



February 17, 2016

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to state and local law enforcement agencies (A.G. File No. 15-0124).

Background

Law Enforcement Agencies. California currently has about 600 law enforcement agencies employing about 81,000 full-time sworn officers. These include state agencies (such as the California Highway Patrol and the Department of Parks and Recreation) and local agencies (such as county sheriffs, city police, and school district police).

Racial and Identity Profiling Act of 2015. Chapter 466 of 2015 (AB 953, Weber)—also known as the Racial and Identity Profiling Act of 2015—imposes a series of data reporting requirements on local law enforcement. First, Chapter 466 requires state and local law enforcement agencies to submit an annual report beginning in 2019 to the state Attorney General on all stops conducted in the previous calendar year. Agencies must provide certain information regarding each stop, including the perceived race, ethnicity, gender, and approximate age of the person stopped. Second, Chapter 466 requires law enforcement agencies report annually on citizen complaints that allege racial or identity profiling. Agencies must also specify the type of profiling alleged (such as race, religion, or gender identity) and how these complaints were ultimately resolved.

Proposal

Designating Jurisdictions as “Over-Policed.” This measure amends state law to authorize individuals to file a case in the state trial courts to seek a declaration that the jurisdiction in which the individual resides is over-policed by a law enforcement agency. In order to demonstrate that a jurisdiction is over-policed, individuals must show that, for a period of at least 12 months, the law enforcement agency’s interactions (such as stops, citations, or hiring decisions) with a racial, identity, ethnic, or language minority group occurred in a “statistically significant greater percentage” than the group’s representation in the jurisdiction’s population. Individuals would not need to prove intentional malice or willful action by the law enforcement

agency. Individuals could use the data submitted by the agency to comply with Chapter 466 or other reliable statistics to support their claim. The measure specifies that an agency that fails to comply with the reporting requirements of Chapter 466 is presumed to be over-policing unless it can prove otherwise.

The measure limits the eligibility to file these cases to those individuals who reside in the agency's jurisdiction and are members of the minority group subject to the alleged over-policing. The measure also waives all trial court filing fees and directs the trial court to adjudicate cases within six months after the law enforcement agency files its response to the individual's complaint. If the court finds that the statistical evidence demonstrates that over-policing is occurring, the court shall designate the law enforcement agency as an "Over-Policed Rights Act jurisdiction."

Requirements Placed on Over-Policed Jurisdictions. The measure requires that the court impose a series of requirements on law enforcement agencies found to be over-policing. Such requirements include body cameras for all law enforcement agents on patrol and their supervisors, forfeiting all federal "militarized" hardware to the state, and audits of the agency's public complaint system by the court. Additionally, the court would be required to appoint volunteer observers of "good moral character" who reside in the jurisdiction to monitor the agency by observing and documenting all law enforcement activity. Any documentation collected by these monitors, including video recordings, would be stored by the state Department of Justice (DOJ). Finally, within one week of occurrence, the measure requires the agency to report various pieces of information to DOJ, such as a description of every incident in which the officer unholsters his or her weapon to prepare to use it. Failure by law enforcement officers to report such information to their agency would constitute a felony. The court could hold a law enforcement agency in contempt for failing to provide the information.

Terminating Over-Policed Jurisdiction Status. Unless otherwise specified by the court, the measure allows law enforcement agencies to seek termination of their status as an over-policing agency after one year. The measure authorizes the trial court to terminate the designation if the court finds that the agency has complied with all requirements imposed by the measure, the court, or DOJ and that the agency has been positively changed and is focused on proper policing techniques.

Fiscal Effects

This measure would have varying fiscal effects on state and local governments. The magnitude of these effects would depend heavily on (1) the number of individuals who choose to file over-policing cases in court and (2) how this measure is interpreted and implemented. As such, our estimates encompass a relatively wide range.

State Court Costs. The measure could increase workload and costs for state courts in a couple of ways. First, the courts could experience increased workload and costs associated with hearing and processing over-policing cases. This is because the measure (1) authorizes a potentially significant number of individuals to file these cases, (2) waives filing fees that would otherwise offset costs, and (3) specifies compressed timeframes for adjudicating these cases. Second, to the extent that agencies are found to be over-policing, the measure requires the courts

to engage in a number of different activities that could increase workload and costs, such as identifying and monitoring the work of volunteer observers. The magnitude of the above costs could range in the millions of dollars annually.

State and Local Law Enforcement Costs. This measure could also increase state and local law enforcement costs. First, agencies could incur litigation costs related to court hearings, such as to determine whether they will be designated an over-policing agency. Second, agencies that are found to be over-policing would experience various additional operational costs, such as costs related to body cameras and increased reporting requirements. Third, this measure could result in additional costs for DOJ to conduct oversight of over-policing agencies. For example, DOJ would incur costs for storing the information these agencies must report and the video or other documentation generated by volunteer observers. The magnitude of the above costs would vary depending on the number of agencies found to be over-policing, but could be in the tens of millions of dollars annually.

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could range widely depending on (1) the number of individuals who choose to file over-policing cases in court and (2) how this measure is interpreted and implemented:

- Potential state court costs that could range in the millions of dollars annually related to hearing and processing cases filed under the measure and oversight of law enforcement agencies found to be over-policing.
- Potential state and local law enforcement costs that could be in the tens of millions of dollars annually primarily related to compliance with requirements placed on agencies found to be over-policing.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance