



October 12, 2021

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (A.G. File No. 21-0010, Amendment #1) related to peace officer use of force.

Background

State and Local Government Peace Officers. Both the state and local governments employ peace officers who have various public safety responsibilities. These include responding to calls for assistance, patrolling communities and roadways, investigating crimes, staffing state prisons and county jails, and supervising people on state parole and county probation. Currently, there is a total of over 130,000 peace officers employed in California, with more than two-thirds of them working for local agencies. State public safety agencies employ about 32,000 correctional staff and about 11,000 other peace officers, including highway patrol officers, park rangers, and university police. Local public safety agencies employ about 39,000 city police officers, 33,000 county sheriff deputies, 8,000 county probation officers, and 5,000 juvenile correctional officers. The remaining officers work for other types of agencies such as county District Attorney's offices, school districts, and transit agencies.

Authorization for Peace Officer Use of Force. Under existing state law, peace officers may use force under various circumstances in carrying out their duties. For example, the law specifies that peace officers may use "objectively reasonable" force to make an arrest of a person they reasonably believe has committed an offense. This force can range from physically restraining someone to deadly force. Deadly force includes any type of force that has the potential of killing or seriously injuring someone, such as discharging a firearm. State law places limits on when officers may use deadly force. For example, officers are only allowed to use deadly force during an arrest when they reasonably believe, based on the totality of the circumstances, that such force is necessary to prevent death or serious bodily injury to another person.

Peace Officer Training. Before people can assume the duties of a peace officer, they must undergo various forms of training, such as on the use of force. For example, police officer academy training typically includes a minimum of 60 hours on arrest and control of suspects, 26 hours on principled policing in communities, 16 hours on use of force and de-escalation techniques, 16 hours

on cultural diversity and discrimination, and 8 hours on handling disputes and crowd control, among other topics. After assuming their duties, peace officers generally receive continuing education. For example, city police officers typically must complete a minimum of four hours of use of force training every two years. When officers cannot complete their regular duties because they are receiving continuing education, it is common for agencies that employ peace officers to incur additional training expenses to “backfill” the officer being trained by paying for another officer to temporarily take over their duties.

Criminal and Civil Liability for Peace Officer Use of Force. Peace officers who commit acts of misconduct can be charged with a crime related to their specific actions. For example, if there is evidence that the misconduct involved a use of force beyond what is objectively reasonable, officers can be charged with a related crime, such as assault or manslaughter. District attorneys are generally responsible for determining whether or not to file charges against a peace officer accused of misconduct based on the evidence available.

Peace officers and the agencies they work for can also be sued in state civil court related to officer misconduct, such as in cases where officers use excessive force. However, state law provides certain immunities to public employees, including peace officers, that limit their liability to such lawsuits. For example, public employees are generally not liable for injuries they cause when exercising the discretion vested in them. Similarly, public employees are not liable when enforcing a law with “due care.” State law also provides similar immunities that limit the liability of public entities to such lawsuits, including the agencies employing peace officers. For example, public entities are generally not liable for injuries caused by an employee if the employee is not liable, such as for the reasons described above.

Peace officers can also be sued in federal court. However, federal courts have ruled that peace officers have certain immunities that limit their liability to such lawsuits. For example, if officers did not violate a person’s clearly established constitutional right with their actions, the officers cannot be sued in federal court for those actions. This is known as qualified immunity.

Use of Body Cameras. In recent years, many local public safety agencies in California have begun using body cameras, which are video cameras attached to the front of an officer’s uniform. Body cameras can be used to provide evidence in court cases and to increase the accountability of officers. Some state agencies have also begun using body cameras. For example, a couple of California Highway Patrol units and several state prisons use body cameras for their officers.

State and local public safety agencies have different policies on how body cameras are used. For example, some agencies only require the cameras to be turned on in certain situations rather than over the course of an officer’s entire shift. Additionally, agencies vary in how long they store body camera footage. In certain cases, agencies make body camera footage publicly available, such as when they release footage of a high-profile incident. In these cases, agencies sometimes must first redact the footage—blur faces, remove addresses, and remove audio as necessary—to protect peoples’ privacy and ensure confidential information is not released.

Proposal

This measure would enact a state law related to use of force training, criminal and civil liability for peace officers, body cameras, and officer misconduct reporting and investigations.

