
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 230 **Hearing Date:** April 23, 2019
Author: Caballero
Version: April 11, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Law Enforcement: Use of Deadly Force: Training: Policies*

HISTORY

Source: California Peace Officers Research Association of California (PORAC);
California Police Chiefs Association

Prior Legislation: AB 931 (Weber), 2017, held in Senate Rules Committee

Support: Association for Los Angeles Deputy Sheriffs; Brawley Public Safety Employee Association; California Narcotic Officers' Association; California Peace Officers Association; California Probation, Parole and Correctional Association; California; State Sheriffs' Association; California Statewide Law Enforcement Association; Chief Probation Officers of California; Chula Vista Police Officers Association; City of Ontario Police Department; Clovis Police Officers Association; Crime Victims United of California; El Cerrito Police Employees Association; Fresno Police Officers Association; Glendale Police Officers' Association; Kern Law Enforcement Association; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Napa County Deputy Sheriffs' Association; North Valley Chapter of PORAC; Peace Officers Association of Petaluma; Resource Protection Peace Officers Association; Riverside Sheriffs' Association; Sacramento County Alliance of Law Enforcement; Salinas City Council; San Diego District Attorney Investigators Association; San Diego County Probation Officers Association; San Diego Harbor Police Officers Association, Santa Barbara Deputy Sheriff's Association; Solano County Deputy Sheriff Association; Sonoma County Law Enforcement Association; Stockton Police Officer's Association; Union City Police Officer's Association

Opposition: American Civil Liberties Union of California; Alliance of San Diego; Anti Police-Terror Project; Asian Americans Advancing Justice – California; California Civil Liberties Advocacy; California Families United 4 Justice; Center on Juvenile and Criminal Justice; Change Begins With Me; Clergy & Laity United for Economic Justice (CLUE); The Council on American-Islamic Relations - California; Courage Campaign; Davis People Power; Drug Policy Alliance; Earl B. Gilliam Bar Association; Ella Baker Center for Human Rights; Feminists in Action; Human Impact Partners; Indivisible Los Angeles, CA-43; Indivisible Marin; Indivisible Peninsula/CA-14; Indivisible Project; Indivisible Sausalito; Indivisible South Bay; Indivisible Stanislaus; Indivisible California StateStrong (60 Indivisible Groups); Indivisibles of Sherman Oaks; InnerCity Struggle; Justice

Teams Network; League of Women Voters of California; MILPA; Oakland Privacy; Orange County Communities Organized for Responsible Development (OCCORD); Our Revolution Long Beach; People Power LA/West; Public Health Justice Collective; Revolutionary Scholars; Rooted in Resistance; San Francisco No Injunctions Coalition; San Francisco Public Defender's Office; San Jose/Silicon Valley NAACP; Showing Up for Racial Justice (SURJ) Bay Area; SURJ San Jose; SURJ Santa Barbara; The Resistance Northridge-Indivisible; Think Dignity; Together We Will/Indivisible – Los Gatos; Universalist Unitarian Church of Riverside; We The People – San Diego; White People 4 Black Lives; Youth ALIVE; Youth Forward; Youth Justice Coalition; 2 individuals

PURPOSE

The purpose of this bill is to codify existing United States Supreme Court precedent into California code for the standard of use of deadly force by a peace officer to justify a homicide. Additionally, this bill sets forth extensive requirements for local law enforcement use of force policies, training in use of force statewide, and makes a number of legislative findings and declarations.

Existing statutory law provides that homicide is justifiable when committed by public officers when any of the following occur: (Pen. Code, § 196.)

- 1) In obedience to any judgment of a competent court; or
- 2) When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or
- 3) When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice or resisting such arrest.

Existing law provides that any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. (Pen. Code, § 835a)

Existing law specifies that a peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. (Pen. Code, § 835a)

Existing law provides that homicide is justifiable when committed by any person in any of the following cases: (Pen. Code, § 197)

- 1) When resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.
- 2) When committed in defense of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony, or against one who manifestly intends and endeavors, in a violent, riotous, or tumultuous manner, to enter the habitation of another for the purpose of offering violence to any person therein.

- 3) When committed in the lawful defense of such person, or of a spouse, parent, child, master, mistress, or servant of such person, when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; but such person, or the person in whose behalf the defense was made, if he or she was the assailant or engaged in mutual combat, must really and in good faith have endeavored to decline any further struggle before the homicide was committed.
- 4) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed, or in lawfully suppressing any riot, or in lawfully keeping and preserving the peace.

