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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 284                      **Hearing Date:** July 11, 2017  
**Author:** McCarty  
**Version:** July 3, 2017  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Department of Justice: Officer-Involved Shootings: Report*

## HISTORY

**Source:** California Attorney General's Office

**Prior Legislation:** AB 86 (McCarty), 2015, failed in Assembly Appropriation.  
SB 227 (Mitchell), Ch. 175, Stats. of 2015

**Support:** American Civil Liberties Union; California Civil Liberties Advocacy; California Immigrant Policy Center; National Action Network San Diego & Imperial Counties

**Opposition:** Association of Orange County Deputy Sheriffs; California State Sheriffs' Association; California Statewide Law Enforcement Association; Fraternal Order of Police; Long Beach Police Officers Association; Peace Officers Research Association of California; Sacramento County Deputy Sheriffs' Association

**Assembly Floor Vote:** 45 - 29

## PURPOSE

***The purpose of this bill is to require the Department of Justice to collect information regarding peace officer-involved shootings resulting in death or serious injury between the dates of January 1, 2015 and December 31, 2016.***

*Existing law* specifies that subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. (Cal. Const., Art. 5, § 13.)

*Existing law* states that it shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. (Cal. Const., Art. 5, § 13.)

*Existing law* provides that the Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their perspective jurisdictions as to the Attorney General may seem advisable. (Cal. Const., Art. 5, § 13.)

*Existing law* states that whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violation of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office. (Cal. Const., Art. 5, § 13.)

*Existing law* specifies that the Attorney General has direct supervision over the district attorneys of the several counties of the State and may require of them written reports as to the condition of public business entrusted to their charge. (Gov. Code, § 12550.)

*Existing law* provides that when the Attorney General deems it advisable or necessary in the public interest, or when directed to do so by the Governor, he shall assist any district attorney in the discharge of his duties, and may, where he deems it necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect he has all the powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process. (Gov. Code, § 12550.)

*Existing law* states that if a district attorney is disqualified to conduct any criminal prosecution within the county, the Attorney General may employ special counsel to conduct the prosecution. The attorney's fee in such case is a legal charge against the state. (Gov. Code, § 12550.)

*Existing law* states that if a district attorney is disqualified to conduct any criminal prosecution within the county, the Attorney General may employ special counsel to conduct the prosecution. The attorney's fee in such case is a legal charge against the State. (Gov. Code, § 12553.)

*Existing law* states that when requested to do so by the grand jury of any county, the Attorney General may employ special counsel and special investigators, whose duty it shall be to investigate and present the evidence in such investigation to such grand jury. (Pen. Code, § 936.)

*Existing law* provides that when a grand jury request special counsel, services of such special counsel and special investigators shall be a count charge of such county. (Pen. Code, § 936.)

*Existing law* specifies that the district attorney is the public prosecutor, except as otherwise provided by law. (Gov. Code, § 25600.)

*Existing law* states that a public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses. (Gov. Code, § 25600.)

*Existing law* requires each department or agency in this state that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public. (Pen. Code, § 832.5, subd. (a)(1).)

*Existing law* allows each department or agency that employs custodial officers, to establish a procedure to investigate complaints by members of the public against those custodial officers employed by these departments or agencies, provided however, that any procedure so established

shall comply with the provisions of this section and with other provisions, as specified. (Pen. Code, § 832.5, subd. (a)(2).)

*Existing law* requires complaints and any reports or findings relating to these complaints be retained for a period of at least five years. (Pen. Code, § 832.5, subd. (b).)

*Existing law* specifies that all complaints retained may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law. (Pen. Code, § 832.5, subd. (b).)

*Existing law* prohibits complaints by members of the public that are determined by the peace or custodial officer's employing agency to be frivolous, or unfounded or exonerated, or any portion of a complaint that is determined to be frivolous, unfounded, or exonerated, from being maintained in that officer's general personnel file. However, these complaints shall be retained in other, separate files that shall be deemed personnel records for purposes of the California Public Records Act. (Pen. Code, § 832.5, subd. (c).)

*Existing law* allows a department or agency that employs peace or custodial officers to release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action. (Pen. Code, § 832.7, subd. (d).)

