

**Introduced by Senator Caballero****(Coauthors: Senators Archuleta, Dodd, Galgiani, Glazer, and Hill)****(Coauthors: Assembly Members Cooper, Frazier, Gray, Grayson, Low, O'Donnell, Quirk-Silva, Ramos, Robert Rivas, Rodriguez, Blanca Rubio, and Salas)**February 7, 2019

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An act to add Chapter 17.4 (commencing with Section 7286) to Division 7 of Title 1 of the Government Code, and to amend Section 196 of, and to add Section 13519.10 to, the Penal Code, relating to law enforcement.

## LEGISLATIVE COUNSEL'S DIGEST

SB 230, as introduced, Caballero. Law enforcement: use of deadly force: training: policies.

(1) Existing law requires each law enforcement agency to annually furnish specified information to the Department of Justice regarding the use of force by a peace officer. Existing law requires the Department of Justice, once per year, to update a summary of information contained in the reports received on its internet website. Existing law requires a department or agency that employs peace officers or custodial officers to establish a procedure to investigate complaints by members of the public against those officers.

This bill would require each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing deescalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. The bill would require each agency to make their use of force policy accessible

to the public. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

(2) Under existing law, the use of deadly force resulting in the death of a person is justified if it was necessarily committed in overcoming actual resistance to an arrest, if it was necessarily committed in apprehending a felon who had escaped from custody, or if it was necessarily committed in arresting a person charged with a felony and who was fleeing from justice or resisting arrest.

Existing case law prohibits the use of deadly force by a peace officer unless, among other criteria, there is a reasonable fear of death or serious physical harm to the officer or another.

This bill would refine the circumstances under which a homicide by a peace officer is justifiable to those situations in which the officer reasonably believes the suspect poses an imminent threat of death or serious physical injury to the officer or others or when a fleeing suspect has committed a forcible and atrocious felony.

By changing the circumstances under which a peace officer may be charged and convicted of a homicide, this bill would impose a state-mandated local program.

(3) Existing law establishes the Commission on Peace Officer Standards and Training in the Department of Justice and requires the commission to adopt rules establishing minimum standards regarding the recruitment of peace officers. Existing law requires the commission to develop guidelines and implement courses of instruction regarding racial profiling, domestic violence, hate crimes, vehicle pursuits, and human trafficking, among others.

This bill would require the commission to implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force. The bill would require the commission to develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for the use of force, as specified. The bill would encourage law enforcement agencies to adopt and promulgate a use of force policy and would state the intent of the Legislature that each law enforcement agency adopt, promulgate, and require regular and periodic training consistent with the agency's policy that complies with the guidelines developed under this bill.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

- 1     SECTION 1. The Legislature finds and declares:  
2     (a) The highest priority of California law enforcement is  
3     safeguarding the life, dignity, and liberty of all persons, without  
4     prejudice to anyone.  
5     (b) Law enforcement officers shall be guided by the principle  
6     of reverence for human life in all investigative, enforcement, and  
7     other contacts between officers and members of the public. When  
8     officers are called upon to detain or arrest a suspect who is  
9     uncooperative or actively resisting, may attempt to flee, poses a  
10    danger to others, or poses a danger to themselves, they should  
11    consider tactics and techniques that may persuade the suspect to  
12    voluntarily comply or may mitigate the need to use a higher level  
13    of force to resolve the situation safely.  
14    (c) Vesting officers with the authority to use reasonable force  
15    and to protect the public welfare requires monitoring, evaluation,  
16    and a careful balancing of all interests.  
17    (d) The authority to use force is a serious responsibility given  
18    to peace officers by the people who expect them to exercise that  
19    authority judiciously and with respect for human rights, dignity,  
20    and life.  
21    (e) The intent of this act is to establish the minimum standard  
22    for policies and reporting procedures regarding California law  
23    enforcement agencies' use of force. The purpose of these use of  
24    force policies is to provide law enforcement agencies with guidance  
25    regarding the use and application of force to ensure such  
26    applications are used only to effect arrests or lawful detentions,  
27    overcome resistance, or bring a situation under legitimate control.  
28    (f) The legal standard used to determine the lawfulness of a use  
29    of force is the Fourth Amendment to the United States Constitution.

1 The decision of the United States Supreme Court in *Graham v.*  
2 Connor (1989) 490 U.S. 386 states in part, “[t]he reasonableness  
3 of a particular use of force must be judged from the perspective  
4 of a reasonable officer on the scene, rather than with the 20/20  
5 vision of hindsight ... . The calculus of reasonableness must  
6 embody allowance for the fact that police officers are often forced  
7 to make split-second judgments - in circumstances that are tense,  
8 uncertain, and rapidly evolving - about the amount of force that is  
9 necessary in a particular situation” and “the test of reasonableness  
10 under the Fourth Amendment is not capable of precise definition  
11 or mechanical application.”

