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Defines Legal Standard for Claim of Self-Defense in Certain Criminal Prosecutions of Law-Enforcement Officers. Requires Jury Trial for Specified Criminal Prosecutions of Law-Enforcement Officers. Initiative Constitutional Amendment.

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The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

**DEFINES LEGAL STANDARD FOR CLAIM OF SELF-DEFENSE IN CERTAIN
CRIMINAL PROSECUTIONS OF LAW-ENFORCEMENT OFFICERS. REQUIRES
JURY TRIAL FOR SPECIFIED CRIMINAL PROSECUTIONS OF LAW-
ENFORCEMENT OFFICERS. INITIATIVE CONSTITUTIONAL AMENDMENT.**

Requires that law-enforcement officers who are prosecuted for crimes involving use of lethal or near-lethal force be held to a reasonable-person standard equal to or higher than that required for ordinary citizens to prevail on self-defense claims. Requires that criminal trials of law-enforcement officers be by jury for charges related to abuse of power or authority, unlawful or excessive force under color of law, or violent felonies. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Likely minor net fiscal impact on annual state and local criminal justice costs.** (17-0022.)

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Proposed Constitutional Amendment:

WHEREAS, California law enforcement agencies employ peace officers, which derive their authority from the California Penal Code (the "CPC") to enforce various state and local criminal and civil laws;

AUG 23 2017
INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

WHEREAS, the State of California is home to over 1,000 law enforcement agencies including local police departments, sheriff's departments, and the California Highway Patrol, which employ peace officers in each agency ("Law Enforcement Officers");

WHEREAS, we the people, through our Constitution and state and local laws, have granted Law Enforcement Officers the right to use lethal and near-lethal force to defend the Constitution and to enforce laws protecting the welfare, safety, and health of the public;

WHEREAS, Law Enforcement Officers are required to undergo highly specialized training which includes, amongst other topics, situational and/or hands-on use of force training.

WHEREAS, an essential duty for Law Enforcement Officers is to keep the peace in accordance with their highly specialized training;

WHEREAS, The United States Supreme Court has ruled that deadly force may not be used, unless an individual poses a significant threat of death or serious bodily harm to one's self or others;

WHEREAS, the standard of reasonableness required of Law Enforcement Officers in criminal prosecutions involving lethal or near-lethal use of force in defense of self or others has not been altered from that of an ordinary citizen by law or legal precedent;

WHEREAS, the standard of reasonableness required of Law Enforcement Officers in criminal prosecutions involving lethal or near-lethal use of force in defense of self or others should necessarily be higher than that which is required for an ordinary citizen to prevail on a theory of self-defense;

WHEREAS, law enforcement officers are servants of the citizenry and cases involving excessive, unwarranted, or improper use of force are of critical importance to the public at large and the members of the affected communities in particular;

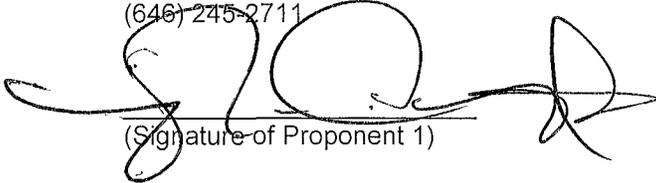
NOW, THEREFORE, BE IT RESOLVED that:

1. Notwithstanding any previous statutory and/or case law to the contrary, in criminal prosecutions involving the use of lethal or near-lethal force, law enforcement officers shall be held to a reasonable person standard that is - both in theory and in practice - equal to or higher than that required for an ordinary citizen to prevail on a self-defense claim.

2. Any criminal prosecution of a law enforcement officer for a crime related to abuse of power or authority, unlawful or excessive use of force under color of law, or a violent felony whether or not under color of law, shall not be heard in a bench trial but must be heard before a jury.

In accordance with California Elections Code § 9001(a), we, the proponents, hereby submit the following draft of our proposed Constitutional Amendment initiative measure and request that a circulating title and summary of the chief purpose and points of the proposed initiative measure be prepared.

