
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 324 **Hearing Date:** April 18, 2017
Author: Roth
Version: March 28, 2017
Urgency: No **Fiscal:** No
Consultant: JRD

Subject: *Public Officers: Custodial Officers*

HISTORY

Source: California State Sheriffs' Association

Prior Legislation: None

Support: Los Angeles County Professional Peace Officers Association

Opposition: None known

PURPOSE

The purpose of this bill is allow a custodial officer, at the sheriff's discretion, to use a less lethal weapon if the officer (1) is trained in its use, and (2) complies with the policy on the use of less lethal weapons as set forth by the sheriff.

Existing law states that a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of a city or county who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence in that facility. (Penal Code § 831(a).)

Existing law provides that a custodial officer does not have the right to carry or possess firearms in the performance of his or her duties. (Penal Code § 831(b).)

Existing law requires that custodial officers, within 90 days following the date of the initial assignment to the position, satisfactorily complete the training course specified in Section 832. (Penal Code § 831(c).)

Existing law requires each person designated as a custodial officer to, within one year following the date of the initial assignment as a custodial officer, have satisfactorily met the minimum selection and training standards prescribed by the Board of State and Community Corrections pursuant to Section 6035. (Penal Code § 831(c).)

Existing law provides that persons designated as custodial officers, before the expiration of the 90-day and one-year periods described in this subdivision, who have not yet completed the required training, may perform the duties of a custodial officer only while under the direct

supervision of a peace officer as described in Section 830.1, who has completed the training prescribed by the Commission on Peace Officer Standards and Training, or a custodial officer who has completed the training required. (Penal Code §831(c).)

Existing law requires that any time 20 or more custodial officers are on duty, there must be at least one peace officer, as described in Section 830.1, on duty at the same time to supervise the performance of the custodial officers. (Penal Code § 831(d).)

Existing law specified that this section does not confer any authority upon any custodial officer, except while he or she is on duty. (Penal Code § 831(e).)

Existing law provides that a custodial officer may do all of the following:

- Use reasonable force in establishing and maintaining custody of persons delivered to him or her by a law enforcement officer.
- Make arrests for misdemeanors and felonies within the local detention facility pursuant to a duly issued warrant.
- Release without further criminal process persons arrested for intoxication.
- Release misdemeanants on citation to appear in lieu of or after booking.

(Penal Code § 831.)

Existing law provides that, a custodial officer is a public officer, not a peace officer, employed by a law enforcement agency of San Diego County, Fresno County, Kern County, Stanislaus County, Riverside County, Santa Clara County, Napa County, or a county having a population of 425,000 or less who has the authority and responsibility for maintaining custody of prisoners and performs tasks related to the operation of a local detention facility used for the detention of persons usually pending arraignment or upon court order either for their own safekeeping or for the specific purpose of serving a sentence therein. Custodial officers of a county must be employees of, and under the authority of, the sheriff, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it. A custodial officer has no right to carry or possess firearms in the performance of his or her prescribed duties, except, under the direction of the sheriff or chief of police, while engaged in transporting prisoners; guarding hospitalized prisoners; or suppressing jail riots, lynchings, escapes, or rescues in or about a detention facility falling under the care and custody of the sheriff or chief of police. (Penal Code § 831.5.)

Existing law requires that specified peace officers, including custodial officers, must satisfactorily complete an introductory training course prescribed by the Commission on Peace Officer Standards and Training. On or after July 1, 1989, satisfactory completion of the course shall be demonstrated by passage of an appropriate examination developed or approved by the commission. Training in the carrying and use of firearms shall not be required of a peace officer whose employing agency prohibits the use of firearms. (Penal Code §832(a).)

Existing law requires that, for the purpose of raising the level of competence of local corrections and probation officers and other correctional personnel, the BSCC must adopt, and may from time to time amend, rules establishing minimum standards for the selection and training of these personnel employed by any city, county, or city and county who provide for the custody, supervision, treatment, or rehabilitation of persons accused of, or adjudged responsible for,

criminal or delinquent conduct who are currently under local jurisdiction. Any city, county, or city and county may adhere to the standards for selection and training established by the board. The board may defer the promulgation of selection standards until necessary research for job relatedness is completed. Minimum training standards may include, but are not limited to, basic, entry, continuation, supervisory, management, and specialized assignments. (Penal Code § 6035.)

