

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2017 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:*

<b>Original</b>	<input checked="" type="checkbox"/>	<b>Amendment</b>	<input type="checkbox"/>	<b>Date</b>	<u>1-25-17</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>HB214</u>

<b>Sponsor:</b>	<u>Patricia Roybal Caballero</u>	<b>Agency Code:</b>	<u>264</u>
<b>Short Title:</b>	<u>Use of Force Act</u>	<b>Person Writing</b>	<u>Gail MacQuesten</u>
		<b>Phone:</b>	<u>466-0532</u>
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
\$1,500	0	nonrecurring	General fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	(minimal)	(minimal)	(minimal)	unknown	recurring	general

(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:

HB214, the “Use of Force Act,” establishes a division of the office of the attorney general and gives it exclusive powers to investigate and prosecute cases alleging excessive force by law enforcement officers in the state. HB214 requires such cases to be presented in a preliminary hearing or inquiry before the district court in the judicial district in whose jurisdiction the incident occurred for a determination of probable cause, and not presented to a grand jury.

“Excessive force case” is defined as a case arising out of an action taken by a law enforcement officer while the officer was acting in the officer’s official capacity, including a shooting by a law enforcement officer, an allegation of assault, battery or homicide by a law enforcement officer, or any other allegation of the use of excessive force brought against a law enforcement officer.

HB214 appropriates one million five hundred thousand dollars from the general fund to the office of the attorney general for expenditure in fiscal year 2018 to establish the unit. Any unexpended or unencumbered balance shall revert to the general fund.

**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.

The office of the attorney general will experience increased costs. It is unknown whether the appropriation is sufficient to establish the unit, and no appropriation is made for expenses beyond fiscal year 2018.

Costs for the district attorneys will be reduced to the extent cases are moved from the local district attorney offices to the office of the attorney general.

**SIGNIFICANT ISSUES**

Since District Attorneys are created by the NM Constitution and the AG is a creature of statute, there may be separation of powers issues since the Constitution gives DA's primary criminal

jurisdiction

This bill does not address potential situations where the AG may have a conflict of interest.

The procedures already in use adequately deal with the concerns raised by this bill.

HB214 give the attorney general exclusive powers to investigate and prosecute excessive force cases by law enforcement officers. Presumably, once an allegation of excessive force is made, or once a local body determines that a situation may involve excessive force, the matter must be referred to the attorney general's office for investigation. And, presumably, the attorney general may initiate an investigation even if no referral is made.

Currently, district attorneys may arrange for cases to be prosecuted by attorneys outside their office or refer cases to the attorney general if local prosecution would create the appearance of a conflict of interest or lack of independent review. And currently the attorney general has jurisdiction over criminal matters when the district attorney either refers a case or fails to prosecute a case. Under HB214, however, that prosecution decision is automatic: all excessive force cases will be handled by the attorney general.

HB214 not only gives the office of the attorney general the exclusive power over such cases, it creates a new division and unit in the office of the attorney general to handle the cases. Currently, the attorney general has a special prosecutions division, which handles criminal cases, and units devoted to particular types of crime. Creating a new division for excessive force cases helps ensure that the review will be independent – special prosecutions division attorneys may not be charged with handling cases against the law enforcement officers with which they work.

HB214 requires cases to be presented in a preliminary hearing or inquiry before the district court in the judicial district in whose jurisdiction the incident occurred, and not to a grand jury. Preliminary hearings are public, while grand jury proceedings are not. While transparency in charging such cases is one factor to consider, HB214 will not allow the attorney general to consider any other factors: a grand jury proceeding is not an option. HB214 also takes away discretion regarding which court should hear the case: the case must be heard in the district court, although currently many preliminary hearings are conducted in magistrate court. Some of the excessive force cases, involving simple assault and battery, may be misdemeanor cases but they must still be brought for preliminary hearing in district court.

HB214 contains no provision expressly giving the attorney general the responsibility of determining whether probable cause exists to present a case in a preliminary hearing. If all cases, regardless of merit, must be brought to a public preliminary hearing, this will raise ethical concerns for the prosecuting attorney.

## **PERFORMANCE IMPLICATIONS**

HB214 removes discretion in the handling of excessive force cases, requiring the investigation and prosecution to be by the attorney general's office, and requiring the determination of probable cause in a public preliminary hearing in district court, rather than by grand jury. HB214 also dictates the internal structure of the attorney general's office, requiring establishment of a new division and unit.

## **ADMINISTRATIVE IMPLICATIONS**

The district attorneys will need to establish a procedure for referring excessive force cases to the attorney general. The attorney general will need to establish the division and unit required by HB214.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None noted.

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

Excessive force cases will be investigated and prosecuted in the jurisdiction in which the event occurred, unless the district attorney refers the case for prosecution by the office of the attorney general or arranges for prosecution by an attorney outside the office of the district attorney.

## **AMENDMENTS**

None suggested.