
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 1506 **Hearing Date:** August 7, 2020
Author: McCarty
Version: June 17, 2020
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Police Use of Force*

HISTORY

Source: Author

Prior Legislation: AB 2917 (McCarty), never heard in Senate Public Safety
AB 284 (McCarty), 2017, failed in Senate Appropriations
AB 86 (McCarty), 2015, failed in Assembly Appropriation.
SB 227 (Mitchell), Ch. 175, Stats. of 2015

Support: AT&T; California Public Defenders Association; California Teachers Association; City of Alameda; City of Glendora; City of Long Beach; City of Sacramento; Consumer Attorneys of California; League of California Cities; Los Angeles County District Attorney's Office; National Association of Social Workers - California; Planned Parenthood Affiliates of California; Sacramento County District Attorney's Office; Salesforce; San Diego County District Attorney's Office; Yolo County District Attorney

Opposition: California Attorneys for Criminal Justice; Communities United for Restorative Youth Justice

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this legislation is to allow law enforcement agencies and district attorneys to request a new division of the Attorney General's office to investigate, report on, and potentially prosecute a criminal case when there is an officer involved shooting that results in a death of a member of the public.

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 establishes within the Department of Justice (DOJ), an independent division to investigate incidents of officer-involved use of force resulting in the death of a civilian.

This bill names the new division as the "Statewide Officer-Involved Deadly Force Investigation Division."

This bill specifies that the division shall consist of three separate teams located in northern, central, and southern California.

This bill states that when asked by local law enforcement or the district attorney the division shall investigate and gather facts in incidents involving the use of force by a peace officer that results in the death of a civilian.

This bill states that when the division is asked by local law enforcement or the district attorney they shall prepare and submit a written report to the entity requesting the independent review containing, at minimum, the following information:

- A statement of facts.
- A detailed analysis and conclusion for each investigatory issue.
- Recommendations to modify the policies and practices of the law enforcement agency if applicable.

The bill states that if criminal charges against the involved officer are found to be warranted, the division shall initiate and prosecute a criminal action against the officer.

The bill requires that the Attorney General shall post and maintain on the DOJ website each written report prepared by the division, appropriately redacting any information in the report that is required by law to be kept confidential.

The bill states that, commencing July 1, 2023, the Attorney General shall operate a Police Practices Division within the DOJ to, upon the request of a law enforcement agency, review the use of deadly force policies of that law enforcement agency, based on best practices.

COMMENTS

1. Need for This Bill

According to the author:

In California alone, there have been almost 800 fatal shootings by police since 2015, yet less than five independent investigations have been conducted.

While the vast majority of law enforcement officers, from county prosecutors to police officers, act in accordance with appropriate professional and ethical standards, the current process of local district attorneys investigating local police is fraught with bias and conflicts of interest. Since prosecutors and police officers are essentially colleagues, it raises questions about the impartiality of “findings”. In 2016 a Stanford Law School study, “At Arm’s Length: Improving Criminal Investigations of Police Shootings,” determined that police departments and district attorneys lack the independence and incentive to investigate one of their own.

In addition, a 2015 report of The U.S. Conference of Mayors Working Group of Mayors and Police Chiefs on Police-Community Relations also called for independent investigations.

Further, the lack of accountability and transparency has created enormous mistrust between law enforcement and the residents they aim to protect and serve. The current appetite for reform, both at the national and local level, to create a fairer and more transparent process for deadly force cases is huge and immediate.

In March 2015, the Obama Administration released the “President’s Task Force on 21st Century Policing,” with recommendations and action items 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. In addition, the task force encouraged 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.

Law enforcement audits are equally important to prevent these tragic deaths. In the last few years, local entities including Sacramento, San Francisco and Vallejo, requested audits by the AG's office of their law enforcement agencies' "patterns and practices". These audits have been well received and resulted in positive changes based on the AG's recommendations. These improvements and changes in policy ensure greater protections and safety for police officers and the communities they serve.

Wisconsin, New York, Illinois, New Jersey and Connecticut have enacted policies to require independent investigations when a police officer is involved in the death of a civilian. In the wake of the killing of George Floyd at the hands of a Minneapolis police officer, AB 1506 would provide independent, accountable and transparent oversight of police deadly-force.

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 21st 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 county 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 21st 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 21st 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 or 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 21st 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 21st Century Policing (2015), p. 22.)

4. The Provisions of This Bill are Only Triggered When Requested by a Law Enforcement Agency or a Prosecutor's Office

Unlike the "2.2.3 Action Item" in President Obama's Task Force on 21st Century Policing, this bill does not "mandate the use of external and independent prosecutors in cases of police use of force resulting in death..."

On the contrary, this bill doesn't mandate any investigation by an independent agency unless requested by the law enforcement agency involved, or by the local district attorney. Possible alternatives to this could be to automatically trigger an independent review every time police use of force results in the death of a member of the public, as recommended by the President's Task Force. Or, as a compromise, at least allowing an independent governing body make the request. Potentially local city councils or boards of supervisors could fill that role.