Existing law defines “less lethal weapon” as:

- Any device that is designed to or that has been converted to expel or propel less lethal ammunition by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. It is not necessary that a weapon leave any lasting or permanent incapacitation, discomfort, pain, or other injury or disability in order to qualify as a less lethal weapon. Less lethal weapon includes the frame or receiver of any weapon described above, but does not include any of the following unless the part or weapon has been converted to be less lethal:
 - Pistol, revolver, or firearm.
 - Machinegun.
 - Rifle or shotgun using fixed ammunition consisting of standard primer and powder and not capable of being concealed upon the person.
 - A pistol, rifle, or shotgun that is a firearm having a barrel less than 0.18 inches in diameter and that is designed to expel a projectile by any mechanical means or by compressed air or gas.
 - When used as designed or intended by the manufacturer, any weapon that is commonly regarded as a toy gun, and that as a toy gun is incapable of inflicting any impairment of physical condition, function, or senses.
 - A destructive device.
 - A tear gas weapon.
 - A bow or crossbow designed to shoot arrows.
 - A device commonly known as a slingshot.
 - A device designed for the firing of stud cartridges, explosive rivets, or similar industrial ammunition.
 - A device designed for signaling, illumination, or safety.
 - An assault weapon.

(Penal Code § 16780.)

Existing law allows a person who is a peace officer or a custodial officer, if authorized by and under the terms and conditions as are specified by the person's employing agency, to purchase, possess, or transport any less lethal weapon or ammunition for any less lethal weapon, for official use in the discharge of the person's duties. (Penal Code § 19400.)

This bill provides that a custodial officer shall not carry or possess firearms in the performance of his or her prescribed official duties. A custodial officer may use a firearm that is a less lethal weapon in the performance of his or her official duties, at the discretion of the sheriff or his or her designee. A custodial officer who uses a less lethal weapon must be trained in its use and must comply with the policy on the use of less lethal weapons as set forth by the sheriff.

COMMENTS

1. Need for Legislation

According to the author:

While the Penal Code (Section 831) gives local law enforcement agencies the authority to employ custodial officers, who generally work at the jail and provide inmate custodial services, the law precludes these officers from possessing firearms in the course of their duties.

Some sheriff offices would like to deploy certain officers in custodial facilities with the appropriate tools to address specific situations. For example, a jail may have an emergency response team that responds to critical incidents and emergency situations. A sheriff may wish to deploy this team with less lethal weapons that fire plastic, rubber, or other less lethal projectiles, but if these weapons are technically firearms, these tools may not be used by custodial officers as defined in PC 831.

This bill provides a modest exception to the prohibition on the use of firearms by PC 831 custodial officers when the use (1) involves a less lethal weapon, (2) by a custodial officer, (3) in the performance of his or her duties, (4) at the discretion of the Sheriff or his or her designee, (5) when the officer has been trained in the less lethal weapon's use, and (6) is in compliance with department policy.

2. Effect of Legislation

As discussed above, this legislation would clarify that sheriffs have ability to arm custodial officers with less lethal weapons. Custodial officers are currently required to attend Penal Code section 832 training. The introductory training course prescribed in Penal Code section 832, subdivision (a) is commonly referred to as the "PC 832 Arrest and Firearms" course and is the minimum training standard required of California peace officers in order to exercise peace officer powers. According to POST:

The Arrest and Firearms (PC 832) course consists of two components, which total a minimum of 64 hours. The Arrest component has a 40-hour requirement, and the Firearms component has a 24-hour requirement. These components are divided into 14 individual topics, called Learning Domains. The Learning Domains contain the minimum required foundational information for given subjects. The training and testing specifications for a particular domain may also include information on required instructional activities and testing requirements. (<https://www.post.ca.gov/pc-832-arrest-and-firearms-course.aspx>.)

Custodial officers are required to take use of force training as part of the PC 832 Arrest and Firearms course. This course teaches officers, among other things:

- Reasonable force as stated by law
- The components of the Fourth Amendment standard for determining objective reasonableness as determined by the U.S. Supreme Court

- To identify the circumstances set forth in the California Penal Code when a peace officer has the authority to use force
- The level of authority agency policies have regarding the use of force by a peace officer
- To identify that the objective of using force is to overcome resistance to gain control of an individual and the situation
- To recognize force options and the amount of force peace officers may use based on the subject's resistance
- The importance of training and ongoing practice when responding to potentially
Factors that can affect a peace officer's response when threatened with danger, to include:
 - Fear
 - Reasonable
 - Unreasonable
 - Anger
 - Indecision and hesitation
- The legal and administrative consequences associated with the use of unreasonable force.
- An agency's potential liability associated with the use of unreasonable force
- The consequences of an officer's failure to intervene when unreasonable force is used by another peace officer
- Immediate and delayed intervention techniques

- Factors that may inhibit a peace officer from intervening in a situation where a fellow officer may be applying unreasonable force

(Learning Doman 20; <https://www.post.ca.gov/pc-832-arrest-and-firearms-training-specifications.aspx>.)

Given that this legislation will allow officers to use less lethal weapons, this legislation would, additionally, require local sheriffs to provide custodial officers with training.

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