

California AB-392 Peace officers: deadly force
as enacted compared to as introduced

SECTION 1.

Section 196 of the Penal Code is amended to read:

196.

~~(a)~~ Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under **any either** of the following circumstances:

- (1) ~~(a)~~ In obedience to any judgment of a competent court.
- (2) ~~(b)~~ When the homicide results from a peace officer's use of ~~force, other than deadly force,~~ **force** that is in compliance with ~~subdivision (b) of~~ Section 835a.
- ~~(3) When, except as otherwise provided in subdivision (b), the homicide would be justifiable pursuant to Section 197, in self-defense or the defense of another person.~~
- ~~(4) When, subject to subdivision (b), the officer reasonably believes, based on the totality of the circumstances, that the use of force resulting in a homicide is necessary to prevent the escape of a person, and all of the following are true:~~
 - ~~(A) The peace officer reasonably believes that the person has committed, or has attempted to commit, a felony involving the use or threatened use of deadly force.~~
 - ~~(B) The peace officer reasonably believes that the person will cause death or inflict serious bodily injury to another unless immediately apprehended.~~
 - ~~(C) If feasible, the peace officer has identified themselves as a peace officer and given a warning that deadly force may be used unless the person ceases flight, unless the officer has reasonable ground to believe the person is aware of these facts.~~

~~(b) As used in paragraph (4) of subdivision (a), "necessary" means that, 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. The totality of the circumstances means all facts known to the peace officer at the time and includes the tactical conduct and decisions of the officer leading up to the use of deadly force.~~

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

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SEC. 2.

Section 835a of the Penal Code is amended to read:

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

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

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.

~~(2)~~ (3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

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

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

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

~~(c) A peace officer who makes or attempts to make an arrest need not abandon or desist from the arrest by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. A peace officer shall, however, attempt to control an incident through sound tactics, including the use of time, distance, communications, tactical repositioning, and available resources, in an effort to reduce or avoid the need to use force whenever it is safe, feasible, and reasonable to do so. This subdivision does not conflict with the limitations on the use of deadly force set forth in this section or Section 196.~~

~~(d)~~ (c) (1) *A* ~~Notwithstanding subdivision (b),~~ a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons:

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

(B) To ~~prevent the escape of a fleeing suspect consistent with paragraph (4) of subdivision (a) of Section 196.~~ *apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.*

(2) A peace officer shall not use deadly force against a person based on the danger that person poses to themselves, if *an objectively reasonable officer would believe* the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

~~(3) (d) This subdivision does not provide the legal standard and~~ *A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested. A peace officer shall not be* ~~used in any criminal proceeding against a peace officer relating to~~ *deemed an aggressor or lose the right to self-defense by* ~~the use of force by that peace officer, or to any defenses to criminal charges under sections 196 or 197 or any other defense asserted by that officer, but may be used in any civil or administrative proceeding.~~ *objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other deescalation tactics.*

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

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

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

~~(3) "Necessary" means that, 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.~~

~~(4) (3)~~ "Totality of the circumstances" means all facts known to the peace officer at the ~~time and includes the tactical conduct and decisions~~ *time, including the conduct* of the officer *and the subject* leading up to the use of deadly force.