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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2021 - 2022 Regular Session

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### SB 710 (Bradford) - District attorneys: conflicts of interest

**Version:** March 25, 2021

**Policy Vote:** PUB. S. 4 - 1

**Urgency:** No

**Mandate:** No

**Hearing Date:** April 19, 2021

**Consultant:** Shaun Naidu

**Bill Summary:** SB 710 would require a district attorney or the Attorney General to recuse themselves from a decision relating to investigating, charging, or prosecuting a peace officer for alleged criminal conduct while on duty if that district attorney or Attorney General has a conflict of interest, as specified.

#### **Fiscal Impact:**

- Unknown costs, potentially ranging from the tens of thousands of dollars to the low millions of dollars annually, to the Department of Justice (DOJ) for a special prosecutor to investigate, charge, or prosecute any peace officer when the Attorney General has a conflict of interest as proposed by this measure. Actual costs would depend on a number of unknown factors, including how many law enforcement member organization and associations that represent law enforcement employees or members in criminal investigations related to on-duty conduct provided a monetary benefit to the Attorney General, the number of peace officers within those entities who are being investigated for on-duty criminal conduct in any given year, if and how many investigations lead to the filing of criminal charges and prosecutions, and the complexity of each criminal case. (General Fund)
- Unknown, potentially-significant workload cost pressures to DOJ to take over the investigation, charging, and prosecution of peace officers, as specified, when a district attorney has a conflict of interest as proposed by this measure minus the workload related to the investigation of peace officer-involved shootings that result in the death of an unarmed civilian, as DOJ is required to conduct those investigations already. Factors that would determine the actual workload that DOJ attorneys would assume are similar to the factors related to when the Attorney General has a conflict of interest but with respect to the 58 county district attorneys. (General Fund)

**Background:** Existing law sets forth the requirements of the defendant in a criminal proceeding to disqualify a district attorney, city attorney, or city prosecutor. The court may grant the motion only upon the showing that a conflict of interest exists that would render it unlikely that the *defendant* would receive a fair trial. Additionally, the court may disqualify a prosecuting attorney if it finds that the prosecuting attorney deliberately or intentionally withheld relevant, material exculpatory evidence or information in violation of the law.

Separately, the State Bar Rules of Professional Conduct prohibit a lawyer, without obtaining informed written consent from affected clients, as specified, from representing a client if there is a significant risk the representation will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client, a third person, or by the lawyer's own interests. Furthermore, the rules provide that a lawyer

should not represent a client without written disclosure that the lawyer has, or knows that another lawyer in the lawyer's firm who has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter.

Existing law requires a state prosecutor, who is the Attorney General unless otherwise specified or named, to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian.

**Proposed Law:** This bill would require a district attorney or the Attorney General to recuse themselves from a decision relating to investigating, charging, or prosecuting a peace officer for alleged criminal conduct while on duty if the district attorney or Attorney General has a conflict of interest. It would provide that a conflict of interest exists when both of the following occur:

- A district attorney or the Attorney General investigating, charging, or prosecuting a peace officer for alleged criminal conduct while on duty received a monetary benefit (i.e., any financial benefit, including a direct financial campaign contribution) from a member organization or association that solely represents law enforcement:
  - that is involved in an investigation;
  - that employed the officer who allegedly committed the crime at the time the alleged crime was committed; or
  - of which the officer is a member or was a member at the time of the alleged crime.
- The member organization or association solely representing law enforcement makes representation in criminal investigations available to its employees or members under criminal investigation for alleged criminal conduct that occurred while on duty.

SB 710 would require the Attorney General to assume responsibility for investigating, charging, or prosecuting the peace officer when a district attorney recuses themselves pursuant to the provisions of this bill, except when the Attorney General has a conflict of interest under this measure, in which case the Attorney General is required to recuse themselves and appoint a special prosecutor to investigate, charge, or prosecute the peace officer.

**Related Legislation:** AB 1506 (McCarty, Ch. 326, Stats. 2020), in part, requires a state prosecutor (that is, the Attorney General) to investigate incidents of an officer-involved shooting resulting in the death of an unarmed civilian.

**Staff Comments:** This bill would require a district attorney or Attorney General to recuse themselves in the investigation, charging, or prosecution of a peace officer for potential on-duty criminal conduct if they received a monetary benefit from a law enforcement member organization or association that meets certain criteria. It is not entirely clear if the receipt of the monetary benefit applies only to the office holder of the positions of district attorney or Attorney General or if it includes receipt of any monetary benefit before a person occupies either of those offices. Consequently, the author may wish to clarify that language. Including all monetary benefits a person received before holding these positions could range from a campaign contribution from an affected law enforcement member organization or association received by a non-incumbent candidate for district attorney or Attorney General to a college scholarship granted to a high school student from a local police officer association (POA) (should that student

later become a district attorney or the Attorney General) triggering a conflict of interest (if all of the other elements of a conflict are met). If including prior contributions, this measure also would encompass campaign contributions that a person received while occupying and/or running for a different office if the person later became a district attorney or the Attorney General. Take, for example, Mr. Rob Bonta, who Governor Newsom nominated as Attorney General late last month. While running for election and re-election to the California State Assembly, Mr. Bonta received direct financial campaign contributions from the Alameda POA PAC, the California Correctional POA PAC, the Los Angeles Police Protective League, the Oakland POA PAC, the San Francisco POA PAC, and the San Leandro POA PAC. If he is confirmed as Attorney General by the Legislature, it appears that Mr. Bonta would need to conflict out of investigating, charging, and prosecuting a peace officer who is a member of any of the organizations mentioned above (presuming the organizations meet all the other criteria outlined in this bill). Considering that the Attorney General is required to investigate all officer-involved shootings that resulted in the death of an unarmed civilian, if any of those instances involved a member of any of the POAs that contributed to any of Mr. Bonta's campaigns, an Attorney General Bonta would be required to appoint a special prosecutor to investigate those incidents, each at a cost to DOJ.

**-- END --**