

September 20th, 2021

Initiative Coordinator
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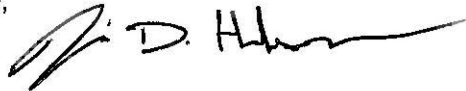
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary for Amended Version of The Elijah McClain Police Accountability Act

Pursuant to California Elections Code 9002(b), I am submitting amended text for proposed measure 21-0010 to your office. I request that you prepare a circulating title and summary of the amended measure as required by law. I have included with this letter a printed copy of the amended text.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact Jai Hudson at: (714) 394-9823.

Sincerely,



Jai Hudson
People's Advocate

Elijah McClain Police Accountability Act

Introduction

This bill recognizes that it is not the final solution to a culture of police brutality, and it does not pose as such. Instead, this bill stands as a proposed minimum set of regulations that will end the ability of peace officers to use excessive and/or lethal force against citizens without consequence within the current structure of the police system. Full restructuring and reform of police forces may take years to accomplish, and in the meantime, this bill can be enacted immediately and reduce unnecessary victimization and loss of life significantly. This bill does not conflict with the idea of making large-scale financial and structural changes to police forces; it is a proposed set of legislation that can be constituted and serve to govern the start of the restructured police forces we aim to create. The creators of this bill are actively constructing potential ways to address problematic interaction between municipalities and their citizens. We encourage you all to form your own policy initiatives, and we hope you can find a better solution faster than we can. In the meantime, we will continue to work as fast as we can without compromising the validity of our solution.

Police brutality has proceeded unchecked for so long because of the judicially created doctrine called qualified immunity. This means that peace officers are immune from prosecution unless it can be shown that they knowingly violated a human being's civil rights as it relates to clearly established law. This reference to 'clearly established law,' as you know, makes prosecuting a police officer's action much more difficult than prosecuting the action of a citizen because unless an officer violated someone's rights in exactly the same way in a prior case, the officer will receive immunity.

We recognize that the specific purpose of qualified immunity is to protect a public official in the event that he or she violates someone's human and civil liberties, therefore, this bill will end qualified immunity for peace officers, with the intent to hold officers to the same legal standard that any citizen is held. All citizens have the right to use force to defend themselves or others in service of public good, and the right to use lethal force in the face of a threat of death or great bodily harm. Qualified immunity shifts this standard to involve an officer's perception of threat. Ending qualified immunity will hold officers legally responsible for accurately identifying threats and using only the objectively necessary amount of force.

Officers have often been afforded reduced charges, such as manslaughter for killing an unarmed person. Under this bill, officers are subject to the same charges that would be brought against a civilian. For example, use of unnecessary force is assault, and shooting and killing someone is murder. In addition, in any case where any officer who pleads guilty or no contest to a charge involving excessive force, the officer should be immediately fired and barred from joining another police force. This is included in the process of decertification as in California Bill SB2 put forth by Steven C. Bradford currently in committee.

A citizen has the right to intervene in violence between other citizens in service of the public good. This is not so in the case of violence committed by a peace officer against a citizen because only another peace officer can intervene in such a case. Given this discrepancy, an officer has a heightened responsibility to intervene when another officer is using excessive force, and a heightened punishment is warranted when an officer chooses not to do so. This initiative seeks consequences for officers who

choose not to intervene in police violence as if the officers who fail to intervene committed the violence themselves.

Peace officers count on each other in life or death situations, they have a special bond which often prevents them from reporting the misconduct of other officers. To mitigate this, this bill proposes that all officers wear body cameras which must be turned on during all interaction with the public. In order to prevent an officer who wishes to evade accountability from turning off their camera, this bill provides that missing footage of an incident will be legally interpreted by courts and investigative authorities as evidence of police misconduct. In addition, a simple and tangible path to report police misconduct is established and an investigation into all reports is mandatory.

Finally, this bill calls for increased training for peace officers. Even an officer who does not have violent tendencies is likely to resort to violence if he or she feels his or her life is threatened. Officers feel threatened more than necessary because they do not have adequate training to deal with some of the situations they encounter. For this reason, this bill calls for officers to spend 20% of work hours in continued training on peaceable interaction, de-escalation, proper threat identification, and minimal and appropriate use of force.