12 (g) No policy can anticipate every conceivable situation or  
13 exceptional circumstance which officers may face. In all  
14 circumstances, officers are expected to exercise sound judgment  
15 and critical decision making when using force options.

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

20 SEC. 2. Chapter 17.4 (commencing with Section 7286) is added  
21 to Division 7 of Title 1 of the Government Code, to read:

22  
23 CHAPTER 17.4. LAW ENFORCEMENT USE OF FORCE POLICIES  
24

25 7286. (a) For the purposes of this section:

26 (1) “Deadly force” means force reasonably anticipated and  
27 intended to create a substantial likelihood of causing death or great  
28 bodily injury.

29 (2) “Feasible” means capable of being done or carried out to  
30 successfully achieve the arrest or lawful objective without  
31 increasing risk to the officer or another person.

32 (3) “Imminent” does not mean immediate or instantaneous, but  
33 shall include an officer’s objectively reasonable belief that a danger  
34 of injury or death may occur if force is not applied.

35 (4) “Law enforcement agency” means any police department,  
36 sheriff’s department, district attorney, county probation department,  
37 transit agency police department, school district police department,  
38 the police department of any campus of the University of  
39 California, the California State University, or community college,

1 the Department of the California Highway Patrol, and the  
2 Department of Justice.

3 (b) Each law enforcement agency shall maintain a policy that  
4 provides guidelines on the use of force, and the following:

5 (1) Utilizing deescalation techniques, crisis intervention teams,  
6 and other alternatives to force when feasible.

7 (2) Balancing the amount of force with the seriousness of the  
8 suspected offense and the reasonably perceived level of actual or  
9 threatened resistance.

10 (3) An officer's duty to report potential excessive force to a  
11 superior officer when present and observing another officer using  
12 force that the officer believes to be beyond that which is objectively  
13 reasonable under the circumstances based upon the totality of  
14 information actually known to the officer.

15 (4) Taking into account the possibility that other officers may  
16 have additional information regarding the threat posed by a subject,  
17 an officer's duty to intercede when present and observing another  
18 officer using force that is clearly beyond that which is objectively  
19 reasonable under the circumstances.

20 (5) Approved methods and devices available for the application  
21 of force with corresponding guidelines for each.

22 (6) The officer's responsibility to carry out duties, including  
23 use of force, in a manner that is fair and unbiased.

24 (7) Specific guidelines for the application of deadly force.

25 (8) Prompt internal reporting and notification requirements  
26 regarding a use of force incident, including reporting use of force  
27 incidents to the Department of Justice in compliance with Section  
28 12525.2.

29 (9) The role of supervisors in the review of use of force  
30 applications.

31 (10) Ensuring medical assistance is procured, when reasonable  
32 and safe to do so, for persons following a use of force incident.

33 (11) Training standards and requirements relating to an officer's  
34 demonstrated knowledge and understanding of their law  
35 enforcement agency's use of force policy.

36 (12) Training and guidelines regarding vulnerable populations,  
37 including, but not limited to, children, elderly persons, people who  
38 are pregnant, and people with physical and developmental  
39 disabilities.

1 (13) Situations under which the discharge of a firearm at a  
2 moving vehicle may or may not be permitted.

3 (14) Factors for evaluating and reviewing all use of force  
4 incidents.

5 (15) Minimum entry level and annual hourly training and course  
6 titles required to meet the objectives in the use of force policy.

7 (c) Each law enforcement agency shall make their use of force  
8 policy accessible to the public.

9 (d) This section does not supersede the collective bargaining  
10 procedures established pursuant to the Myers-Milias-Brown Act  
11 (Chapter 10 (commencing with Section 3500) of Division 4), The  
12 Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512)  
13 of Division 4), or the Higher Education Employer-Employee  
14 Relations Act (Chapter 12 (commencing with Section 3560) of  
15 Division 4).

