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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 360                      **Hearing Date:** June 6, 2023  
**Author:** Gipson  
**Version:** March 22, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** AB

**Subject:** *Excited delirium*

## HISTORY

**Source:** Author

**Prior Legislation:** AB 1608 (Gipson, 2022), failed on Senate Floor

**Support:** ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association; California State Association of Psychiatrists; Consumer Attorneys of California; Disability Rights California; Ella Baker Center for Human Rights; Los Angeles County Board of Supervisors; Los Angeles County District Attorney's Office; National Association of Social Workers, California Chapter; National Police Accountability Project; Oakland Privacy; Secure Justice; One Individual

**Opposition:** None known

**Assembly Floor Vote:** 75 - 0

## PURPOSE

*The purpose of this bill is to prohibit "excited delirium" from being recognized as a valid medical diagnosis or cause of death in California and to prohibit peace officers from using that term to describe an individual in an incident report, except as specified. The bill also deems evidence that a person experienced "excited delirium" inadmissible in a civil action, as specified.*

*Existing law* requires coroners to determine the manner, circumstances and cause of death in the following circumstances:

- Violent, sudden or unusual deaths;
- Unattended deaths;
- When the deceased was not attended by a physician, or registered nurse who is part of a hospice care interdisciplinary team, in the 20 days before death;
- When the death is related to known or suspected self-induced or criminal abortion;

- Known or suspected homicide, suicide or accidental poisoning;
- Deaths suspected as a result of an accident or injury either old or recent;
- Drowning, fire, hanging, gunshot, stabbing, cutting, exposure, starvation, acute alcoholism, drug addiction, strangulation, aspiration, or sudden infant death syndrome;
- Deaths in whole or in part occasioned by criminal means;
- Deaths associated with a known or alleged rape or crime against nature;
- Deaths in prison or while under sentence;
- Deaths known or suspected as due to contagious disease and constituting a public hazard;
- Deaths from occupational diseases or occupational hazards;
- Deaths of patients in state mental hospitals operated by the State Department of State Hospitals;
- Deaths of patients in state hospitals serving the developmentally disabled operated by the State Department of Development Services;
- Deaths where a reasonable ground exists to suspect the death was caused by the criminal act of another; and,
- Deaths reported for inquiry by physicians and other persons having knowledge of the death. (Gov. Code, § 27491.)

*Existing law* requires the coroner or a deputy to sign the certificate of death when they perform a mandatory inquiry. (Gov. Code, § 27491, subd. (a).)

*Existing law* allows the coroner or medical examiner discretion when determining the extent of the inquiry required to determine the manner, circumstances and cause of death. (Gov. Code, § 27491, subd. (b).)

*Existing law* requires the coroner or medical examiner to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has not already been performed. (Gov. Code, § 27520, subd. (a).)

*Existing law* allows the coroner or medical examiner discretion to conduct an autopsy at the request of the surviving spouse or other specified persons when an autopsy has already been performed. (Gov. Code, § 27520, subd. (b).)

*Existing law* provides that specified mental health facilities shall not use prone mechanical restraint on a person at risk for positional asphyxiation as a result of specified risk factors known to the provider, including agitated delirium or excited delirium syndromes. (Health and Safety Code § 1180.4, subd. (e).)

*Existing law* makes all relevant evidence admissible, except as otherwise provided by statute. (Evid. Code §351.)

*Existing law* limits or excludes certain specified evidence on the basis of extrinsic policies. (Evid. Code §1100 – 1162.)

*This bill* defines excited delirium as a term used to describe a person’s state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM), or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium includes, but is not limited to, excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

*This bill* provides that excited delirium shall not be recognized as a valid medical diagnosis or cause of death in this state.

*This bill* provides that a government entity, or employee or contractor of a government entity, shall not document, testify to, or otherwise use in any official capacity or communication excited delirium as a recognized medical diagnosis or cause of death.

*This bill* provides that a coroner or medical examiner shall not state on the certificate of death, or in any report, that the cause of death was excited delirium. The coroner or medical examiner may list and describe the contributing causes of death, but shall not describe the underlying cause as excited delirium.

*This bill* provides that a peace officer shall not use the term excited delirium to describe an individual in an incident report completed by a peace officer. A peace officer may describe the characteristics of an individual’s conduct, but shall not generally describe the individual’s demeanor, conduct, or physical and mental condition at issue as excited delirium.

