



1-2-2022

Law Enforcement Allegiance: How Chapter 20 Provides an Ineffective Solution to Police Accountability

Chloe Fisher

Follow this and additional works at: <https://scholarlycommons.pacific.edu/uoplawreview>



Part of the [Law Commons](#)

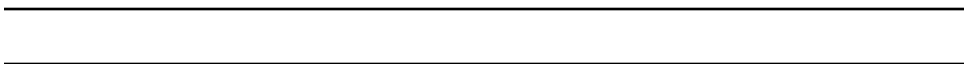
Recommended Citation

Chloe Fisher, *Law Enforcement Allegiance: How Chapter 20 Provides an Ineffective Solution to Police Accountability*, 53 U. PAC. L. REV. 361 (2022).

Available at: <https://scholarlycommons.pacific.edu/uoplawreview/vol53/iss2/11>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in University of the Pacific Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

UNIVERSITY OF THE PACIFIC LAW REVIEW



Law Enforcement Allegiance: How Chapter 20 Provides an Ineffective Solution to Police Accountability

*Chloe Fisher**

Code Sections Affected

Penal Code § 817 (amended).
AB 127 (Kamlager); 2020 STAT. CH. 20.

TABLE OF CONTENTS

I.	INTRODUCTION	362
II.	LEGAL BACKGROUND	363
	<i>A. An Officer May Make an Arrest Without a Warrant in Limited Circumstances</i>	364
	<i>B. Situations in Which an Officer Must Obtain an Arrest Warrant</i>	365
III.	CHAPTER 20.....	367
IV.	ANALYSIS	368
	<i>A. Chapter 20 Successfully Eliminates a Procedural Barrier in Prosecuting Police Officers</i>	368
	<i>B. Chapter 20 is Likely Not an Adequate Solution to Increase Police Accountability</i>	370
	1. <i>Chapter 20 Fails to Consider the Relationship Between District Attorneys and the Police</i>	370
	2. <i>Prosecutors’ Inherent Conflict of Interest Will Likely Result in Little Police Accountability and Transparency</i>	371
	<i>C. Chapter 20 Must Include the Implementation of Independent Oversight of Police Agencies</i>	373
	1. <i>The Need for Independent Oversight for Better Police Accountability</i>	373
	2. <i>Current Oversight Boards Across the United States Do Not Have the Necessary Resources to be Effective</i>	374
	3. <i>An Independent Oversight Body with Proper Authority Will Increase Police Accountability</i>	376
V.	CONCLUSION	378

* J.D. Candidate, University of the Pacific, McGeorge School of Law, to be conferred May 2023; B.S., Business Administration, California Polytechnic State University, San Luis Obispo, 2019. I would like to thank both the University of the Pacific Law Review Board and fellow staff members for their suggestions and edits. I would also like to thank my family and friends for their support and encouragement as I continue to pursue and achieve my goals. Most importantly, I would like to thank my mom for always being my biggest supporter and always encouraging me to chase my dreams—I am honored I get to follow in your footsteps.

I. INTRODUCTION

Police officers killed George Floyd on May 25, 2020, resulting in unprecedented worldwide protests against police brutality.¹ George Floyd's fatal encounter with the police began when a store clerk reported George Floyd's use of a counterfeit twenty dollar bill.² Officers arrived and handcuffed George Floyd—a black man—pinning him to the ground.³ Derek Chauvin, a Minneapolis police officer, then held his knee on George Floyd's neck for nine and a half minutes, ultimately killing George Floyd.⁴

George Floyd's death generated public outcry across the nation regarding the police's use of excessive force.⁵ Bystanders recorded the chilling manner in which Derek Chauvin killed George Floyd, and the videos quickly spread online.⁶ The videos of the killing allowed viewers to see the devastating effects of police brutality with their own eyes.⁷ Once people across the country—and the world—saw the video, people gathered in protest, calling for change.⁸

One of the calls for change involves greater transparency of law enforcement agencies.⁹ Today, many Americans feel there is a lack of transparency and accountability with regards to law enforcement agencies and officer misconduct.¹⁰

1. See Audra D.S. Burch et al., *The Death of George Floyd Reignited a Movement. What Happens Now?*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2021/04/20/us/george-floyd-protests-police-reform.html> (on file with the *University of the Pacific Law Review*) (“[P]rotests . . . bec[ame] the largest mass protest movement in U.S. history.”).

2. Tim Arango et al., *How George Floyd Died, and What Happened Next*, N.Y. TIMES (May 25, 2021), <https://www.nytimes.com/article/george-floyd.html> (on file with the *University of the Pacific Law Review*).

3. *Id.*

4. Janelle Griffith, *Derek Chauvin Sentenced to 22.5 Years for the Murder of George Floyd*, NBC NEWS (June 25, 2021), <https://www.nbcnews.com/news/us-news/derek-chauvin-be-sentenced-murder-death-george-floyd-n1272332> (on file with the *University of the Pacific Law Review*).

5. Megan Brenan, *Amid Pandemic, Confidence in Key U.S. Institutions Surges*, GALLUP NEWS (Aug. 12, 2020), <https://news.gallup.com/poll/317135/amid-pandemic-confidence-key-institutions-surges.aspx> (on file with the *University of the Pacific Law Review*).

6. Griffith, *supra* note 4.

7. See Jeannie Suk Gersen, *The Vital Role of Bystanders in Convicting Derek Chauvin*, NEW YORKER (Apr. 21, 2021), <https://www.newyorker.com/news/our-columnists/the-vital-role-of-bystanders-in-convicting-derek-chauvin>, (on file with the *University of the Pacific Law Review*) (declaring the critical role of the bystander's video and how it allowed the jury to see what unfolded during George Floyd's killing with their own eyes).

8. See History.com Editors, *George Floyd is Killed by a Police Officer, Igniting Historic Protests*, HISTORY (May 24, 2021) <https://www.history.com/this-day-in-history/george-floyd-killed-by-police-officer> (on file with the *University of the Pacific Law Review*) (addressing that the video of Derek Chauvin killing George Floyd's immediately generated what may be the largest protest movement in American history).

9. See Karina Zaiets et al., *We Looked at Protester Demands From Across the Nation and Compared Them With Recent Police Reforms*, USA TODAY (July 20, 2020), <https://www.usatoday.com/in-depth/news/2020/07/20/protester-demands-police-policy-change-chokehold-ban/5357153002/> (on file with the *University of the Pacific Law Review*) (showcasing the police reform measures protestors are demanding, including: banning neck restraints, decreasing police funding, requiring intervention, additional police training or education, increased reporting, changing protest protocol, and increasing transparency).

10. *The Change We Need: 5 Issues that Should Be Part of Efforts to Reform Policing in Local Communities*, ADVANCEMENT PROJECT (Aug. 12, 2020), <https://advancementproject.org/the-change-we-need-5-issues-that-should-be-part-of-efforts-to-reform-policing-in-local-communities/> (on file with the *University of the Pacific Law*

It is still rare for the criminal justice system to hold police officers accountable for their use of force.¹¹ The American public has witnessed numerous examples of officers' use of excessive force in recent years, often with little to no accountability.¹² As a result, public confidence in law enforcement agencies is at a record low.¹³

Following George Floyd's murder, lawmakers across the country introduced over 3,000 policing policy bills in response to the public's push for change.¹⁴ In the California State Legislature, State Senator Sydney Kamlager authored Chapter 20 in an attempt to increase accountability and transparency of officers and police departments.¹⁵ Chapter 20 aims to remove procedural barriers which make it difficult to arrest police officers.¹⁶ Specifically, the bill permits prosecutors to request an arrest warrant from a magistrate when a police officer is the subject of the arrest.¹⁷ Although Chapter 20 reduces procedural barriers to arresting officers, it will be ineffective without creating an independent oversight body to eliminate a prosecutor's conflict of interest.¹⁸

Review).