Requires Reallocation of Public Safety Resources to Use of Force Training. The measure specifies various requirements related to the reallocation of resources for use of force training. First, the measure requires that “20 percent of the current and intact police budget and on-shift hours for all peace officers shall be shifted to training.” Second, “patrols and available response units will be reduced by 20 percent.” Third, 20 percent of an officer’s time must be spent in training on specified topics related to use of force. Finally, the measure specifies that the increased training shall not result in a reduction in funding for other public services, such as “social service programs, social wellness, houseless services, public health, education, and other programs serving citizens and their community.”

Criminal and Civil Liability for Use of Force Provisions. The measure includes various provisions related to peace officers’ criminal liability in cases involving use of force. For example, under the measure, any peace officer convicted of a crime against a member of a “protected group” shall be subject to hate crime sentencing enhancements that result in longer state prison sentences. The measure makes a peace officer liable for criminal charges if the officer witnesses or “should have seen the use of excessive force and was physically close enough to the officer using excessive force to intervene” and fails to intervene. Peace officers who intervene must report the incidents to the appropriate investigative agency. Failure to do so would make such officers subject to an independent investigation.

The measure seeks to limit the cases in which peace officers can avoid lawsuits through qualified immunity in use of force cases. For example, the measure specifies that if an officer uses force, “objectively in excess of the amount required to bring about the safe resolution of an encounter,” qualified immunity shall not apply.

Body Camera Use and Legal Actions for Missing Footage. This measure requires all peace officers to wear a functional body camera that is turned on for all encounters with the public. The measure also requires that all body camera footage be made publicly available, in accordance with current privacy laws, on a website within 72 hours of the footage being taken. Under the measure, this footage must be searchable on the website by “officer name, date, and/or badge number.”

According to the measure, if misconduct is alleged and body camera footage of the incident is missing, the missing footage “shall be assumed to have shown the reported officer misconduct,” and “the District Attorney shall deem the missing body camera footage to warrant an independent investigation with the option to formally file charges against the officer for the alleged misconduct.”

Officer Misconduct Reporting Websites, Hotlines, and Investigations. The measure requires agencies that employ peace officers to prominently display a link on their websites to report officer misconduct and to maintain 24 hour telephone hotlines for the reporting of officer misconduct. The measure requires investigations of all reports of misconduct to begin within 72 hours of a complaint being received.

Fiscal Effects

This measure would impact the expenditures of both the state and local governments. The actual magnitude of these effects, however, is uncertain and would depend primarily on how the measure is interpreted and implemented. For example, the measure requires agencies that employ peace officers to record and post online all body camera footage of interactions with the public. The cost of these provisions would depend heavily on the extent to which agencies need to redact the additional body camera footage before releasing it publicly to comply with privacy laws.

Increased State and Local Public Safety Costs. The measure would result in significant costs to both the state and local governments in a number of ways. This measure would require agencies that employ peace officers to use body cameras and post online a significant amount of body camera footage, likely in the millions of hours annually. As a result, state and local governments would incur significant costs to redact, store, and post online this substantial amount of body camera footage, as well as purchase and maintain body camera equipment. The state and local governments would also incur significant costs related to the measure's use of force training requirements. As noted above, training costs cannot be paid for by redirecting funds from other public services and these costs are likely to exceed the amount of funding the measure redirects to pay for training. In particular, this measure would likely necessitate hiring thousands of additional officers and/or major increases in overtime expenditures to backfill some of the officers redirected from their duties to training, such as those whose duties include guarding people in state prison and county jails. The state and local governments could also incur various costs from additional criminal cases and misconduct complaints being filed against officers. This could include additional costs to investigate, prosecute, and punish officers related to use of force. The measure contains numerous provisions intended to limit qualified immunity. However, because qualified immunity only applies in federal courts and cannot be changed by state law, we assume these provisions would have no fiscal effect. Depending on how the measure is interpreted and implemented, the above state and local government costs could reach the billions of dollars annually.

State Appropriations Limit Consideration. The State Constitution limits how much tax revenues the state can spend each year. However, certain types of spending are excluded from this limit. In recent years, the limit has been an important consideration in state budgeting decisions. State spending required by this measure likely would not be excludable from the limit. As a result, it could mean the state would spend more on non-excluded purposes, somewhat increasing the chances that the state would spend revenues in excess of the limit. State revenues in excess of the limit, over a two-year period, triggers a requirement for taxpayer rebates and additional school payments.

Summary of Fiscal Effects. We estimate that this measure could have the following major fiscal effect on the state and local governments:

- Increased state and local government costs, which could reach the billions of dollars annually, primarily related to use of body cameras and increased use of force training.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance