

## **Research Memo: HF 1 (Mariani) – The MN Police Accountability Act**

*The bill summary below reflects the author's DE amendment.*

**BILL SUMMARY:** This brief summarizes the proposals agreed to by the House and the Senate after negotiations.

This bill will provide more effective training on mental health and crisis intervention, as well as tools for first responders to cope with their own trauma while on the job. It will require some data collection on officer misconduct and use of deadly force incidents. It will ban the use of chokeholds in most incidents and require officers to intervene when another officer is using excessive force. It changes the current arbitration process for officers to a process that will hold officer accountable for their actions. Lastly, it begins to allow for more community input when it comes to policing policies and practices.

Provisions included in this bill are:

- Critical incident stress management teams and public safety peer counseling (modified)
- Investigatory reform (modified)
- Police residency reform (modified)
- Banning chokeholds and certain neck restraints (modified)
- Use of force reform (modified)
- Use of force reporting
- POST Board reform and citizen engagement (modified)
- Prohibiting warrior-style training (modified)
- POST Board model policies
- Mental health and crisis intervention training
- Mandatory autism training
- Requiring the duty to intervene and report
- Arbitration reform (modified)
- Peace officer training assistance funding extension (new)

### **Sections 1 – 4, and 28 – Critical Incident Stress Management Teams and Public Safety Peer Counseling**

Law enforcement officers respond to and witness some of the most tragic events that happen in our communities. On-the-job stress can have a significant impact on their physical and mental well-being, which can accumulate over the course of their career. As a result, many officers struggle with alcohol abuse, depression, suicidal thoughts, and PTSD. This bill aims to encourage more public safety officials to participate critical incident stress management services and peer debriefing sessions after they have been involved in a critical incident while on the job by adding privacy protections for those who participate. The provisions in this section come from a recommendation from the Attorney General's Police-Involved Deadly Force Encounters Report.

**Critical Incident Stress Management Team:** This bill establishes a Critical Incident Stress Management Team (Team) that provides services for emergency service providers to assist in coping with stress and potential

psychological trauma resulting from a response to a critical incident or emotionally difficult events. Services may include consultation, risk assessment, education, intervention, and other crisis intervention services provided by a CISM team member to an emergency service provider affected by a critical incident.

Any data acquired by a critical incident stress team when providing services are governed by Ch. 13 data privacy laws related to peer counseling debriefing data. Any information or opinion disclosed in a debriefing session cannot be used as evidence in criminal, administrative, or civil proceeding against the person being debriefed. There are, however, exceptions to this specific provision.

The Team can disclose information if (1) the member reasonably believes the disclosure is necessary to prevent harm to a person who received services or to prevent harm to another person, (2) the person who received services provides written consent to the disclosure, (3) the team member is a witness or a party to a critical incident that prompted the emergency service provider to receive critical stress services, (4) the person receiving services discloses information that is required to be reported under mandatory reporting laws, (5) the emergency service provider who received services is deceased and the surviving spouse or administrator of the estate of the deceased gives written consent to the disclosure, or (6) the emergency service provider who received services voluntarily testifies, in which case a team member may be compelled to testify on the same subject.

**Public Safety Peer Counseling:** This section modifies current MN law related to Public Safety Peer Counseling and Debriefing to align with the same data requirements and rules regarding what information is disclosed in the services provided by a critical incident stress management team. It also re-defines public safety peer counseling as “a counseling session, led by a peer support counselor for emergency service providers that is designed to help a person who has suffered an occupation-related trauma, illness, or stress begin the process of healing and effectively dealing with a person’s problems, and includes the use of referrals to better service these occupation-related issues.” Other key terms are defined: service providers, peer support counselor.

Current law related to public safety peer counseling is repealed (MS 181.973).

### **Sections 5 and 25 – Investigatory Reform**

These sections establish an independent Use of Force Investigations Unit with the Bureau of Criminal Apprehension (BCA). The purpose of the independent investigation unit is to conduct officer-involved death investigations. This unit will sunset in four years.

The BCA, in consultation with DPS will select a special agent in charge of the unit. The unit will employ peace officers and staff to conduct the investigations. The BCA will develop and implement policies and procedures to ensure no conflict of interest exists with agents assigned to investigate a particular incident. When a peace officer employed by the BCA is the subject of an officer-involved death investigation the County Attorney of the jurisdiction where the incident occurs will select an investigatory agency to conduct the investigation.