11. Lydia Wang, *Derek Chauvin's Guilty Verdict is a Step Toward Accountability—But It's Not Justice*, REFINERY 29 (Apr. 21, 2021), <https://www.refinery29.com/en-us/2021/04/10433632/derek-chauvin-guilty-accountability-justice> (on file with the *University of the Pacific Law Review*).

12. See *114 Black Men and Boys Killed by Police*, NEWSONE (June 3, 2021), <https://newsone.com/playlist/black-men-boy-who-were-killed-by-police/> (on file with the *University of the Pacific Law Review*) (reporting 114 Black men that police officers killed in recent years in the United States); see also Wang, *supra* note 11 (tallying the 319 people police have killed in the first four months of 2021).

13. Brenan, *supra* note 5.

14. Noreen O'Donnell & Amy O'Kruk, *States Raced to Pass Police Reform Bills After George Floyd's Murder. Advocates Say Not Enough*, NBC DALL. FORT WORTH (May 25, 2021), <https://www.nbcdfw.com/news/national-international/since-george-floyds-murder-states-have-raced-to-pass-police-reform-bills-but-advocates-say-not-enough/2640889/> (on file with the *University of the Pacific Law Review*).

15. Bay City News, *State Bill Seeks to Increase Police Accountability*, NBC BAY AREA (June 29, 2021), <https://www.nbcbayarea.com/news/local/san-francisco/state-bill-seeks-to-increase-police-accountability/2582381/> (on file with the *University of the Pacific Law Review*); David M. Greenwald, *Landmark Police Accountability Bill Signed by Governor Newsom*, DAVIS VANGUARD (July 1, 2021), <https://www.davisvanguard.org/2021/07/landmark-police-accountability-bill-signed-by-governor-newsom/> (on file with the *University of the Pacific Law Review*).

16. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 127, at 3 (Apr. 20, 2021).

17. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 127, at 5 (June 8, 2021).

18. ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021); see also *Thirteen Principles for Effective Oversight*, NAT'L ASS'N CIVILIAN OVERSIGHT L. ENF'T, <https://www.nacole.org/principles> (last visited July 18, 2021) (on file with the *University of the Pacific Law Review*) (emphasizing the importance for an overseeing body to remain independent in order to maintain legitimacy).

II. LEGAL BACKGROUND

In California, there are multiple ways to arrest an individual.¹⁹ American jurisprudence requires a probable cause standard of proof for any arrest.²⁰ This standard stems from the Fourth Amendment, requiring officers to show probable cause to arrest an individual or obtain an arrest warrant.²¹ In order to demonstrate probable cause, an officer must reasonably believe the “suspect committed, is committing, or is about to commit an offense.”²² In evaluating probable cause, the court looks to the totality of the circumstances by evaluating all facts available to the officer at the time of the incident.²³ Facts the court may consider include the level of crime in a specific location, a suspect’s evasive conduct, and other relevant circumstances.²⁴ Section A discusses circumstances in which an officer may make a warrantless arrest—as long as they have sufficient probable cause on the scene.²⁵ Section B addresses situations where an officer needs a warrant to make an arrest, and therefore must first present probable cause to a magistrate.²⁶

A. An Officer May Make an Arrest Without a Warrant in Limited Circumstances

The need for an arrest warrant may depend upon certain circumstances as well as the practicality of an officer to obtain an arrest warrant.²⁷ Specifically, an officer must demonstrate that “exigent circumstances” justify the lack of a warrant.²⁸ This

19. See Stacy Barrett, *The Criminal Arrest Process & Your Rights*, ALL L., <https://www.alllaw.com/articles/nolo/criminal/arrest-process-your-rights.html> (last visited on July 14, 2021) (on file with the *University of the Pacific Law Review*) (describing that police officers can arrest a suspect with or without an arrest warrant); see also *Citizen’s Arrest in California – Penal Code 837 PC*, SHOUSE CAL. L. GRP., <https://www.shouselaw.com/ca/defense/penal-code/837/> (last visited July 18, 2021) (on file with the *University of the Pacific Law Review*) (identifying that private citizens have the right to arrest).

20. See *Probable Cause*, LEGAL INFOR. INST., CORNELL L. SCH., https://www.law.cornell.edu/wex/probable_cause (last visited July 18, 2021) (on file with the *University of the Pacific Law Review*) (“Probable cause is a requirement found in the Fourth Amendment that must usually be met before police make an arrest.”).

21. See U.S. CONST. amend. IV (“[N]o warrants shall issue, but upon probable cause.”); see also *Fourth Amendment*, LEGAL INFOR. INST., CORNELL L. SCH., https://www.law.cornell.edu/constitution/fourth_amendment (last visited on July 18, 2021) (on file with the *University of the Pacific Law Review*) (explaining the Fourth Amendment protects citizens against arbitrary arrests).

22. *United States v. Humphries*, 372 F.3d 653, 657 (2004); *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979).

23. See *Arrest and Search Warrants*, MICHAEL REHM, PERS. INJ. ATT’Y, <https://www.michaelrehm.com/california-arrest-search-warrants> (last visited on July 12, 2021) (on file with the *University of the Pacific Law Review*) (requiring a magistrate to examine all surrounding circumstances when applying the totality of the circumstances standard).

24. *Humphries*, 372 F.3d at 657.

25. *Infra* Section II.A.

26. *Infra* Section II.B.

27. *When Can Police Arrest a Suspect Without an Arrest Warrant?*, MORALES L. FIRM (Jan. 14, 2013), <https://sferiminalawspcialist.com/blog/when-can-police-arrest-a-suspect-without-an-arrest-warrant/> (on file with the *University of the Pacific Law Review*).

28. See CALCRIM No. 2670, JUD. COUNCIL CAL. CRIM. JURY INSTRUCTIONS 556 (2020).

means that an officer must determine if the current circumstances require an immediate arrest.²⁹ Moreover, the officer's determination that an immediate arrest is necessary must be reasonable.³⁰

Similarly, if a suspect's criminal conduct constitutes a felony, an officer does not need a warrant to arrest an individual.³¹ An officer need not personally witness the felony offense to arrest the suspect.³² That said, an officer must still demonstrate probable cause when arresting an individual for a felonious offense, even though an arrest warrant is not required.³³ For example, if a police officer has probable cause to believe a suspect committed a robbery, despite not having witnessed the crime, there is no need for a warrant.³⁴

The location of a crime and arrest may also determine whether a warrant is necessary.³⁵ For example, if a crime occurs in the presence of an officer, that officer may make a warrantless arrest.³⁶ Further, if an officer is arresting a suspect in a public place, an officer does not need an arrest warrant.³⁷ A warrant is unnecessary in this situation because a person does not have a reasonable expectation of privacy in a public setting.³⁸ While this section addressed situations where an officer need not obtain an arrest warrant, there are certain circumstances where an officer must obtain a warrant.³⁹

B. Situations in Which an Officer Must Obtain an Arrest Warrant

Some situations require an officer to obtain an arrest warrant in order to effect an arrest.⁴⁰ An arrest warrant is necessary to arrest a suspect for a misdemeanor

<https://www.justia.com/documents/criminal-law-calcrim.pdf> (on file with the *University of the Pacific Law Review*) (“The term exigent circumstances describes an emergency situation that requires swift action to prevent (1) imminent danger to life or serious damage to property, or (2) the imminent escape of a suspect or destruction of evidence.”).