*Existing law* requires the department or agency to provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition. (Pen. Code, § 832.7, subd. (e)(1).)

*This bill* provides that the Department of Justice (DOJ) shall collect information regarding peace officer-involved shootings resulting in death or serious injury between the dates of January 1, 2015 and December 31, 2016. The comprehensive study shall review the following:

- 1) The nature and the circumstances of each incident and the characteristics of the individuals involved.
- 2) The policies, procedures, and training of the agency that employed the peace officer.
- 3) The oversight and investigation of peace officer-involved shootings and serious uses of force.

*This bill* specifies that by April 1, 2018, as specified, the DOJ shall confer with stakeholders, and prepare a written report describing its findings and recommendations and make that report available to the public.

*This bill* specifies that the study conducted pursuant to this section does not constitute a civil or criminal investigation and does not take the place of all other appropriate investigations.

## COMMENTS

### 1. Need for This Bill

According to the author:

The aftermath of high profile cases of Michael Brown and Eric Garner have led to a public outcry for an increased level of independent oversight of officer involved shootings. In July 2016, Joseph Mann was shot 18 times by Sacramento police officers in an incident that was captured by video and made public. The local district attorney found that the officers involved acted lawfully.

There is a growing skepticism and a perceived conflict of interest, of the current process of local district attorneys investigating local police. Given that they work so closely, it is a valid question of whether this is the most transparent process for the public. There is a growing appetite, both at the national and local level, to create a better and more transparent system for officer involved shootings that is fair to police, families, and the community in order to restore public trust.

In March 2015, the “President’s Task Force on 21st Century Policing,” released a report with recommendations and action items in order to strengthen community policing and trust among law enforcement and the communities they serve. The report calls for increasing transparency and eliminating or minimizing bias for law enforcement agencies. Key recommendations:

- 2.2.3 ACTION ITEM: The task force encourages policies that mandate the use of external and independent prosecutors in cases of police use of force resulting in death, officer involved shootings resulting in injury or death, or in-custody deaths.
- 2.3 RECOMMENDATION: Law enforcement agencies are encouraged to implement nonpunitive peer review of critical incidents separate from criminal and administrative investigations.

Further in a 2016 a Stanford Law School study, “At Arm’s Length: Improving Criminal Investigations of Police Shootings,” opined that police departments and district attorneys lack the independence and incentive to investigate one of their own for OIS. Citing several cases throughout the country and accounts from law enforcement officials, the study questions the ability of police to conduct their own OIS investigations.

Similarly, local district attorneys have potential conflicts of interests investigating local officers. Wisconsin, New York, Illinois and Connecticut have enacted policies to require an independent investigation when a police officer is involved in the death of a civilian. In California, current law requires each law enforcement agency to establish a procedure to investigate complaints by members of the

public related to OIS. In most jurisdictions, local district attorneys investigate local police when a civilian death occurs.

To build public trust, AB 284 requires the DOJ to establish an independent review unit to investigate police shootings. This unit, upon the request of a local law enforcement agency or district attorney, will investigate, gather facts, and provide a recommendation to the entity requesting the review.

## **2. Models in Other U.S. States**

In 2012, Connecticut passed a statute governing the procedure for the investigation of the use of deadly force by a police officer. The statute provided for the appointment of an individual to conduct the investigation, other than prosecutorial official from the judicial district where the incident occurred. Upon the conclusion of the investigation of the incident, a report must be filed that contains the following: (1) The circumstances of the incident, (2) a determination of whether the use of deadly physical force by the peace officer was appropriate, and (3) any future action to be taken by the Division of Criminal Justice as a result of the incident. (CT Gen Stat § 51-277 (2012).)

In Wisconsin, AB 409 was signed into law by Gov. Walker in April 2014. That law requires that an investigation must be performed by an independent review panel when a police officer is involved in the death of a civilian. The panel must consist of two individuals from outside of the police agency involved. In addition, the family of the victim must be informed of their legal rights.

