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EXECUTIVE ORDER

Designating State's Prosecutor

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, C.R.S. § 24-31-101(1)(a), and subsequent authority effective with the enactment of C.R.S. § 24-31-101(1)(b) (2020) as amended by Senate Bill 20-063, I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order designating Phil Weiser, Attorney General for the State of Colorado, as the State's prosecutor to investigate and, if the facts support prosecution, criminally prosecute any individuals whose actions caused the death of Elijah McClain in the City of Aurora, Adams County, Colorado in August 2019.

I. Background and Purpose

On August 24, 2019, three Aurora police officers responded to a 911 report of a "suspicious" person and confronted Elijah McClain, a twenty-three year old Black man. In the encounter with the officers, Mr. McClain was ultimately placed in a carotid control hold for a period of time. A carotid control hold is designed to subdue an individual by applying pressure to the side of the neck to obstruct the carotid arteries and prevent blood flow to the brain. Members of Aurora Fire Rescue later arrived on the scene, and a fire medic injected Mr. McClain with ketamine. Mr. McClain was placed into an ambulance where he stopped breathing and lost his pulse. On the way to the hospital, Mr. McClain suffered cardiac arrest. On August 30, 2019, he was removed from life support.

In November 2019, the District Attorney in the 17th Judicial District declined to pursue charges against the three officers involved in the incident. Earlier this year, an excessive force review board with the Aurora Police Department found that the actions taken by the officers were within policy and consistent with their training. The City of Aurora initiated a separate review of the incident, but recently removed the investigator in the case due to charges of bias because of the investigator's prior employment as a police officer. The Mayor of Aurora subsequently issued a statement saying the City Council and Mayor are working together to launch a new independent review of the events surrounding Mr. McClain's death. The City of Aurora's investigation may form an important part of the record to inform prosecutorial decisions.

This is a tragic and complex case that warrants close attention. Public confidence in the outcome of an investigation is extremely important. This is especially true when any Coloradan dies during an interaction with law enforcement, and when we must determine whether the facts justify criminal charges against members of law enforcement. I am keenly aware that an elected district attorney issued a letter explaining his decision not to bring charges in this matter. That

letter lays out a detailed review of the facts of this case and an in-depth discussion of the legal standard. It does not, however, account for some significant facts that have been widely reported, particularly relating to body camera footage and recordings of the incident. The State of Colorado just enacted a law requiring use of body cameras by all law enforcement, in part to prevent situations like this where the complete circumstances of a deadly encounter cannot be fully understood, either because the officers involved did not have body cameras or the body cameras at the scene were obstructed. The family affected by this tragedy and the public must have confidence that every aspect of this case has been properly examined.

The Governor therefore finds that this case is a matter of statewide importance and it is necessary for the Attorney General to act as the State's prosecutor, investigate, and—if the evidence permits—prosecute potential criminal activity by individuals that caused the death of Elijah McClain.

I respect the solemn duty of the State's district attorneys to investigate and, at their judgment and discretion, bring charges for the commission of crimes. The State rarely steps in to investigate, and potentially prosecute, an incident over the individual decisions of district attorneys. This, however, is the truly exceptional case where widely reported facts are not addressed in any current investigation. These omissions merit a supplemental evaluation of the case by an independent prosecutor and thus warrant this Executive Order.

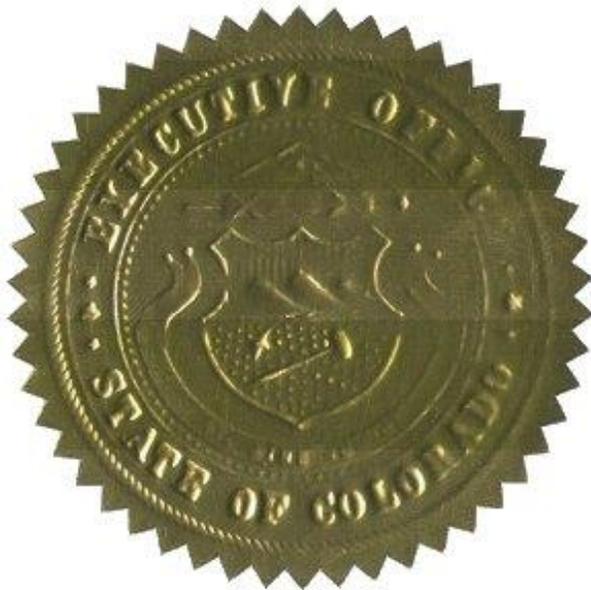
II. Directives

- A. I appoint Phil Weiser, Attorney General for the State of Colorado, or his duly authorized successor, to be the State's prosecutor and direct him to take all necessary actions to investigate and, if deemed necessary, prosecute, on behalf of the State of Colorado, any potential criminal activity by law enforcement officers or any other individuals that caused the death of Elijah McClain in Aurora, Colorado in August 2019. The Attorney General may utilize a State grand jury pursuant to C.R.S. § 13-73-101(2) if and as he deems appropriate, and may appoint special assistant attorneys general, and utilize other resources to assist in the fulfillment of this Executive Order. To the greatest extent possible, the Attorney General may work with the City of Aurora on any independent investigation it undertakes into the death of Elijah McClain to ensure accountability and learn critical lessons so that we can prevent these tragedies in the future.
- B. I direct the Colorado Bureau of Investigation to fully cooperate with and assist the Attorney General and his designees to effectuate this Executive Order, including providing any investigation support required by and requested from the Attorney General or his designees.
- C. I direct all other State departments and agencies to fully cooperate with the Attorney General and his designees to effectuate this Executive Order, including the provision of any evidence, documents, records, or other information deemed relevant to the investigation by the Attorney General or his designees.

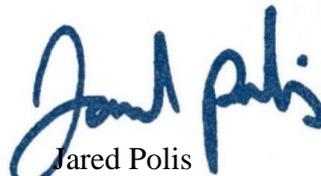
- D. Due to significant funding and staff reductions to the Department of Law Criminal Justice line item for the 2020-2021 fiscal year caused by ongoing State budget shortfalls, I urge the General Assembly and Joint Budget Committee to consider and approve a supplemental appropriations request pursuant to C.R.S. § 2-3-208 to support the fulfillment of this Executive Order, if such request is submitted by the Attorney General to the Joint Budget Committee.

III. Duration

This appointment and this Executive Order shall expire upon completion of the Attorney General's investigation and any prosecution related to the matters herein, unless modified or terminated by further Executive Order of the Governor.



GIVEN under my hand and the Executive Seal of the State of Colorado, this twenty-fifth day of June, 2020.


Jared Polis
Governor