29. *Id.*

30. *Exigent Circumstances*, LEGAL INFOR. INST., CORNELL L. SCH., https://www.law.cornell.edu/wex/probable_cause (last visited Sept. 17, 2021) (on file with the *University of the Pacific Law Review*).

31. See CAL. PENAL CODE § 836(a)(1) (enacted by 1872 Stat. Ch. 5) (specifying the need for an arrest warrant is nonexistent when there is probable cause the suspect committed a felony).

32. *In re Alonzo C.*, 87 Cal. App. 3d 707, 712 (1978).

33. CAL. PENAL CODE § 836(a)(1) (enacted by 1872 Stat. Ch. 5)

34. See *In re Alonzo C.*, 87 Cal. App. 3d at 712 (distinguishing between felonies and misdemeanors).

35. See CAL. PENAL CODE § 836(a)(1) (enacted by 1872 Stat. Ch. 5) (outlining the limited circumstances in which an officer may effect arrest without a warrant).

36. *Id.*

37. Sam Kamin & Justin Marceau, *Double Reasonableness and the 4th Amendment*, 68 U. MIAMI L. REV. 589, 598 (2014).

38. See *Katz v. United States*, 389 U.S. 347, 351 (1967) (“What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.”) (citations omitted).

39. *Supra* Section II.A.; *infra* Section II.B.

40. *What is a Ramey Warrant? How Does it Differ from a Regular Arrest Warrant?*, SHOUSE CAL. L. GRP., <https://www.shouselaw.com/ca/blog/warrant/what-is-a-ramey-warrant-how-does-it-differ-from-a-regular-arrest->

that the officer did not personally witness.⁴¹ The standard determining whether an officer personally witnesses a crime merely requires an officer to know of the criminal acts through their own sensory perceptions.⁴² However, misdemeanor offenses often do not occur within the officer's presence, making an arrest warrant necessary for most misdemeanor offenses.⁴³

Additionally, an officer generally must acquire an arrest warrant in order to enter a suspect's dwelling when arresting a suspect at their home.⁴⁴ However, even with an arrest warrant, an officer must have knowledge the subject resides at the specified dwelling.⁴⁵ Also, the officer must reasonably believe the subject is currently inside in order to enter.⁴⁶ These requirements surrounding officers' entry into a dwelling stem from the notion that the entry is a limited invasion of one's property.⁴⁷

Prior to Chapter 20, California law required a peace officer to request an arrest warrant from a magistrate.⁴⁸ An officer signed a written declaration describing the facts of the crime and then presented it to a magistrate.⁴⁹ The declaration needed to demonstrate probable cause that a crime occurred and the subject of the arrest warrant was the likely offender.⁵⁰ If the magistrate found sufficient evidence in the declaration to show probable cause, the magistrate issued the arrest warrant.⁵¹ Officers then had the authority to arrest the suspect for the crime.⁵² Although California law empowers an officer to arrest a fellow officer for misconduct, this rarely happens because officers are reluctant to arrest one of their own.⁵³ The

warrant/ (last visited July 18, 2021) (on file with the *University of the Pacific Law Review*).

41. See CAL. PENAL CODE § 836(a)(1) (enacted by 1872 Stat. Ch. 5) (permitting officers to arrest a suspect without a warrant if the suspect committed the crime in the officer's presence).

42. See *In re Alonzo C.*, 87 Cal. App. 3d at 712 (The test is whether the misdemeanor is apparent to the officer's senses.) (quotations omitted).

43. *Id.*

44. See *People v. Ramey*, 16 Cal. 3d 263, 275 (1976) (“[I]n the absence of a bona fide emergency, or consent to enter, police action in seizing the individual in the home must be preceded by the judicial authorization of an arrest warrant.”).

45. *People v. Downey*, 198 Cal. App. 4th 652, 660 (2011); *Payton v. New York*, 445 U.S. 573, 603 (1980).

46. *Downey*, 198 Cal. App. 4th at 660; *Payton*, 445 U.S. at 603.

47. See *People v. LeBlanc*, 60 Cal. App. 4th 157, 164 (1997) (reasoning arrest warrants are necessary when entering dwelling because an arrest warrant permits a peace officer to deprive another of their liberty and authorizes a limited invasion of an individual's property).

48. See CAL. PENAL CODE § 817(a)(1) (amended by 2018 Stat. Ch. 176, Sec. 1) (indicating only a peace officer can make a declaration of probable cause to present to a magistrate); see also CAL. PENAL CODE § 830.1(a) (amended by 2012 Stat. Ch. 66, Sec. 1) (defining a peace officer as any sheriff or police officer employed in that capacity as well as any “inspector or investigator employed in that capacity in the office of a district attorney”).

49. See CAL. PENAL CODE § 817(b) (amended by 2018 Stat. Ch. 176, Sec. 1) (highlighting the declaration of probable cause is a sworn written statement and the peace officer can then transmit the affidavit to a magistrate via facsimile transmission equipment, email, or computer server).

50. CAL. PENAL CODE § 817(a)(1) (amended by 2018 Stat. Ch. 176, Sec. 1).

51. *Id.*

52. See CAL. PENAL CODE § 817(h) (amended by 2018 Stat. Ch. 176, Sec. 1) (permitting the taking of defendant into custody after the magistrate issues an arrest warrant).

53. Lovepreet Dhinsa, *SF District Attorney Chesa Boudin Applauds CA Assembly OK of Police Accountability Bill Monday*, DAVIS VANGUARD (May 4, 2021), <https://www.davisvanguard.org/2021/05/sf->

underlying purpose of Chapter 20 is to increase accountability by rectifying the problem of an officer's hesitancy to report fellow officers.⁵⁴

III. CHAPTER 20

Chapter 20 aims to eliminate procedural barriers when arresting an officer by allowing prosecutors to obtain the arrest warrant.⁵⁵ Chapter 20 creates an alternative avenue for obtaining an arrest warrant when the subject of the arrest is an officer, rather than a public citizen.⁵⁶ This alternative procedure expands who may sign a declaration of probable cause for an arrest warrant when an officer is the subject of arrest.⁵⁷ Under Chapter 20, an employee within a California prosecutor's office can sign a declaration of probable cause.⁵⁸ Therefore, this bill eliminates the requirement that an officer must sign the declaration.⁵⁹

A prosecutor must follow the same procedures as a peace officer when making the declaration of probable cause.⁶⁰ The prosecutor must present the declaration to a magistrate.⁶¹ The magistrate must then examine the declaration.⁶² Chapter 20 does not change the existing standard of proof—probable cause—the requesting party must show.⁶³ If the magistrate is satisfied that probable cause exists, they will issue the arrest warrant.⁶⁴ As such, magistrates are still the gatekeepers and ultimately decide whether to issue the arrest warrant based on the evidence in the declaration.⁶⁵

district-attorney-chesa-boudin-applauds-ca-assembly-ok-of-police-accountability-bill-monday/ (on file with the *University of the Pacific Law Review*).

54. See ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021) (“One obstacle to prosecution of police officers is the unwillingness of law enforcement officers to assist in the prosecution of one of their own. This can lead to law enforcement officers refusing to provide the necessary information to support an arrest warrant.”).

55. *Id.*

56. See AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (permitting prosecutors to request an arrest warrant from a magistrate when the subject is a peace officer).

57. *Id.*; see also *Arrest and Search Warrants*, *supra* note 23 (describing probable cause as a showing of sufficient facts such that a reasonable person would believe that a crime occurred, and the arrestee committed the crime).

58. AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

59. Compare *id.* (showing public prosecutor's will be able to sign a declaration of probable cause), with CAL. PENAL CODE § 817(a)(1) (amended by 2018 Stat. Ch. 176, Sec. 1) (requiring a declaration of probable cause must be made by a California peace officer).

