

House \_\_\_\_\_ Amendment NO. \_\_\_\_\_

Offered By

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for  
2 Senate Bill No. 289, Page 6, Section 320.400, Line 91, by inserting after all of said section and line  
3 the following:  
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5 "506.450. 1. A peace officer, as defined under section 590.010, who, under color of law,  
6 deprives any individual of his or her constitutional rights shall be liable to such individual for legal  
7 or equitable relief or any other appropriate relief.

8 2. (1) Statutory immunities and statutory limitations on liability, damages, or attorney fees  
9 shall not apply to claims brought under this section.

10 (2) Qualified immunity shall not be a defense to liability under this section.

11 3. In any action brought under this section, a court shall award reasonable attorney fees and  
12 costs to a prevailing plaintiff. In actions for injunctive relief, a court shall deem a plaintiff to have  
13 prevailed if the plaintiff's suit was a substantial factor or significant catalyst in obtaining the results  
14 sought by the litigation. If a judgment is entered in favor of a defendant, the court may award  
15 reasonable costs and attorney fees to the defendant for defending any claims the court finds  
16 frivolous.

17 4. Notwithstanding any other provision of law, a peace officer's employer shall indemnify its  
18 peace officers for any liability incurred by the peace officer and for any judgment or settlement  
19 entered against the peace officer for claims arising under this section; except that, if the peace  
20 officer was shown by clear and convincing evidence to be acting outside the scope of his or her  
21 employment or to not be acting under color of law, the peace officer shall be personally liable and  
22 shall not be indemnified by the peace officer's employer for more than five percent of the judgment  
23 or settlement or twenty-five thousand dollars, whichever is less. Notwithstanding any provision of  
24 this section, if the peace officer's portion of the judgment is uncollectable from the peace officer, the  
25 peace officer's employer or insurance shall satisfy the full amount of the judgment or settlement. A  
26 public entity is not required to indemnify a peace officer if the peace officer was convicted of a  
27 criminal violation for the conduct from which the claim arises.

28 5. A civil action under this section shall be commenced within two years after the cause of  
29 action accrues."; and  
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31 Further amend said bill, Page 8, Section 590.030, Line 40, by inserting after all of said section and  
32 line the following:  
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34 "590.1065. 1. The provisions of this section shall be known and may be cited as the "Law  
35 Enforcement Accountability Act".

36 2. A peace officer shall intervene to prevent or stop another peace officer from using

Action Taken \_\_\_\_\_ Date \_\_\_\_\_

1 physical force that exceeds the degree of force permitted under this chapter in pursuance of the other  
2 peace officer's law enforcement duties in carrying out an arrest of any person, placing any person  
3 under detention, taking any person into custody, booking any person, or in the process of crowd or  
4 riot control without regard to chain of command.

5 3. A peace officer who intervenes as required under subsection 1 of this section shall report  
6 the intervention to his or her immediate supervisor. At a minimum, the report required under this  
7 subsection shall include:

8 (1) The date, time, and place of the occurrence;

9 (2) The identity, if known and description of the participants; and

10 (3) A description of the intervention actions taken.

11  
12 Such report shall be made in writing within ten days of the occurrence of the use of such force and  
13 shall be appended to all other reports of the incident.

14 4. A member of a law enforcement agency shall not discipline or retaliate in any way  
15 against a peace officer for intervening as required under subsection 1 of this section, reporting  
16 unconstitutional conduct, or failing to follow what the peace officer reasonably believes is an  
17 unconstitutional directive.

18 5. When an internal investigation finds that a peace officer failed to intervene or prevent the  
19 use of unlawful physical force under this section, such finding shall be presented to the prosecuting  
20 attorney for a determination as to whether charges should be filed. However, nothing in this  
21 subsection prohibits the prosecuting attorney from charging a peace officer with failure to intervene  
22 before the conclusion of any internal investigation.

23 6. In addition to any criminal liability and penalty, when an internal investigation finds that  
24 a peace officer failed to intervene or prevent the use of unlawful physical force under this section in  
25 an incident resulting in serious bodily injury or death to any person, the peace officer's employer  
26 shall subject the peace officer to discipline, up to and including termination, to the extent permitted  
27 under applicable constitutional and statutory law, and the POST Commission shall revoke the peace  
28 officer's certification under chapter 590 upon receipt of notice of the peace officer's discipline. Such  
29 revocation may only be overturned if the peace officer is exonerated by a court.

30 7. In a case in which the prosecution charges a peace officer with offenses related to and  
31 based on the use of excessive force but does not file charges against any other peace officer or  
32 officers who were at the scene during the use of force, the prosecuting attorney shall prepare a  
33 written report explaining his or her basis for the decision not to charge any other peace officer with  
34 criminal conduct and shall disclose the report to the public; except that if disclosure of the report  
35 would substantially interfere with or jeopardize an ongoing criminal investigation, the prosecuting  
36 attorney may delay public disclosure for up to forty-five days. The prosecuting attorney shall post  
37 the written report on its website or, if it does not have a website, make it publicly available upon  
38 request.

39 8. The offense of failing to intervene to prevent the use of unlawful force under this section  
40 is considered an act of complicity and the penalty for such act shall be equal to the penalty imposed  
41 against the peace officer who committed the original wrongdoing for which the peace officer failed  
42 to intervene. Nothing in this subsection shall prohibit or discourage prosecution of any other  
43 criminal offense related to failure to intervene, including a higher charge, if supported by the  
44 evidence."; and

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46 Further amend said bill by amending the title, enacting clause, and intersectional references  
47 accordingly.