

ASSEMBLY BILL

No. 392

Introduced by Assembly Members Weber and McCarty
(Principal coauthor: Assembly Member Holden)
(Principal coauthors: Senators Bradford and Mitchell)
(Coauthor: Assembly Member Mark Stone)

February 6, 2019

An act to amend Sections 196 and 835a of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 392, as introduced, Weber. Peace officers: deadly force.

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.

Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law does not require an officer to retreat or desist from an attempt to make an arrest because of resistance or threatened resistance of the person being arrested.

Under existing law, a homicide committed by a peace officer is justifiable when necessarily committed in arresting a person who has committed a felony and the person is fleeing or resisting such arrest.

Existing case law deems such a homicide to be a seizure under the Fourth Amendment of the Constitution of the United States, and as such, requires the actions to be reasonable.

This bill would redefine the circumstances under which a homicide by a peace officer is deemed justifiable to include when the killing is

in self-defense or the defense of another, consistent with the existing legal standard for self-defense, or when the killing is necessary to prevent the escape of a fleeing felon whose immediate apprehension is necessary to prevent death or serious injury. The bill would additionally bar the use of this defense if the peace officer acted in a criminally negligent manner that caused the death, including if the officer’s criminally negligent actions created the necessity for the use of deadly force.

The bill would also affirmatively prescribe the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape or to overcome resistance.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 196 of the Penal Code is amended to
 2 read:
 3 196. (a) Homicide is justifiable when committed by ~~public~~
 4 *peace officers and those acting by their command in their aid and*
 5 *assistance, either— under any of the following circumstances:*
 6 ~~±.~~
 7 (1) ~~In obedience to any judgment of a competent Court; or,~~
 8 *court.*
 9 ~~2. When necessarily committed in overcoming actual resistance~~
 10 ~~to the execution of some legal process, or in the discharge of any~~
 11 ~~other legal duty; or,~~
 12 ~~3. When necessarily committed in retaking felons who have~~
 13 ~~been rescued or have escaped, or when necessarily committed in~~
 14 ~~arresting persons charged with felony, and who are fleeing from~~
 15 ~~justice or resisting such arrest.~~
 16 (2) *When the homicide results from a peace officer’s use of*
 17 *force, other than deadly force, that is in compliance with*
 18 *subdivision (b) of Section 835a.*
 19 (3) *When, except as otherwise provided in subdivision (b), the*
 20 *homicide would be justifiable pursuant to Section 197, in*
 21 *self-defense or the defense of another person.*
 22 (4) *When, subject to subdivision (b), the officer reasonably*
 23 *believes, based on the totality of the circumstances, that the use*

1 of force resulting in a homicide is necessary to prevent the escape
2 of a person, and all of the following are true:

3 (A) The peace officer reasonably believes that the person has
4 committed, or has attempted to commit, a felony involving the use
5 or threatened use of deadly force.

6 (B) The peace officer reasonably believes that the person will
7 cause death or inflict serious bodily injury to another unless
8 immediately apprehended.

9 (C) If feasible, the peace officer has identified themselves as a
10 peace officer and given a warning that deadly force may be used
11 unless the person ceases flight, unless the officer has reasonable
12 ground to believe the person is aware of these facts.

13 (b) As used in paragraph (4) of subdivision (a), “necessary”
14 means that, given the totality of the circumstances, an objectively
15 reasonable peace officer in the same situation would conclude
16 that there was no reasonable alternative to the use of deadly force
17 that would prevent death or serious bodily injury to the peace
18 officer or to another person. The totality of the circumstances
19 means all facts known to the peace officer at the time and includes
20 the tactical conduct and decisions of the officer leading up to the
21 use of deadly force.

22 (c) Neither this section nor Section 197 provide a peace officer
23 with a defense to manslaughter in violation of Section 192, if that
24 person was killed due to the criminally negligent conduct of the
25 officer, including situations in which the victim is a person other
26 than the person that the peace officer was seeking to arrest, retain
27 in custody, or defend against, or if the necessity for the use of
28 deadly force was created by the peace officer’s criminal
29 negligence.