60. Compare AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021), with CAL. PENAL CODE § 817(a)(1) (amended by 2018 Stat. Ch. 176, Sec. 1) (demonstrating that §§ (a)(2)–(i) involves the same process for both existing law and AB 127).

61. AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

62. *Id.*; see CAL. PENAL CODE § 817(g) (amended by 2018 Stat. Ch. 176, Sec. 1) (explaining a magistrate may examine the individual seeking a warrant under oath, as well as any witnesses).

63. ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021).

64. AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021); see also CAL. PENAL CODE § 815 (amended by Stat. Ch. 1490) (outlining the required components of an arrest warrant include the defendant's name, the issuing city or county, and the time the warrant is issued).

65. ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021).

IV. ANALYSIS

State and local governments continue to grapple with ways to enhance police accountability.⁶⁶ Chapter 20 aims to hold police accountable by reducing procedural barriers that exist at the outset of criminal prosecution of police officers.⁶⁷ Section A explains how Chapter 20 effectively eliminates one procedural barrier to arresting an officer by extending the ability to request an arrest warrant to district attorneys.⁶⁸ Section B describes how Chapter 20 fails to address other practical barriers in holding police accountable, such as the strong relationship between prosecutors and police.⁶⁹ Section C highlights the need for independent oversight agencies to effectively hold police officers accountable.⁷⁰

A. Chapter 20 Successfully Eliminates a Procedural Barrier in Prosecuting Police Officers

Chapter 20 effectively reduces obstacles to arresting officers because it grants prosecutors the power to obtain arrest warrants against police officers.⁷¹ The arrest warrant is vital because the arrest is the first step in a criminal prosecution.⁷² Under Chapter 20, not only can peace officers request an arrest warrant, but public prosecutors can as well.⁷³ This broadens who can initiate a criminal prosecution against an officer.⁷⁴

Extending the power to obtain an arrest warrant to prosecutors creates uniformity and acts as a check on police departments.⁷⁵ Chapter 20 creates

66. See Steve Eder et al., *As New Police Reform Laws Sweep Across the U.S., Some Ask: Are They Enough?*, N.Y. TIMES (Apr. 18, 2021), <https://www.nytimes.com/2021/04/18/us/police-reform-bills.html> (on file with the *University of the Pacific Law Review*) (describing the efforts to reform police conduct by states and lawmakers following George Floyd's death).

67. See ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021) (indicating the bill's purpose is make ease district attorneys in initiating prosecution against an officer by reducing procedural barriers).

68. *Infra* Section IV.A.

69. *Infra* Section IV.B.

70. *Infra* Section IV.C.

71. AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

72. *How Criminal Cases Work, California Courts*, JUD. BRANCH CAL., <https://www.courts.ca.gov/1069.htm?rdeLocaleAttr=en&print=1> (last visited on July 17, 2021) (on file with the *University of the Pacific Law Review*).

73. AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

74. *Compare id.* (permitting public prosecutors to sign a declaration of probable cause to request an arrest warrant), with CAL. PENAL CODE § 817(a)(1) (amended by 2018 Stat. Ch. 176, Sec. 1) (allowing only peace officers to present probable cause to a magistrate to request an arrest warrant).

75. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 127, at 4–5 (Apr. 20, 2021) (explaining AB 127 would make the requirements to obtain an arrest warrant the same as the requirements to obtain a search warrant); see also *State Senator Sydney K. Kamlager Says California Moves Closer to Police Officer Accountability with AB 127 Now Heading to Governor's Desk*, SIERRA SUN TIMES (June 12, 2021), <https://goldrushcam.com/sierrasuntimes/index.php/news/local-news/30409-state-senator-sydney-k-kamlager-says-california-moves-closer-to-police-officer-accountability-with-ab-127-now-heading-to-governor-s-desk> (on file with the *University of the Pacific Law Review*) (suggesting AB 127 eliminates procedural barriers currently

uniformity in that it parallels the procedure for obtaining a search warrant.⁷⁶ Additionally, uniformity will increase court efficiency because courts will have one process to follow when issuing warrants—either arrest or search warrants.⁷⁷ Chapter 20 also creates a check on police power because the ability to arrest no longer relies solely on fellow police officers.⁷⁸ Allowing external agencies, such as district attorney’s offices, to request arrest warrants holds police accountable to those outside the department.⁷⁹

Allowing public prosecutors to obtain arrest warrants eliminates the need for officers to report fellow officers, thus easing the ability to arrest police officers for misconduct.⁸⁰ Before Chapter 20, a fellow officer would need to obtain an arrest warrant against the offender, making it difficult to arrest officers.⁸¹ Officers are often reluctant to report other officers and hesitant to assist in the prosecution of one of their own.⁸² With Chapter 20, a prosecutor can now present probable cause to a magistrate, eliminating the need for a police officer to speak out against another officer.⁸³ Despite this bill’s elimination of prosecutorial barriers by expanding who can acquire an arrest warrant for an officer, further improvements are still necessary for adequate police accountability.⁸⁴

in place that shield law enforcement officers from accountability by no longer requiring officers to sign off on arrest warrants).

76. See ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 1 (May 3, 2021) (highlighting peace officers are not required to sign off search warrants even though the examination procedures and standard to obtain a search warrant is the same as an arrest warrant).

77. See *id.* (indicating how the process will be similar to the process of obtaining a search warrant).

78. See Sydney K. Kamlager, *Governor Newsom Signs Landmark Legislation to Improve Police Officer Accountability Into Law*, SYDNEY K. KAMLAGER REPRESENTING SENATE DIST. 30: PRESS RELEASES (June 29, 2021), <https://sd30.senate.ca.gov/news/governor-newsom-signs-landmark-legislation-improve-police-officer-accountability-law> (on file with the *University of the Pacific Law Review*) (“AB 127: Arrest Warrants: Declaration of Probable Cause will allow a prosecutor’s office to go directly to the judge in securing an arrest warrant when the subject is a peace officer.”).

79. See Rachel Marshall, *San Francisco District Attorney Chesa Boudin Praises Senate’s Passage of AB 127, Which He Cosponsored, and Urges Governor Newsom To Sign It into Law*, S.F. DISTRICT ATT’Y: PRESS RELEASES (June 11, 2021), <https://sfdistrictattorney.org/press-release/district-attorney-chesa-boudin-praises-senates-passage-of-ab-127/> (on file with the *University of the Pacific Law Review*) (quoting ACLU police practices expert, John Crew, explaining the importance of policy changes enabling prosecutors to file charges against officers who break the law).

80. Dhinsa, *supra* note 53.

81. See *id.* (emphasizing police officers are often reluctant to assist in the arrest of one of their own).

82. *Id.*; SENATE FLOOR, SENATE FLOOR ANALYSIS OF AB 127, at 5 (June 9, 2021).

83. See Paige Laver, *Chesa Boudin-Backed Assembly Bill 127 to Hold Police Accountable Signed into Law*, DAVIS VANGUARD (July 3, 2021), <https://www.davisvanguard.org/2021/07/chesa-boudin-backed-assembly-bill-127-to-hold-police-accountable-signed-into-law/> (on file with the *University of the Pacific Law Review*) (stating AB 127 will diversify who can present evidence of probable cause to a magistrate when requesting an arrest warrant).

84. See *id.* (referencing that both author of AB 127—Senator Sydney Kamlager—and the co-sponsor of the bill—San Francisco District Attorney Chesa Boudin—believe this bill will increase police accountability by eliminating procedural barriers to obtaining arrest warrants when the subject of arrest is a peace officer); AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021).

