

CLIENT NEWS BRIEF

AB 392 Changes Use of Force Standards

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Governor Gavin Newsom has signed the California Act to Save Lives (AB 392) into law. AB 392 modifies the standards surrounding the use of deadly force by Police and other peace officers in the line of duty.

California Penal Code section 196, enacted in 1872, was the single oldest un-amended law enforcement use of force statute in the country. This Penal Code section provided that killing by police was justifiable when necessarily committed when arresting or retaking felons who are fleeing, resisting, or who have escaped. In addition, California Penal Code section 835a authorized police to use force to arrest, prevent escape, and overcome resistance – without requiring the force to be proportional.

AB 392 significantly changes these rules, including amending the longstanding justifiable homicide standard. The bill states, “Peace officers are 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.” The new law goes on to state that the use of deadly force is limited to two circumstances. First, deadly force may be used when the officer reasonably believes it necessary to defend themselves against “an imminent threat of death or serious bodily injury.” Second, deadly force may be used in order to apprehend a person fleeing from a felony that may have caused or resulted in death or serious bodily injury or where the officer reasonably believes that the fleeing person will pose a similar danger to another unless “immediately apprehended.” However, prior to the use of deadly force to apprehend a fleeing person the officer must make “reasonable efforts” to identify themselves as an officer and warn that deadly force may be used. The officer does not have to identify and warn if they have objectively reasonable grounds to believe that that the person is aware of those facts.

AB 392 also includes a clarification that de-escalation techniques should be used by law enforcement agencies prior to the use of deadly force. When reviewing situations in which deadly force has been used, the new law requires such review be done under the “totality of circumstances” standard. That is a review of all facts known to the officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force. Departments may want to provide updated training and information to their officers following this new law.

For more information about AB 392, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our podcast, follow us on [Facebook](#), [Twitter](#), and [LinkedIn](#) or download our [mobile app](#).



Jenell Van Bindsbergen
Partner and Co-Chair
Local Government Practice Group
Fresno Office
jvanbindsbergen@lozanosmith.com



Junaid Halani
Associate
Sacramento Office
jhalani@lozanosmith.com



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