5. Argument in Support

According to the California Public Defenders Association:

AB 1506 would create a division within the Department of Justice (DOJ) to upon request by a law enforcement agency a) review the agency's "use of force" policies and make recommendations and b) conduct an independent investigation of any officer involved shooting or other use of force that resulted in the death of a civilian. AB 1506 also authorizes DOJ to prosecute any officer who, pursuant to the investigation, is found to have violated state law. This is an urgently needed bill, which would lend credibility to the investigations of police officer involved killings of civilians.

The data shows that police in California killed, in the line of duty, more than 610 people in California in the five-year period between 2009 and 2014. In Los Angeles County, since the year 2000 nearly 900 people, (80% of whom were Black and Brown persons) have died at the hands of law enforcement. Since the year 2000 only two officers were charged as the result of the shooting of a civilian while on duty. In virtually all of the cases, the Los Angeles County District Attorney deemed the use of force resulting in the death of the civilian legally justified. In a much smaller county, Solano County, the Vallejo Police Department (alone) has killed 19 people since 2010. In 2012, Vallejo officers fatally shot 6 people. Vallejo is a small city of 122,000 people. No Vallejo police officer has been charged for an on duty shooting or use of force causing the death of a civilian. Some of the Vallejo officers killed again, even before the Solano County District Attorney had made a decision about prosecution in the first killing. Nevertheless, the Solano County District Attorney has found that all the deaths of civilians at the hands of Vallejo officers since 2010 were legally justified.

The District Attorney and the law enforcement officers in any given county must work hand in hand to investigate and prosecute crime. Many District Attorneys rely on the endorsements and financial support of Police Chiefs, Sheriffs and Police Officer Associations for their elections. Given this interdependence, relying on the local District Attorney to complete a transparent, reliable and truly independent investigation undermines trust in the entire justice system.

AB 1506 would be a significant step towards ensuring California's citizens that the investigations of these many deaths is more likely to be independent, fair and just. If the investigations were to be automatic and not limited to the request of a law enforcement agency, this assurance would be even stronger.

6. Argument in Opposition

According to California Attorneys for Criminal Justice:

Incidents of police brutality have plagued communities of color for decades. Until now, policies aimed at reducing this problem have fallen short as reports of police abuse and unjustified deaths at the hands of law enforcement continue to be reported around the country.

This ongoing problem is in part due to a failure to adopt strict accountability and oversight procedures. Law enforcement entities have successfully blocked implementation of civilian review boards if the bodies have legal authority to investigate and subpoena witnesses. Instead, internal reviews are the most common form of oversight.

In cases of police abuse, victims, their families, and community members often, rightfully, distrust the local police and prosecutors to investigate and make appropriate charging decisions due to the intertwined relationship between police and prosecutors. There are countless examples of local prosecutors choosing not to file criminal charges against officers, and often waiting months to announce the decision. Amongst community members, the failure to file charges often increase the distrust of the criminal justice system.

The tragic killing of George Floyd reflects the shortcomings of accountability measures, an inability to deter, and the behavior of individual officers and police departments as a whole. At this moment in our history, we cannot fail again. It is time to take bold, paradigm-shifting action that will usher in a generational change in police-community relations.

Any policy change in this area must fully enact independent oversight of law enforcement, which requires decisions on who to prosecute and should not be in the hands of departments themselves.

CACJ opposes the provision of AB 1506 which gives local law enforcement the ability to choose the prosecutor in a police death case. As drafted, if law enforcement is concerned that a local prosecutor may actually be vigilant in pursuing a case against an officer, then law enforcement can simply take the case away from the local prosecutor and give it to the California Attorney General. While there may be instances when the AG could be an appropriate choice, law enforcement should not be given statutory authority to dictate. Moreover, there is a growing sentiment that elected local prosecutors should come from a more reform-minded perspective, and recently San Francisco elected a public defender to take helm of the DA's office. If this trend continues, AB 1506 would provide law enforcement with an ability to circumvent a vigilant prosecutor. There are also questions about the independence, perceived or real, of the AG since the office is commonly touted as the "top cop" of California. AB 1506 also does not give the victims or family of victims any say in who investigates and prosecutes a case, which can result in further distrust in the system and outcome of any investigation. At this historical moment in the struggle for police accountability, we should pursue

approaches that will better ensure independence, transparency and accountability and that will also engender greater confidence in the process.

To this end CACJ proposes the following amendments:

1. Every allegation of police abuse resulting in death should be referred to a newly created state independent prosecutor office.
2. The independent prosecutor office shall have full and unfettered authority to investigate, make charging decisions, and handle prosecution of individual law enforcement officers. These activities and decisions should be free from interference from the Attorney General's office.
3. The independent prosecutor office shall be led by someone appointed by a California Justice Commission that is comprised of a cross-section of experts and community members. The prosecutor shall also provide reports to the new CJC and make publicly available any decisions to not bring charges against a law enforcement officer.
4. Law enforcement departments shall NOT have any authority to decide who investigates and prosecutes a case.

With these amendments, CACJ would withdraw its opposition and consider supporting the bill. We have further suggested amendments related to other cases of police abuse.

-- END --