## **3. President's Task Force on 21<sup>st</sup> Century Policing (2015)**

The Task Force was Co-Chaired by Charles Ramsey, Commissioner, Philadelphia Police Department and Laurie Robinson, Professor, George Mason University. The nine members of the task force included individuals from law enforcement and civil rights communities. The stated goal of the task force was “. . . to strengthen community policing and trust among law enforcement officers and the communities they served, especially in light of recent events around the country that have underscored the need for and importance of lasting collaborative

relationships between local police and the public.” (Final Report of the President's Task Force on 21<sup>st</sup> Century Policing (2015), p. v.) Based on based on their investigation, the Task Force provided thoughts and recommendations on a variety of issues related to police practices.

One of the areas explored by the Task Force was oversight. The Task Force developed the following actions items (among others) in connection with cases that involved police use of force resulting in a death, or police shootings resulting in death or injury:

*2.2.2 Action Item:* These policies should also mandate external and independent criminal investigation in cases of police use of force resulting in death, officer-involved shooting resulting in injury or death, or in-custody deaths.

One way this can be accomplished is by the creation of multi-agency force investigation task forces comprising state and local investigators. Other ways to structure this investigative process include referring to neighboring jurisdictions or to the next higher levels of government (many

small departments may already have state agencies handle investigations), but in order to restore and maintain trust, this independence is crucial.

In written testimony to the task force, James Palmer of the Wisconsin Professional Police Association offered an example in that state's statutes requiring that agency written policies "require an investigation that is conducted by at least two investigators . . . neither of whom is employed by a law enforcement agency that employs a law enforcement officer involved in the officer – involved death." Furthermore, in order to establish and maintain internal legitimacy and procedural justice, these investigations should be performed by law enforcement agencies with adequate training, knowledge, and experience investigating police use of force. (Interim Report of the President's Task Force on 21<sup>st</sup> Century Policing (2015), p. 21.)

*2.2.3 Action Item:* The task force encourages policies that mandate the use of external and independent prosecutors in cases of police use of force resulting in death, officer-involved shootings resulting in injury of death, or in-custody deaths.

Strong systems and policies that encourage use of an independent prosecutor for reviewing police uses of force and for prosecution in cases of inappropriate deadly force and in-custody death will demonstrate the transparency to the public that can lead to mutual trust between community and law enforcement. (Interim Report of the President's Task Force on 21<sup>st</sup> Century Policing (2015, p. 22.)

*2.2.5 Action Item:* Polices on use of force should clearly state what types of information will be released, when, and in what situation, to maintain transparency.

This should also include procedures on the release of a summary statement regarding the circumstances of the incident by the department as soon as possible and within 24 hours. The intent of this directive should be to share as much information as possible without compromising the integrity of the investigation or anyone's rights. (Interim Report of the President's Task Force on 21<sup>st</sup> Century Policing (2015, p. 22.)

#### **4. Argument in Support**

According to the American Civil Liberties Union of California:

Currently, officer-involved shooting by local law enforcement are investigated by local district attorneys. As police officers who shoot and kill civilians continue to evade prosecution, including incidents captured by video and made public, the perceived conflict of interest between officers and district attorneys has resulted in growing skepticism. There is a growing appetite, both at the national and local level, to create a better and more transparent system for OIS that is fair to families, communities, and the police in order to restore public trust.

In a 2016, a report of the Stanford Criminal Justice Center concluded that police departments and district attorneys lack the independence and incentive to investigate one of their own for OIS, recommending that DOJ or another unconnected law enforcement agency conduct the bulk of the criminal investigation. Likewise, the Obama Administration's 'Task Force on 21<sup>st</sup> Century Policing' recommend 'policies that mandate the use of external and independent

prosecutions' in cases of officer-involved civilian death.

AB 284 would be a positive step towards achieving these recommendations by requiring the DOJ to establish a pilot independent review unit to investigate police shootings.

## **5. Argument in Opposition**

According to the Fraternal Order of Police:

Law enforcement agencies have taken dramatic steps within the past few years to increase police transparency, especially when tragically dealing with officer-involved shootings at the local level. Further, many agencies are creating local policies, working internally and within their communities. For these reason, AB 284 is duplicative and is an unnecessary use of public resources.

**-- END --**