The unit is also required to investigate all criminal sexual conduct cases involving peace officers, including sexual assaults involving chief law enforcement officers. The unit may also investigate conflict of interest cases involving peace officers.

This section also lays out two reporting requirements. First, the BCA is required to make all public data available on their website within 30 days of the end of the last criminal appeal of a subject of an investigation. Second, the BCA must submit an annual report to the Legislature with information about the Use of Force Investigations Unit. The annual report must include: the number of investigations initiated, the number of incidents investigated, the outcomes or status of each investigation, the charging decision made by the prosecutor, the number of plea agreements reached, and any other relevant information.

The provisions in this section come from the Attorney General’s Police-Involved Deadly Force Encounters Report (recommendation 3.1). The public is also demanding changes to who investigates officer-involved deaths because the community has lost trust in the current system. By establishing a new independent investigation unit the hope is to restore public confidence in the BCA.

**FISCAL IMPACT:** \$3,365,000 in FY 21 is appropriated from the General Fund to the Dept. of Public Safety to establish the independent Use of Force Investigations Unit in the BCA. \$3,272,000 is added the agency’s base for this purpose. The BCA estimated the costs based on past investigations into police shootings that are conducted by their agency.

### **Section 6 – Police Residency Reform**

This section allows cities or counties to offer incentives to encourage a person hired as an officer to be a resident of that city or county. This provision has changed since the original Act, which lifted the ban on residency requirements across the state.

### **Sections 7 and 8 – Banning Chokeholds and Other Certain Restraints**

Prohibits a peace officer from using certain neck restraints, unless section 609.066 authorizes the use of deadly force to protect the peace officer or another from death or great bodily harm.

With the exception described above, officers will no longer be able to use chokeholds, they will not be able to tie all of the person’s limbs together behind the person’s back to render the person immobile, and they cannot secure a person in any way that results in transporting the person face down in a vehicle. The only time a peace officer can restrict free movement of a person’s neck or head is to protect the peace officer or another from imminent harm.

For the purposes of this section, chokeholds are defined as “a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible, and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing, or reduce the intake of air.” It also means, “applying pressure to a person’s neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.”

### **Section 9 – Use of Force Reporting**

This section requires a chief law enforcement officer of an agency to submit a monthly report to the BCA with information related to each use of force incident that resulted in serious bodily harm or death. The report must

also include for each incident all of the information requested by the Federal Bureau of Investigation. The BCA is required to submit an annual report summarizing and analyzing the information provided to the legislature.

This provision comes from the Attorney General’s Police-Involved Deadly Force Encounters Report and was originally included in HF 4304 (Moller) Peer-to-Peer Counseling bill which was heard in the 2020 session.

### **POST Board Reform and Citizen Engagement**

This section includes:

- Expanding POST Board membership to include two additional community members;
- Establishes the Ensuring Police Excellence and Improving Community Relations Advisory Council;
- Expanding the POST Board Complaint Investigatory Committee (which already exists) to include a community voice and;
- Creates a centralized database of officer misconduct complaints.

The Minnesota Peace Officers Standards and Training Board (Post Board) has the authority and oversight to establish licensing and training requirements that all law enforcement agencies and officers must abide by. They have the ability to shape how policing is practiced and how it impacts the quality of life of every Minnesotan. Currently, 10 of the 15 seats on the Board are held by law enforcement. This makes it difficult for the community to have a voice in both shaping how policing impacts public safety and holding officers accountable for their actions.

#### **Section 10 – Expanding POST Board Membership**

This section expands POST Board membership from 15 members to 17 by appointing additional members from the community. Currently there are only two members from the community who sit on the Board. Instead of appointing two public members, the Governor will appoint four community members.

#### **Section 11 – POST Board Complaint Investigation Committee**

This section states that, if the POST Board adopts rules to establish a subcommittee to investigate officer licensure action, the subcommittee must include one voting board member appointed from the general public and three voting board members who are current or former peace officers to the Complaint Investigations Committee.

This is a committee that already exists within the POST Board. The role of this committee is to review officer licensure actions, including discipline or suspension of licenses. The purpose of expanding this committee is to allow for community voices to have a say in officer discipline.

