law-enforcement witnesses to an alleged crime of: 1) assault with intent to commit a violent felony pursuant to Section 30-3-3 NMSA 1978 when the violent felony is criminal sexual penetration; 2) assault against a household member with intent to commit a violent felony pursuant to Section 30-3-14 NMSA 1978 when the violent felony is criminal sexual penetration; 3) stalking pursuant to Section 30-3A-3 NMSA 1978; 4) aggravated stalking
pursuant to Section 30-3A-3.1 NMSA 1978; 5) criminal sexual penetration pursuant to Section 30-9-11 NMSA 1978; or 6) criminal sexual contact pursuant to Section 30-9-12 NMSA 1978.

Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this subsection; provided that the presence of such information on a law enforcement record does not exempt the record from inspection;

E. as provided by the Confidential Materials Act;
F. trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;
G. tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and
H. as otherwise provided by law."

SECTION 2. A new section of the Department of Public Safety Act is enacted to read:

"[NEW MATERIAL] REPORTING OFFICER-INVOLVED INJURIES OR
DEATHS--DEPARTMENT OF PUBLIC SAFETY INVESTIGATION--PROSCRIBING PENALTIES.--

A. The secretary shall create a uniform protocol for a law enforcement agency to report officer-involved injuries or deaths. The uniform protocol shall require a report of the following information regarding each incident:

1. the reporting law enforcement agency;
2. the date of the incident;
3. the location of the incident;
4. the age, sex, race and ethnicity of each officer involved;
5. the age, sex, race and ethnicity of each injured or deceased person involved, if known; and, if unknown, a description of the inquiry undertaken to ascertain that information;
6. whether the person was injured, received emergency medical care, was hospitalized or died as a result of the incident;
7. a description of the injuries sustained by each injured person;
8. whether and in what manner each injured or deceased person used, exhibited or possessed a deadly weapon during the incident;
9. whether each injured or deceased person exhibited signs or symptoms of mental illness or impairment at
the time of the incident;

(10) the reason for the use of force by officers;

(11) whether the reporting law enforcement agency determined the use of force was justified;

(12) whether an officer involved attempted to call medical or mental health professionals to the scene during the incident;

(13) whether each officer involved was on duty during the incident;

(14) whether each officer involved was in uniform during the incident;

(15) a description of the physical force used by each officer during the incident;

(16) a description of the de-escalation tactics and techniques used by each officer involved during the incident;

(17) for each officer present, a description of all attempts to intervene to prevent the use of unreasonable physical force during the incident; and

(18) whether the incident occurred during or as a result of:

(a) an emergency call or request for assistance and a description of the facts and circumstances;

(b) the execution of a warrant or other
enforcement action; or

(c) a hostage-taking, a barricade or other emergency situation.

B. Not later than thirty days after an officer-involved injury or death, the law enforcement agency employing the officer involved in the incident shall complete and submit to the secretary a report using the uniform protocol. If the agency maintains a website, the agency shall post the report online upon submission to the secretary. Not later than five days after receiving a report, the secretary shall post the report on the department's website. If no officer-involved injuries or deaths have occurred during a quarterly period, the agency shall submit a no incident report to the secretary in a manner prescribed by the secretary. The quarterly periods for no incident reports pursuant to this subsection shall be:

(1) January 1 to March 31;
(2) April 1 to June 30;
(3) July 1 to September 30; and
(4) October 1 to December 31.

C. The secretary shall investigate the use of physical force in all incidents that result in emergency medical care, hospitalization or death. Within ninety days of the incident, the secretary shall determine whether physical force was justified pursuant to Section 6 of this 2021 act; provided that a conclusion by the secretary pursuant to this
subsection that force was justified shall not be admissible or have any preclusive effect in any civil or criminal proceeding; and provided further that an investigation by the secretary shall not preclude any other elected official or public body from conducting an investigation of an officer-involved injury or death.

D. A law enforcement agency that fails to comply with Subsection B of this section shall be ineligible to apply for grants administered by any state agency. The secretary shall afford the law enforcement agency an opportunity to contest a finding that the agency did not comply with Subsection B of this section.