B. Chapter 20 is Likely Not an Adequate Solution to Increase Police Accountability

California Senator Sydney Kamlager introduced Chapter 20 intending to hold police accountable for misconduct.⁸⁵ While the bill successfully eliminates one procedural barrier to initiating an arrest of a peace officer, the bill is not enough to create greater police accountability.⁸⁶ Chapter 20 fails to consider other key barriers to holding officers accountable and therefore is not an adequate solution.⁸⁷ Subsection 1 discusses how Chapter 20 does not address the interdependent relationship between police departments and public prosecutors, therefore creating a conflict of interest.⁸⁸ Subsection 2 addresses how this conflict of interest results in a lack of accountability and transparency to the public.⁸⁹

1. Chapter 20 Fails to Consider the Relationship Between District Attorneys and the Police

Police and prosecutors work together every day and must cooperate to successfully perform their jobs.⁹⁰ Police assist district attorneys in gathering the evidence prosecutors use to build and prove their case.⁹¹ Prosecutors must have all relevant facts for a case in order to demonstrate a defendant committed the crime beyond a reasonable doubt come trial.⁹² To meet this high burden of proof, prosecutors need police officers who often have the most relevant information about the events of a crime.⁹³ Prosecutors cannot do their job without police, thus

85. ASSEMBLY FLOOR, ASSEMBLY FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021).

86. *Supra* Section IV.A; *infra* Section IV.B.

87. *Infra* Section IV.B.

88. *Infra* Subsection IV.B.1.

89. *Infra* Subsection IV.B.2.

90. *Important Relationships for Prosecutors*, CLIFFNOTES, <https://www.cliffsnotes.com/study-guides/criminal-justice/prosecutors/important-relationships-for-prosecutors> (last visited on July 17, 2021) (on file with the *University of the Pacific Law Review*); Jon Swaine, et. al., *Ties That Bind: How the Bond Between Police and Prosecutors Impedes Justice*, GUARDIAN (Dec. 31, 2015), <https://www.theguardian.com/us-news/2015/dec/31/ties-that-bind-conflicts-of-interest-police-killings> (on file with the *University of the Pacific Law Review*).

91. See Martin Kaste, *It's A Complicated Relationship Between Prosecutors, Police*, NPR (Dec. 4, 2014), <https://www.npr.org/2014/12/04/368529402/its-a-complicated-relationship-between-prosecutors-police> (on file with the *University of the Pacific Law Review*) (“[P]rosecutors need the police on their side. They rely on the police to investigate cases and testify at trials.”).

92. See *In re Winship*, 397 U.S. 358, 36 (1970) (expressing the government must prove a defendant’s guilt beyond a reasonable doubt); see also CALCRIM No. 220, JUD. COUNCIL CAL. CRIM. JURY INSTRUCTIONS 43 (2020), <https://www.justia.com/documents/criminal-law-calcrim.pdf> (on file with the *University of the Pacific Law Review*) (“Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true.”).

93. See Alexandra Hodson, *The American Injustice System: The Inherent Conflict of Interest in Police-Prosecutor Relationships & How Immunity Lets Them ‘Get Away with Murder’*, 54 IDAHO L. REV. 563, 584 (2018) (noting a detective’s ability to possess in-depth and current information which can help a prosecutor with their case).

creating a strong relationship and a sense of dependency.⁹⁴ Prosecutors typically cannot so much as bring charges against an individual, let alone reach a conviction, without relying on police reports.⁹⁵ Therefore, prosecutors' success in court depends on diligent police efforts.⁹⁶

Additionally, as elected officials, elected district attorneys depend heavily on police organizations and unions for campaign support.⁹⁷ Police contribute substantially to district attorneys' election campaigns.⁹⁸ For example, in the most recent Los Angeles County District Attorney election, police unions donated to the incumbent, totaling seventy-two percent of her total campaign donations.⁹⁹ This interdependency renders Chapter 20 ineffective because it creates the same conflict of interest the bill aims to eliminate.¹⁰⁰

2. Prosecutors' Inherent Conflict of Interest Will Likely Result in Little Police Accountability and Transparency

District attorneys and police departments have a symbiotic relationship, thus creating an evident conflict of interest.¹⁰¹ The strong affiliation between prosecutors and police agencies can lead to a prosecutor's reluctance in seeking an arrest warrant against an officer.¹⁰² Despite working in different branches of law enforcement, prosecutors—like officers—may not want to speak out against police due to this conflict of interest.¹⁰³ Therefore, Chapter 20 falsely assumes that district

94. *Local Criminal Prosecution*, HUMAN RIGHTS WATCH, <https://www.hrw.org/legacy/reports98/police/uspo31.htm> (last visited July 18, 2021) (on file with the *University of the Pacific Law Review*); see also Kate Levine, *Who Shouldn't Prosecute the Police*, 101 IOWA L. REV. 1447, 1450 (2016) ("Maintaining a good relationship with individual officers and the good will of a police department is essential to a prosecutor's success in obtaining convictions, and thus to her professional life.").

95. See Paul Bergman, *How the Prosecutor Decides Which Cases to Charge*, NOLO, <https://www.nolo.com/legal-encyclopedia/how-prosecutors-decide-which-cases-charge.html> (last visited on July 18, 2021) (on file with the *University of the Pacific Law Review*) (detailing the process in which prosecutors make charging decisions often relies on police reports); ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021).

96. See Bergman, *supra* note 96 (denoting the various ways police reports can impact a prosecutor's case, such as influencing what charges to file, the bail amount, preliminary hearing outcomes, plea bargains, and even tactics at trial).

97. See Swaine, et al., *supra* note 91 (illustrating police unions frequently donate to district attorney campaigns).

98. See *id.* ("Among the 95% of district attorneys who are elected, many receive valuable donations and public endorsements from police unions for their campaigns.").

99. Maloy Moore et al., *Here are the Mega-Donors and Police Unions Pouring Millions into the L.A. County District Attorney Race*, L.A. TIMES (Nov. 3, 2020), <https://www.latimes.com/projects/la-district-attorney-race-top-donors/> (on file with the *University of the Pacific Law Review*).

100. See ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021) (declaring the obstacle AB 127 eliminates is that members of law enforcement do not want to help prosecute one of their own).

101. Irene Oritseweyinmi Joe, *The Prosecutor's Client Problem*, 98 B.U. L. REV. 885, 899 (2018).

102. See Swaine, et al., *supra* note 91 ("Prosecutors work with police day in, day out, and typically they're reluctant to criticize them or investigate them.").

103. See German Lopez, *Police Officers are Prosecuted for Murder in Less Than 2 Percent of Fatal Shootings*, VOX (Apr. 2, 2021), <https://www.vox.com/21497089/derek-chauvin-george-floyd-trial-police->

attorneys will willingly seek arrest warrants against police simply because the bill empowers prosecutors to do so.¹⁰⁴

If prosecutors are unlikely to pursue arrest warrants against police officers, police departments will remain unchecked.¹⁰⁵ Consequently, the current lack of police accountability will likely continue.¹⁰⁶ Currently, police are self-regulated entities, accountable only to themselves.¹⁰⁷ This self-regulation permits police departments to avoid transparency with the public, contributing further to the lack of police accountability.¹⁰⁸ Because Chapter 20 only permits prosecutors—another law enforcement agency—to hold officers accountable, minimal police accountability will continue.¹⁰⁹ The bill does not adequately eliminate the barrier to obtaining an arrest warrant against a police officer because prosecutors, like officers, have a strong conflict of interest.¹¹⁰ To truly eliminate this procedural barrier and increase accountability, independent entities must be able to check law

prosecutions-black-lives-matter (on file with the *University of the Pacific Law Review*) (identifying the “blue wall of silence” as the reason officers have a code not to snitch on each other); see also *About Government*, OFF. ATT’Y GEN., STATE CAL. DEP’T JUST., <https://oag.ca.gov/government/about> (last visited on July 18, 2021) (on file with the *University of the Pacific Law Review*) (recognizing district attorney’s offices as a branch of law enforcement).