Legal Standard for Use of Deadly Force by a Peace Officer

This bill modifies the standard for justifiable homicide for by a peace officer to include the following circumstances:

- 1) In obedience to any judgment of a competent court.
- 2) When necessarily committed to overcome actual resistance to the discharge of a legal duty if the officer reasonably believes the suspect poses an imminent threat of death or serious physical injury to the officers or others.
- 3) When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting a suspect who is fleeing from justice or resisting arrest if either of the following are true:
 - a) The officer reasonably believes the escape of the suspect poses a significant threat of death or serious physical injury to the officer or others if apprehension is delayed.
 - b) The officer reasonably believes the fleeing suspect to have committed a felony that threatened or resulted in death or serious bodily harm.

Legal Definitions

This bill defines “deadly force” as force reasonably anticipated and intended to create a substantial likelihood of causing death or great bodily injury.

This bill defines “feasible” as reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

This bill defines “law enforcement agency” as any police department, sheriff’s department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, and the Department of Justice.

Law Enforcement Policies Regarding Use of Force

This bill provides that each law enforcement agency shall maintain a policy that provides a minimum standard on the use of force. Each agency’s policy shall, without limitation, include all of the following:

- 1) A requirement that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.
- 2) A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- 3) A requirement that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is objectively reasonable under the circumstances based upon the totality of information actually known to the officer.
- 4) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
- 5) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
- 6) Procedures for disclosing public records of police misconduct in accordance with California law.
- 7) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.
- 8) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.
- 9) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- 10) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.
- 11) Comprehensive and specific guidelines for the application of deadly force.
- 12) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice as specified.
- 13) The role of supervisors in the review of use of force applications.
- 14) A requirement that officers promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.
- 15) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.
- 16) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical and developmental disabilities.
- 17) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.
- 18) Factors for evaluating and reviewing all use of force incidents.
- 19) Minimum entry level and annual hourly training and course titles required to meet the objectives in the use of force policy.
- 20) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

This bill requires that each law enforcement agency shall make their use of force policy accessible to the public.

Training of Law Enforcement Regarding Use of Force

This bill requires the California Commission on Peace Officers Standards and Training (POST) to develop and implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force.

This bill provides that the POST guidelines and course of instruction shall stress that the use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone. These guidelines shall be a resource for each agency executive to use in the creation of a use of force policy that the agency is encouraged to adopt and promulgate, and that reflects the needs of the agency, the jurisdiction it serves, and the law.

This bill specifies that the POST course or courses of basic training for law enforcement officers and the guidelines shall include all of the following:

- 1) Legal standards for use of force.
- 2) Duty to intercede.
- 3) The reasonable force doctrine.
- 4) Supervisory responsibilities.
- 5) Use of force review and analysis.
- 6) Guidelines for the use of deadly force.
- 7) State required reporting.
- 8) De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.
- 9) Implicit and explicit bias and cultural competency.
- 10) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues.
- 11) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't-shoot situations, and real-time force option decision making.
- 12) Alternatives to the use of deadly force and physical force, so that de-escalation tactics and less lethal alternatives are, where reasonably practical, part of the decision making process leading up to the consideration of deadly force.
- 13) Mental health and policing, including bias and stigma.
- 14) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

This bill encourages law enforcement agencies to include, as part of their advanced officer training program, periodic updates and training on use of force. POST shall assist where possible.

This bill provides that the course or courses of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by POST in consultation with appropriate groups and individuals having an interest and expertise in the field on use of force. The groups and individuals shall include, but not be limited to, law enforcement

agencies, police academy instructors, subject matter experts, and members of the public. POST, in consultation with these groups and individuals, shall review existing training programs to determine the ways in which use of force training may be included as part of ongoing programs.

This bill states that it is the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with an agency's specific use of force policy that, at a minimum, complies with the guidelines developed herein.

