

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 360 (Gipson)  
Version: March 22, 2023  
Hearing Date: June 27, 2023  
Fiscal: Yes  
Urgency: No  
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**SUBJECT**

Excited delirium

**DIGEST**

This bill prohibits evidence that a person suffered “excited delirium” from being admitted in any civil action, used to describe the cause of death in a death certificate, recognized as a valid medical diagnosis, or used by a peace officer in an incident report.

**EXECUTIVE SUMMARY**

“Excited delirium” is a term increasingly used by medical examiners and law enforcement as a post-mortem explanation for the death of individuals restrained or taken into custody by law enforcement. However, this diagnosis is not a recognized medical or psychiatric diagnosis according to either the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association or the International Classification of Diseases (ICD-9) of the World Health Organization.

Concerns have arisen around the increased usage of this imprecise term and the patterns that have emerged. The term is disproportionately used when describing the condition of individuals who have been harmed or died in police custody, and specifically when the individuals are Black men.

In response, this bill prohibits evidence that a person suffered “excited delirium” from being admitted in any civil action, used to describe the cause of death in a death certificate, recognized as a valid medical diagnosis, or used by a peace officer in an incident report, as specified.

This bill is author-sponsored. It is supported by a wide variety of groups, including the Los Angeles County Board of Supervisors and the Los Angeles County District Attorney’s Office. There is no known opposition. The bill passed out of the Senate Public Safety Committee on a 5 to 0 vote.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) States that only relevant evidence is admissible, and except as otherwise provided by statute, all relevant evidence is admissible. (Evid. Code §§ 350, 351.)
- 2) Defines “relevant evidence” as evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evid. Code § 210.)
- 3) Authorizes a court in its discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code § 352.)
- 4) Provides, through the Civil Discovery Act, procedures by which parties to a civil action conduct and obtain “discovery.” (Code Civ. Proc. § 2016.010 et seq.)
- 5) Makes it the duty of the coroner to inquire into and determine the circumstances, manner, and cause of all violent, sudden, or unusual deaths; deaths known or suspected as resulting in whole or in part from or related to accident or injury; deaths in prison or while under sentence; deaths under such circumstances as to afford a reasonable ground to suspect that the death was caused by the criminal act of another; and any deaths reported by physicians or other persons having knowledge of death for inquiry by the coroner. Inquiry pursuant to this section does not include those investigative functions usually performed by other law enforcement agencies. (Gov. Code § 27491.)
- 6) Requires the coroner or a deputy to personally sign the certificate of death in any case in which the coroner conducts an inquiry. (Gov. Code § 27491(a).)
- 7) Makes clear that the above provisions do not prohibit the discretion of the coroner to cause to be conducted an autopsy upon any victim of sudden, unexpected, or unexplained death or any death known or suspected of resulting from an accident, suicide, or apparent criminal means, or other death, as specified. (Gov. Code § 27491.4(c).)

This bill:

- 1) Prohibits evidence that a person suffered or experienced excited delirium from being admitted in any civil action. However, a party or witness may describe the factual circumstances surrounding the case, including a person’s demeanor,

conduct, and physical and mental condition at issue, but shall not describe or diagnose it as excited delirium, or attribute it to excited delirium.

- 2) Defines “excited delirium” as a term used to describe a person’s state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. Excited delirium includes, but is not limited to, excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.
- 3) Provides that excited delirium shall not be recognized as a valid medical diagnosis or cause of death and a coroner or medical examiner cannot state on the certificate of death, or in any report, that the cause of death was excited delirium. However, it permits a coroner or medical examiner to list and describe the contributing causes of death, but shall not describe the underlying cause as excited delirium.
- 4) Prohibits a government entity, or employee or contractor of a government entity, from documenting, testifying to, or otherwise using in any official capacity or communication excited delirium as a recognized medical diagnosis or cause of death.
- 5) Prohibits a peace officer from using the term excited delirium to describe an individual in an incident report. A peace officer may describe the characteristics of an individual’s conduct, but shall not generally describe the individual’s demeanor, conduct, or physical and mental condition at issue as excited delirium.