104. See AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (expanding the power to request an arrest warrant to employees in a public prosecutor’s office, instead of just peace officers).

105. See Antony Davies & James R. Harrigan, *How to Hold Police Accountable*, U.S. NEWS (Sept. 7, 2017), <https://www.usnews.com/opinion/civil-wars/articles/2017-09-07/how-to-hold-police-accountable-to-the-public> (on file with the *University of the Pacific Law Review*) (implying that police are not held accountable because very little actually limits police authority).

106. See *id.* (suggesting police agencies’ powers are not limited or checked by external entities).

107. Max Felker-Kantor, *Police Departments Should No Longer be Allowed to Police Themselves*, WASH. POST (Mar. 19, 2018), <https://www.washingtonpost.com/news/made-by-history/wp/2018/03/19/police-departments-should-no-longer-be-allowed-to-police-themselves/> (on file with the *University of the Pacific Law Review*); *The Relationship Between Prosecutors and Police: Promoting Accountability and Building Public Trust*, NAACP LEGAL DEF. FUND, VOTING FOR JUST. B1 (2020), https://votingforjustice.org/wp-content/uploads/2020/10/B_LDF_09282020_VFJToolkit_PromotingAccountability-w_finished-endnotes-1.pdf (on file with the *University of the Pacific Law Review*).

108. See Mike Savino, *Police Accountability is Impossible Without Transparency*, CT MIRROR (June 4, 2020), <https://ctmirror.org/category/ct-viewpoints/police-accountability-is-impossible-without-transparency/> (on file with the *University of the Pacific Law Review*) (“[A]ccountability is nearly impossible without transparency, and too often police are able to block public access to information.”).

109. See *The Relationship Between Prosecutors and Police: Promoting Accountability and Building Public Trust*, *supra* note 108, at B1–B2, https://votingforjustice.org/wp-content/uploads/2020/10/B_LDF_09282020_VFJToolkit_PromotingAccountability-w_finished-endnotes-1.pdf (on file with the *University of the Pacific Law Review*) (acknowledging that district attorneys often oppose reform attempts and legislation that will increase police accountability and transparency).

110. See David M. Greenwald, *Landmark Police Accountability Bill Signed by Governor Newsom*, DAVIS VANGUARD (July 1, 2021), <https://www.davisvanguard.org/2021/07/landmark-police-accountability-bill-signed-by-governor-newsom/> (on file with the *University of the Pacific Law Review*) (addressing the intent behind AB 127 is to ease the process of securing an arrest warrant for an officer by extending that power to prosecutors); see also Hodson, *supra* note 94, at 584 (stating an inherent conflict exists in officer–prosecutor relationships).

enforcement.¹¹¹ Independent agencies with the ability to check police departments will ensure that these departments do not become too powerful.¹¹²

C. Chapter 20 Must Include the Implementation of Independent Oversight of Police Agencies

Implementing independent oversight of police conduct must occur in tandem with Chapter 20.¹¹³ Without this addition, police are still not accountable to anyone outside law enforcement.¹¹⁴ Subsection 1 describes the need for independent oversight bodies to increase police accountability.¹¹⁵ Subsection 2 examines current examples of oversight bodies.¹¹⁶ Subsection 3 discusses how oversight committees with proper authority can result in greater police accountability.¹¹⁷

1. The Need for Independent Oversight for Better Police Accountability

Engaging in little oversight of police, the criminal justice system rarely holds police officers accountable for their misconduct.¹¹⁸ Chapter 20 does not increase the level of oversight as it only expands the power to acquire an arrest warrant to another branch within law enforcement.¹¹⁹ An independent oversight body is a viable solution to hold police accountable.¹²⁰ Independent bodies will likely hold

111. See Masha Lisitsyna & Ian Scott, *How Independent Agencies Can Begin to Hold Police Accountable*, OPEN SOC'Y JUST. INITIATIVE (May 10, 2021), <https://www.justiceinitiative.org/voices/how-independent-agencies-can-begin-to-hold-police-accountable> (on file with the *University of the Pacific Law Review*) (“Independence is the oxygen of a credible investigative agency.”).

112. See *id.* (explaining that police departments currently police themselves which does not result in accountability); see also *Separation of Powers*, LEGAL INFOR. INST., CORNELL L. SCH., https://www.law.cornell.edu/wex/separation_of_powers_0 (last visited Aug. 27, 2021) (“The Checks and Balances system provides each branch of government with individual powers to check the other branches and prevent any one branch from becoming too powerful.”).

113. See Lisitsyna & Scott, *supra* note 112 (recognizing independence as a necessary characteristic of any investigative agency).

114. See Felker-Kantor, *supra* note 108 (“Without a fundamental rethinking of internal disciplinary procedures and the political structures of power that leave police departments with autonomous authority to police their own, continued revelations about departments that leave officers with a history of abusive or violent behavior on the street should not be surprising.”).

115. *Infra* Subsection IV.C.1.

116. *Infra* Subsection IV.C.2.

117. *Infra* Subsection IV.C.3.

118. See Sean Collins, *How the Federal Government Could Improve Police Oversight*, VOX (Mar. 24, 2021), <https://www.vox.com/22295749/policing-reform-federal-oversight-voting-rights-act-mazzone-rushin> <https://www.vox.com/22295749/policing-reform-federal-oversight-voting-rights-act-mazzone-rushin> (on file with the *University of the Pacific Law Review*) (indicating that many police departments in the United States have little oversight).

119. See AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (expanding the power to present probable cause to a magistrate to acquire an arrest warrant to public prosecutor offices); see also *About Government*, *supra* note 104 (recognizing district attorney offices as a branch of law enforcement).

120. See Seth W. Stoughton et al., *How to Actually Fix America's Police*, ATLANTIC (June 3, 2020), <https://www.theatlantic.com/ideas/archive/2020/06/how-actually-fix-americas-police/612520/> (on file with the

police accountable because these bodies will be entirely separate entities from law enforcement that will have the power to oversee police agencies.¹²¹

The element of independence is vital because it eliminates the police's power to self-regulate.¹²² Across the nation, self-regulated police departments are not only refusing to discipline their own officers in instances of misconduct, but are also allowing these officers to remain employed.¹²³ For example, the New York Police Department hid "probation files" for officers who had committed serious offenses yet kept their jobs.¹²⁴ In Philadelphia, police departments have a list of officers the department has disciplined; however, these officers are still employed and collecting a salary.¹²⁵ Police agencies demonstrated that they allow offending officers to continue their jobs and may even help keep the misconduct out of the public eye.¹²⁶ As such, completely independent bodies must oversee police agencies to hold offending officers accountable.¹²⁷

2. Current Oversight Boards Across the United States Do Not Have the Necessary Resources to be Effective

Three different models for oversight boards gained momentum due to society's growing calls for police accountability in instances of misconduct.¹²⁸ In the investigation model, oversight boards are independent of law enforcement, consisting of professional, non-police investigators.¹²⁹ However, the investigation model is costly, difficult to operate, and police unions strongly oppose this model.¹³⁰ The review model consists of volunteers who retroactively review completed investigations and then provide recommendations to leaders within police departments.¹³¹ While the volunteer staff has limited resources and power,

University of the Pacific Law Review) (emphasizing the importance of external oversight to enforce best policies and training).

121. See Lisitsyna & Scott, *supra* note 112 (indicating independence as a key component for a successful oversight body).

