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BOARD OF SUPERVISORS

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May 15, 2018

Dear Assembly Member Weber and Assembly Member McCarty:

Regrettably, Lassen County Board of Supervisors is strongly opposed to AB 931 due to the following concerns.

As a retired Police Chief with twenty-eight years of experience, I have a concern that this legislation would decrease public safety for all Californians and visitors to the state at a serious cost of life, property and trust.

This legislation would put our constituents and yours at extended risk of fear, injury or death during life and death situations because the legislation is vague and untested; it is a departure from existing legislation and case law. A great example our Sheriff gave at a Board Meeting was, a suspect pulling an unloaded gun on an officer and the officer shooting that person. A violation of this proposed bill?

We have a difficult enough time recruiting and retaining qualified personnel today and this legislation will make a bad situation worse. I fear that this legislation may make it even more difficult to recruit and retain peace officers who may become apprehensive with added stress about violating AB 931 when doing their job in California during critical life and death situations.

California has long-standing and sound hiring practices for peace officer candidates, including a comprehensive background investigation, psychological screening, and medical screening. The Peace Officer Standards and Training (POST) certified police academies and ongoing professional training programs are top-notch and are emulated by many other states. This system was established to remove unfit candidates who would want to perform this public safety career for the wrong purposes and to promote the hiring and retention of professional peace officers who are committed to the safety of all people in their communities.

Response time is critical in life and death situations. Will AB 931 slow the response of peace officers when they need to take immediate action to save their life or that of someone else? Will AB 931 expose local government and the State to potential and actual litigation because the legislation establishes a new standard for evaluating peace officer use of force that is far stricter than long established case law? How will AB931 change peace officer response to crimes in progress? If peace officers do not have a duty to

respond or take action, and retreat is always an acceptable alternative, why wouldn't they choose the latter? If they have a higher burden to meet to protect their own life than the average citizen does, why would they choose to take any action at all? Would this legislation lessen or increase peace officer response times to life and death situations?

AB 931 may mean unproven changes in POST and local and state procedures, possibly changes mandating that first responders not intervene with deadly force without first receiving clearance from senior officers. Would you want a responding peace officer to delay or retreat from a dire life or death situation because of not having clearance to use deadly force?

In closing, AB 931 is not a solution. What we need is immediate and long term funding for helping rural communities to boost public safety, recruit and retain peace officers, and offer programs and services that would function under existing laws, procedures and guidance. The State does not need vagary in the law causing response delays, placing peace officers and the public in unnecessary danger, or making it more difficult to recruit, train and retain peace officers in California.

Please listen to the law enforcement groups that are opposing this Bill and remove the bill from consideration.

Sincerely,

CHRIS GALLAGHER, Chairman
Lassen County Board of Supervisors

CC: Assembly Member Brian Dahle
Senator Ted Gaines
Members of Assembly Public Safety Committee
Rural County Representatives of California
California State Association of Counties

AMENDED IN SENATE APRIL 16, 2018
AMENDED IN ASSEMBLY MARCH 23, 2017
CALIFORNIA LEGISLATURE—2017—18 REGULAR SESSION

ASSEMBLY BILL

No. 931

Introduced by Assembly Member Members Weber and McCarty
(Principal coauthors: Assembly Members Holden, Jones-Sawyer, and
Mark Stone)
(Principal coauthors: Senators Bradford and Mitchell)

February 16, 2017

~~An act to amend Section 4098.3 of the Welfare and Institutions Code, relating to suicide prevention.~~ *An act to amend Sections 196 and 835a of the Penal Code, relating to criminal procedure.*

LEGISLATIVE COUNSEL'S DIGEST

AB 931, as amended, ~~McCarty Weber. Suicide prevention.~~ *Criminal procedure: use of force by peace officers.*

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, the use of deadly force resulting in the death of a person is justified when it was necessarily committed in overcoming actual resistance to an arrest, when it was necessarily committed in

apprehending a felon who had escaped from custody, or when 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 bodily harm to the officer or another.

This bill would limit the use of deadly force, as defined, by a peace officer to those situations where it is necessary to prevent imminent and serious bodily injury or death to the officer or to a third party, as specified. The bill 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. The bill 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 would make a homicide committed by a peace officer justifiable only if the use of deadly force by a peace officer was necessary given the totality of the circumstances, as specified, but would exclude those situations in which the gross negligence of the officer contributes to creating the necessity.

This bill would make legislative declarations regarding its provisions.