### COMMENTS

#### 1. The problem with “excited delirium”

The purpose of the bill is to eliminate use of the term “excited delirium” in official government reporting and as evidence in civil actions. The bill defines it as a term used to describe a person’s state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition. This includes excited delirium syndrome, excited delirium, hyperactive delirium, agitated delirium, and exhaustive mania.

A brief look at the history, usage and medical basis for the term is instructive.

a. *The origin and history of “excited delirium” and its racial context*

A group of medical doctors with Physicians for Human Rights published an in-depth look at the origins of the term that pinpointed its first usage by several medical professionals, including Dr. Wetli, and the lack of “scientific evidence underpinning” its use as a “cause of death, diagnosis, and unique disease.”<sup>1</sup> Dr. Wetli infamously used the term to first explain how 12 Black women in Miami who used cocaine had died. Eventually it was discovered that all of the women were actually strangled by a serial killer. The report notes that the doctors’ usage of the term to gravely mischaracterize those asphyxiation deaths, as well as the “racism and misogyny that that seemed to inform it” and his other medical theories, should have discredited the usage of the term, but it only grew. It expanded in one particular context that has motivated the current bill:

A small cohort of authors, many working as researchers or legal defense experts for TASER International (now Axon Enterprise) – a U.S. company that produces technology products and weapons, including the “Taser” line of electroshock weapons marketed as so-called “less-lethal” “stun” weapons – increased the broader use of the term by populating the medical literature with articles about “excited delirium.” In 2007, TASER/Axon purchased many copies of a book entitled *Excited Delirium Syndrome* written by one of its defense experts, Dr. Vincent Di Maio, and his wife Theresa Di Maio, that built on Wetli’s description of “excited delirium” by describing an “excited delirium syndrome.” They distributed the book for free and also gave out other materials on “excited delirium” at conferences of medical examiners and police chiefs. Seven years later, during a deposition, Dr. Di Maio acknowledged that he and his wife had “come up with” the term “excited delirium syndrome.” The term has come to be used as a catch-all for deaths occurring in the context of law enforcement restraint, often coinciding with substance use or mental illness, and disproportionately used to explain the deaths of young Black men in police encounters.

Ultimately, the report concludes that the term “excited delirium” “cannot be disentangled from its racist and unscientific origins.” The increased and disproportionate usage of the term in law-enforcement related deaths has brought national attention:

On December 23, 2020, Bella Quinto-Collins called 911, seeking help for her 30-year-old brother, Angelo Quinto, who was agitated and exhibiting signs of a mental health crisis at their home in Antioch, California. When two police officers arrived, they pulled Quinto from his mother’s arms

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<sup>1</sup> Dr. Brianna da Silva Bhatia, et al., *“Excited Delirium” and Deaths in Police Custody: The Deadly Impact of a Baseless Diagnosis* (Mar. 2, 2022) Physicians for Human Rights, <https://phr.org/our-work/resources/excited-delirium/>. All internet citations are current as of June 23, 2023.

onto the floor. At least twice, Quinto's mother, Cassandra Quinto-Collins, heard him say to the officers, "Please don't kill me." Bella and Cassandra then watched in disbelief and horror as the two officers knelt on Quinto's back for five minutes until he stopped breathing. Three days later, Quinto died in the hospital.

It was not until August 2021 that the family learned the official determination of cause of death: a forensic pathologist testified during a coroner's inquest that Quinto died from "excited delirium syndrome."

Angelo Quinto, a Filipino-American Navy veteran, is one of many people, disproportionately people of color, whose deaths at the hands of police have been attributed to "excited delirium" rather than to the conduct of law enforcement officers. In recent years, others have included Manuel Ellis, Zachary Bear Heels, Elijah McClain, Natasha McKenna, and Daniel Prude. "Excited delirium" even emerged as a defense for the officers who killed George Floyd in 2020.

