

RESOLUTION 15-07-2017 (REVISED)

DIGEST

Peace Officers: Appointment of Special Prosecutor in Deadly Force Cases

Adds Penal Code section 11056 to require the Attorney General to appoint a special prosecutor when a peace officer uses force that results in death.

RESOLUTIONS COMMITTEE ANALYSIS

History:

No similar resolutions found.

Reasons:

This resolution adds Penal Code section 11056 to require the Attorney General to appoint a special prosecutor when a peace officer uses force that results in death.

Similar to AB 284 (McCarty) of 2017, as amended 7/3/2017, which was approved by the Senate Committee on Public Safety but was Held under Submission in Senate Appropriations Committee.

Current law provides that law enforcement agencies must establish procedures to investigate complaints against peace officers brought by members of the public. (Pen. Code, § 832.5, subd. (a)(1).) In addition, Penal Code section 149 imposes criminal penalties against peace officers for using force without lawful necessity.

Many law enforcement agencies have policies requiring the agency to report an officer’s use of deadly force to the local prosecutorial agency. (See, e.g., Los Angeles Police Department Manual, Vol. 3, § 794.35; San Francisco Police Department, sanfranciscopolice.org/officer-involved-shooting-faq; Fresno Police Department, www.fresno.gov/police/records-reports.)

The Resolutions Committee initially recommended disapproval of this resolution. The Conference voted to approve.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Penal Code section 11056 to read as follows:

- 1 § 11056
- 2 (a) If a peace officer, in the performance of his or her duties, uses deadly physical force
- 3 upon another person and that person dies as a result of the use of that deadly physical force, the
- 4 Attorney General shall appoint a special prosecutor to direct the investigation concerning the use
- 5 of deadly physical force by the peace officer.
- 6 (b) Pursuant to this investigation, the special prosecutor has the sole authority to
- 7 determine whether criminal charges should be filed.
- 8 (c) If the special prosecutor files charges, the special prosecutor shall file those charges in

9 the superior court of the county in which the death occurred.
10 (d) The special prosecutor is responsible for prosecuting any criminal charges that are
11 filed. Any support the special prosecutor needs to pursue prosecution
12 of the criminal charges filed under this section shall be provided by the Office of the Attorney
13 General.

(Proposed new language underlined; language to be deleted stricken)

PROPONENTS: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: With the spate of deaths of civilians attributed to police officers that have been so widely broadcast on national and international media, there has been at least two major issues that concern us all. There is general agreement among those in a position to know that most police officers are conscientious and never fire their weapons in the line of duty throughout an entire career. It is also quite clear that perception often trumps reality. That leads to a widespread belief that the police are out of control and should be reined in. The public needs to be reassured that the police are not engaging in less than a thorough job of investigating and determining a fellow officer is guilty of a crime.

Existing law establishes that the Department of Justice is under the direction and control of the Attorney General, and requires the Department of Justice to perform duties in the investigation of crimes as may be assigned by the Attorney General. Existing law requires each department or agency in this State that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments of agencies, as specified.

The Solution: This resolution requires the Attorney General to appoint a special prosecutor to direct an independent investigation if a peace officer in the performance of his or her duties, uses deadly physical force upon another person and that person dies as a result of the use of that deadly physical force. The resolution would grant the special prosecutor the sole authority to determine whether criminal charges should be filed. The resolution would make the special prosecutor responsible for prosecuting any chargers filed.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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