Legislative Findings and Declarations

This bill finds and declares the following on behalf of the California State Legislature:

- 1) The highest priority of California law enforcement is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone.
- 2) Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public. When officers are called upon to detain or arrest a suspect who is uncooperative or actively resisting, may attempt to flee, poses a danger to others, or poses a danger to themselves, they should consider tactics and techniques that may persuade the suspect to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation safely.
- 3) Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.
- 4) The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity, and life.
- 5) The intent of this act is to establish the minimum standard for policies and reporting procedures regarding California law enforcement agencies' use of force. The purpose of these use of force policies is to provide law enforcement agencies with guidance regarding the use and application of force to ensure such applications are used only to effect arrests or lawful detentions, overcome resistance, or bring a situation under legitimate control.
- 6) The legal standard used to determine the lawfulness of a use of force is the Fourth Amendment to the United States Constitution. The decision of the United States Supreme Court in *Graham v. Connor* (1989) 490 U.S. 386 states in part, "[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation" and "the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application."
- 7) No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision making when using force options.
- 8) A law enforcement agency's use of force policies and training may be introduced as evidence in proceedings involving an officer's use of force. The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably, but shall not be considered as imposing a legal duty on the officer to act in accordance with such policies and training.

- 9) Every instance in which a firearm is discharged, including exceptional circumstances, shall be reviewed by the department on a case-by-case basis to evaluate all facts and to determine if the incident is within policy and in accordance with training.

COMMENTS

1. Need for This Bill

According to the author:

In California, our use of force statute, (Penal Code 196) sets the parameters for using force against a fleeing felon in 1872. As such, PC196 is currently outdated and does not reflect the decisions of the U.S. and California Supreme Courts. Although our courts do not apply PC 196 as current written, our statute should conform with current case law.

In setting our current legal standard governing an officers' use of force, the U.S. Supreme Court aptly stated there must be an "allowance for the fact that police officers are required to make split-second judgments in circumstance that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation." (Graham v. Connor). However, the US Supreme Court has also set clear boundaries for when deadly force is unwarranted, stating that "the use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." (Tennessee v. Garner). Through those two seminal cases, and the following 30 years of developing case law, we currently derive our nationwide legal standards for adjudicating officers' use of force.

2. Existing California Statues Related to Police Use of Force are Outdated

Under current California law a peace officer may kill anyone charged with a felony who is fleeing or resisting arrest. This law was enacted in 1872. California Penal Code § 196 is the single oldest un-amended law enforcement use of force statute in the country. In 1985, the United States Supreme Court decided the case of *Tennessee v. Garner*, 471 U.S. 1. In *Garner* the court held:

The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. . . . A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.

Additionally, the United States Supreme Court decided *Graham v. Connor*, 490 U.S. 386 in 1989. In *Graham* the court held that an objective reasonableness test should be used as the standard to determine whether a law enforcement official used excessive force in the course of making an arrest, or other action. The court stated:

As in other Fourth Amendment contexts... the "reasonableness" inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation...[t]he "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

Following the decisions in *Graham* and *Garner* California has been operating in a reality where the statutes related to police use of force are outdated and unconstitutional. Currently, the California Penal Code authorizes police to use force to arrest, prevent escape, and overcome resistance – without requiring the force to be proportional. (Penal Code § 835a). It authorizes police deadly force without limiting its use to situations where killing is needed to defend against a threat of death or serious injury. On its face, the code justifies police killing any person charged with a felony who is fleeing or resisting arrest – whether or not the person poses a danger to the officer or someone else (Penal Code § 196). The provisions of this bill are intended to update the California Penal Code to comply with the Supreme Court's more modern approach to policing and use of deadly force standards.

3. Use of Deadly Force by Peace Officers

Every person in the State of California has the right to self-defense and to defend others. According to the California jury instructions, the right to self-defense and defense of others are explained as follows:

Judicial Council of California Criminal Jury Instruction ("CALCRIM") 505 – Justifiable Homicide: Self-Defense or Defense of Another. "[A] defendant is not guilty of [homicide] if he or she was justified in killing or attempting to kill someone in self-defense or defense of another. The defendant acted in lawful self-defense defense of another if:

- 1) The defendant reasonably believed that he, she, or someone else was in imminent danger of being killed or suffering great bodily injury or was in imminent danger of being raped, maimed, or robbed;
- 2) The defendant reasonably believed that the immediate use of deadly force was necessary to defend against that danger; and
- 3) The defendant used no more force than was reasonably necessary to defend against that danger.