An Austin-American Statesman investigation into each non-shooting death of a person in police custody in Texas from 2005 to 2017 found that more than one in six of these deaths (of 289 total) were attributed to "excited delirium." A January 2020 Florida Today report found that of 85 deaths attributed to "excited delirium" by Florida medical examiners since 2010, at least 62 percent involved the use of force by law enforcement. A Berkeley professor of law and bioethics conducted a search of these two news databases and three others from 2010 to 2020 and found that of 166 reported deaths in police custody from possible "excited delirium," Black people made up 43.3 percent and Black and Latinx people together made up at least 56 percent.<sup>2</sup>

*b. "Excited delirium" is unequivocally rejected by established medical community*

The term "excited delirium" does not appear as a legitimate medical or psychiatric diagnosis in either the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association or the International Classification of Diseases (ICD-9) of the World Health Organization. The medical community in the United States has unequivocally rejected the term and has called for the cessation of its usage, especially given the troubling usage in law enforcement-involved deaths.

The American Medical Association has specifically adopted a policy opposing use of the term "excited delirium" and stating the troubling patterns that have emerged:

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<sup>2</sup> *Ibid.*

A policy adopted by physicians, residents, and medical students at the American Medical Association's (AMA) Special Meeting of its House of Delegates (HOD) opposes "excited delirium" as a medical diagnosis and warns against the use of certain pharmacological interventions solely for a law enforcement purpose without a legitimate medical reason.

The new policy addresses reports that show a pattern of using the term "excited delirium" and pharmacological interventions such as ketamine as justification for excessive police force, disproportionately cited in cases where Black men die in law enforcement custody. Specifically, the policy:

- Confirms the AMA's stance that current evidence does not support "excited delirium" as an official diagnosis, and opposes its use until a clear set of diagnostic criteria has been established
- Denounces "excited delirium" as a sole justification for law enforcement use of excessive force
- Underscores the importance of emergency physician-led oversight of medical emergencies in the field
- Opposes the use of sedative/hypnotic and dissociative drugs—including ketamine—as an intervention for an agitated individual in a law enforcement setting, without a legitimate medical reason
- Recognizes the risk that sedative/hypnotic and dissociative drugs have in relation to an individual's age, underlying medical conditions, and potential drug interactions when used outside of a hospital setting by a non-physician

Research supporting the new policy echoes current AMA policy recognizing police brutality as a product of structural racism, indicating that racially marginalized and minoritized communities are disproportionately subjected to police force and racial profiling and underscoring the correlation between violent policing and adverse health outcomes. Broadly defined as being in a highly agitated and combative state, studies show that the term "excited delirium" has been misapplied and diagnosed disproportionately in law enforcement-related deaths of Black and Brown individuals, who are also more likely to experience excessive sedative intervention instead of behavioral de-escalation.<sup>3</sup>

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<sup>3</sup> Press Release, *New AMA policy opposes "excited delirium" diagnosis* (Jun. 14, 2021) American Medical Association, <https://www.ama-assn.org/press-center/press-releases/new-ama-policy-opposes-excited-delirium-diagnosis>.

The American Psychiatric Association recently stated its formal, resoundingly clear position: “The term ‘excited delirium’ (ExDs) is too non-specific to meaningfully describe and convey information about a person. ‘Excited delirium’ should not be used until a clear set of diagnostic criteria are validated.” The association further calls for an investigation into the validity of the term and into its troubling and disproportionate usage:

An investigation should be undertaken of cases labelled with “excited delirium” to identify how the term is being used, whether consistent criteria are being applied, and whether it has any validity as a medical syndrome. The U.S. Department of Health and Human Services should conduct a comprehensive, nationwide investigation of instances in which individuals have been identified as being in a state of excited delirium, including in interactions with law enforcement personnel and other out-of-hospital contexts. The study should include examination of all relevant data, including the precipitating events, health outcomes for the individuals and law enforcement personnel, and whether there is a disproportionate application of the term “excited delirium” to persons with mental illness, Black people, or other racial and ethnic groups.<sup>4</sup>

## 2. Eliminating use of “excited delirium” in California

This bill addresses the troubling and imprecise usage of the term “excited delirium” by prohibiting its use in various contexts and for specified purposes. First, the bill provides that evidence that a person suffered or experienced “excited delirium” is not admissible in any civil action. Generally, all relevant evidence is admissible in such actions, however there is precedent for limiting relevant evidence that may be problematic for other reasons. For instance, courts have discretion to exclude relevant evidence if its probative value is substantially outweighed by the probability that its admission will create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

Second, the bill prohibits government entities, and their employees and contractors, from documenting, testifying to, or using in any official capacity or communication, “excited delirium” as a recognized medical diagnosis or cause of death. Specifically, peace officers are restricted from using the term in incident reports and coroners and medical examiners are prohibiting from stating on certificates of death or other reports that a cause of death was “excited delirium.”

