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State of Minnesota

HOUSE OF REPRESENTATIVES

SPECIAL SESSION

H. F. No. 77

06/12/2020 Authored by Mariani, Becker-Finn and Xiong, J., The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division
06/16/2020 Adoption of Report: Re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to public safety; modifying a peace officer's authority to use deadly force;
1.3 assigning prosecutorial authority for peace-officer-involved deaths to the attorney
1.4 general; establishing an independent Use of Force Investigations Unit within the
1.5 Bureau of Criminal Apprehension; limiting the use of money bail for certain
1.6 offenses; requiring reports; appropriating money; amending Minnesota Statutes
1.7 2018, sections 8.01; 388.051, subdivision 1; 609.066, subdivision 2, by adding a
1.8 subdivision; 626.8452, subdivision 1; 629.53; proposing coding for new law in
1.9 Minnesota Statutes, chapters 8; 299C.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2018, section 8.01, is amended to read:

1.12 8.01 APPEARANCE.

1.13 The attorney general shall appear for the state in all causes in the supreme and federal
1.14 courts wherein the state is directly interested; also in all civil causes of like nature in all
1.15 other courts of the state whenever, in the attorney general's opinion, the interests of the state
1.16 require it. Except as provided for in section 8.37, upon request of the county attorney, the
1.17 attorney general shall appear in court in such criminal cases as the attorney general deems
1.18 proper. Upon request of a county attorney, the attorney general may assume the duties of
1.19 the county attorney in sexual psychopathic personality and sexually dangerous person
1.20 commitment proceedings under chapter 253D. Whenever the governor shall so request, in
1.21 writing, the attorney general shall prosecute any person charged with an indictable offense,
1.22 and in all such cases may attend upon the grand jury and exercise the powers of a county
1.23 attorney.

2.1 Sec. 2. **[8.37] PEACE-OFFICER-INVOLVED DEATHS.**

2.2 Subdivision 1. Definitions. (a) As used in this section, the following terms have the  
2.3 meanings provided.

2.4 (b) "Law enforcement agency" has the meaning given in section 626.84, subdivision 1,  
2.5 paragraph (f).

2.6 (c) "Officer-involved death" means the death of another that results from a peace officer's  
2.7 use of force while the officer is on duty or off duty but performing activities that are within  
2.8 the scope of the officer's law enforcement duties.

2.9 (d) "Peace officer" has the meaning given in section 626.84, subdivision 1, paragraph  
2.10 (c).

2.11 Subd. 2. Prosecution of officer-involved deaths. (a) The attorney general has charge  
2.12 of the prosecution of peace officers alleged to have caused an officer-involved death.

2.13 (b) When requested by the attorney general, a county attorney may appear for the state  
2.14 in any case instituted under this section and assist in the preparation and trial.

2.15 Subd. 3. Local assistance. Each law enforcement agency with jurisdiction over the area  
2.16 where an officer-involved death occurred must cooperate with the attorney general to the  
2.17 same extent as if the county attorney had charge of the prosecution.

2.18 Sec. 3. **[299C.80] INDEPENDENT USE OF FORCE INVESTIGATIONS UNIT.**

2.19 Subdivision 1. Definitions. (a) As used in this section, the following terms have the  
2.20 meanings provided.

2.21 (b) "Law enforcement agency" has the meaning given in section 626.84, subdivision 1,  
2.22 paragraph (f).

2.23 (c) "Officer-involved death" means the death of another that results from a peace officer's  
2.24 use of force while the officer is on duty or off duty but performing activities that are within  
2.25 the scope of the officer's law enforcement duties.

2.26 (d) "Peace officer" has the meaning given in section 626.84, subdivision 1, paragraph  
2.27 (c).

2.28 (e) "Superintendent" means the superintendent of the Bureau of Criminal Apprehension.

2.29 (f) "Unit" means the independent Use of Force Investigations Unit.