E. The secretary shall prepare an annual report regarding all officer-involved injuries or deaths that occurred during the preceding fiscal year. The report shall include:

(1) the total number of officer-involved injuries or deaths;
(2) the number of officer-involved injuries or deaths reported by each law enforcement agency;
(3) the entirety of data reported using the uniform protocol; and
(4) any operational, policy, regulatory or legislative recommendations to reduce the number and seriousness of officer-involved injuries or deaths.

F. On or before September 30 of each year, the
secretary shall submit the report to the governor, the speaker of the house of representatives, the president pro tempore of the senate and the appropriate legislative interim committee dealing with courts, corrections and justice. On or before September 30 of each year, the secretary shall post the report on the department's website.

G. As used in this section:

(1) "chokehold" means the use of the lateral vascular neck restraint, carotid restraint, chokehold, neck hold or any other action that involves placing any part of an officer's body on or around a person's neck;

(2) "deadly weapon" means a firearm or any object manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury or any object that, in the manner of its use, is capable of causing death or serious bodily injury;

(3) "de-escalation tactics and techniques" means proactive actions and approaches used by a law enforcement officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force, including verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the law enforcement officer and a threat and requesting additional resources to resolve the
incident, including but not limited to calling in medical or
mental health professionals to address a potential medical or
mental health crisis;

(4) "firearm" means any weapon that will or is
designed to or may readily be converted to expel a projectile
by the action of an explosion or the frame or receiver of any
such weapon;

(5) "law enforcement agency" means the police
department of a municipality, the sheriff's office of a county,
the New Mexico state police or the department;

(6) "law enforcement officer" means a full-
time salaried public employee of a governmental entity, or a
certified part-time salaried police officer employed by a
governmental entity, whose principal duties under law are to
hold in custody any person accused of a criminal offense, to
maintain public order or to make arrests for crimes, or members
of the national guard of New Mexico when called to active duty
by the governor;

(7) "officer-caused injury or death" means an
event during which a law enforcement officer:

(a) discharges a firearm, actually or
proximately causing injury or death to another;

(b) discharges a stun gun, actually or
proximately causing injury or death to another;

(c) uses a chokehold, discharges tear
gas or other chemical weapon, discharges rubber pellets or
bullets from a propulsion device or attacks a person using a
dog, actually or proximately causing injury or death of a
person; or

(d) engages in a physical altercation
with a member of the public who sustains serious bodily injury
or requests or receives medical care as a result;

(8) "serious bodily injury" means bodily
injury that results in:

(a) permanent disfigurement;
(b) protracted loss or impairment of a
bodily function, limb or organ; or
(c) a substantial risk of death; and

(9) "stun gun" means a portable device or
weapon, regardless of whether it passes an electrical shock by
means of a dart or projectile via a wire lead, from which an
electrical current, impulse, wave or beam that is designed to
incapacitate temporarily, injure or kill may be directed."

SECTION 3. Section 30-2-6 NMSA 1978 (being Laws 1963,
Chapter 303, Section 2-7, as amended) is amended to read:

"30-2-6. JUSTIFIABLE HOMICIDE BY PUBLIC OFFICER OR PUBLIC
EMPLOYEE.--

A. Homicide is justifiable when committed by a
public officer or public employee or those acting by their
command and in their aid and assistance:
(1) in obedience to any judgment of a competent court;

(2) when necessarily committed in overcoming actual resistance to the execution of some legal process or to the discharge of any other legal duty;

(3) when necessarily committed in retaking felons who have been rescued or who have escaped or when necessarily committed in arresting felons fleeing from justice; or

(4) when necessarily committed in order to prevent the escape of a felon from any place of lawful custody or confinement.

B. [For the purposes of this section, homicide is "necessarily committed" when a public officer or public employee has probable cause to believe he or another is threatened with serious harm or deadly force while performing those lawful duties described in this section. Whenever feasible, a public officer or employee should give warning prior to using deadly force.] Homicide is "necessarily committed" only if a public officer or public employee complied with the provisions of Section 6 of this 2021 act."

SECTION 4. [NEW MATERIAL] SHORT TITLE.--Sections 4 through 9 of this act may be cited as the "Law Enforcement Officer Procedures Act".