1. For purposes of this measure, the terms "peace officer," "police officer," "police," and "officer," are defined as all peace officers, as specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.4, and 830.5 of chapter 4.5 of the California Penal Code.
2. Laws governing qualified immunity.
 - a. No provision of this bill shall be interpreted to enhance or extend qualified immunity granted to peace officers.
 - b. An officer's frame of mind at the time force was used, and their judgment of the necessity of the use of force to the extent they used it at the time, shall have no legal bearing over the determination of the necessity of the force the officer used.
 - c. Qualified immunity in cases where use of force is involved shall be based on a third party assessment on a case by case basis of what is reasonable and objective necessary use of force to carry out an arrest or to defend the public from imminent danger such that:
 - c.i. If the officer uses an objectively reasonable approximation of the minimum force necessary to bring about the safe resolution of an encounter, qualified immunity will stand, and;
 - c.ii. If an officer uses force objectively in excess of the amount required to bring about the safe resolution of an encounter, qualified immunity shall not apply, and;
 - c.iii. An officer found to be objectively using force in excess of what is necessary to bring about the safe resolution of an encounter shall be open to both civil and criminal penalties as if he/she was a civilian.
 - d. Qualified immunity shall not apply for officers using crowd control weaponry including, but not limited to; tear gas, bean bag rounds, and rubber bullets to disperse a peaceful protest, regardless of local curfews or other decrees meant to limit the ability of a crowd to engage in peaceful demonstration. In addition:
 - d.i. A crowd which was engaged in peaceful protest defined as a protest where no physical harm is perpetrated against peace officers or other citizens prior to

peace officers directing the use of force, including, but not limited to; tear gas, bean bag rounds, rubber bullets, or pushing or striking with riot shields or batons, shall be considered to be acting in self-defense when forcefully resisting peace officers; thus, qualified immunity will not apply when using force against such a crowd.

- e. Qualified immunity, in cases where threat of deadly force by the removal of the officer's duty weapon from its holster is involved, shall be based on a reasonable and objective analysis of the necessity of the threat of use of deadly force to protect the public from imminent danger such that:
 - e.i. If the officer objectively needed to remove their duty weapon from its holster to deter an imminent danger to the officer or the public, qualified immunity shall stand, and;
 - e.ii. If the officer objectively and reasonably did not need to remove their duty weapon from its holster to deter an imminent danger to the officer's person or the public, qualified immunity shall not stand, and;
 - e.iii. An officer found to have removed their duty weapon from its holster and aimed it at a person who did not pose a deadly threat shall be open to the same civil and criminal penalties that a civilian would be.

3. Charges brought for use of excessive force.

- a. An officer found by a jury to have used objectively excessive force, or who pleads guilty or nolo contendere to charges of use of excessive force:
 - a.i. Shall have no claim to qualified immunity.
 - a.ii. Shall be immediately fired and permanently barred from employment as a peace officer in the state of California in all cities, counties, and municipalities.
 - a.iii. Records related to decertification of peace officers may be made available to out of state agencies upon request.
- b. The following is a non-exhaustive list of charges in which an officer found guilty of use of excessive force may be convicted:
 - b.i. An officer who unnecessarily punches, kicks, chokes, restricts the ability to breathe of, or otherwise causes physical pain to a civilian, shall be guilty of aggravated assault.
 - b.ii. An officer who unnecessarily employs a baton, taser, or other weapon, other than a firearm, against a civilian shall be guilty of assault with a deadly weapon.
 - b.iii. An officer who employs tear gas or rubber bullets against a crowd who is peacefully protesting, or against a crowd which was peacefully protesting prior to force applied by peace officers, shall be guilty of assault with a deadly weapon.
 - b.iv. An officer found to have been using excessive force when he or she ends the life of a civilian shall be charged, prosecuted, and tried for that crime.
 - b.v. Aggravating Factors: Any peace officer convicted of a crime against a member of a protected group, as outlined in California Penal Code 422.55, shall be subjected to the sentencing enhancements associated with committing a hate crime (California Penal Code 422.7, and California Penal Code 422.75).