122. *Id.*

123. Felker-Kantor, *supra* note 108.

124. *Id.*

125. Chris Palmer et al., *Behind DA's List of Suspect Cops: A Controversial Police Discipline System*, PHILA. INQUIRER (Mar. 8, 2018), <https://www.inquirer.com/philly/news/breaking/do-not-call-list-da-krasner-philadelphia-police-20180308.html> (on file with the *University of the Pacific Law Review*).

126. Felker-Kantor, *supra* note 108.

127. Lisitsyna & Scott, *supra* note 112.

128. See Michael De Bonis, *Civilian Review Boards Gain Popularity Among Police Reformers. How Effective Are They?*, WOSU PUB. MEDIA (June 24, 2020), <https://news.wosu.org/news/2020-06-24/civilian-review-boards-gain-popularity-among-police-reformers-how-effective-are-they> (on file with the *University of the Pacific Law Review*) (discussing three proposed models for oversight boards—the review model, the investigation model, and the auditor model—each with pros and cons).

129. *Id.*

130. *Id.*

131. *Id.*

it has successfully generated greater public trust in law enforcement.¹³² This increase in public trust stems from the staff's ability to illuminate community concerns.¹³³ The final type of review board is the auditor board, which can effectively change police departments because it examines broad policies and patterns within a law enforcement agency.¹³⁴

Existing review boards face challenges in effectively reducing instances of police misconduct.¹³⁵ Some civilian review boards ("CRB") have been unsuccessful as they face barriers to obtaining information from police departments.¹³⁶ In some instances, police unions have strongly opposed CRBs that have too much investigative authority.¹³⁷ Limited access to funding is another obstacle influencing the effectiveness of a CRB.¹³⁸ The less funding a CRB receives, the less likely it will effectively increase police accountability.¹³⁹

Further, some independent review boards are ineffective because they lose their ability to effectively hold police agencies accountable.¹⁴⁰ For example, some CRBs are unsuccessful because they become "vulnerable to local political manipulation."¹⁴¹ Additionally, some boards are less effective because they are not truly independent.¹⁴² Former police officers sometimes serve on these boards, thus perpetuating the conflict of interest.¹⁴³ Ultimately, while CRBs have attempted to

132. *Id.*

133. De Bonis, *supra* note 129.

134. *See id.* (establishing the auditor agency as highly effective because "[t]hey have a free license to investigate anything").

135. *See* Marlene Lenthang, *Police Oversight Boards are Proliferating, but Do They Actually Work?*, ABC NEWS (June 4, 2021), <https://abcnews.go.com/US/police-oversight-boards-proliferating-work/story?id=77919091> (on file with the *University of the Pacific Law Review*) (asserting that civilian oversight boards must be empowered with proper resources in order to contribute to police reform).

136. *See id.* (showing the civilian oversight group in the Breonna Taylor case was unsuccessful because they did not have the authority to investigate).

137. *See* Kelly McConney Moore, *For Civilian Review Boards to Work, They Must Avoid Past Mistakes*, ACLU CONN. (Sept. 10, 2020), <https://www.acluct.org/en/news/civilian-review-boards-work-they-must-avoid-past-mistakes> (on file with the *University of the Pacific Law Review*) (demonstrating police unions strongly opposed a Connecticut bill that allowed CRBs to have the power to subpoena).

138. *Do Police Oversight Boards Work?*, AM. POLICE OFFICERS ALL. (Dec. 5, 2019), <https://americanpoliceofficersalliance.com/do-police-oversight-boards-work/> (on file with the *University of the Pacific Law Review*); *see also* Peter Finn, *Citizen Review of Police: Approaches and Implementation*, NAT'L INST. JUST. 128 (2001), <https://www.ojp.gov/pdffiles1/nij/184430.pdf> (on file with the *University of the Pacific Law Review*) ("In most organizations, there is a relationship between expenditures and results—that is, the more money spent, the more or better the results.").

139. *See* Finn, *supra* note 139 (suggesting that oversight bodies with greater funding and spending have better results).

140. *See* Priyanka Boghani, *Is Civilian Oversight the Answer to Distrust of Police?*, FRONTLINE PBS (July 13, 2016), <https://www.pbs.org/wgbh/frontline/article/is-civilian-oversight-the-answer-to-distrust-of-police/> (on file with the *University of the Pacific Law Review*) (discussing that some oversight boards are less effective because they lack authority to carry out their own investigations, subpoena officers, and do not have adequate staffing).

141. *Id.*

142. *Id.*

143. *See id.* ("Some boards . . . can be staffed with current or former police officers.").

address police misconduct, they have lacked the necessary powers and resources to effectively do so.¹⁴⁴

3. An Independent Oversight Body with Proper Authority Will Increase Police Accountability

An independent body requires the proper authority to effect change and provide proper oversight of police departments.¹⁴⁵ One necessary element is the power to access officer misconduct records.¹⁴⁶ Although police records are necessary for oversight bodies to conduct thorough investigations, these bodies often encounter difficulties in accessing such records.¹⁴⁷ Oversight bodies should have the power to access records directly or through the subpoena power to properly oversee police departments.¹⁴⁸

Oversight agencies must also have the power to discipline police.¹⁴⁹ By empowering oversight boards with the power to discipline police agencies, the disciplinary process will become external from the police department.¹⁵⁰ One of the key obstacles to officer accountability is that departments often do not discipline officers for misconduct.¹⁵¹ By allowing external bodies to discipline officers, more officers will likely face disciplinary action and possible termination.¹⁵²

144. See Moore, *supra* note 138 (suggesting CRBs face barriers, making it difficult for the boards to generate successful oversight, thus making them appear to be ineffective).

145. See De Bonis, *supra* note 129 (“The more authority the board has, the better they will be able to provide appropriate oversight of the police.”); see also Lenthang, *supra* note 136 (“[E]ssential elements for effective oversight include civilian leadership, a sufficient budget, the power to conduct investigations into officers, direct access to police files, the power to subpoena records and the power to discipline officers.”).

146. See Finn, *supra* note 139 (pointing to police departments’ refusal to share records as a common concern for oversight bodies).

147. See Lenthang, *supra* note 136 (noting the challenges independent oversight bodies face when attempting to access police records).

148. Brett Raffish, *Civilian Oversight as a Police Accountability Mechanism*, LAWFARE (Feb. 17, 2021), <https://www.lawfareblog.com/civilian-oversight-police-accountability-mechanism> (on file with the *University of the Pacific Law Review*); see also De Bonis, *supra* note 129 (discussing various oversight bodies’ authority to subpoena has led to success).

149. See De Bonis, *supra* note 129 (claiming successful oversight groups have the authority to discipline).

150. Tatiana Follett et al., *Law Enforcement Certification and Discipline*, NAT’L CONF. STATE LEGISLATURES (Aug. 17, 2020), <https://www.ncsl.org/research/labor-and-employment/policing-oversight-and-new-legislation.aspx> (on file with the *University of the Pacific Law Review*).