As discussed above, under existing California Penal Code authorizes police to use force to arrest, prevent escape, and overcome resistance, without requiring the force to be proportional. (Penal Code § 835a). It authorizes police deadly force without limiting its use to situations where killing is needed to defend against a threat of death or serious

injury. On its face, the code justifies police killing any person charged with a felony who is fleeing or resisting arrest – whether or not the person poses a danger to the officer or someone else (Penal Code § 196). Although the Supreme Court rulings in *Graham* and *Garner* have found effectively found these statutes unconstitutional, they remain in the California Penal Code today. California has an outdated and unconstitutional section that applies only to peace officers and whether or not their actions result in justifiable homicide. This bill seeks to amend that section. This bill makes homicide by a peace officer justifiable only if the following provisions are met:

- 1) When the homicide is committed in obedience to any judgment of a competent court (for example: an execution).
- 2) When the homicide is necessarily committed to overcome actual resistance to the discharge of a legal duty if the officer reasonably believes the suspect poses an imminent threat of death or serious physical injury to the officers or others.
- 3) When the homicide is necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting a suspect who is fleeing from justice or resisting arrest if either of the following are true:
 - a) The officer reasonably believes the escape of the suspect poses a significant threat of death or serious physical injury to the officer or others if apprehension is delayed.
 - b) The officer reasonably believes the fleeing suspect to have committed a felony that threatened or resulted in death or serious bodily harm.

4. Constitutionality Issues with Fleeing Suspects

Under California Code, our rule regarding use of deadly force is significantly outdated and non-compliant with constitutional standards under *Tennessee v. Garner*, (1985) 471 U.S. 1.

Under current California Penal Code standard is:

Police are authorized to use deadly force on any person charged with a felony who is fleeing or resisting arrest – whether or not the person poses a danger to the officer or someone else (Penal Code § 196).

The standard as set forth in *Garner* is:

The use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. . . . A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.

The standard as set forth in this bill is:

[Homicide by a peace officer is justified] when necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in

arresting a suspect who is fleeing from justice or resisting arrest if either of the following are true:

- i) The officer reasonably believes the escape of the suspect poses a significant threat of death or serious physical injury to the officer or others if apprehension is delayed.
- ii) The officer reasonably believes the fleeing suspect to have committed a felony that threatened or resulted in death or serious bodily harm.

This bill's standard falls short of the constitutional standard set forth in *Tennessee v. Garner* because it fails to limit the use of deadly force on a fleeing suspect to situations where the officer believes that the fleeing suspect poses an immediate threat. However, this constitutional challenge is remediable.

By making the two requirements non-conjunctive, an officer can legally use force on a fleeing or resisting suspect when the officer believes that the fleeing suspect has committed a felony that threatened or resulted in death or serious bodily harm. Under this standard an officer could lawfully shoot a resisting suspect that the officer reasonably believed previously committed a felony that threatened or resulted in serious bodily harm. So arguably, officers could shoot a 90-year-old suspect who is resisting arrest that they believe committed robbery at some time in the past. If the bill were amended to make the final two criteria conjunctive rather than disjunctive: (1) the officer believes they pose a significant threat of death or serious physical injury; **and** (2) that the officer believes that the fleeing suspect committed a felony that threatened or resulted in death or serious bodily harm; the standard would meet the requirements to *Tennessee v. Garner*.

Alternatively, some standard that required that officers not harm a suspect where the following requirements are not met:

“Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so. . . . A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead.” *Tennessee v. Garner*, (1985) 471 U.S.

1

At minimum, further specificity as to the threat imposed by the fleeing suspect is required in order to make the standard of this bill acceptable under the standard articulated in *Garner*.

5. Definition of “Deadly Force” – Intent Requirement

The bill provides a definition of “deadly force.” The definition provided is:

“Deadly force” as force reasonably anticipated and intended to create a substantial likelihood of causing death or great bodily injury.

The element of showing the intent of the officer is a very high standard to meet. While the proponents of the legislation likely wish to include the intent of the officer “to create a substantial likelihood of causing death or great bodily injury” the opponents are concerned with meeting the standard of knowing what was in the officer’s mind to

determine whether deadly force was used. Under the reasonable officer standard, the intent or recklessness of an officer should already be taken into consideration. The committee should determine whether or not requiring intent to create a substantial likelihood of causing death or great bodily injury should be included in the definition of deadly force.

6. Sets a Minimum Statewide Standard for Law Enforcement Use of Force Policy Provisions

This bill outlines a number of policies related to a minimum standard on the issue of use of force that every law enforcement agency in the state must adopt and maintain. Additionally, these agencies must make their policies publically available. Law enforcement agencies have presumably always had to have use of force policies so that they maintain compliance with the standards of legal use of force, as outlined by the Supreme Court.