SECTION 5. [NEW MATERIAL] DEFINITIONS.--As used in the
Law Enforcement Officer Procedures Act:

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

B. "deadly physical force" means physical force that can be reasonably expected to cause death or serious physical injury;

C. "de-escalation tactics and techniques" means proactive actions and approaches used by a law enforcement officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force, including verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the law enforcement officer and a threat and requesting additional resources to resolve the incident, including but not limited to calling in medical or mental health professionals to address a potential medical or mental health crisis;

D. "firearm" means any weapon that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon;

E. "imminent harm" means when a person creating a risk has the present ability, opportunity and apparent intent...
to immediately cause serious physical injury or death; provided
that imminent harm shall not be merely a fear of future harm
but is a risk that, based on the information available at the
time, must be instantly confronted and addressed;

F. "law enforcement agency" means the police
department of a municipality, the sheriff's office of a county,
the New Mexico state police or the department of public safety;

G. "law enforcement officer" means a full-time
salaried public employee of a governmental entity, or a
certified part-time salaried police officer employed by a
governmental entity, whose principal duties under law are to
hold in custody any person accused of a criminal offense, to
maintain public order or to make arrests for crimes, or members
of the national guard of New Mexico when called to active duty
by the governor;

H. "necessary" means when, after all available
alternatives have been exhausted, no available, effective
alternative was known or should have been known to a reasonable
person in the circumstances, without regard to the subjective
beliefs of the law enforcement officer;

I. "proportional" means not excessive in relation
to a direct and legitimate law enforcement objective;

J. "stun gun" means a portable device or weapon,
regardless of whether it passes an electrical shock by means of
a dart or projectile via a wire lead, from which an electrical
current, impulse, wave or beam that is designed to incapacitate
temporarily, injure or kill may be directed; and

    K. "totality of the circumstances" means the entire
duration of an interaction between law enforcement officers and
a victim of force, from the first contact through the
conclusion of the incident, including consideration of
contextual factors the law enforcement officer knew or should
have known during such interaction, including:

    (1) whether the law enforcement officer's
conduct during the interaction contributed to the risk of
imminent harm to an identifiable person by the victim of force;

    (2) whether the law enforcement officer
attempted de-escalation tactics and techniques during the
interaction;

    (3) whether the law enforcement officer failed
to identify as a law enforcement officer to the victim of
force;

    (4) whether an arrest could have been effected
at a later time with a lower risk to the safety of the public
or to the victim of force;

    (5) whether the law enforcement officer made
reasonable accommodations in light of the victim of force's
physical disability, mental illness, developmental or
neurological condition or disability, drug interactions,
linguistic limitations, then-existing mental, emotional or
physical condition or other characteristics that may have
interfered with the victim of force's ability to cooperate or
comply with a law enforcement officer's instructions;

(6) whether the law enforcement officer failed
to call in a medical or mental health professional in response
to a potential medical or mental health crises;

(7) whether the law enforcement officer gave
any warnings to the victim of force before undertaking a use of
force or other escalation; and

(8) whether the law enforcement officer
exacerbated the injury sustained by the victim of force by
subsequent actions."

SECTION 6. [NEW MATERIAL] REGULATION OF PHYSICAL FORCE BY
LAW ENFORCEMENT OFFICERS.--

A. All persons in New Mexico shall have a right
against the use of force prohibited by this section.

B. A law enforcement officer shall not use physical
force upon another person unless the officer has exhausted
de-escalation tactics and techniques and, based on the totality
of the circumstances, such force is proportionate and necessary
to:

(1) prevent an imminent threat to an
identifiable person, where the amount of force used is
proportional to the threat of imminent harm to the identifiable
person;
(2) effect an arrest of a person whom the law
enforcement officer has probable cause to believe has committed
a criminal offense; or

(3) prevent the escape from custody of a
person whom the law enforcement officer has probable cause to
believe has committed an offense, unless the law enforcement
officer knows that the custody is unauthorized.

C. Law enforcement officers shall use physical
force only to the extent the use of force accomplishes a
legitimate law enforcement objective. A law enforcement
officer shall immediately modulate the use of physical force as
the threat diminishes and shall cease the use of physical force
as soon as possible after:

(1) the person upon whom the physical force is
being used:

(a) is under the officer's control; or

(b) no longer poses a threat of physical
injury to the officer or another person; or

(2) the use of physical force will no longer
accomplish, or is no longer reasonable and proportional to
accomplish, a legitimate law enforcement objective.

