



CPOA ADVOCACY

AB 931 FACT SHEET

BACKGROUND

In response to the Stephon Clark incident in Sacramento, Assemblywoman Shirley Weber (D-San Diego) in April 2018 [announced that she would be amending AB 931](#), a failed 2017 bill that dealt with suicide prevention resources. This “gut and amend” procedure would remove all of the 2017 language of AB 931 and instead have the bill elevate the current “objectively reasonable” standard for application of lethal force by peace officers to “necessary.”

Needless to say, this did not sit well with CPOA. We took numerous press calls the day of the Legislature’s announcement, followed by participation in press conference arranged by the California Police Chiefs Association, where CPOA’s 1st Vice President, Sheriff Jay Varney of Madera County outlined our concerns regarding not only that the bill was introduced, but also regarding the procedure used to introduce the bill. No law enforcement groups were made aware of this bill proposal until the Legislature held their announcement press conference, and the first meeting with Weber’s office to review the bill had to be initiated by CPOA.

Several members of CPOA’s staff and leadership then met with Dr. Weber’s office **at our insistence** to outline our extreme concerns with the bill. Her staff was joined by the ACLU, who felt that AB 931 only made ‘minor changes,’ and simply served as an interpretation of [Graham v. Connor](#). CPOA obviously disagreed with this interpretation, and argued that changing the legal standard set in place by the United States Supreme Court regulating use of force by peace officers violated the ‘equal protection’ clauses of both the *United States Constitution* and *California Constitution* and simply was neither reasonable nor good public policy.

About a month later, various law enforcement groups met with Dr. Weber herself and her ACLU bill sponsors. We again outlined our thoughts on how AB 931 would drastically change policing in California, and make public safety officers more reactionary, thereby eroding the progress made over the last few decades in innovative and community-oriented policing. Dr. Weber dismissed those sentiments as “scare tactics,” but remained committed to ensuring adequate California budget funds for LE de-escalation training.

CPOA’s contingency at that meeting again left the Capitol very concerned about a fundamental disagreement of policing and the Dr. Weber’s apparent ignorance of the rarity with which lethal force is applied by California law enforcement officers.

First Bill Hearing

AB 931 was first heard in the Legislature on June 16th in the Senate Public Safety Committee. [David P. Mastagni of Mastagni Holstedt \(CPOA’s LSP provider\) testified in the committee on behalf of CPOA](#) and noted how AB 931 violates equal protection and seeks to criminalize officer actions. The bill hearing was particularly harsh towards law enforcement, and the bill passed that committee on a 5-2 vote. The bill was then sent to Senate Appropriations Committee, **where it will be heard for fiscal arguments on August 6th in Room 4203 of the Capitol.**

BILL HIGHLIGHTS

Amends PC 196(b):

(b) A defense to a charge of homicide in violation of Section 192 shall not be available pursuant to this section or Section 197 for a public officer whose conduct is such a departure from the expected conduct of an ordinary prudent or careful officer under the same circumstances as to be incompatible with a proper regard for human life.

Amends PC 835a:

(a) The Legislature finds and declares that the authority to use physical force, conferred upon peace officers by this section, is a serious responsibility that must 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

(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 to effect the arrest, to prevent escape or to overcome resistance.

(c) A peace officer ~~shall not~~ who makes or attempts to make an arrest *shall not be required to retreat or desist from his or her efforts by reason of the resistance or threatened resistance of the person being arrested and shall not* be deemed an aggressor or lose his or her right to self-defense by the use of reasonable force to effect the arrest, to prevent escape, or to overcome resistance. *However, peace officers shall attempt to control and incident by using time, distance, communications, and available resources in an effort to deescalate a situation whenever it is safe and reasonable to do so. This subdivision shall not be construed to conflict with the limitations of the use of deadly force set forth in subdivision (d) or to prohibit law enforcement agencies from requiring peace officers to employ reasonable alternatives to the use of force or other tactics designed to make arrests without the use of force or with the least amount of force necessary.*

Defines:

Necessary: given the "totality of the circumstances," ~~a~~ *an objectively* reasonable peace officer would conclude that there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury to the peace officer or to another person.

