

Police challenge ban on death theory

Bills in several states seek to control use of 'excited delirium' defense

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KFF Health News

Following a pivotal year in the movement to discard the term "excited delirium," momentum is building in several states to ban the discredited medical diagnosis from death certificates, law enforcement training, police incident reports and civil court testimony.

Excited delirium is a four-decade-old diagnostic theory that has been used to explain how a person experiencing severe agitation can suddenly die while being restrained. It was cited as a legal defense in the 2020 deaths of George Floyd in Minneapolis; Daniel Prude in Rochester, New York; and Angelo Quinto in Antioch, California, among others.

In January, California became the first state to prohibit the medical term from many official proceedings. Now, lawmakers in Colorado, Hawaii, Minnesota and New York are considering bills that also would rein in how the excited delirium concept is used.

The new spate of state proposals, driven by families who lost relatives after encounters with law enforcement, marks an important step in doing away with a concept that critics say spurs police to overuse lethal force.

"It's the law following the science, which is what we want to see," said Joanna Naples-Mitchell, an attorney who worked on an influential Physicians for Human Rights review of how the term excited delirium evolved into a concept whose legitimacy is largely rejected by the medical community.

But initial momentum in statehouses is being met with fresh resistance from law enforcement agencies and other defenders, including some who agree that excited delirium is a sham diagnosis.

The bills "clearly run afoul of the First Amendment" and violate free speech, said Bill Johnson, executive director of the National Association of Police Organizations. He also argued that law enforcement officers do encounter symptoms and behaviors associated with ex-

cited delirium.

Last year, the American College of Emergency Physicians withdrew a 2009 report that had been the last remaining official medical pillar of support for the theory used increasingly over the prior 15 years to explain away police culpability for many in-custody deaths.

The theory proposed that individuals in a mental health crisis, often under the influence of drugs or alcohol, can exhibit superhuman strength as police try to control them, then die suddenly from the condition, not the police response.

The Minneapolis Police Department, which according to the Star Tribune used the term in trainings, declined to comment on its training materials and the pending state legislation. That bill would prohibit excited delirium and similar terms from being cited as a cause of death, used as a medical diagnosis or included in law enforcement training.

But the theory's presence in training materials may also be starting to change. In Colorado — where the term was used, in part, to justify the 2019 killing of Elijah McClain in Aurora — a state board has eliminated the term from law enforcement training. Law enforcement officers restrained the 23-year-old, and paramedics injected him with a lethal dose of ketamine.

This year, Colorado lawmakers are debating a measure that largely mirrors California's bill but allows the term to remain in civil court proceedings.

At the bill's hearing before the Colorado House Judiciary Committee on Feb. 6, Rebecca De Luna described her family's anguish over the 2017 death of her daughter's father, Alejandro Gutierrez, in Thornton police custody. She said excited delirium was classified as the cause of his death.

"His face was bruised with an imprint of a shoe. His appearance was unrecognizable," De Luna testified. "The term has been used far too long as an excuse for law enforcement to protect themselves when someone dies in their custody."

Several medical service providers and educators testified in opposition. John Seward, the University of Denver's emergency medical services program manager, told the committee that he did

not object to banning "excited delirium" in death certificates and police training, as police are not health professionals. But banning the term's use from medical personnel training would amount to legislating medicine and impeding academic freedom, he said.

"If we cannot study and learn from the past, even when that past is hurtful, we are now condemning ourselves to repeat it," Seward told lawmakers.

Julia Sherwin, a California civil rights attorney who testified in support of the Colorado bill, was surprised by opponents' arguments that such bills could limit free speech and discussion about the history of the idea.

"That to me felt a little ridiculous," said Sherwin, who co-authored the Physicians for Human Rights report. Such bills keep a discredited theory from being falsely used to respond to a crisis and keep "junk science" out of official records, she said.

The Colorado bill passed the state's House in a 42-19 vote in mid-February

and is now before the state Senate. It was amended to clarify that "excited delirium" may be used when teaching about the history of the term and that EMS courses are allowed on "safe and effective medical interaction with individuals exhibiting an altered mental state" who have symptoms that include agitation, aggression, or violence.

Some of the push comes from families whose loved ones' deaths were blamed on excited delirium, rather than on use of force in a police encounter.

The Hawaii bill was introduced after William and Verdell Haleck learned about California's effort and began contacting lawmakers in Hawaii. Their son Sheldon died there in 2015 after he was pepper-sprayed, shocked and restrained by Honolulu police. In a civil trial that the Halecks lost, officers blamed his death on excited delirium.

The Hawaii bill would ban excited delirium from being used in death certificates, police incident reports and civil cases.

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