

LFC Requester:

**AGENCY BILL ANALYSIS
2020 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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 January 28, 2020
Bill No: SB 100-264

Sponsor: Antoinette Sedillo Lopez
Short Title: Deadly Force Investigations, Proceedings

Agency Name and Code Number: Administrative Office of the District Attorneys 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY20	FY21		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 100 sets forth procedures for investigating and prosecuting cases where a person is hurt or killed because of the excessive or deadly force used by a law enforcement officer. The bill places the duty to handle these cases to the Attorney General’s office. SB 100 will remove the role of investigating and prosecuting these types of cases from the respective district attorneys and place it in the Attorney General’s office.

SB 100 creates a process whereby these cases are to be handled.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

More duties for the Attorney General will likely result in the need for more resources for the office.

SIGNIFICANT ISSUES

1. Article VI, §24 of the New Mexico Constitution establishes district attorneys for each judicial district who are the law officer of the State and of the counties in their districts.
2. §36-1-18A (1) provides that each district attorney shall prosecute and defend for the State in all courts of record of the counties of his district all cases, criminal and civil....
3. The Attorney General’s office was created by statute and is not a creation of the Constitution. See§8-5-1 et seq.
4. The Attorney General is not the superior of the district attorneys. *State ex rel. Attorney General v. Reese*, 1967-NMSC-172.
5. Where a district attorney delegates a prosecution to the Attorney General, the Attorney General may proceed. See *State v. Koehler*, 1981-NMSC-060.

6. Presently, the only times that the Attorney General's office prosecutes cases are when the local district attorney declines to prosecute, refers the case to the Attorney General's office or fails to prosecute. The Attorney General cannot proceed unless one of the criteria is met.

7. SB 100 will give the Attorney General's office the authority to proceed with use of deadly force cases by police officers, circumventing local district attorneys. The language of the statute requires the district attorney to report incidents to the Governor and the Attorney General. There is no language prohibiting the District Attorney from performing their constitutional and statutory duties.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Article VI, §24, New Mexico Constitution; Article III, §1, New Mexico Constitution; §36-1-18A (1), NMSA 1978; §8-5-1, NMSA 1978.

TECHNICAL ISSUES

SB 100 creates a separation of powers situation in that the Constitution and statutes grant district attorneys original authority in all criminal prosecutions. See article III, §1 Distribution of Powers.

The bill does not give a reason for the requirement that the District Attorney report to the Governor. Other than the Governor keeping a log of such incidents, there does not seem to be anything in the requirement that helps the handling of these cases.

The framers of the New Mexico Constitution made it clear that criminal prosecutions be handled at the local level, and not by a centralized agency, unless the local prosecutor declines, fails to prosecute or refers the matter to the Attorney General's office. Nothing in the statute that created the Attorney General's office provides for a centralized agency to take over prosecutions from local district attorneys.

SB 100 appears to be in response to incidents that have happened mostly the Albuquerque Metro. area. The district attorneys in the State have been able to effectively and efficiently investigate cases that involve the use of deadly force by police and, in those cases where a crime is being committed, prosecute them.

For many years, district attorneys have worked cooperatively with the Attorney General and have either teamed up or referred cases to the Attorney General using the discretion given them by the voters of their districts.

Taking away the prosecution of these cases removes local involvement in that the district attorney, who is chosen by the citizens of their district, will not perform the duties they are elected to do. There is also a concern that every time certain types of cases are not handled well, there will be another piece of legislation giving the Attorney General those cases to prosecute.

SB 100 will create another level of bureaucracy in a centralized agency that is not necessary because cases are already being handled adequately at the local level.

It does not appear that cases will be presented to a grand jury, although that is not specifically prohibited in the bill.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

District attorneys will continue to work effectively with the Attorney General in those situations where a case is declined or is referred to the Attorney General. District Attorneys will continue to be able to team prosecute these cases.

AMENDMENTS