2.30 Subd. 2. Formation; special agent in charge; duty. The superintendent shall form an  
2.31 independent Use of Force Investigations Unit within the Bureau of Criminal Apprehension

3.1 to conduct officer-involved death investigations. The superintendent, in consultation with  
 3.2 the commissioner of public safety, shall select a special agent in charge of the unit.

3.3 Subd. 3. **Additional duty.** The unit may also investigate conflict of interest cases  
 3.4 involving peace officers and other public officials accused of crimes, including but not  
 3.5 limited to sexual assault.

3.6 Subd. 4. **Staff; support.** The unit will employ peace officers and staff to conduct  
 3.7 investigations and the superintendent shall develop and implement policies and procedures  
 3.8 to ensure no conflict of interest exists with agents assigned to investigate a particular incident.  
 3.9 The superintendent may permit bureau resources not directly assigned to this unit to be used  
 3.10 to assist the unit in fulfilling the duties assigned in this section.

3.11 Subd. 5. **Conflicts.** When a peace officer employed by the Bureau of Criminal  
 3.12 Apprehension is the subject of an officer-involved death investigation, the investigation  
 3.13 shall be conducted by an investigatory agency selected by the attorney general.

3.14 Subd. 6. **Reporting.** The superintendent must make all case files publicly available on  
 3.15 the bureau's website within 30 days of the end of the last criminal appeal of a subject of an  
 3.16 investigation, as provided for in chapter 13. By February 1 of each year, the superintendent  
 3.17 shall report to the commissioner, the governor, and the chairs and ranking minority members  
 3.18 of the legislative committees with jurisdiction over public safety finance and policy the  
 3.19 following information about the unit: the number of investigations initiated; the number of  
 3.20 incidents investigated; the outcomes or current status of each investigation; the charging  
 3.21 decisions made by the prosecuting authority of incidents investigated by the unit; the number  
 3.22 of plea agreements reached in incidents investigated by the unit; and any other information  
 3.23 relevant to the unit's mission.

3.24 Sec. 4. Minnesota Statutes 2018, section 388.051, subdivision 1, is amended to read:

3.25 Subdivision 1. **General provisions.** The county attorney shall:

3.26 (1) appear in all cases in which the county is a party;

3.27 (2) give opinions and advice, upon the request of the county board or any county officer,  
 3.28 upon all matters in which the county is or may be interested, or in relation to the official  
 3.29 duties of the board or officer;

3.30 (3) except as provided in section 8.37, prosecute felonies, including the drawing of  
 3.31 indictments found by the grand jury, and, to the extent prescribed by law, gross  
 3.32 misdemeanors, misdemeanors, petty misdemeanors, and violations of municipal ordinances,  
 3.33 charter provisions and rules or regulations;

4.1 (4) attend before the grand jury, give them legal advice, and examine witnesses in their  
4.2 presence;

4.3 (5) request the court administrator to issue subpoenas to bring witnesses before the grand  
4.4 jury or any judge or judicial officer before whom the county attorney is conducting a criminal  
4.5 hearing;

4.6 (6) attend any inquest at the request of the coroner; and

4.7 (7) appear, when requested by the attorney general, for the state in any case instituted  
4.8 by the attorney general in the county attorney's county or before the United States Land  
4.9 Office in case of application to preempt or locate any public lands claimed by the state and  
4.10 assist in the preparation and trial.

