

Special Prosecution in Cases of Police Misconduct (HB 15-1286)

SHORT DESCRIPTION:

Under current law, a person can file an affidavit with a court having jurisdiction over the matter alleging that a prosecuting attorney's decision not to prosecute an alleged offense was arbitrary or capricious. If the court agrees, it can order the offense be prosecuted by the prosecuting attorney or appoint a special prosecutor from another judicial district to proceed with the case. Special prosecutors are appointed from a pool of district attorneys and their assistants or deputies, or a licensed private attorney may be appointed.

Current law provides for compensation of ordinary and necessary expenses, including travel, for full-time district attorneys, assistant district attorneys, or deputy district attorneys serving as a special prosecutor. Private attorneys are also paid a daily fee of up to 1/20th of the monthly salary for a judicial officer in the particular jurisdiction in which the case is being heard.

For an alleged offense involving police misconduct resulting in serious bodily injury or death, this bill allows the court to require prosecution if the court finds that the decision not to prosecute was an abuse of discretion.

STATUS: Senate State, Veterans and Military Affairs Committee. Passed the House 40-24.

SPONSOR: Prime: Senator Carroll Sponsor & Senator Jessie Ulibarri

HOUSE AMENDMENTS: None

FACTS:

- Examples in Colorado of officer involved shooting deaths:
 - Naeschylus Vinzant, was an unarmed man shot while running away from police
 - Jack Jacquez, Jr., was shot by police in his home while holding a skate board. The officer was investigated and charged with second degree murder
 - Brandon Ellingson, confronted police in a park, ran away and was shot 14 times, 7 in the back.
 - Jessica Hernandez, allegedly drove a vehicle at police officers who were on foot and was shot 4 times.
- Investigations of officer-involved shoots originate within the police department. The officer is put on leave and the department internal affairs division investigates. The Internal Affairs division then brings it to the District Attorney to determine if charges should be filed.
- There is a lack of transparency and independent oversight in the investigation as well as filing charges by the DA, who resides in the same county and typically has strong working relationship with the police department.
- In some counties, the District Attorney's office provides training for police officers as cadets.
- Providing independent oversight is important to rebuilding public trust in the police who are charged with protecting Coloradans and rely on that trust to do their jobs safely and efficiently.