4. Obligation of a peace officer to intervene in another officer's use of excessive force.

- a. A peace officer shall be deemed to have been obligated to intervene in another officer's use of excessive force if:
 - a.i. A jury determines that the officer's use of force was objectively excessive, or;
 - a.ii. The officer pleads guilty or nolo contendere to use of excessive force, and;
 - a.iii. The officer near the use of excessive force saw or objectively should have seen the use of excessive force and was physically close enough to the officer using excessive force to intervene.
 - b. A peace officer who intervenes in another officer's use of excessive force must report the other officer's use of excessive force to the appropriate investigative agency (e.g. Internal Affairs) as soon as reasonably possible.
 - c. A peace officer who is objectively in a position to intervene in the use of excessive force and fails to do so will face related charges if the officer who used excessive force is found guilty.
 - d. A peace officer who intervenes in excessive force and does not report it to the appropriate investigative agency shall be subject to an independent investigation in accordance with due process potentially related to obstruction of justice.
5. Peace officer monitoring.
- a. All peace officers shall be required to wear fully charged, active, unobstructed body cameras during all on-duty interactions with the public.
 - b. All body camera footage shall be uploaded in accordance with current privacy laws to a public website within 72 hours post-incident after it is taken in a format searchable by officer name, date, and/or badge number.
 - c. Officers shall be responsible for maintaining the integrity of their respective body cameras such that:
 - c.i. If body camera footage which covers an event reported by a civilian to have been discriminatory, unnecessarily violent, or otherwise an instance of officer misconduct, the missing body camera footage shall be assumed to have shown the reported officer misconduct, and;
 - c.ii. The investigator looking into the claim must immediately report the incident to the District Attorney's office with a note that body camera footage is missing, and;
 - c.iii. The District Attorney shall deem the missing body camera footage to warrant an independent investigation with the option to formally file charges against the officer for the alleged misconduct.
6. Reporting and investigation of officer misconduct.
- a. All police websites and home pages shall prominently display a link to report officer misconduct, and all submissions shall be investigated by the appropriate authority beginning within 72 hours of submission.
 - b. All police stations must establish a hotline for reporting officer misconduct, and prominently display the number to that hotline on their respective home pages. All calls reporting officer misconduct must be followed up by a representative of the applicable internal investigative agency within 24 hours, and the investigation related to the claim must be initiated within 72 hours.
 - c. At the conclusion of an investigation into officer misconduct, the investigating agent must, as soon as reasonably possible, send an email to the complainant including the

conclusion of the investigation, how that conclusion was reached, a link to all body and/or dash camera footage of the incident, and, if applicable, a copy of the report sent to the District Attorney, and post a copy of all such information to a web page that is clearly linked to the police website's home page.

- d. The officer investigating an incident of officer misconduct or brutality shall use this bill as a guideline for considering the criminality of the misconduct such that:
 - d.i. The determination of whether or not force used was excessive shall be based only on a standard of objective reasonableness assessed by a third party or by the courts, and;
 - d.ii. The officer's perception of the reasonableness of force at the time of its use shall be investigated, and;
 - d.iii. Missing body camera footage shall be investigated thoroughly as it may prove that the alleged misconduct occurred, and this should trigger an automatic submission and independent investigation of the missing footage by the District Attorney's office.

7. Peace Officer training.

- a. 20% of the current and intact police budget and on-shift hours for all peace officers shall be shifted to training. Specifically;
 - a.i. Patrols and available response units will be reduced by 20%, and;
 - a.ii. 20% of an officer's time up to 40 hours a week (i.e., if the officer works five 8 hour shifts, this would be equivalent to one 8 hour shift) will be spent in continued training on de-escalation, proper threat identification, proper use of non-lethal restraint and combat methods, diffusion of tense situations, and psychological training related to evidence based reduction in use of force cases, and;
 - a.iii. This shall be paid for by re-allocating 20% of the police budget associated with patrolling and call response.
 - a.iv. Funding for peace officer training listed in the above sections will not result in the reduction of funding for other public service offerings included but not limited to social service programs, social wellness, houseless services, public health, education, and other programs serving citizens and their community.