

<b>LFC Requester:</b>	<b>ISMAEL TORRES</b>
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**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**        **Amendment**      
**Correction**        **Substitute**   

**Date** 02/08/19  
**Bill No:** SB476

**Sponsor:** ANTOINETTE SEDILLO    **Agency Name and Code**    AODA/264  
LOPEZ    **Number:** \_\_\_\_\_  
**Short Title:** CRIMINAL PROCEDURE    **Person Writing**    ROSANNA C VAZQUEZ  
USE OF DEADLY FORCE BY    **Phone:** \_\_\_\_\_    **Email** rosannacvazquez@gm

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 493 is the exact same bill.  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

SB 476 proposes to add a new section 31 to apply in instances where deadly force is used and death and or injury result the following procedures are required:

1. Within 24 hours of injury or death, notice by law enforcement agency to district attorney in county where incident occurred.
2. Within 24 hours of receiving notice, district attorney shall provide notice to governor.
3. Within three days of receiving notice Governor shall appoint a special prosecutor to represent the state at a probable cause hearing. Evidence of deadly force and crimes committed by police officer
4. Special Prosecutor shall supervise investigation and New Mexico State Police shall assist in the investigation.
5. The probable cause hearing:
  - a. Before a judge where incident took place
  - b. Within 90 days
  - c. May be open to the public unless good cause exists to close.
  - d. Rules of Evidence will not limit the evidence submitted.
6. After hearing the Court shall determine whether probable cause to believe that officer committed a crime or violated any of the following statutes and draft a written Order:
  - a. Section 30-2-1;
  - b. Section 30-2-3;
  - c. Section 30-3-2;
  - d. Section 30-3-3;
  - e. Section 30-3-5.
7. The Order shall be public record and provided to the district attorney in the county in which “death” occurred. See pg. 4, line 9.
8. The special prosecutor shall make a recommendation to district attorney whether law enforcement officer should be prosecuted. But shall not limit decision-making authority of district attorney on the issue of whether to prosecute.
9. All filing and procedural deadlines are tolled pending the probable cause hearing.
10. Law enforcement officer includes anyone who enforces criminal laws.

**FISCAL IMPLICATIONS:**

**SIGNIFICANT ISSUES:**

Not sure what the benefit is to an open hearing where the public is welcome to hear the probable cause determination. In administrative disciplinary hearings, for a determination of loss of a

constitutionally protected right, are not public nor are required to be. When a probable cause is determined in a criminal matter the police raise the evidence to the judge and the judge makes a determination without the presence of the public.

Why should there be a hearing on the probable cause determination on use of deadly force when in other criminal matters the judge or grand jury makes the decision and a preliminary hearing is had after the fact? The defendant is then afforded their constitutional rights, which include time frames for hearings to occur and application of rules of evidence for preliminary hearings, not so in grand juries.

In addition, administrative hearings the officer is also afforded constitutional protections. Not clear whether this eliminates the need for administrative hearings to determine violations of NMSA Sections noted above.

**AMENDMENT LANGUAGE - NA**

**PERFORMANCE IMPLICATIONS – NA**

**ADMINISTRATIVE IMPLICATIONS - NA**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP -**

HB 493 is the exact same bill.

**TECHNICAL ISSUES –**

Deadly force includes death or great bodily harm or injury. The language on Pg 4, line 9, inadvertently makes reference only to “death”.

The reference to Special Prosecutor should be used throughout and eliminate use of Assistant Attorney General. Pg. 2, line 25.

**OTHER SUBSTANTIVE ISSUES - NA**

**ALTERNATIVES - NA**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:**

Status quo.

**AMENDMENTS:**

Not at this time.