These standards are extensive in nature and cover a wide range of topics. These topics include, but are not limited to, the following:

- 1) De-escalation techniques, crisis intervention, and use of force alternatives;
- 2) Requirement of proportional use of force to the threat imposed;
- 3) Reporting requirements of officers to report excessive force, and potential excessive force, by fellow officers;
- 4) Requirements that officers intercede when they observe another officer using excessive force;
- 5) Guidelines on when a firearm can be drawn and/or pointed at a suspect;
- 6) Requirements on consideration of surroundings before the discharge of a firearm;
- 7) Outlined procedures for the disclosure of public records of misconduct;
- 8) Procedures for citizen complaints regarding the use of force;
- 9) Guidelines on methods and devices available for the application of force;
- 10) Requirement that officers carry out use of force in a manner that is fair and unbiased;
- 11) Guidelines for the application of deadly force;
- 12) Requirements for reporting and notification regarding use of force incidents;
- 13) The role of supervisors in the review of use of force;
- 14) Requirement that officers procure medical assistance for persons injured in a use of force incident;
- 15) Training standards and requirements related to knowledge of use of force rules;
- 16) Training and guidelines regarding vulnerable populations;
- 17) Guidelines on discharge of a firearm from a vehicle;
- 18) Factors for evaluating and reviewing use of force incidents;
- 19) A minimum standard for training and course titles required to meet the objectives in the use of force policy; and
- 20) A requirement for regular review and updating of the policy.

This bill, in addition to codifying United States Supreme Court precedent on the issue of use of deadly force, requires that each law enforcement agency in California adopt a use of force policy that complies with minimum standards set forth in this bill. While some discreet jurisdictions have policies similar to those promulgated by this bill, this bill would set a minimum state standard requiring that all individual jurisdictions create policies in and around these provisions.

7. Training of Law Enforcement on Issues Related to Use of Force

This bill requires that the California Commission on Peace Officers Standards and Training (POST) develop and implement courses of instruction for the regular training of law enforcement officers in the use of force. Additionally POST is instructed to develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. The bill further instructs POST to make sure their guidelines be a resource for each agency executive to use in the creation of a use of force policy.

The basic training for law enforcement officers and the guidelines shall include the following areas:

- 1) Legal standards for use of force;
- 2) Duty to intercede;
- 3) The reasonable force doctrine;
- 4) Supervisory responsibilities;
- 5) Use of force review and analysis;
- 6) Guidelines for the use of deadly force;
- 7) State required reporting;
- 8) De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence;
- 9) Implicit and explicit bias and cultural competency;
- 10) Skills including de-escalation techniques to effectively, safely, and respectfully interact with people with disabilities or behavioral health issues;
- 11) Use of force scenario training including simulations of low-frequency, high-risk situations and calls for service, shoot-or-don't-shoot situations, and real-time force option decision making;
- 12) Alternatives to the use of deadly force and physical force, so that de-escalation tactics and less lethal alternatives are, where reasonably practical, part of the decision making process leading up to the consideration of deadly force; Mental health and policing, including bias and stigma; and
- 13) Using public service, including the rendering of first aid, to provide a positive point of contact between law enforcement officers and community members to increase trust and reduce conflicts.

The bill's proponents argue that by creating higher minimum standard for basic training in the use of force, then the existing legal standard for the use of deadly force that they are codifying will be naturally heightened. This argument is based in the fact that officers' use of force is evaluated on whether the officer acted in a reasonable manner. The reasonability standards takes into account whether an officer acts in a manner that an officer with similar training would act. If the standards and training are increased, then the quality of a reasonable officer increases as well.

8. Related Legislation

Assemblymember Shirley Weber has introduced AB 392 in the State Assembly. Her bill amends Penal Code sections 196 and 835a which set out the standards for justifiable homicide by a peace officer in California. The provisions in her bill limit the use of deadly force by a peace officer to those situations where it is necessary to defend against a threat of imminent serious bodily injury

or death to the officer or to another person. Her bill defines “necessary” as given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person. Unlike SB 230, AB 392 does not contain provisions related to statewide policies or minimum statewide basic training on use of force. However, the bills do both amend the same section related to justifiable homicide by a peace officer.

9. Argument in Support

According to the California Police Chiefs Association:

The California Police Chiefs Association would like to express our sincere **support** for SB 230 – a comprehensive measure that seeks to implement evidence-based, precedent-setting policies to minimize use of force and ensure that our officers can continue to keep Californians safe.