Reasonable alternatives include, but are not limited to, verbal communications, warnings, de-escalation, and tactical repositioning.

Totality of the circumstances: includes, but is not limited to, the facts known to the officer at the time, the conduct of the subject and the officer leading up to the use of deadly force, and whether the officer's conduct was consistent with applicable training and policy.

Circumstances:

- An officer shall not use deadly force against an individual based on the danger they pose to themselves, where the individual does not pose an imminent threat of serious bodily injury or death to officers or other members of the public.
- An officer may use deadly force against persons fleeing from arrest or imprisonment only when 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 another person if the subject is not immediately apprehended.

CONCERNS ABOUT THE BILL

CPOA is opposed to AB 931 for the following reasons (and more):

- The bill sets the stage for judging the actions of peace officers—often made in fractions of seconds under extreme conditions—to an unreasonable degree of 20/20 hindsight. This is in direct conflict with over four decades of well-developed law, judged by the highest court in the land.
- Restrictions and definition changes contained in the proposed PC 835a would place the use of important non-lethal tools in jeopardy (see proposed PC 835a (b) and (d)(1)(D)).
- The bill does not define “time, distance and communications” as used in PC 835(c).
- AB 931 essentially gives more self-defense legal protection to citizens than it does to peace officers.
- This bill will cause officers to be reactionary, as they will be constantly second-guessing themselves when a situation escalates to force application. In turn, this will potentially cause more injuries to peace officers, who delay in the reasonable application of deadly force under the circumstances, thus exposing themselves to harm by suspects.
- Local training costs for agencies to update their policies and procedures to adhere to the mandates set forth in the bill will be astronomical.
- Overall, AB 931 will completely turn policing in California on its head, and the safety of communities and LE personnel will be a great risk.
- CPOA believes that the legislature could more appropriately and substantively further public and officer safety by fully funding California POST, so officers receive the latest training in such needed areas as Crisis Intervention Techniques and De-escalation principles and attempt to address the failing mental health system in this state.
- CPOA is also very concerned regarding the effect that AB 931, if passed, will have on recruitment and retention of qualified officers who will decline to apply for LEO positions, or remain LEOs, for fear of exposure to criminal and civil liability.
- In addition, CPOA is concerned that AB 931, if passed, will result in “de-policing” by officers. Officers will avoid placing themselves in positions of confrontation with suspects due to their concerns about exposure to criminal and civil liability. This will result in a decline to public safety for members of our communities.
- CPOA is also apprehensive because the passage of AB 931 will likely cause more lawsuits to be filed in Superior Courts, which are already overburdened. Moreover, officers facing lawsuits for use of force filed on state law theories do not have the defense of qualified immunity to shield their actions from civil liability. Qualified immunity is designed to protect officers from civil liability for making reasonable mistakes in the application of force when the law does not clearly establish that their actions would be unconstitutional.
- CPOA is also concerned because peace officers would be subject to uncertainty concerning the meaning of “necessary” until this term is interpreted in a vast array of circumstances by the state courts. Presently, peace officers have the benefit of approximately 40 years of court decisions by both federal and state courts interpreting the meaning of the current standard, “objectively reasonable,” governing the application of force.

STATISTICS

The following statistics paint a drastically different, and factual story of lethal force encounters and arrests than what is currently being paraded by the Legislature [and the media](#). These statistics demonstrate that with a rising violent crime rate, and an increase in assaults on peace officers with a firearm, that AB 931 is truly dangerous and will put both the public and law enforcement personnel at extreme risk.

CPOA suggests that agencies use these statistics in conversations with your local legislators and public.

- Violent crime for every 100,000 Californians rose 1.5% from 2016-2017.
- The total number of reported criminal complaints against peace officers fell to its lowest since 1987.
- The total number of peace officers assaulted in the line of duty increased from 2016-2017 by 837.
- From 2016 to 2017, **the total number of LE officers assaulted with a firearm increased 25.1%**, while the number assaulted with a knife or other cutting instrument decreased 9.9%.