151. Felker-Kantor, *supra* note 108.

152. See *id.* (stating that police departments rarely discipline their own officers).

An oversight body also requires proper funding in order to effect change.¹⁵³ Without proper funding, the board would likely consist of volunteers.¹⁵⁴ As such, members of the board lack the necessary expertise to adequately oversee police agencies.¹⁵⁵ However, with proper funding, these boards will be able to pay for professional staff that will be able to devote the necessary time to engage in proper oversight.¹⁵⁶ For an oversight body to truly be successful, sufficient funding is necessary.¹⁵⁷

Another necessary requirement for oversight bodies is that they must be independent from law enforcement.¹⁵⁸ An oversight body empowered with proper authority will increase accountability and transparency of police departments because the departments will be subject to independent review.¹⁵⁹ Currently, Chapter 20 retains the power to arrest police officers within law enforcement, and therefore the review is not independent.¹⁶⁰ As such, the bill does little to encourage impartiality.¹⁶¹ Accordingly, an independent review body needs to be part of the solution to truly hold police accountable.¹⁶²

With the proper authority, an oversight body can operate without any dependence upon law enforcement agencies.¹⁶³ An independent oversight body specializing in police conduct would ensure checks on police departments come from outside law enforcement, thus increasing police accountability.¹⁶⁴ Accordingly, an independent and impartial oversight body, empowered to investigate and discipline police departments, will restore the public's trust in law

153. *Do Police Oversight Boards Work?*, *supra* note 139; *see also* Joseph De Angelis et al., *Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models*, OFF. JUST. PROGRAMS, NAT'L ASS'N CIVILIAN OVERSIGHT L. ENF'T 11 (2016), https://d3n8a8pro7vhm.cloudfront.net/nacole/pages/161/attachments/original/1481727977/NACOLE_short_doc_FINAL.pdf?1481727977 (on file with the *University of the Pacific Law Review*) (suggesting oversight bodies with volunteers, instead of paid staff, may have less expertise therefore leading to possible inefficiency).

154. Moore, *supra* note 138; De Bonis, *supra* note 129.

155. De Angelis et al., *supra* note 154.

156. *Id.*

157. *See* Finn, *supra* note 139 (showing a correlation between the amount of funding an oversight body receives and the body's ability to be effective).

158. *See* Lisitsyna & Scott, *supra* note 112 (claiming independence is a necessary element for oversight agencies).

159. *See* Olugbenga Ajilore, *Are Civilian Oversight Agencies Actually Holding Police Accountable?*, URBAN WIRE (July 19, 2018), <https://www.urban.org/urban-wire/are-civilian-oversight-agencies-actually-holding-police-accountable> (on file with the *University of the Pacific Law Review*) (explaining greater trust exists when oversight agencies are independent from police).

160. *See* AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (extending the power to request arrest warrants to public prosecutors who are members of law enforcement).

161. Levine, *supra* note 95, at 1450.

162. Ajilore, *supra* note 160.

163. *See* Lenthang, *supra* note 136 (discussing the importance for an oversight body to have the ability to conduct investigations of officers without relying on the police agency).

164. CAL. PENAL CODE § 817(a)(1) (amended by 2018 Stat. Ch. 176, Sec. 1); *see also* Levine, *supra* note 95, at 1450 (declaring the prosecutor–police relationship creates such a conflict of interest that it could threaten prosecutorial legitimacy).

enforcement.¹⁶⁵ Moreover, an independent oversight body will do what Chapter 20 intended to do—hold police accountable in cases of officer misconduct.¹⁶⁶

V. CONCLUSION

Americans have witnessed numerous displays of police misconduct and excessive uses of force.¹⁶⁷ George Floyd’s murder was just one example, yet it sparked public protests around the world.¹⁶⁸ These mass protests called for change.¹⁶⁹ Senator Kamlager authored Chapter 20 to increase police accountability.¹⁷⁰ Prior to the bill, California law only permitted peace officers to request an arrest warrant from a magistrate.¹⁷¹ This restriction meant officers would need to speak out against fellow officers, thus creating limited accountability of police officers.¹⁷²

Chapter 20 extends the ability to request an arrest warrant to prosecutors, specifically when the subject of the arrest is a police officer.¹⁷³ The bill aims to eliminate the procedural barriers that exist in arresting an officer for misconduct.¹⁷⁴ Current California law only permits peace officers to request arrest warrants.¹⁷⁵ As such, a lack of police accountability exists because officers are often unwilling to speak out against fellow officers.¹⁷⁶

On its own, Chapter 20 is an insufficient solution to increasing police accountability as it still limits the power to request an arrest warrant to law enforcement agencies.¹⁷⁷ Although permitting prosecutors to request arrest

165. Boghani, *supra* note 141; Lenthang, *supra* note 136.

166. See ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 1 (May 3, 2021) (stating AB 127’s intends to ease the challenges prosecutors face when charging police officers).

167. See *114 Black Men and Boys Killed by Police*, NEWSONE (June 3, 2021), <https://newsone.com/playlist/black-men-boy-who-were-killed-by-police/> (on file with the University of the Pacific Law Review) (discussing the 114 Black men and boys that police have killed in recent years).

168. Jason Silverstein, *The Global Impact of George Floyd: How Black Lives Matter Protests Shaped Movements Around the World*, CBS NEWS (June 4, 2021), <https://www.cbsnews.com/news/george-floyd-black-lives-matter-impact/> (on file with the *University of the Pacific Law Review*).

169. Helier Cheung, *George Floyd Death: Why US Protests Are so Powerful This Time*, BBC NEWS (June 8, 2020), <https://www.bbc.com/news/world-us-canada-52969905> on file with the *University of the Pacific Law Review*).

170. Bay City News, *supra* note 15.

171. CAL. PENAL CODE § 817(a)(1) (West 2021) (amended by 2018 Stat. Ch. 176, Sec. 1).

172. See Bay City News, *supra* note 15 (pointing to officers’ reluctance to speak out against other officers as a barrier to accountability).

173. AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021)

174. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 127, at 3 (June 8, 2021).

175. CAL. PENAL CODE § 817(a)(1) (Amended by 2018 Stat. Ch. 176, Sec. 1.)

176. See Dhinsa, *supra* note 53 (claiming AB 127 eliminates officers’ current role as the check against prosecution).

177. See AB 127, 2021 Leg., 2021–2022 Sess. (Cal. 2021) (expanding the power to present probable cause to a magistrate to public prosecutors who are also members of law enforcement).

warrants is a beneficial step, a conflict of interest will still exist.¹⁷⁸ The fact that police agencies are neither accountable to, nor transparent with, the public exacerbates this conflict of interest.¹⁷⁹ Chapter 20 alone does not rectify the issue of accountability.¹⁸⁰

Independent oversight bodies will hold police accountable and ensure they are more transparent to the communities they serve.¹⁸¹ Greater accountability and transparency will ultimately increase public trust in law enforcement.¹⁸² If given the power to oversee police departments, these bodies can help alleviate the tension between police and the public.¹⁸³ The addition of independent oversight bodies will aid Chapter 20 in achieving its goal of increasing police accountability and transparency.¹⁸⁴

178. ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 1 (May 3, 2021); Levine, *supra* note 95, at 1450; see Joe, *supra* note 102, at 899 (discussing the symbiotic relationship between police and prosecutors).

179. See Felker-Kantor, *supra* note 108 (implying the lack of accountability and transparency is because police “are left to police themselves”).

180. *Supra* Section IV.C.

181. See Boghani, *supra* note 141 (“Civilian oversight . . . can help hold police accountable and develop trust with local residents.”).

182. See Barbara Attard, *Oversight of Law Enforcement is Beneficial and Needed—Both Inside and Out*, 30 PACE L. REV. 1548, 1554–1555 (2010) (“[A]llowing independent oversight and community access to this information leads to increased confidence in the process and the law enforcement organization.”).

183. See Leica Kwong, *Increasing Police Accountability and Improving Use of Force Policies in the United States*, THEMIS RSCH. J. JUST. STUD. FORENSIC SCI. 164, 164–65 (2018) (implying a positive relationship between police and the public exists when there is more transparency and less division between the two).

184. *Supra* Section IV.C; see also ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 127, at 2 (May 3, 2021) (emphasizing AB 127’s purpose to eliminate barriers to police accountability).