D. A law enforcement officer shall not use deadly
physical force upon another person unless it is used as a last
resort, after the officer has exhausted de-escalation tactics
and techniques and, based on the totality of the circumstances,
such force is necessary to prevent imminent death or serious
physical injury to an identifiable person and the amount of
force used is proportional to the threat of imminent harm to an
identifiable person. The use of deadly force shall not present
a threat of serious physical injury to a third person.

E. The use of deadly force against a person who
poses a danger only to the person's self is not justified.

F. Each application of force shall be evaluated
independently as a separate use of force to be separately
justified as lawful pursuant to the provisions of this section.
A law enforcement officer's failure to use feasible
alternatives to the use of force shall be a consideration in
determining whether the use of force was justified.

G. A law enforcement officer shall not discharge
any firearm into or at a fleeing motor vehicle, unless, based
on the totality of the circumstances and after exhausting
de-escalation tactics and techniques, such discharge is
necessary to prevent an imminent death or serious physical
injury to an identifiable person and the discharge is
proportional to the threat of imminent harm to an identifiable
person. For purposes of this subsection, use of the vehicle
itself shall not be imminent harm.

H. A law enforcement officer shall not
intentionally position the officer's body or vehicle in front
of a fleeing motor vehicle, unless such action is a tactic
approved by the law enforcement agency that employs the officer. A law enforcement officer moving into or remaining in the path of a moving vehicle, whether deliberate or inadvertent, shall not be justification for discharging a firearm at the vehicle or any of its occupants or any other use of physical or deadly physical force. A law enforcement officer in the path of an approaching vehicle shall attempt to move to a position of safety rather than discharge a firearm at the vehicle or any of the occupants of the vehicle.

I. A law enforcement officer shall not use a chokehold.

J. A law enforcement officer shall not discharge tear gas or other chemical weapons.

K. A law enforcement officer shall not discharge rubber pellets from a propulsion device.

L. A law enforcement officer shall not direct a dog to bite a person.

M. Notwithstanding the standards described above in Subsections B through L of this section, an otherwise lawful use of force shall be unlawful if it is motivated in substantial part by anger, malice, retaliation or any other intent unrelated to a law enforcement purpose.

N. If a law enforcement officer used physical force in violation of this section, the law enforcement officer shall be immediately disciplined and, depending on the seriousness of
the violation, may be decommissioned and terminated from the
officer's position. Upon a finding by a court, the secretary
of public safety or the head of any law enforcement agency that
a law enforcement officer used physical force, including deadly
physical force, in violation of this section, which resulted in
serious bodily injury or death, or that the law enforcement
officer violated Subsections I through L of this section, the
law enforcement officer shall be immediately decommissioned,
terminated from the officer's position and disqualified from
future employment as a law enforcement officer in New Mexico.

O. To the extent an employment contract conflicts
with the provisions of this section, the contract shall be
amended at the earliest available opportunity to conform with
this section.

P. A law enforcement officer who uses force against
a person in a manner inconsistent with the provisions of this
section that does not result in death may be charged with
battery or aggravated battery pursuant to the provisions of
Sections 30-3-4 and 30-3-5 NMSA 1978.

Q. A law enforcement officer who uses force against
a person in a manner inconsistent with the provisions of this
section that results in death may be charged with manslaughter
or murder pursuant to the provisions of Chapter 30, Article 2
NMSA 1978.

SECTION 7. [NEW MATERIAL] DUTY TO INTERVENE.--
A. A law enforcement officer present and observing another officer using physical force, including deadly physical force, that appears to be beyond that which is lawful based on the totality of the circumstances shall intercede to prevent the use of excessive force, unless interceding would result in imminent harm to the officer or another identifiable individual.

B. A law enforcement officer who observes another officer using physical force, including deadly physical force, that appears to be beyond that which is lawful based on the totality of the circumstances shall report the incident to the officer's direct supervisor as soon as reasonably possible but no later than the end of the officer's shift. The officer shall prepare a detailed written statement describing the incident consistent with the uniform protocols set forth in Subsection A of Section 2 of this 2021 act. The officer's written statement shall be included in the supervisor's report.

