

<b>LFC Requester:</b>	<b>Conner Jorgensen</b>
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**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

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

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

*and*

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*{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: Date 2/8/16  
**Original**     **Amendment**        **Bill No:** SM 88  
**Correction**     **Substitute**   

**Sponsor:** Linda Lopez    **Agency Code:** 305  
**Short Title:** AG Special Excessive Force Unit    **Person Writing:** Jason Yamato  
**Title:** Unit    **Phone:** 505.222.9163    **Email:** jyamato@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
0	0		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>		1,500	1,500	3,000	Recurring	OAG Operating Fund

(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**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

#### **Synopsis:**

SM 88 seeks to create a new division in the Office of the Attorney General designed to investigate and prosecute all allegations of excessive force by law enforcement officers within the scope of their duties throughout the state. SM 88 proposes to find that excessive force prosecutions "have historically not been effectively investigated and have not been prosecuted even when effectively investigated." SM 88 also concludes that prosecutors have been reluctant to "aggressively" proceed to indict such cases and that this reluctance has prejudiced the grand jury and trial by jury process. However, the basis of these findings is unclear. SM 88 laments the lack of readily available public information regarding excessive force cases and sees this as a cause for civilian distrust of the criminal justice system. The proposed solution is a specialized unit to be created within the Office of the Attorney General that will be exclusively tasked with "the investigation and prosecution of cases of the use of excessive force against civilians by law enforcement officers, coupled with clear prosecutorial standards upon which decisions must be based, and the prohibition of the use of grand juries for the legal determination of probable cause in favor of public preliminary hearings." SM 88 finds that this proposed "special excessive force unit" will have a chilling effect on the use of excessive force by law enforcement.

#### **FISCAL IMPLICATIONS**

SM 88 would require the creation of a new unit to have exclusive, statewide jurisdiction for the prosecution of acts excessive force committed by law enforcement. It does not, however, propose any appropriation to the Office of the Attorney General to establish and fund this unit.

#### **SIGNIFICANT ISSUES**

It is possible that special excessive force unit would be subject to constitutional challenge. Article VI Section 24 provides that the elected district attorney "shall be the law officer... of the counties within his district." Relieving the district attorney of any and all authority to investigate violent crimes committed by law enforcement officers could potentially be seen as contrary to the intention of Article VI, Section 24.

#### **PERFORMANCE IMPLICATIONS**

SM 88 purports to create a new division within the Office of the Attorney General. It would also increase the criminal caseload tremendously by conveying exclusive jurisdiction over all violent crimes committed by law enforcement while working in official capacity.

### **ADMINISTRATIVE IMPLICATIONS**

N/A

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

HB 322 proposes to create an Excessive Force Unit in the Office of the Attorney General.

### **TECHNICAL ISSUES**

N/A

### **OTHER SUBSTANTIVE ISSUES**

The nature of having a centralized office with statewide jurisdiction over dynamic crime scenes presents a number of logistical issues. The first of which is that investigations are likely to be compromised due to the fact that any response from the Office of the Attorney General could take several hours. In this time witnesses could leave and physical evidence could be tainted. Secondly, the special excessive force unit as proposed would require a large number of agents within the division. An officer involved shooting scene likely would require between six or eight agents to conduct a proper investigation. Two shooting scenes in different parts of the state would present an impossible scenario. Another issue is transportation. These issues all would require a very large appropriation in order properly conduct these investigations.

The above appropriation is limited to staffing. It is difficult to opine on all of the various scenarios that would require specialized equipment in order to make this a self-contained unit. A non-exhaustive list might include a mobile crime unit, 3d imaging equipment, thermal imagers, video and audio recording devices, office space to conduct interrogations, a holding cell, computers, cellular telephones and dedicated vehicles for agents and prosecutors. Funding would also be required for fingerprint analyses, DNA analyses, accident reconstruction, expert witnesses and ballistics analyses.

Additionally, the increase in the amount of criminal cases to be investigated and prosecuted would be tremendous. Between 2011 and 2013 the Albuquerque Police Department alone averaged 168.67 allegations of excessive force per year. Adding cases originating from all other agencies throughout the state, it would appear that the number of cases within the purview of the unit will be very high. This would also require a large number of agents assigned to the unit which would require a large appropriation.

SM 88 makes no mention of appropriation. Not only would the appropriation have to be for a very large amount, it would necessarily have to be recurring. If the unit is only funded for a finite period of time any case remaining after the unit is disbanded would be placed in serious jeopardy.

### **ALTERNATIVES**

N/A

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

Status quo

**AMENDMENTS**

N/A