30 SEC. 2. Section 835a of the Penal Code is amended to read:

31 835a. (a) The Legislature finds and declares all of the
32 following:

33 (1) That the authority to use physical force, conferred on peace
34 officers by this section, is a serious responsibility that shall be
35 exercised judiciously and with respect for human rights and dignity
36 and for the sanctity of every human life. The Legislature further
37 finds and declares that every person has a right to be free from
38 excessive use of force by officers acting under color of law.

39 (2) That the decision by a peace officer to use force shall be
40 evaluated carefully and thoroughly, in a manner that reflects the

1 gravity of that authority and the serious consequences of the use
2 of force by peace officers, in order to ensure that officers use force
3 consistent with law and agency policies.

4 (3) That the decision by a peace officer to use force shall be
5 evaluated from the perspective of a reasonable officer in the same
6 situation, based on the totality of the circumstances known to or
7 perceived by the officer at the time, rather than with the benefit of
8 hindsight, and that the totality of the circumstances shall account
9 for occasions when officers may be forced to make quick judgments
10 about using force.

11 ~~Any~~

12 (b) Any peace officer who has reasonable cause to believe that
13 the person to be arrested has committed a public offense may use
14 reasonable ~~force~~ force, other than deadly force, to effect the arrest,
15 to prevent escape or to overcome resistance.

16 ~~A~~

17 (c) A peace officer who makes or attempts to make an arrest
18 need not ~~retreat~~ abandon or desist from ~~his efforts~~ the arrest by
19 reason of the resistance or threatened resistance of the person being
20 arrested; ~~nor shall such arrested.~~ A peace officer shall not be
21 deemed an aggressor or lose ~~his~~ the right to self-defense by the
22 use of reasonable force to effect the arrest or to prevent escape or
23 to overcome resistance. A peace officer shall, however, attempt to
24 control an incident through sound tactics, including the use of
25 time, distance, communications, tactical repositioning, and
26 available resources, in an effort to reduce or avoid the need to use
27 force whenever it is safe, feasible, and reasonable to do so. This
28 subdivision does not conflict with the limitations on the use of
29 deadly force set forth in this section or Section 196.

30 (d) (1) A peace officer is justified in using deadly force upon
31 another person only when the officer reasonably believes, based
32 on the totality of the circumstances, that such force is necessary
33 for either of the following reasons:

34 (A) To defend against a threat of imminent death or serious
35 bodily injury to the officer or to another person.

36 (B) To prevent the escape of a fleeing suspect consistent with
37 paragraph (4) of subdivision (a) of Section 196.

38 (2) A peace officer shall not use deadly force against a person
39 based on the danger that person poses to themselves, if the person

1 *does not pose an imminent threat of death or serious bodily injury*
2 *to the peace officer or to another person.*

3 *(3) This subdivision does not provide the legal standard and*
4 *shall not be used in any criminal proceeding against a peace officer*
5 *relating to the use of force by that peace officer, or to any defenses*
6 *to criminal charges under sections 196 or 197 or any other defense*
7 *asserted by that officer, but may be used in any civil or*
8 *administrative proceeding.*

9 *(e) For purposes of this section, the following definitions shall*
10 *apply:*

11 *(1) “Deadly force” means any use of force that creates a*
12 *substantial risk of causing death or serious bodily injury, including,*
13 *but not limited to, the discharge of a firearm.*

14 *(2) A threat of death or serious bodily injury is “imminent”*
15 *when, based on the totality of the circumstances, a reasonable*
16 *officer in the same situation would believe that a person has the*
17 *present ability, opportunity, and apparent intent to immediately*
18 *cause death or serious bodily injury to the peace officer or another*
19 *person. An imminent harm is not merely a fear of future harm, no*
20 *matter how great the fear and no matter how great the likelihood*
21 *of the harm, but is one that, from appearances, must be instantly*
22 *confronted and addressed.*

23 *(3) “Necessary” means that, given the totality of the*
24 *circumstances, an objectively reasonable peace officer in the same*
25 *situation would conclude that there was no reasonable alternative*
26 *to the use of deadly force that would prevent death or serious*
27 *bodily injury to the peace officer or to another person.*

28 *(4) “Totality of the circumstances” means all facts known to*
29 *the peace officer at the time and includes the tactical conduct and*
30 *decisions of the officer leading up to the use of deadly force.*