The loss of life is always tragic, and an officer’s use of serious force must be a last resort. Unfortunately, our society has many dangerous threats, and just as our peace officers cannot anticipate what they will encounter on any given day, our policies governing their engagement must account for the dangerous scenarios we see too often confronting law enforcement. In those tense, life-threatening situations, our peace officers fall back on their training to make critical split-second decisions. Rigorous training programs and clear guidelines have effectively and significantly reduced uses of force in cities throughout California and across the nation, and SB 230 will bring these evidenced-based best practices to every law enforcement agency in our state.

Under SB 230, California will lead the nation in use of force policing standards, policies, practices, training and reporting. Specifically, SB 230:

- i) Sets a clear and enforceable standard for authorizing the use of force;
- ii) Provides law enforcement with the training and resources needed to minimize the use of force; and
- iii) Mandates that every department adopt modernized and comprehensive use of force policies.

The California Law Enforcement Code of Ethics begins with, “As a law enforcement officer, my fundamental duty is to serve mankind.” In support of this promise, SB 230 builds upon California’s already rigorous crisis intervention and de-escalation training and policies with the goal of reducing use of force incidents – it is an effective approach based on collaboration, science and reason. We urge you to continue pushing for SB 230’s passage for the safety of our families, our communities and all Californians.

10. Argument in Opposition

According to the ACLU of California:

SB 230 will expand police officers' already broad authority to kill members of the public.

Despite the recent amendments, SB 230 would still codify in Pen. Code § 196 a more permissive standard for deadly force than current law, as interpreted by courts. SB 230 fails to limit justified homicides to those where officers acted constitutionally. In amending Pen. Code § 196(c), SB 230 authorizes deadly force “when necessarily committed in arresting a suspect who is fleeing from justice or resisting arrest, if ... [t]he officer reasonably believes the escape of the suspect poses a significant threat of death or serious physical injury to the officer or others if apprehension is delayed.” This provision would allow officers to kill someone suspected of only a minor crime who poses no immediate threat to officers or others, based on the officer’s guess about the threats the suspect might pose in the future – for example, an officer might be justified in killing an unarmed person suspected of a nonviolent felony who had made threats against others to prevent their escape, so long as the person’s threats gave the officer a “reasonable belief” that a persons would pose a “significant threat” of serious bodily injury if not apprehended. The lack of any requirement that the threat be “imminent” and the allowance for deadly force where the officer merely believes that either the person poses a “significant threat” of serious bodily harm, or that the person has committed a felony involving a threat of serious bodily harm, means that officers will be able to invoke this defense broadly while pursuing suspects. This broad provision will swallow limits set forth in other provisions. Such a homicide would be unconstitutional under *Garner*, which addressed use of deadly force to prevent escape of those suspected of felonies only, or *Graham*, which evaluates force based on factors including “the severity of the crime at issue” and “whether the suspect poses an *immediate* threat to the safety of the officers or others.”¹

The amended bill also still allows an officer to kill any fleeing suspect or escapee who the officer believes committed a felony threatening serious bodily harm, regardless whether the individual poses any threat whatsoever. As before, the provision proposed by SB 230 has no time constraints limiting the use of deadly force to an escape in progress – the person could have escaped decades before, and SB 230 would still authorize officers to kill them. Here, the US DOJ further recognizes that “once an escape is no longer in progress, but has been accomplished, that is, once the subject is no longer in the immediate environs of the facility... the policy pertaining to escaping prisoners is no longer applicable. Deadly force would then be authorized only consistent with the policy governing the use of such force in circumstances other than those of escaping prisoners.”²

SB 230’s training requirements are duplicative of current law and practice, offering no additional requirements or guidance.

¹ 490 U.S. at 396 (emphasis added).

² *Id.*

Better training in use of force is critical for preventing unnecessary killings by police. Unfortunately, SB 230 fails to make any improvements to training for California officers. Section 4 of the bill requires training that is already required under law or exists in the training already required by California's Commission on Peace Officer Standards and Training (POST) and suffers from the same flaws of vagueness and toothlessness that plague Section 2 of the bill. SB 230 calls for POST to implement a course or courses for training on the use of force, and "uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force." The bill then simply lists a number of subjects to be included, all of which are already required by statutory law, constitutional law, or are already covered by POST's existing training program.

Because SB 230 would broaden police officers' authority to kill members of the public, including those who do not pose a threat, authorizes policies that are contrary to best practices, and provides no improvements whatsoever to training, the ACLU of California respectfully opposes this bill.

-- END --