4.11 Sec. 5. Minnesota Statutes 2018, section 609.066, is amended by adding a subdivision to  
4.12 read:

4.13 Subd. 1a. **Legislative intent.** The legislature hereby finds and declares the following:

4.14 (1) that the authority to use deadly force, conferred on peace officers by this section, is  
4.15 a critical responsibility that shall be exercised judiciously and with respect for human rights  
4.16 and dignity and for the sanctity of every human life. The legislature further finds and declares  
4.17 that every person has a right to be free from excessive use of force by officers acting under  
4.18 color of law;

4.19 (2) as set forth below, it is the intent of the legislature that peace officers use deadly  
4.20 force only when necessary in defense of human life. In determining whether deadly force  
4.21 is necessary, officers shall evaluate each situation in light of the particular circumstances  
4.22 of each case and shall use other available resources and techniques if reasonably safe and  
4.23 feasible to an objectively reasonable officer;

4.24 (3) that the decision by a peace officer to use deadly force shall be evaluated from the  
4.25 perspective of a reasonable officer in the same situation, based on the totality of the  
4.26 circumstances known to or perceived by the officer at the time, rather than with the benefit  
4.27 of hindsight, and that the totality of the circumstances shall account for occasions when  
4.28 officers may be forced to make quick judgments about using deadly force; and

4.29 (4) that peace officers should exercise special care when interacting with individuals  
4.30 with physical, mental health, developmental, or intellectual disabilities as an individual's  
4.31 disability may affect the individual's ability to understand or comply with commands from  
4.32 peace officers.

5.1 Sec. 6. Minnesota Statutes 2018, section 609.066, subdivision 2, is amended to read:

5.2 Subd. 2. **Use of deadly force.** (a) Notwithstanding the provisions of section 609.06 or  
5.3 609.065, the use of deadly force by a peace officer in the line of duty is justified only when  
5.4 the officer reasonably believes, based on the totality of the circumstances, that such force  
5.5 is necessary:

5.6 (1) to protect the peace officer or another from ~~apparent~~ imminent death or great bodily  
5.7 harm; or

5.8 (2) to effect the arrest or capture, or prevent the escape, of a person whom the peace  
5.9 officer knows or has reasonable grounds to believe has committed or attempted to commit  
5.10 a felony ~~involving the use or threatened use of deadly force; or~~ and the officer reasonably  
5.11 believes that the person will cause death or great bodily harm to another person unless  
5.12 immediately apprehended.

5.13 ~~(3) to effect the arrest or capture, or prevent the escape, of a person whom the officer~~  
5.14 ~~knows or has reasonable grounds to believe has committed or attempted to commit a felony~~  
5.15 ~~if the officer reasonably believes that the person will cause death or great bodily harm if~~  
5.16 ~~the person's apprehension is delayed.~~

5.17 (b) A peace officer shall not use deadly force against a person based on the danger the  
5.18 person poses to self if an objectively reasonable officer would believe the person does not  
5.19 pose an imminent threat of death or great bodily harm to the peace officer or to another  
5.20 person.

5.21 Sec. 7. Minnesota Statutes 2018, section 626.8452, subdivision 1, is amended to read:

5.22 Subdivision 1. **Deadly force policy.** By January 1, 1992, the head of every local and  
5.23 state law enforcement agency shall establish and enforce a written policy governing the use  
5.24 of force, including deadly force, as defined in section 609.066, by peace officers and part-time  
5.25 peace officers employed by the agency. The policy must be consistent with the provisions  
5.26 of section 609.066, ~~subdivision~~ subdivisions 1a and 2, and may not prohibit the use of deadly  
5.27 force under circumstances in which that force is justified under section 609.066, subdivision  
5.28 2.

5.29 Sec. 8. Minnesota Statutes 2018, section 629.53, is amended to read:

5.30 **629.53 PROVIDING RELEASE ON BAIL; COMMITMENT.**

5.31 Subdivision 1. **Pretrial release.** A person charged with a criminal offense may be  
5.32 released with or without bail in accordance with rule 6.02 of the Rules of Criminal Procedure.

6.1 and this section. To the extent a court determines there is a conflict between rule 6.02 of  
6.2 the Rules of Criminal Procedure and this section, this section shall control.

6.3 Subd. 2. Release of a person charged with a misdemeanor offense. (a) A defendant  
6.4 charged with a misdemeanor offense, other than a violation identified in paragraph (e), must  
6.5 be released on personal recognizance unless the court determines that there is a substantial  
6.6 likelihood that the defendant will not appear at future court proceedings or poses a threat  
6.7 to a victim's safety.