16 SEC. 3. Section 196 of the Penal Code is amended to read:

17 196. Homicide is justifiable ~~when~~ *if* committed by ~~public~~  
18 ~~officers and those acting by their command in their aid and~~  
19 ~~assistance, either—~~ *a peace officer or by an individual acting*  
20 *under the command of a peace officer in the peace officer's aid*  
21 *and assistance, under any of the following circumstances:*

22 ~~(1.)~~

23 (a) In obedience to any judgment of a competent ~~Court; or,~~  
24 *court.*

25 ~~(2.)~~

26 (b) When necessarily committed in overcoming actual resistance  
27 ~~to the execution of some legal process, or in the discharge of any~~  
28 ~~other legal duty; or,~~ *discharge of a legal duty if the officer*  
29 *reasonably believes the suspect poses an imminent threat of death*  
30 *or serious physical injury to the officer or others.*

31 ~~(3.)~~

32 (c) When necessarily committed in retaking felons who have  
33 been rescued or have escaped, ~~or when necessarily committed in~~  
34 ~~arresting persons charged with felony, and who are fleeing from~~  
35 ~~justice or resisting such arrest.~~ *escaped.*

36 (d) *When necessarily committed in arresting a suspect who is*  
37 *fleeing from justice or resisting arrest if the officer reasonably*  
38 *believes that the suspect poses a significant threat of death or*  
39 *serious physical injury to the officer or others.*

1     (e) *When necessarily committed in arresting a suspect who is*  
2     *fleeing if the officer reasonably believes the fleeing suspect has*  
3     *committed a forcible or atrocious felony.*

4     SEC. 4. Section 13519.10 is added to the Penal Code,  
5     immediately following Section 13519.9, to read:

6     13519.10. (a) (1) The commission shall implement a course  
7     or courses of instruction for the regular and periodic training of  
8     law enforcement officers in the use of force and shall also develop  
9     uniform, minimum guidelines for adoption and promulgation by  
10    California law enforcement agencies for use of force. The  
11    guidelines and course of instruction shall stress that the use of  
12    force by law enforcement personnel is of important concern to the  
13    community and law enforcement and that law enforcement should  
14    safeguard life, dignity, and liberty of all persons, without prejudice  
15    to anyone. These guidelines shall be a resource for each agency  
16    executive to use in the creation of a use of force policy that the  
17    agency is encouraged to adopt and promulgate, and that reflects  
18    the needs of the agency, the jurisdiction it serves, and the law.

19    (2) As used in this section, “law enforcement officer” includes  
20    any peace officer of a local police or sheriff’s department or the  
21    California Highway Patrol, or of any other law enforcement agency  
22    authorized by law to use force to effectuate an arrest.

23    (b) The course or courses of basic training for law enforcement  
24    officers and the guidelines shall include adequate consideration  
25    of each of the following subjects:

- 26    (1) Legal standards for use of force.
- 27    (2) Duty to intercede.
- 28    (3) The reasonable force doctrine.
- 29    (4) Deescalation.
- 30    (5) Tactical communications.
- 31    (6) Use of force options.
- 32    (7) Rendering medical aid.
- 33    (8) Supervisory responsibilities.
- 34    (9) Use of force review and analysis.
- 35    (10) Dealing with vulnerable populations.
- 36    (11) Guidelines for the use of deadly force.
- 37    (12) State required reporting.
- 38    (13) Reasonable alternatives to use of force.

39    (c) Law enforcement agencies are encouraged to include, as  
40    part of their advanced officer training program, periodic updates

1 and training on use of force. The commission shall assist where  
2 possible.

3 (d) (1) The course or courses of instruction, the learning and  
4 performance objectives, the standards for the training, and the  
5 guidelines shall be developed by the commission in consultation  
6 with appropriate groups and individuals having an interest and  
7 expertise in the field on use of force. The groups and individuals  
8 shall include, but not be limited to, law enforcement agencies,  
9 police academy instructors, subject matter experts, and members  
10 of the public.

11 (2) The commission, in consultation with these groups and  
12 individuals, shall review existing training programs to determine  
13 the ways in which use of force training may be included as part of  
14 ongoing programs.

15 (e) It is the intent of the Legislature that each law enforcement  
16 agency adopt, promulgate, and require regular and periodic training  
17 consistent with an agency's specific use of force policy that, at a  
18 minimum, complies with the guidelines developed under  
19 subdivisions (a) and (b).

20 SEC. 5. No reimbursement is required by this act pursuant to  
21 Section 6 of Article XIII B of the California Constitution for certain  
22 costs that may be incurred by a local agency or school district  
23 because, in that regard, this act creates a new crime or infraction,  
24 eliminates a crime or infraction, or changes the penalty for a crime  
25 or infraction, within the meaning of Section 17556 of the  
26 Government Code, or changes the definition of a crime within the  
27 meaning of Section 6 of Article XIII B of the California  
28 Constitution.

29 However, if the Commission on State Mandates determines that  
30 this act contains other costs mandated by the state, reimbursement  
31 to local agencies and school districts for those costs shall be made  
32 pursuant to Part 7 (commencing with Section 17500) of Division  
33 4 of Title 2 of the Government Code.