*This bill* provides that evidence that a person suffered or experienced excited delirium is inadmissible in any civil action. A party or witness may describe the factual circumstances surrounding the case, including a person’s demeanor, conduct, and physical and mental condition at issue, but shall not describe or diagnose such demeanor, conduct, or condition as excited delirium, or attribute such demeanor, conduct, or physical and mental condition to excited delirium.

## **COMMENTS**

### **1. Need for This Bill**

According to the Author:

This issue was brought to my attention through very tragic circumstances. In 2020, Angelo Quinto, a Navy Veteran dealing with a mental health crisis, stopped breathing while two police officers knelt on his back and neck. Mr. Quinto’s official cause of death was determined to be excited delirium. Excited delirium is not a reliable, independent medical or psychiatric diagnosis. There are no diagnostic guidelines, and it is not recognized in the DSM-5, which is the main diagnosis guide

for mental health providers. Neither the American Medical Association nor the American Psychiatric Association recognizes this term as a legitimate diagnosis. In fact, the only place where this term is continuously used is to describe deaths that occur in police custody.

## 2. Excited Delirium

Although there is no consistent definition of “excited delirium,” it has been characterized as a state of extreme mental and physiological excitement, featuring agitation, aggression hyperthermia, exceptional strength and endurance without fatigue.<sup>1</sup> However, “excited delirium,” also sometimes called “agitated delirium,” is not listed in the World Health Organization’s International Classification of Diseases nor the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), tools seen as the standard for medical diagnosis across the world.<sup>2</sup> The DSM-5 recognizes “delirium” as a clinical entity, with “hyperactive,” “hypoactive,” and “mixed” delirium subtypes, but does not recognize “excited delirium.” A new study from doctors at Harvard, the University of Michigan and Massachusetts General Hospital, as well as civil rights lawyers, says the term is ‘scientifically meaningless’ and has become a ‘catch-all for deaths occurring in the context of law enforcement restraint, often coinciding with substance use or mental illness, and disproportionately used to explain the deaths of young Black men in police encounters.’<sup>3</sup>

Indeed, the controversy surrounding the terminology and diagnosis of “excited delirium” is mainly attributed to sudden unexplained deaths of individuals while in police custody, which may be used as a justification for excessive police force.<sup>4</sup> For example, it was relied on by the defense for former Minneapolis police officer Derek Chauvin as a contributing factor in George Floyd’s death.<sup>5</sup> Further, a 2020 review in Florida Today showed that nearly two-thirds of the deaths in the state listing the cause of death as “excited delirium” over the past decade occurred while the person who died was either in police custody or had some other interaction with law enforcement.<sup>6</sup> Another investigation into non-shooting deaths of people in police custody in Texas since 2005 revealed that more than one in six of the 289 such deaths have been attributed to excited delirium.<sup>7</sup>

Moreover, critics note that the term has racist origins. The organization Physicians for Human Rights traced the history of the term. The term was coined by Drs. Charles Wetli and David Dishbain in 1985 in a case series on cocaine intoxication. The series described seven cocaine

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<sup>1</sup> Takeuchi, Asia et. al. “Excited Delirium.” Western Journal of Emergency Medicine, 2011 Feb, vol. 12, 77-83. [Excited Delirium - PMC \(nih.gov\)](#)

<sup>2</sup> [Excited delirium: What is it and why the diagnosis and the term itself should be abandoned, according to a new study | CNN](#)

<sup>3</sup> Bhatia, Brianna, et. al. “Excited Delirium and Deaths in Police Custody.” Physicians for Human Rights. 2 March 2022. ["Excited Delirium" and Deaths in Police Custody - PHR](#)

<sup>4</sup> See, for instance, <https://www.ama-assn.org/press-center/press-releases/new-ama-policy-opposes-excited-delirium-diagnosis>

<sup>5</sup> <https://apnews.com/article/death-of-george-floyd-health-george-floyd-minneapolis-thomas-lane-1c6776d265e6f3c09e32df7039e80720>

<sup>6</sup> “Excited Delirium: Rare and Deadly Syndrome or a Condition to Excuse Deaths by Police?” Florida Today, 30 Jan 2020. <https://www.floridatoday.com/in-depth/news/2019/10/24/excited-delirium-custody-deaths-gregory-edwards-melbourne-taser/2374304001/>

