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Tuesday, June 11, 2019

Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

RE: Opposition to Assembly Bill 137 (Cooper)

Dear Committee Members:

The California Civil Liberties Advocacy is writing in **opposition** to AB 137 (Cooper). Make no mistake, though the bill is being touted as a mere "labor bill," AB 137 is an expansion of the Public Safety Officers Procedural Bill of Rights Act ("POBRA").

Specifically, AB 137 mandates that an officer under investigation shall be informed of the time, date, and location of any incident at issue, the internal affairs case number, and the titles of any policies, orders, rules, procedures, or directives alleged to have been violated with a general characterization of the event giving rise to that allegation.

After reviewing the author's comments during this committee's last public hearing on February 26, 2019, to the effect that AB 137 is not an expansion of POBRA but merely a labor bill, the CCLA contacted the author's office in attempt to clarify their position so that we could remove opposition. Assemblymember Cooper specifically stated that the provisions of this bill were already established by case law. Unfortunately, after conducting legal research, we were unsuccessful in identifying any such opinions that specifically established the provisions found in AB 137. As mentioned, we contacted the author's office, but instead of providing any case citations, we were directed to review Government Code § 3303 as an example of "existing law." However, Gov. Code § 3303 is the very section of code that the author seeks to amend with AB 137. Citing the law code section the bill is intended to amend as "existing law" implies the bill is only codifying existing law and is therefore circular.

We were further instructed to review "GC 3303 (4) (h)," which allegedly states that if it is deemed a criminal act may be charged against an officer, then the officer is to be read their Miranda rights. The relevant language is actually found in Gov. Code § 3303, paragraph (h), and reads, "[i]f prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights." AB 137 makes absolutely no change to this language and the CCLA does not oppose leaving such language intact, since all individuals are entitled to due process.

To reiterate, AB 137 mandates that an officer under investigation shall be informed of the time, date, and location of any incident at issue, the internal affairs case number, and the titles of any policies, orders, rules, procedures, or directives alleged to have been violated with a general characterization of the event giving rise to that allegation.

Both in hearing and in correspondence between our organization and the author's office, we have been assured that the provisions of AB 137 do not, in any way, apply to criminal investigations and only to administrative investigations. However, it is crucial to note that internal affairs investigations may be either administrative ***or criminal*** in nature. According to *Standards and Guidelines for Internal Affairs*, published by the U.S. Department of Justice, Office of Community Oriented Policing Services, "[i]t is helpful to classify complaints into either of the two categories: criminal or administrative." "A complaint that is criminal is investigated quite differently from a complaint that is administrative. Criminal misconduct may lead to prosecution and jail or prison," while "[a]n administrative complaint may lead only to internal discipline or other corrective action." [i]

Because the provisions of Gov. Code § 3033 do not distinguish between administrative internal affairs investigations and criminal internal affairs investigations, it is difficult to conclude with any certainty whether the provisions of AB 137 will apply only to administrative investigations. For example, if a department receives a complaint that an officer was rude and used profanity in dealing with a member of the public, this would be an administrative issue. Under the provisions of subdivision (h), already existing law, if the interrogation revealed that the officer was also embezzling illegal drugs and reselling them on the black market, then the officer would be read their Miranda rights and the case would be referred to the criminal branch of internal affairs. But under the provisions of AB 137, which does not distinguish between criminal or administrative investigations (except as far as administrative investigations relate to "voluminous complaints,") an officer who is or who has engaged in criminal conduct would be afforded greater rights than those granted to ordinary defendants.

Generally, administrative investigations are either handled by a separate unit or are completed prior to opening a criminal investigation in order to avoid tainting the prosecution.[ii] However, there are situations in which the distinction isn't so clear. In matters involving "hybrid" investigations, in which an administrative internal affairs investigation may run concurrently with a criminal investigation, whether conducted by internal affairs or another agency, Gov. Code § 3033 does apply. Such a situation arose in the *California Correctional Peace Officers Association v. State of California*,[iii] in which correctional officers suspected of criminal wrongdoing were questioned both by the warden and DOJ investigators.

The threshold question this Legislature must answer is whether or not AB 137 expands law enforcement protections in cases of criminal misconduct. Because AB 137 would require informing an officer of the time, date, and location of the incident, the internal affairs case number, and the titles of the policies, orders, rules, procedures, or directives violated, along with a general characterization of the event in question, and because these requirements do not distinguish between administrative and criminal investigations, the CCLA strongly feels that AB 137 still grants an unfair advantage to law enforcement officers who may be guilty of criminal wrongdoing — an advantage not afforded to common criminal defendants. Even if the incident

giving rise to the investigation begins as an administrative one, if an officer is indeed guilty and suspects the administrative investigation may lead to a criminal inquiry, such a bad actor may be able to tamper with evidence, witnesses, or perjure testimony in attempt to escape criminal liability. Thus, the CCLA answers affirmatively, that AB 137 is an expansion of officers' rights — rights not afforded to ordinary criminal defendants and which may facilitate a miscarriage of justice, regardless of the author's benevolence.

For all of the abovementioned reasons, the CCLA strongly **opposes** AB 137.

Very truly yours,

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[i] Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice (U.S. Department of Justice, Office of Community Oriented Policing Services) (2012)
[ii] Ibid.
[iii] *California Correctional Peace Officers Association v. State of California* (2000) 82 Cal.App.4th 294