#### **Section 13 – Ensuring Police Excellence and Improving Community Relations Advisory Council**

This council is referred to as the Ensuring Police Excellence and Improving Community Relations Advisory Council (Council) (formally the Police-Community Relations Council). The purpose of the Council is

“to assist the board in maintaining policies and regulating peace officers in a manner that ensures the protection of civil and human rights. The council shall provide for citizen involvement in policing policies, regulations, and supervision. The council shall advance policies and reforms that promote positive interactions between peace officers and the community.”

The Council will be made up of five law enforcement stakeholders, four legislative appointee’s and six members of the community. Members of the community will be appointed by NAMI, Violence Free MN (victim coalition), and the Dept. of Human Rights.

The POST Board is required to place the Council’s recommendations on their meeting agenda within four months of receiving a recommendation. They are also required to submit an annual report to the Legislature with (1) all of the recommendations brought forth by the Council and how the POST Board acted on those, (2) any recommendations for statutory reform or legislative initiatives intended to promote police-community relations, and (3) updates on review of police misconduct data.

### **Sections 14, 18, and 27 – Centralized database that stores public data related to officer misconduct.**

Requires the POST Board to create and maintain a database that will store public data related to officer misconduct. Chief Law Enforcement Officers (CLEO’s) are required to submit in real time, individual officer data that is classified as public. This data will be anonymized.

The purpose for collecting this data is to require the POST Board (1) to evaluate the effectiveness of officer training, (2) to assist the Council in accomplishing it’s duties, (3) to allow for the Council and the Complaint Investigation Committee to identify patterns of behavior that may suggest an officer is likely to violate a model policy. Lastly, the POST Board is required to submit an annual report to the Legislature that includes summary data related to officer misconduct. A copy of this report must be available for the public on the POST Board’s website.

**FISCAL IMPACT:** \$4.5 million dollars has been allocated to the POST Board in FY 21. These funds will be used to design, build, and implement the officer misconduct database.

### **Section 12 – Prohibiting Warrior-Style Training**

Prohibits the use of warrior-style training by law enforcement. It also states that the POST board (Board) may not certify a continuing education course that includes warrior-style training; the Board may not grant continuing education credit to a peace officer for a course that includes warrior-style training; and the Board may not reimburse a law enforcement agency or a peace officer for a course that includes warrior-style training.

Warrior-style training is defined in under this section as training for peace officers that dehumanizes people or encourages aggressive conduct by peace officers during encounters with others in a manner that deemphasizes the value of human life or constitutional rights, the result of which increases a peace officer’s likelihood or willingness to use deadly force.

### **Sections 15 – 17 – POST Board Model Policies**

Requires the POST Board to adopt a comprehensive use of force model policy that will be distributed and implemented to every law enforcement agency across the state. The model policy must include (1) a duty for an officer to intervene, (2) a duty for an officer to report illegal use of force, and (3) a duty to only use deadly force when authorized by statute, and even then, less lethal measures should be considered first by the officer. Law enforcement agencies have until December 15, 2020 to update their policies to align with the policies mandated in this section. Lastly, the POST Board has the authority to inspect agency policies to ensure compliance with this section.

## **Section 19 – Mental Health and Crisis Intervention Training**

These sections address the need to invest in more effective training that will equip officers with the tools and experience to respond to mental health crisis calls, instead of escalating the situation where force is needed.

Too many Minnesotan’s with mental illness become entangled within the criminal justice system, largely due to the lack of treatment options, failure to complete treatment, or the stigma associated with having a mental illness. Minnesota county jails and prisons are overburdened by persons with mental illness because the state lacks a fully funded infrastructure to stabilize their lives, including access to crisis services, treatment, healthcare, housing, employment, other therapeutic services, and community supports.

Because police are usually the first to respond to an emergency, it is critical that they have a working knowledge of the different types of mental illness and the various behaviors someone may exhibit so that we don’t keep filling up our jails with individuals who need medical or mental health professionals instead of incarceration.

This section modifies current statute related to training in crisis response, conflict management, and cultural diversity (MS 626.8469). It requires the POST Board to consult with the Dept. of Human Services and other mental health stakeholders to create a list of approved training courses related to responding to mental health crisis. It also requires officers to complete a minimum of six hours of training under this section.