Nadia Turner
16761 Viewpoint Apt 125
Huntington Beach, CA 92647
(646) 245-2711

A handwritten signature in black ink, appearing to be 'Nadia Turner', written over a horizontal line. The signature is stylized and cursive.

(Signature of Proponent 1)

Dated this 21st day of August, 2017

Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, California 95814

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SEP 13 2017

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Initiative 17-0022 "Criminal Prosecutions of Law Enforcement Officers"

I authorize Masheika Allen to be the main listed/named proponent for this initiative.



Nadia Turner
September 7, 2017



Masheika E. Allen
September 6, 2017



AP17:091

FOR IMMEDIATE RELEASE

October 30, 2017

CONTACT:

SOS Press Office

(916) 653-6575

Proposed Initiative Enters Circulation
DEFINES LEGAL STANDARD FOR CLAIM OF SELF-DEFENSE IN CERTAIN
CRIMINAL PROSECUTIONS OF LAW-ENFORCEMENT OFFICERS. REQUIRES
JURY TRIAL FOR SPECIFIED CRIMINAL PROSECUTIONS OF LAW-
ENFORCEMENT OFFICERS. INITIATIVE CONSTITUTIONAL AMENDMENT.

SACRAMENTO – Secretary of State Alex Padilla announced the proponents of a new initiative were cleared to begin collecting petition signatures this past Friday.

The Attorney General prepares the legal title and summary that is required to appear on initiative petitions. When the official language is complete, the Attorney General forwards it to the proponent and to the Secretary of State, and the initiative may be circulated for signatures. The Secretary of State then provides calendar deadlines to the proponent and to county elections officials. The Attorney General's official title and summary for the measure is as follows:

DEFINES LEGAL STANDARD FOR CLAIM OF SELF-DEFENSE IN CERTAIN CRIMINAL PROSECUTIONS OF LAW-ENFORCEMENT OFFICERS. REQUIRES JURY TRIAL FOR SPECIFIED CRIMINAL PROSECUTIONS OF LAW-ENFORCEMENT OFFICERS. INITIATIVE CONSTITUTIONAL AMENDMENT. Requires that law-enforcement officers who are prosecuted for crimes involving use of lethal or near-lethal force be held to a reasonable-person standard equal to or higher than that required for ordinary citizens to prevail on self-defense claims. Requires that criminal trials of law-enforcement officers be by jury for charges related to abuse of power or authority, unlawful or excessive force under color of law, or violent felonies. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Likely minor net fiscal impact on annual state and local criminal justice costs.** (17-0022.)

The Secretary of State's tracking number for this measure is 1818 and the Attorney General's tracking number is 17-0022.

The proponents of the measure, Nadia Turner and Masheika E. Allen, must collect the signatures of 585,407 registered voters (eight percent of the total votes cast for Governor in the November 2014 general election) in order to qualify it for the ballot. The proponents have 180 days to

circulate petitions for the measure, meaning the signatures must be submitted to county elections officials no later than April 25, 2018. The proponents can be reached at 646-245-2711.

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October 12, 2017

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OCT 12 2017

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed the proposed constitutional initiative regarding the criminal prosecution of law enforcement officers (A.G. File No.17-0022).

Background

Law Enforcement Agencies. California currently has about 600 law enforcement agencies employing about 83,000 full-time sworn officers. These include state agencies (such as the California Highway Patrol) and local agencies (such as county sheriffs, city police, and school district police).

Use of Force by Law Enforcement Officers. Federal, state, and local laws and policies govern law enforcement activities. For example, state law authorizes law enforcement officers to use reasonable force to make an arrest or to overcome resistance of an individual who is believed to have committed an offense. Federal, state, and local laws and policies also specify how force may be used, such as what actions constitute “reasonable” force and when such force should be utilized. Law enforcement officers are generally required to complete use of force related training—such as courses on controlling individuals during an arrest—both at the beginning of their careers and at regular intervals thereafter.

Criminal Prosecutions and Jury Trials. Criminal cases can be resolved through plea bargains—agreements for the defendant to plead guilty, typically in exchange for the prosecutor reducing charges or recommending a specific sentence—or through trials. Trials can be decided by a judge or by a jury. Jury trials generally take more time, and thus cost more, than trials decided by judges. Federal and state law guarantee defendants the right to a jury trial in criminal cases. However, state law allows a jury trial to be waived upon the agreement of both the prosecutor and the defendant.