<sup>7</sup> Dexheimer and Schwartz, “In Fatal Struggles with Police, a Controversial Killer is Often Blamed.” May 27, 2017., [https://www.statesman.com/story/news/investigates/2017/05/27/in-fatal-struggles-with-police-controversial-killer-is-often-blamed/8339157007/.](https://www.statesman.com/story/news/investigates/2017/05/27/in-fatal-struggles-with-police-controversial-killer-is-often-blamed/8339157007/))

users who exhibited fear, panic, violent behavior, hyperactivity, hyperthermia, and/or unexpected strength. All of the individuals had been restrained (six by police and one by emergency room staff) and all died suddenly with respiratory arrest, with five of them reportedly dying in police custody.<sup>8</sup> Soon thereafter Wetli used this theory to explain how 12 Black women in Miami and were presumed to be sex workers died and were found to have small amounts of cocaine in their systems. Wetli theorized that the combination of cocaine and sex led to sexual excitement and death (though investigators later determined a serial killer was responsible for the deaths. Since all the women were Black, Wetli speculated that cocaine in combination with a blood type more common in Blacks was lethal. At the same time Wetli “continued to promote a corresponding theory of Black male death from cocaine-related delirium, without any scientific basis: “Seventy percent of people dying of coke-induced delirium are black males, even though most users are white. Why? It may be genetic.”<sup>9</sup>

In 2004, Wetli coauthored a National Association of Medical Examiners position paper that continued to link cocaine use to “excited delirium.” A year later, Theresa Di Maio, a psychiatric nurse, and her husband, Dr. Vincent Di Maio, a forensic pathologist who was the chief medical examiner of a county in Texas and editor of the *American Journal of Medicine and Pathology*, published a book on “excited delirium syndrome. A few years later, TASER International (now Axon Enterprise), which produces the Taser line of stun guns, purchased copies of the book and began distributing it and other materials on excited delirium at conferences of chiefs of police and medical examiners.<sup>10</sup>

In 2009, the American College of Emergency Physicians formally recognized “excited delirium” as a unique syndrome.<sup>11</sup> However, in 2020, the American Psychiatric Association published a position statement on concerns about use of the term, and in 2021, the American Medical Association formally opposed excited delirium as a valid medical diagnosis.<sup>12</sup> Likewise, Physicians for Human Rights takes the position that “excited delirium” is a descriptive term of multiple signs and symptoms, not a medical diagnosis, and accordingly should not be cited as a cause of death.<sup>13</sup>

The term gained some notoriety in California after the December 2020 death of Antioch resident Angelo Quinto, who died in police custody while suffering a mental health episode. Quinto’s family alleged that on the night he was taken into custody, officers knelt on Quinto’s neck for nearly 5 minutes until he became unresponsive, a claim disputed by police. Quinto died in the hospital 3 days later, and the Contra Costa County Sheriff-Coroner’s Office ruled that the death was a result of “excited delirium.” That incident was a major impetus behind the effort to pass AB 1608 (Gipson, 2022), which would have required the separation of combined Sheriff-Coroner offices and was also authored by the author of this measure, but failed on the Senate Floor.

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<sup>8</sup> See Bhatia at pp. 18-19.

<sup>9</sup> *Id.* at pp. 21-23

<sup>10</sup> *Id.* at pp. 23-26

<sup>11</sup> “ACEP Recognizes Excited Delirium Syndrome.” *Emergency Medicine News*. 5 October 2009. [ACEP Recognizes Excited Delirium Syndrome : Emergency Medicine News \(lww.com\)](https://www.acep.org/press-releases/acep-recognizes-excited-delirium-syndrome)

<sup>12</sup> “Position Statement on Concerns About Use of the Term “Excited Delirium” and Appropriate Medical Management in Out-of-Hospital Contexts.” Approved December 2020. *American Psychiatric Association Position Statement Template (psychiatry.org)*; “New AMA policy opposes ‘excited delirium’ diagnosis.” 14 June 2021. *American Medical Association* – Press release. <https://www.ama-assn.org/press-center/press-releases/new-ama-policy-opposes-excited-delirium-diagnosis>

<sup>13</sup> See Bhatia “Executive Summary.”

As to the use of the term “excited delirium” in law enforcement incident reports, according to information provided to the Assembly Public Safety Committee by the Commission on Peace Officer Standards and Training (POST), the term is not used in either the basic-training program or the field-training program because it is not a recognized medical term. At least some agencies have used the terms in the recent past. For instance, in August 2022, the Bay Area Rapid Transit Police Department issued a new release advising “excited delirium” was removed from BART Police Department policy manual and would no longer be used in their written reports.<sup>14</sup> Additionally, a 2019 version of the Palo Alto Police Department Policy Manual included a protocol for individuals experiencing “excited delirium,” but the language was altered in the latest version indicating that “excited delirium” is not universally recognized as a medical condition.<sup>15</sup> The San Jose Police Department has an active training bulletin posted on its website entitled “Management of Subjects in Excited Delirium,” originally published March 19, 2007, suggesting that the term is regularly used in incident reports.<sup>16</sup>

### 3. Effect of This Bill

Existing law does not contain any meaningful limitations on what constitutes a valid medical diagnosis or official cause of death in this state, or on how government officials may declare those diagnoses or causes of death in their official capacities. This bill expressly prohibits the use of the term “excited delirium” as a valid medical diagnosis or cause of death in California, and prohibits coroners, medical examiners or other government employees from documenting, testifying to or otherwise using that term as a recognized medical diagnosis or cause of death. Under the bill, a coroner or medical examiner may list and describe the contributing causes of death, but may not describe the underlying cause as excited delirium, which, according to the definition in the bill, includes hyperactive delirium, agitated delirium, and exhaustive mania. Further, the bill proscribes the use of the term ‘excited delirium’ by peace officers to describe an individual in an incident report. While an officer may describe the characteristics of an individual’s conduct, they may not generally describe the individual’s demeanor, conduct, or physical and mental condition as excited delirium.

California law currently contains only one usage of the term “excited delirium,” to describe a factor putting an individual at risk of positional asphyxia and therefore prohibiting the use of a prone mechanical restraint on that individual in specified mental health facilities. The Author may wish to amend the bill to remove or modify that reference in light of the changes proposed in this bill.

### 4. Double Referral

Should this bill pass out of this committee, it will be heard in Senate Judiciary Committee, which will analyze the provisions of the bill which fall within its jurisdiction.

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<sup>14</sup> <https://www.bart.gov/news/articles/2022/news20220818>

<sup>15</sup> See the 2019 version here: [redacted-papd-policy-manual-11-19-2019-for-web.pdf \(cityofpaloalto.org\)](#), at p. 61; and the 2022 version here: [policy-manual-for-web-5-3-2023.pdf \(cityofpaloalto.org\)](#), pp. 60-61.

<sup>16</sup> [637236117888330000 \(sjpd.org\)](#)

## 5. Argument in Support

According to the California Public Defenders Association:

Excited Delirium is not a medical diagnosis and the use of certain pharmacological interventions solely for a law enforcement purpose without a medical diagnosis or reason is opposed by major medical and psychiatric associations. In a June 2021 policy adopted by physicians, residents, and medical students at the American Medical Association (AMA) the association opposes the use of “excited delirium” as a medical diagnosis and warns against the use of pharmacological interventions without a medical reason. Further, it opposes the use of the term until a clear set of diagnostic criteria has been established. *To date, no such diagnostic criteria has been established.* The AMA also denounces “excited delirium” as a sole justification for law enforcement use of excessive force. (AMA policy June 14, 2021.)

The American Psychiatric Association’s (APA) position (approved by the APA Assembly in November 2020 and by the APA Board of Trustees in December 2020) is that the term “excited delirium” is too non-specific to meaningfully describe and convey information about a person. “Excited Delirium” should not be used until a clear set of diagnostic criteria are validated. *To date, no such clear set of diagnostic criteria have been validated.* In their call for detailed study and investigation by the U.S. Department of Health and Human Services, they also call for evidence based protocols to be developed and implemented including barring the use of Ketamine and other sedating medications to achieve incapacitation solely for law enforcement purposes. The APA has not recognized excited delirium as a mental disorder, and it is not included in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), a manual relied upon by professionals internationally, nor is it found in the International Classification of Diseases. [...]

A meta-analysis of ExD and deaths in police custody completed by Physicians for Human Rights, issued March of 2022 found that ExD is a “go to diagnosis for medical examiners and coroners to use to explain deaths in police custody.” “A review of the history of the term cannot be disentangled from its racist and unscientific origins”. The AMA finds that the term ExD has been misplaced and diagnosed disproportionately in law enforcement-related deaths of Black and Brown individuals, who are also more likely to experience sedative intervention instead of behavioral de-escalation. Excited Delirium is not a valid independent medical or psychiatric diagnosis. There is no clear or consistent definition, established etiology or known underlying pathology.

-- END --