C. All persons in New Mexico have a right to the intervention of officers in the circumstances set forth in this section. An officer who had a duty to intervene and failed to do so shall be disciplined and, depending on the seriousness of the violation, may be decommissioned and terminated from the officer's position. An officer who had a duty to intervene and failed to do so may be held liable, jointly and severally with any officer who used unreasonable force for any injuries or
death caused by such officer's unreasonable use of force.

SECTION 8. [NEW MATERIAL] REQUIRING USE OF FORCE
POLICIES--PUBLISHING POLICIES.--

A. Every law enforcement agency shall adopt a policy regarding the use of force by its officers.

B. The use of force policy required pursuant to Subsection A of this section shall address the following:

1. required procedures for de-escalation tactics and techniques before using or increasing the use of force;

2. procedures to determine the appropriate level of force to be used in particular situations, with examples;

3. a ban on the use of chokeholds, the discharge of tear gas or other chemical weapons, the discharge of rubber pellets from a propulsion device or attacking a person using a dog;

4. required procedures for issuing warnings prior to discharging a firearm or discharging a stun gun;

5. clear limits on the use of force pursuant to Section 6 of this 2021 act, ensuring that less than deadly physical force is used only to the extent that it is proportionate and the least amount of force necessary to achieve its lawful objective and that deadly physical force is only used as a last resort when necessary to defend against
imminent threats to human life;

(6) the duty of officers to intervene pursuant to Section 7 of this 2021 act; and

(7) comprehensive reporting protocols pursuant to Subsection A of Section 2 of this 2021 act.

C. Not later than ninety days after the effective date of this 2021 act, the head of each law enforcement agency shall publish the use of force policy required by Subsection A of this section in a location that is accessible to the public and in a conspicuous place on the agency's website, if any.

SECTION 9. [NEW MATERIAL] SEARCH WARRANTS--REQUIREING KNOCK AND ANNOUNCE--SHOWING SEARCH WARRANT--PROVIDING A PENALTY.--

A. A law enforcement officer executing a search warrant shall knock and announce the officer's presence and purpose before forcibly entering a residence. An officer shall not dispense with the requirement of this subsection in any circumstances. An officer shall not seek, execute or participate in the execution of a search warrant in which the executing officers do not knock and announce their presence and purpose.

B. When executing a search warrant, a law enforcement officer shall be recognizable and identifiable as a uniformed law enforcement officer. The officer shall provide audible notice of the officer's authority and purpose in a
manner reasonably expected to be heard by occupants of such
place to be searched prior to the execution of such search
warrant.

C. After entering and securing the place to be
searched, and prior to undertaking any search or seizure
pursuant to the search warrant, the executing law enforcement
officer shall read and give a copy of the search warrant to the
person to be searched or the owner of the place to be searched
or, if the owner is not present, to any occupant of the place
to be searched. If the place to be searched is unoccupied, the
executing law enforcement officer shall leave a copy of the
search warrant suitably affixed to the place to be searched.

D. A law enforcement officer charged with the
execution of a search warrant shall be accompanied only by such
other persons as may be reasonably necessary for the successful
execution of the search warrant with all practicable safety.

E. A law enforcement officer entering a premises
pursuant to a search warrant shall not be armed with
specialized, military-style equipment, including assault
rifles, submachine guns, shotguns, flash bang stun grenades or
other stun agents, except when expressly authorized by the
search warrant upon a showing of particularized suspicion that
an occupant of the target premises is in actual possession of
deadly weaponry and the use of specialized weaponry by law
enforcement officers is likely to be necessary.
F. Before entering the premises of any property to be searched, a law enforcement officer shall:

   (1) physically knock on an entry door to the premises in a manner and duration that can be heard by the occupants and additionally, when available, sound any bell or other device affixed to the outside of a building that can be rung by visitors to signal a visitor's arrival;

   (2) clearly and verbally announce as law enforcement having a search warrant in a manner that can be heard by the occupants;

   (3) clearly and verbally announce that the occupants must open the door pursuant to the search warrant and that force may be used if the occupants fail to respond; and

   (4) wait a minimum of forty-five seconds for occupants to respond before entering the premises by force.

G. Evidence seized or obtained shall be inadmissible if subsequent judicial review determines that a law enforcement officer did not comply with Subsections A through F of this section.