

# Mental Health Alliance

March 30, 2023

Senator Prozanski, members of the committee,

For the record, my name is Eben Joondeph Hoffer. I am a member of the Mental Health Alliance, and was privileged to aid in the development SB 915.

Under current law, District Attorneys may voluntarily pass any case of homicide involving a law enforcement officer to the Oregon Department of Justice. DAs on both sides of the Cascades, and in all three counties of metro Portland, take advantage of this ad hoc resource. SB 915 will make no changes to this practice, but will provide DOJ funding to adequately resource these complex and demanding cases.

We encourage the members of this committee to understand SB 915 as a non-coercive, collaborative, and relatively cheap path towards improving consistency and public confidence in a limited number of extremely important criminal prosecutions. We encourage this committee to pass it as introduced.

We also encourage this committee to see SB 915 as the beginning of a longer conversation about reducing inherent conflict between defendants and prosecutors in felony cases involving police officers.

Legal efforts to centralize investigation and prosecution of deadly force have been ongoing since at least 2015. That year, following the killing of Eric Garner by an NYPD officer, New York Governor Andrew Cuomo signed Executive Order 147. EO 147 required a special prosecutor for every homicide case in which a police officer killed an unarmed person, on the grounds that, quote,

*Whereas, there have been recent incidents involving the deaths of unarmed civilians that have challenged the public's confidence and trust in our system of criminal justice; and  
Whereas, public concerns have been raised that such incidents cannot be prosecuted at the local level without conflict or bias, or the public perception of conflict or bias; and  
Whereas, it is necessary to ensure that a full, reasoned, and independent investigation of any such incident is conducted without conflict or bias, or the public perception of conflict or bias.*

In the years since, permanent statewide offices of deadly force incident prosecutions and/or investigations have been established in New York [Executive Law Section 70-b], California [AB 1506], and New Jersey [AG Directive 2019-4], at significant public investment. State investigation offices dedicated to officer-involved shootings now exist in such diverse states as Washington, Wisconsin, and Ohio. With SB 915, Oregon will certainly not be leading the way.

Unlike our peer states' efforts to standardize and professionalize LE prosecutions, SB 915 allows District Attorneys to retain control over which agency will pursue a given case. SB 915 also makes no particular demands on the Department of Justice as to its prosecutorial approach or ethics around transparency, which in turn avoids making such demands on local law enforcement. SB 915 also limits the purview of the proposed Deadly Force Prosecutions Unit to use of force cases that result in death, thereby implicitly omitting deaths in custody and the nontrivial share of deadly force incidents that result merely in serious physical injury.

Ultimately, a suite of policies that seriously attempts to altogether remove bias, conflict, or the perception of such from our system would involve the following:

- A requirement that all District Attorneys pass relevant cases to State prosecutors
- Objective standards to determine which cases must be referred to State prosecutors
- Inclusion of in-custody and other non-force deaths and injuries in the referral program
- Uniform standards for prosecutor media communications, reporting if declining to call a grand jury, and release of grand jury transcripts in absence of a returned true bill
- A requirement that prosecutor investigators carry relevant training in homicide cases
- Reasonable efforts to reform 2006's Senate Bill 111, to improve increasingly well-documented issues with local investigators executing up-to-standard and complete homicide investigations.

The status quo for policing oversight in Oregon is one of marked decentralization. Our state lacks uniform standards or definitions for use of force. We lack a uniform force reporting structure, beyond our nascent participation in the FBI force data program - which considers only the 20-30 most severe uses of force statewide. We do not have any mandatory program for reporting non-force deaths and injuries while in contact with or custody of law enforcement officers. Our recent statewide disciplinary standards, set by a committee dominated by representatives from the broad law enforcement community, so thoroughly relies on aggravating and mitigating factors as to amount to a continuity of local control over the rules that committee was assembled to standardize statewide.

The criminal justice system's insistence on local self-investigation and accountability makes it unique among major American government institutions. It should not come as a surprise to advocates for and supporters of law enforcement that this unique stance injures public trust in such vital services and agencies. The Mental Health Alliance believes that the meaningful standardization of our accountability system detailed above would do significant work to repair these community concerns.

However, in the context of SB 915, we are here solely to support the basic functionality of the system that currently exists. While we believe there is certainly ground to cover in improving that system in the years ahead, the Mental Health Alliance supports SB 915, and urges its passage as introduced.

Regards,  
Eben Hoffer  
Mental Health Alliance