6.8 (b) If the court determines that there is a substantial likelihood that a defendant will not  
6.9 appear at future court appearances, the court must impose the least restrictive conditions of  
6.10 release that will reasonably assure the person's appearance as ordered. These conditions of  
6.11 release include but are not limited to an unsecured appearance bond or money bail on which  
6.12 the defendant may be released by posting cash or sureties. If the court sets conditions of  
6.13 release other than an unsecured appearance bond or money bail, it must also set money bail  
6.14 without other conditions on which the defendant may be released.

6.15 (c) The court must not impose a financial condition of release on a defendant subject to  
6.16 this subdivision that results in the pretrial detention of the defendant. Financial conditions  
6.17 of release include but are not limited to money bail.

6.18 (d) If a defendant subject to this subdivision remains in custody for more than 48 hours  
6.19 after the court imposes a financial condition of release, the court must review the conditions  
6.20 of release and there exists a rebuttable presumption that the financial condition resulted in  
6.21 the pretrial detention of the defendant.

6.22 (e) This subdivision does not apply to violations of:

6.23 (1) section 169A.20;

6.24 (2) section 518B.01;

6.25 (3) section 609.224;

6.26 (4) section 609.2242;

6.27 (5) section 609.748;

6.28 (6) section 609.749; and

6.29 (7) section 629.75.

6.30 (f) If a defendant released pursuant to paragraph (a) or (b) fails to appear at a required  
6.31 court hearing, the court shall issue a summons or warrant directing that the defendant appear  
6.32 in court pursuant to rule 6.03 of the Rules of Criminal Procedure.

7.1 Subd. 3. **Presumption of release on personal recognizance.** Except as described in  
 7.2 subdivision 2, on appearance before the court, a defendant charged with a misdemeanor  
 7.3 must be released on personal recognizance or an unsecured appearance bond unless otherwise  
 7.4 provided by law, or a court determines that release will endanger the public safety, a victim's  
 7.5 safety, or will not reasonably assure the defendant's appearance.

7.6 Subd. 4. **Money bail; disposition.** Money bail is the property of the accused, whether  
 7.7 deposited by that person or by a third person on the accused's behalf. When money bail is  
 7.8 accepted by a judge, that judge shall order it to be deposited with the court administrator.  
 7.9 The court administrator shall retain it until the final disposition of the case and the final  
 7.10 order of the court disposing of the case. Upon release, the amount released must be paid to  
 7.11 the accused personally or upon that person's written order. In case of conviction, the judge  
 7.12 may order the money bail deposit to be applied to any fine or restitution imposed on the  
 7.13 defendant by the court and, if the fine or restitution is less than the deposit, order the balance  
 7.14 to be paid to the defendant. Money bail deposited with the court or any officer of it is exempt  
 7.15 from garnishment or levy under attachment or execution.

7.16 **EFFECTIVE DATE.** This section is effective August 1, 2020.

7.17 Sec. 9. **ATTORNEY GENERAL; APPROPRIATION.**

7.18 \$..... in fiscal year 2021 is appropriated from the general fund to the attorney general  
 7.19 for conducting criminal prosecutions, including prosecution of peace-officer-involved death  
 7.20 cases pursuant to Minnesota Statutes, section 8.37. This amount is added to the agency's  
 7.21 base.

7.22 Sec. 10. **APPROPRIATION FOR INDEPENDENT USE OF FORCE**  
 7.23 **INVESTIGATIONS UNIT IN BCA.**

7.24 \$..... in fiscal year 2021 is appropriated from the general fund to the commissioner of  
 7.25 public safety to establish and operate the independent Use of Force Investigations Unit in  
 7.26 the Bureau of Criminal Apprehension. \$..... is added to the agency's base for this purpose.