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<sup>4</sup> *Position Statement on Concerns About Use of the Term “Excited Delirium” and Appropriate Medical Management in Out-of-Hospital Contexts* (Dec. 2020) American Psychiatry Association, <https://www.psychiatry.org/getattachment/7769e617-ee6a-4a89-829f-4fc71d831ce0/Position-Use-of-Term-Excited-Delirium.pdf>.

Finally, the bill provides that the term is not to be recognized as a valid medical diagnosis or cause of death in this state.

Given that the term lacks valid and reliable medical basis and is inextricably imbued with racial biases, it is arguably sound policy to eliminate the term's usage. Importantly, while the bill is limiting the usage of the term in these contexts and for these purposes, it is clear that description of the factual circumstances that are associated with the term are not restricted, so long as they are not diagnosed or attributed to "excited delirium." Therefore, evidence of a person's demeanor or conduct is allowed into evidence in a civil case; their agitation or physical violence is still allowed to be described in a police report; and their physical and emotional condition can be listed and described in a medical examiner's report.

The author explains the motivation for the bill:

This issue was brought to my attention through very tragic circumstances. In 2020, Angelo Quinto, a Navy Veteran dealing with a mental health crisis, stopped breathing while two police officers knelt on his back and neck. Mr. Quinto's official cause of death was determined to be excited delirium. Excited delirium is not a reliable, independent medical or psychiatric diagnosis. There are no diagnostic guidelines, and it is not recognized in the DSM-5, which is the main diagnosis guide for mental health providers. Neither the American Medical Association nor the American Psychiatric Association recognizes this term as a legitimate diagnosis. In fact, the only place where this term is continuously used is to describe deaths that occur in police custody.

### 3. Stakeholder positions

The Los Angeles County District Attorney writes in support: "It is clear that the medical community does not recognize excited delirium as a valid medical diagnosis. As such it should not be used by law enforcement or by coroners and medical examiners as a cause of death on a death certificate or autopsy report."

Writing in support, the Los Angeles County Board of Supervisors asserts:

Excited delirium has been used to rationalize excessive use of force and explain deaths that occur in the context of police restraint on incident reports. Further, it is disproportionately used by police to explain Black male deaths. One systematic review showed that between 2010 and 2020, Black people, who make up 13 percent of the United States population, comprised 43 percent of deaths attributed to excited delirium. As Derek Chauvin knelt on George Floyd's neck for nine minutes and 29 seconds,



he said "I'm worried about excited delirium or whatever," just before ending Floyd's life.

AB 360 aims to address this problem, as it would prohibit the use of the term on a death certificate or other reports completed by a coroner or medical examiner and would prohibit police officers from using the term on an incident report. It would also deem evidence that someone experienced excited delirium inadmissible in a civil action.

### **SUPPORT**

California Attorneys for Criminal Justice  
California Faculty Association  
California Public Defenders Association  
California State Association of Psychiatrists (CSAP)  
Consumer Attorneys of California  
County of Los Angeles Board of Supervisors  
Disability Rights California  
Ella Baker Center for Human Rights  
Los Angeles County District Attorney's Office  
National Association of Social Workers, California Chapter  
National Police Accountability Project  
Oakland Privacy  
Secure Justice

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: SB 836 (Wiener, Ch. 168, Stats. 2022) reinstated a lapsed prohibition on the disclosure of a person's immigration status in open court unless the judge presiding over the matter first determines, after a closed hearing, that the evidence is admissible.

### **PRIOR VOTES:**

Senate Public Safety Committee (Ayes 5, Noes 0)  
Assembly Floor (Ayes 75, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)  
Assembly Public Safety Committee (Ayes 7, Noes 0)

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