

115TH CONGRESS  
1ST SESSION

# H. R. 4332

To provide that in the case of a law enforcement officer who uses deadly force against a person, and thereby causes the death of that person, a hearing shall be conducted before a judge to determine whether there is probable cause for the State to bring criminal charges against the law enforcement officer relating to the death of the person, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 9, 2017

Mr. JOHNSON of Georgia (for himself, Mr. COHEN, Ms. NORTON, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. CONNOLLY, Mrs. WATSON COLEMAN, Mr. HASTINGS, Mr. DAVID SCOTT of Georgia, Mr. CLAY, Mr. ELLISON, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. CICILLINE, Mr. CONYERS, and Ms. MOORE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide that in the case of a law enforcement officer who uses deadly force against a person, and thereby causes the death of that person, a hearing shall be conducted before a judge to determine whether there is probable cause for the State to bring criminal charges against the law enforcement officer relating to the death of the person, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Grand Jury Reform  
3 Act of 2017”.

4 **SEC. 2. FINDINGS.**

5       The Congress finds the following:

6           (1) Grand juries are typically used as the proc-  
7       ess by which allegations of police misconduct are  
8       prosecuted.

9           (2) There exists a symbiotic relationship be-  
10      tween local prosecutors and the law enforcement of-  
11      ficers who regularly testify in routine grand jury in-  
12      vestigations.

13          (3) The closeness of this relationship creates  
14      public suspicion that accused police officers receive  
15      preferential consideration from grand juries when  
16      they are subject to grand jury investigations.

17          (4) Police officers have the right to appear be-  
18      fore the grand jury investigating allegations of  
19      wrongdoing by said officer, and give testimony not  
20      subject to a thorough cross examination.

21          (5) Grand jury proceedings are by law secret  
22      proceedings.

23          (6) The secret grand jury process has histori-  
24      cally resulted in a refusal to indict when the subject  
25      of their investigation is a local law enforcement offi-  
26      cer.

1           (7) The recent grand jury proceedings following  
2           the deaths of Michael Brown and Eric Garner have  
3           followed historical tradition, ending with a refusal to  
4           indict the law enforcement officers involved in their  
5           deaths.

6           (8) The American people have lost confidence in  
7           the secretive grand jury process when it is used to  
8           evaluate allegations of police misconduct.

9           (9) The loss of confidence in our system of jus-  
10          tice leads to the undermining of the principles of  
11          equality and justice upon which this country was  
12          founded.

13          (10) Preliminary hearings are often replaced  
14          with direct presentments, whereby the prosecutor  
15          may send a case directly to the grand jury without  
16          a public preliminary hearing.

17 **SEC. 3. HEARING BEFORE A JUDGE REQUIRED.**

18          (a) RECEIPT OF GRANT FUNDS.—In order for a  
19          State or unit of local government in a State to be eligible  
20          to receive Federal funding under subpart 1 of part E of  
21          title I of the Omnibus Crime Control and Safe Streets Act  
22          of 1968 (34 U.S.C. 10151 et seq.), the State shall comply  
23          with the requirements of this section.

24          (b) NOTIFICATION REQUIREMENTS.—

1           (1) NOTIFICATION TO PROSECUTOR.—In the  
2           case of a law enforcement officer of a local law en-  
3           forcement agency who uses deadly force against a  
4           person in the course of the officer’s employment,  
5           and thereby causes the death of that person, not  
6           later than 24 hours after the death occurs, the chief  
7           officer of the law enforcement agency of the locality  
8           in which the death occurred shall report the death  
9           to the elected prosecutor of that locality.

10          (2) NOTIFICATION TO GOVERNOR.—Not later  
11          than 24 hours after receiving notice under para-  
12          graph (1), the elected prosecutor of the locality in  
13          which the death occurred shall report the death to  
14          the Governor of that State.

15          (c) HEARING REQUIREMENT; APPOINTMENT OF SPE-  
16          CIAL PROSECUTOR.—

17          (1) IN GENERAL.—Not later than 3 days after  
18          receiving notice under subsection (b)(2), the Gov-  
19          ernor of the State in which the death occurred shall  
20          appoint a special prosecutor to present evidence on  
21          behalf of the State at a hearing before a judge in  
22          the appropriate court, in order to determine whether  
23          probable cause exists for the State to bring criminal  
24          charges against the law enforcement officer relating  
25          to the death of the person, which determination shall

1 be made by the judge. The Governor shall use a ran-  
2 dom process to select the special prosecutor from  
3 among all of the elected prosecutors in the State, ex-  
4 cluding the elected prosecutor of the locality in  
5 which the death occurred.

6 (2) TIMING.—The hearing described in para-  
7 graph (1) shall be held not later than 90 days after  
8 the appointment of the special prosecutor, unless the  
9 judge determines that good cause exists to delay the  
10 hearing.

11 (3) COURT TO REMAIN OPEN TO THE PUB-  
12 LIC.—Except as determined appropriate by the pre-  
13 siding judge, in a hearing described in paragraph  
14 (1), the court shall remain open to the public, and  
15 upon scheduling the hearing the judge shall provide  
16 notice to the public of the date, time, and location  
17 of the hearing.

18 (d) STATE LAW ENFORCEMENT AGENCY TO HAVE  
19 EXCLUSIVE AUTHORITY OVER INVESTIGATION.—

20 (1) IN GENERAL.—Not later than 24 hours  
21 after receiving notice under subsection (b)(2), the  
22 Governor shall report the death to the chief officer  
23 of the State law enforcement agency of the State in  
24 which the death occurred, and the State law enforce-  
25 ment agency shall assume exclusive control of the in-

1 investigation of the death during the pendency of the  
2 probable cause hearing.

3 (2) COOPERATION OF LOCAL LAW ENFORCE-  
4 MENT AGENCY.—The chief officer of the law enforce-  
5 ment agency of the locality in which the death oc-  
6 curred shall cooperate with the special prosecutor  
7 and the chief officer of the State law enforcement  
8 agency by responding promptly to requests for infor-  
9 mation related to the death.

10 (e) WRITTEN DETERMINATION OF PROBABLE  
11 CAUSE.—Not later than 5 days after the conclusion of a  
12 hearing described in subsection (c), the judge presiding  
13 over the hearing shall issue the determination described  
14 in subsection (c) in writing, and shall submit such deter-  
15 mination to the elected prosecutor of the locality in which  
16 the death occurred. Such determination shall be made  
17 available to the public.

18 (f) RECOMMENDATIONS OF THE SPECIAL PROS-  
19 ECUTOR.—Upon the conclusion of a hearing described in  
20 subsection (c), the special prosecutor shall submit written  
21 recommendations to the elected prosecutor of the locality  
22 in which the death occurred, including a recommendation  
23 regarding whether criminal charges should be brought  
24 against the law enforcement officer relating to the death  
25 of the person.

1 (g) TOLLING OF PROCEDURAL DEADLINES.—Any  
2 applicable filing or other procedural deadlines are tolled  
3 during the pendency of the hearing described in subsection  
4 (c).

5 (h) PRESERVATION OF PROSECUTORIAL DISCRE-  
6 TION.—The hearing described in subsection (c) shall be  
7 purely advisory, and shall have no binding effect on the  
8 elected prosecutor of the locality in which the death oc-  
9 curred. After the conclusion of the hearing described in  
10 subsection (c), the elected prosecutor of the locality in  
11 which the death occurred shall retain prosecutorial discre-  
12 tion as to whether to bring charges against the law en-  
13 forcement officer, including whether to hold a grand jury  
14 proceeding in the appropriate court.

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