~~Existing law, the California Suicide Prevention Act of 2000, authorizes the State Department of Health Care Services to establish and implement a suicide prevention, education, and gatekeeper program to reduce the severity, duration, and incidence of suicidal behaviors. Existing law authorizes the department to contract with an outside agency to establish and implement a targeted public awareness and education campaign on suicide prevention and treatment. Existing law requires the target populations to include junior high and high school students:~~

~~This bill would additionally require the target populations to include community college, 4-year college, and university undergraduate and graduate students.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-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. Homicide is justifiable when committed by public officers
4 and those acting by their command in their aid and assistance,
5 ~~either—~~ as follows:

6 1.

7 (a) In obedience to any judgment of a competent ~~Court, or,~~
8 court.

9 2.

10 (b) ~~When necessarily committed in overcoming actual resistance~~
11 ~~necessary given the totality of the circumstances, pursuant to the~~
12 ~~execution subdivision (d) of some legal process, or in the discharge~~
13 ~~of any other legal duty; or, Section 835a, unless committed by a~~
14 ~~public officer whose gross negligence substantially contributed to~~
15 ~~making it necessary.~~

16 3. ~~When necessarily committed in retaking felons who have~~
17 ~~been rescued or have escaped, or when necessarily committed in~~
18 ~~arresting persons charged with felony, and who are fleeing from~~
19 ~~justice or resisting such arrest.~~

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

21 835a. (a) The Legislature finds and declares that the authority
22 to use physical force, conferred on peace officers by this section,
23 is a serious responsibility that must be exercised judiciously and
24 with respect for human rights and dignity and for the sanctity of
25 every human life. The Legislature further finds and declares that
26 every person has a right to be free from excessive force by officers
27 acting under color of law.

28 (b) Any peace officer who has reasonable cause to believe that
29 the person to be arrested has committed a public offense may use
30 reasonable force to effect the arrest, to prevent ~~escape~~ *escape*, or
31 to overcome resistance.

32 (c) A peace officer who makes or attempts to make an arrest
33 ~~need not retreat or desist from his efforts by reason of the resistance~~
34 ~~or threatened resistance of the person being arrested; nor shall such~~
35 ~~officer not~~ be deemed an aggressor or lose his or her right to
36 self-defense by the use of reasonable force to effect the ~~arrest or~~
37 ~~arrest~~, to prevent ~~escape~~ *escape*, or to overcome resistance.

1 (d) (1) Notwithstanding any other law, a peace officer may use
2 deadly force only when such force is necessary to prevent imminent
3 and serious bodily injury or death to the officer or to a third party.

4 (2) A peace officer shall not use deadly force against an
5 individual based on the danger that individual poses to himself or
6 herself, if the individual does not pose an imminent threat of serious
7 bodily injury or death to officers or to other members of the public.

8 (3) A peace officer may use deadly force against persons fleeing
9 from arrest or imprisonment only when the officer has probable
10 cause to believe that the person has committed, or intends to
11 commit, a felony involving serious bodily injury or death, and
12 there is an imminent risk of serious bodily injury or death to the
13 officer or to another person if the subject is not immediately
14 apprehended.

15 (4) For the purposes of this subdivision:

16 (A) "Necessary" means that, given the totality of the
17 circumstances, a reasonable peace officer would conclude that
18 there was no reasonable alternative to the use of deadly force that
19 would prevent imminent death or serious bodily injury to the peace
20 officer or to a third party. Reasonable alternatives include, but
21 are not limited to, deescalation, tactics set forth in the officer's
22 training or in policy, and other reasonable means of apprehending
23 the subject or reducing the exposure to the threat.

24 (B) The "totality of the circumstances" includes, but is not
25 limited to, the facts available to the peace officer at the time, the
26 conduct of the subject and the officer leading up to the use of
27 deadly force, and whether the officer's conduct was consistent
28 with applicable training and policy.

29 (C) "Deescalation" means taking action or communicating
30 verbally or nonverbally during a potential force encounter in an
31 attempt to stabilize the situation and reduce the immediacy of the
32 threat so that more time, options, and resources can be called
33 upon to resolve the situation without the use of force or with a
34 reduction of the force necessary. Deescalation tactics include, but
35 are not limited to, warnings, verbal persuasion, and tactical
36 repositioning.

37 ~~SECTION 1. Section 4098.3 of the Welfare and Institutions~~
38 ~~Code is amended to read:~~

39 ~~4098.3. The department may contract with an outside agency~~
40 ~~to establish and implement a targeted public awareness and~~

1 ~~education campaign on suicide prevention and treatment. Target~~
2 ~~populations shall include junior high and high school students,~~
3 ~~community college, four-year college, and university undergraduate~~
4 ~~and graduate students, as well as other selected populations known~~
5 ~~to be at high risk of suicide.~~

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