Burden of Proof in Certain Criminal Prosecutions. For convictions in criminal proceedings, prosecutors are required to prove beyond a reasonable doubt—the highest burden of proof required in court cases—that defendants committed a particular crime. While both sides may

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agree in some cases that a defendant committed a particular act, such as killing an individual, the defendant may argue that the act was justified (such as because the act was done in self-defense). In such circumstances, the prosecutor is required to prove beyond a reasonable doubt that the criminal action was not justifiable. Specifically, the prosecutor must prove that a reasonable person in a comparable situation with similar knowledge as the defendant would not have similarly felt in danger and/or reacted in the same manner as the defendant (commonly referred to as the “reasonable person standard”).

Proposal

This measure requires that law enforcement officers subject to criminal prosecution related to the use of lethal or near-lethal force be held to “a reasonable person standard that is—both in theory and in practice—equal to or higher than that required for an ordinary citizen to prevail on a self-defense claim.” The measure also requires that any criminal prosecution of a law enforcement officer for a criminal offense must be resolved in a jury trial if related to (1) an abuse of power or authority, (2) an unlawful or excessive use of force while on duty, or (3) a violent felony regardless of whether it occurs while the officer is on-duty.

Fiscal Effects

The implementation of the measure’s provisions would likely be subject to legal interpretation by the courts, particularly given the way that the measure is written. For example, it is uncertain whether it would be legal to require that all violent felony cases involving off-duty law enforcement officers be resolved by a jury. This is because courts might rule that this subjects officers to legal treatment (or due process) that is different than that given to other citizens. For the purpose of our analysis, we assume that the measure would be fully implemented as proposed. To the extent that the measure’s provisions are not fully implemented, the measure’s fiscal impacts would be minor.

State and Local Court-Related Workload. This measure would impact state and local court-related workload. The actual impact would primarily depend on how district attorneys and defendants respond to this measure. For example, on the one hand, the measure’s requirement to resolve certain cases through jury trials could increase the number of jury trials that occur. This would result in increased workload for state courts as well as county district attorneys and public defenders. On the other hand, the measure could result in prosecutors and defendants agreeing to more plea bargains in order to avoid jury trials—resulting in a reduction of court-related workload. The overall impact on state and local costs would depend on how the various entities accommodate such potential workload changes. (We note that data is not currently available on the number of criminal cases that are filed each year against law enforcement officers.) On net, the annual fiscal impact on state and local court-related entities would likely be minor.

Other Criminal Justice Impacts. This measure could impact state and local correctional populations. The actual impact would depend upon how various entities—such as prosecutors and defendants—respond to this measure. On the one hand, correctional populations could increase to the extent that this measure results in more convictions for criminal offenses than would otherwise have occurred under existing law. This could occur to the extent that prosecutors win convictions in more cases because of the change in the standard for self-defense.

On the other hand, correctional populations could decrease to the extent that this measure results in shorter prison or jail sentences than would otherwise have occurred. Shorter sentences could potentially result to the extent that the measure results in more cases being resolved through plea bargains for less serious charges than originally filed. The actual impact on state and local costs would depend on how state prisons and county jails accommodate such changes in population. In addition, the measure could increase or decrease state and local law enforcement costs to the extent that the implementation of the measure impacts the total amount of civil damages that are paid by state and local law enforcement agencies. On net, the potential annual fiscal impact of the above effects would likely be minor.

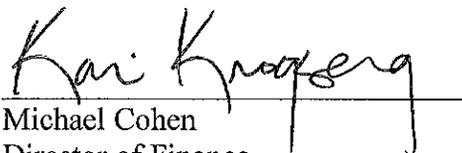
Summary of Fiscal Effects. We estimate this measure would have the following fiscal effect:

- Likely minor net fiscal impact on annual state and local criminal justice costs.

Sincerely,



for Mac Taylor
Legislative Analyst



for Michael Cohen
Director of Finance