

AMENDED IN ASSEMBLY MARCH 27, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 392

Introduced by Assembly Members Weber and McCarty

(Principal coauthor: Assembly Member Holden)

(Principal coauthors: Senators Bradford and Mitchell)

**(~~Coauthor:~~ Coauthors: Assembly Member Members Medina and
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 amended, 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 peace
4 officers and those acting by their command in their aid and
5 assistance, under any of the following circumstances:
6 (1) In obedience to any judgment of a competent court.
7 (2) When the homicide results from a peace officer's use of
8 force, other than deadly force, that is in compliance with
9 subdivision (b) of Section 835a.
10 (3) When, except as otherwise provided in subdivision-(b); (c),
11 the homicide would be justifiable pursuant to Section 197, in
12 self-defense or the defense of another person.
13 (4) When, subject to subdivision-(b); (c), the officer reasonably
14 believes, based on the totality of the circumstances, that the use
15 of force resulting in a homicide is necessary to prevent the escape
16 of a person, and all of the following are true:
17 (A) The peace officer reasonably believes that the person has
18 committed, or has attempted to commit, a felony involving the use
19 or threatened use of deadly force.
20 (B) The peace officer reasonably believes that the person will
21 cause death or inflict serious bodily injury to another unless
22 immediately apprehended.

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

5 (b) As used in paragraph (4) of subdivision (a), “necessary”
6 means that, given the totality of the circumstances, an objectively
7 reasonable peace officer in the same situation would conclude that
8 there was no reasonable alternative to the use of deadly force that
9 would prevent death or serious bodily injury to the peace officer
10 or to another person. The totality of the circumstances means all
11 facts known to the peace officer at the time and includes the tactical
12 conduct and decisions of the officer leading up to the use of deadly
13 force.

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

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

22 835a. (a) The Legislature finds and declares all of the
23 following:

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

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

35 (3) That the decision by a peace officer to use force shall be
36 evaluated from the perspective of a reasonable officer in the same
37 situation, based on the totality of the circumstances known to or
38 perceived by the officer at the time, rather than with the benefit of
39 hindsight, and that the totality of the circumstances shall account

1 for occasions when officers may be forced to make quick
2 judgments about using force.

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

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

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

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

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

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

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

39 (3) This subdivision does not provide the legal standard and
40 shall not be used in any criminal proceeding against a peace officer

1 relating to the use of force by that peace officer, or to any defenses
2 to criminal charges under Sections 196 or 197 or any other defense
3 asserted by that officer, but may be used in any civil or
4 administrative proceeding.

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

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

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

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

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