

San Diego Police Department In-Service Training

Summary of the following bills: (SB-1421) (AB-931) (AB-392) (SB-230) And a brief of (Graham V Conner)

Summary of SB-1421

Prior to this bill, certain categories of peace officer's personnel files, including complaints against peace officers were to be confidential and prohibited the disclosure of those records in any criminal or civil proceeding except discovery. With the passing of **SB-1421** on January 1st 2019, **SB-1421** amends Government Code Section 832.7 to mandate disclosure of records and information related to certain high-profile categories of officer misconduct: officer-involved shootings, certain uses of force, sustained findings of sexual assault, and sustained findings of certain types of dishonesty.

Summary of AB-931

Assembly Member Shirley Weber proposed this bill after the public scrutiny into the Stephon Clark shooting by two police Officers in Sacramento, California. **AB-931** limits the use of deadly force by a peace officer to situations where it is "necessary" to prevent imminent and serious bodily injury or death to the officer or to a third party. It would prohibit the use of deadly force by a peace officer in a situation where an individual poses a risk only to himself or herself. **AB-931** would also limit the use of deadly force by a peace officer against a person fleeing from arrest or imprisonment to only those situations in which the officer has probable cause to believe that the person has committed or intends to commit, a felony involving serious bodily injury or death, and there is an imminent risk of serious bodily injury or death to the officer or to another person if the subject is not immediately apprehended.

*This bill was removed (failed) from the senate appropriations committee for further review and consideration. **AB-392** is the follow up proposal to **AB-931** proposed by Shirley Weber.*

Summary of AB-392

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 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 will additionally bar the use of this defense if the officer acted in a criminally negligent manner that caused the death, including if the criminally negligent actions created the necessity for the use of deadly force. This bill will also 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. **AB-392** significantly alters CPC 196 (Justifiable Homicide by a Peace Officer).

***AB-392** will increase an officers' civil and criminal liability for not making the absolute best decision leading up to the moment force was used. It is hindsight and second guessing, which the federal courts warned about in (Scott v Henrich, 39. 3d 912 9th Cir. 1994) It is also a standard inconsistent with the United States Supreme Court case (Graham v Conner, 490 U.S. 386 1989)*

Summary of Graham v Conner
490 U.S. 386 (1989) United States Supreme Court

Incident: Graham was diabetic and ran into a convenience store to buy orange juice. The line was too long so he left. Officer Connor was outside and thought Graham possibly had robbed the store. He conducted a traffic stop to detain Graham. Graham exited the vehicle and acted irrational. He was taken into custody after a short struggle and sustained a few injuries. No crime occurred at the store.

Court Ruling: The 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. The test of reasonableness is not capable of precise definition or mechanical application.

Objective reasonableness has no precise definition. It is the totality of the circumstances. Use the below to assist you in making force decisions and testifying in court about “Objective Reasonableness.”

Totality Of The Circumstances - All facts known to the peace officer at the time, including the actions of the subject and the officer, leading up to the use of force. It is everything from the moment you received the radio call or the moment your attention was drawn to the subject. The beginning, the middle, and the end of the force encounter. Totality of the circumstances encompasses everything that came into your decision to use force.

Subject Factors- Number of suspects, number of officers, skill of subject, size, strength, exhaustion or fatigue, injuries, weapons, is subject 5150 or 11550.

Graham Factors - Was subject posing an immediate threat to officers or others? (Most important factor regarding your use of force) Severity of the crime? Was subject actively resisting? Was subject attempting to evade or escape?

Reasonable Officer Standard - Would another officer with the same training and experience facing the same circumstances, act in the same manner, or use similar judgement.

Department Policy – Know 1.04! It’s YOUR responsibility to know when it is reasonable to use force. Remember, the SDPD use of force policy is MORE restrictive than State and Federal guidelines on force. Stay within policy and you will not be criminally liable. Civil suits can result even if you are within policy. You have no control of this. You are covered by the city as long as you stay within the law and policy.

Summary of SB-230

A counter bill to ***AB-392***. ***SB-230*** would not limit deadly force. It would still follow *Graham v Conner* (force must be reasonable). It would require additional training, comprehensive and clear guidance on how to de-escalate situations, deal with mental health issues, communicate better in public, use reasonable alternatives to deadly force (when feasible) and intercede (an officers’ duty) to prevent excessive force.