**Training:** Training courses must include scenario-based instruction and incorporate response techniques for at least one of the following issues, (1) mental illness, (2) crisis de-escalation, (3) mental illness and diversity, (4) the intersect between mental illness and the criminal justice system, (5) mental health community resources, (6) psychotropic medications and their side effects, (7) co-occurring mental illness and substance use disorders, (8) suicide prevention, and (9) symptoms of mental illnesses and disorders. Lastly, there must be a training course on how to interact with families of individuals with mental illnesses during a mental illness crisis.

**Reporting:** The head of every law enforcement agency must keep written records of compliance with the new training requirements and they must keep documentation related the trainings that were provided. The POST Board is required to conduct compliance reviews and evaluations for effectiveness to determine if the in-service training reduces officer use of force and to learn if people with mental illnesses are provided community support instead of being arrested.

## **Sections 20 and 26 – Mandatory Autism Training**

These sections require the POST Board to develop learning objectives related to working with individuals with autism, and to then develop and provide preservice and in-service training related to the learning objectives established by the POST Board. The POST Board is required to meet with individuals with autism, family members with autism, autism experts, and police officers to address the following topics:

- Autism overview and behavioral understanding
- Best practices for interventions and de-escalation strategies
- Prevention and crisis reduction models
- Review of technology and other tools available

Similar to the Mental Health Training section, this section seeks to equip officers with the tools and experience to respond to calls where someone with autism is in crisis.

**FISCAL IMPACT:** \$8,000 is appropriated from the General Fund to the Bureau of Criminal Apprehension for the fiscal year ending June 30, 2021 to implement autism training under this section.

### **Section 21 – Requiring the Duty to Intervene and Report**

This section lays out that peace officers, regardless of tenure or rank, must intercede when (1) present and observing another peace officer using force, in violation of MS, Section 609.066, Subd. 2, or otherwise beyond that which is objectively reasonable under the circumstance to prevent the use of unreasonable force; and (2) is physically and verbally in a position to do so. Lastly, this section establishes a duty to report excessive use of force incidents in writing to the chief law enforcement officer of the agency that employs the reporting officer and provides that failure to comply with either duty is grounds for POST Board discipline under the Board’s rules.

### **Sections 22 and 24 – Arbitration Reform**

Over the years police departments across the nation and here in Minnesota have been criticized for not holding officers accountable in fatal shootings or other misconducts. One reason for this is because when a police chief fires an officer they are often overruled by arbitrators. Arbitrators act as the final judge of law and fact disputes covered by collective bargaining agreements made between employers and a Union. [[Washington Post Article](#)]

This section modifies how, and which arbitrators are used in peace officer grievance arbitration by establishing an arbitrator selection procedure. These changes apply to all peace officer grievance arbitrations for written disciplinary action, discharge, or termination, and must be included in the grievance procedure for all collective bargaining agreements covering peace officers negotiated on or after the enactment date. Several police chiefs have testified in support of this provision.

**Roster of Arbitrators:** The Bureau of Mediation Services (originally the Governor), in consultation with community and law enforcement stakeholders, is required to appoint a roster of at least 6 qualified arbitrators. Any arbitrator seeking appointment to this roster must complete six hours of training in culture competency, racism, implicit bias, and recognize the value in community diversity and cultural differences. They will also be required complete six hours of training related to daily experiences of police officers The Bureau of Mediation Services may adopt rules establishing training requirements for the pool of arbitrators.

**Arbitration Process:** Once a peace officer grievance is filed, the Bureau of Mediation Services assigns or appoints an arbitrator from the roster, on a rotation through the roster alphabetically ordered by last name. All parties involved cannot be involved in selecting the arbitrator. The arbitrator or panel will decide the grievance, and the decision is binding subject to provisions of the Uniform Arbitration Act (Ch. 572B).

The changes made to the arbitration process in this section only applies to peace officer grievances and do not apply to other public employees. Peace officers cannot agree to a collective bargaining agreement or grievance arbitration selection procedure that is not consistent with the changes in this section.

**FISCAL IMPACTS:** \$120,000 in FY 21 is appropriated from the General Fund to the Bureau of Mediation Services for rulemaking, staffing, and other costs associated with peace officer grievance procedures. \$4,7000 is added to the bureau's base.

### **Section 23 – Peace Officer Training Assistance Funding Extension (new)**

This section lifts the sunset on current training dollars that support and strengthen law enforcement training and implement best practices. Those training funds will be extended for two years (until 2024) at \$6 million per year.