

December 5, 2008

Hon. Edmund G. Brown Jr.
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Krystal Paris
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional amendment cited as “The California Public Safety and Law Enforcement Act” (A.G. File No. 08-0017).

Background

Law Enforcement Certification and Training. Currently, there are roughly 200,000 law enforcement officers employed by a variety of public agencies in California, including the California Highway Patrol, city and university police departments, and state and local correctional departments. Under existing state law, these officers are not required to obtain a specific state license or certification for employment. However, state law does require individuals interested in becoming a law enforcement officer to meet minimum eligibility requirements, such as completing specified levels of education.

State and local law enforcement agencies have the discretion to impose additional eligibility requirements beyond those specified in statute. For example, many law enforcement agencies choose to require their officers to meet the higher-level standards and training of the state Commission on Peace Officer Standards and Training (POST). The commission requires that candidates for officer positions complete a minimum of 664 hours on a range of topics, including use of force. In addition, POST-certified officers are required to complete “refresher” training sessions on an ongoing basis. The training provided by POST is primarily supported with revenues collected from criminal penalties and fees.

Law Enforcement Officer Violations. Under existing law, state and local law enforcement agencies are required to establish a process for members of the public to file a complaint against an officer. When a complaint is filed, most agencies typically conduct an internal investigation. However, some agencies may have an external board—

consisting of private citizens or law enforcement experts—that conducts an independent review of internal officer investigations. Officers also may be subject to legal action in a civil or criminal court.

When an officer is being investigated for misconduct, he or she is entitled to certain procedural rights. For example, state law specifies how interrogations must be carried out, the type of appeal process available to officers, and the procedures for updating personnel files. These particular statutory provisions are cited in state law as the Public Safety Officers Procedural Bill of Rights. In addition, individual law enforcement agencies must follow local procedural guidelines, as well as those established in negotiations with employee unions. If an officer is found to have acted inappropriately, the disciplinary action taken by the responsible agency could result in his or her termination or criminal charges.

Proposal

This measure amends the State Constitution to (1) establish a new statewide board responsible for licensing and regulating certain law enforcement officers and (2) require certain state, county, and city agencies to provide specified training to these officers.

Creates Law Enforcement Licensing Board. The measure creates a 13-member California Law Enforcement State License Board with authority to regulate the licensing and qualification of state, county, and city law enforcement officers. The members of the board would be appointed by the Governor and include representatives from non-profit organizations, public education, the news media, private businesses, and the medical community. Current or former law enforcement officers would not be eligible for appointment to the board. The term of each board member would vary for the initial set of appointees, but would be six years for subsequent appointees.

The primary responsibilities of the board would be to:

- *License Law Enforcement Officers.* The board would require law enforcement officers—specifically state, county, and city employees who have the power to arrest, search, or seize property—to obtain a state license that must be renewed annually. The board would also adopt regulations for the suspension or revocation of a license. In addition, the board would charge licensing fees to fully support its operating expenses.
- *Require Bond and Insurance Coverage.* The board would be able to require an individual with a state law enforcement license to post a bond in an amount determined by the board and/or have a specified level of insurance coverage essentially for liability purposes.
- *Establish a Public Complaint Process.* The measure requires the board to establish a complaint process in which the public could report cases of inap-

appropriate conduct by law enforcement officers. The measure would also make it a citizen's right to file such complaints.

- ***Conduct Independent Investigations.*** The measure authorizes the board to conduct independent investigations, hold public hearings, appoint grand juries, and take other actions to regulate law enforcement officers. The measure also empowers the board to compel the testimony and obtain any evidence it requires from members of any state or local public agency.
- ***Maintain a Law Enforcement Database.*** The board would also be required to establish a database of every law enforcement officer who has caused serious injury or death through the use of lethal force in the line of duty. The database would also include any officer deemed to be "troubled or at-risk" by the state, county, or city agencies that employ them.

Requires Specified Law Enforcement Training. The measure requires state, county, and city law enforcement agencies to train officers in "diffusing situations and deescalating violence" and the use of alternatives to lethal force. Although this level of training is not required of all officers under current law, officers employed at agencies that participate in POST currently receive such training.

Fiscal Effects

Depending on how this measure is interpreted and implemented, it could have significant fiscal effects on state and local governments. These effects are discussed below.

Administrative and Operating Costs of the Board. The operations of the California Law Enforcement State License Board (such as investigations and public hearings) would increase state expenditures in the tens of millions of dollars annually. However, under this measure, these additional costs would be funded with a roughly comparable amount of revenues collected by the board from licensing fees.

Payment of Law Enforcement Licensing Fees. In order to fully offset its administrative and operating costs, the board would likely charge licensing fees for application and renewal that on average could exceed \$400 annually. In some, but not all cases, public agencies (such as the Office of Real Estate Appraisers) reimburse their employees for the costs of obtaining a professional certificate or license. Moreover, some state, county, and city law enforcement agencies currently pay for their employees to attend POST training sessions. If the individuals applying for the new law enforcement licenses required under this initiative are not reimbursed for these costs by their employers, state, county, and city agencies would not incur costs related to the licensing requirements. However, if such agencies reimburse their employees for the costs of the licenses, state, city, and county costs could collectively reach the high tens of millions of dollars annually.

Bond and Insurance Coverage Costs. The fiscal impact of allowing the board to require bond and/or insurance coverage for licensed officers would depend on (1) the level of coverage required and (2) whether officers would be reimbursed by their employers for the cost of such coverage. If law enforcement agencies provide such reimbursement, this provision of the measure potentially could collectively result in additional state, county, and city costs in the hundreds of millions of dollars annually.

Increased Law Enforcement Training Costs. As noted earlier, this measure requires state and local law enforcement agencies to provide specific training to their officers. The fiscal impact of this requirement would partially depend on the extent to which agencies currently provide this training, such as through the use of POST. Depending on how law enforcement agencies choose to satisfy the measure's new training requirements, the costs to the state, county, and cities could collectively amount to millions of dollars annually.

Increased Legal Counsel Costs. Under this measure, state and local law enforcement agencies may find it necessary to provide legal counsel to represent their officers at the review hearings held by the California Law Enforcement State License Board. Such actions could result in additional state, county, and city costs that collectively could amount to millions of dollars annually.

Summary of Fiscal Effects

This measure would have the following major fiscal effects:

- Increased state expenditures in the tens of millions of dollars annually to support the operations of the new California Law Enforcement State License Board, which would be funded with revenues collected by the board from licensing fees.
- Increased state, county, and city costs that collectively could reach the hundreds of millions of dollars annually for licensing, bond and insurance coverage, law enforcement training, and the provision of legal counsel, depending upon how this measure is interpreted and implemented.

Hon. Edmund G. Brown Jr.

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Sincerely,

Mac Taylor
Legislative Analyst

Michael C. Genest
Director of Finance