

## AB-392 Creates Ambiguities

One thousand one, one thousand two, one thousand three. In the three short seconds it took to read those words, that could be how much time a law enforcement officer has to assess a situation and determine how to deal with it in the best interest of the community. On any fateful day, those trained to serve and protect may be called upon to handle a perilous circumstance, such as encountering a fleeing felon, in our otherwise law-abiding society. Split-second and potentially life or death decisions may need to be made. There is no denying that law enforcement officers have a challenging job, and it remains critical that they stay within their position's boundaries as far as what can, and what should, be done to maintain the peace, protect the public, and preserve lives. With that in mind, on its face, AB-392 appears advantageous to all, but when carefully reviewed, the way it was originally drafted creates ambiguities and lacks sufficient clarity, which could negatively impact the manner in which officers do their jobs and serve our communities. For that reason, if I were a California State Legislator, I could not support Assembly Bill Number 392 unless it was clarified.

The rationale behind AB-392 is to update California's seemingly outdated laws regarding police using deadly force and to "better [preserve] life while also allowing officers the latitude needed to ensure public safety" (Assembly Committee on Public Safety). As originally drafted, however, AB-392 does not accomplish its goals. AB-392 attempts to narrow the scope under which officers can use lethal force by focusing on the apparent immediacy of the threat a felon poses at a particular moment. Citing *Tennessee v. Garner*, the Bill's proponents set forth that, "Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so" (*Tennessee v. Garner*). Yet, that position blurs how the term "immediate" may actually be

viewed when comparing hindsight to the exact time an event is occurring, does not provide proper focus on protecting the law-abiding public, and does not factor in that an officer's actions must already (and always) be reasonable. Based on these points, there are uncertainties as far as how the Bill would be interpreted and applied if voted into law.

When considering AB-392's intent of "better preserving life," one must consider the life of the fleeing felon as well as the scores of innocent bystanders that may end up facing a suspected criminal that got away because an officer waffled over whether the offender posed an *immediate* threat at the precise moment the lawbreaker fled from the police. Felonies are the most serious of all offenses that a person can commit, and include, by way of example, murder, rape, and robbery (Cal Penal Code §§ 187, 261, and 211). Therefore, there could be circumstances when a serious threat is imminent. Using their training, officers need to swiftly, yet reasonably, assess a situation and act. If an officer overly hesitates while trying to apprehend a fleeing felon due to fear or confusion over what someone in the future may assert was not an imminent threat, the officer's safety could be in jeopardy, as could the safety of the public.

For good reason, officers cannot use lethal force in all circumstances. California's Penal Code Section 196 provides that homicide is justifiable when committed by a public officer only if following a competent Court's judgment, if necessary to overcome actual resistance of a legal process, or if necessary to retake a felon or someone charged with a felony (Cal Penal Code § 196). Penal Code Section 835a explains that reasonable force can be used by officers who have reasonable cause to believe a public offense has been committed (Cal Penal Code § 835a). The amount of force that is reasonable is based on an objective, not subjective, standard (*Graham v. Connor*). Accordingly, if deadly force is unreasonable, it would also be unnecessary.

By opposing AB-392, it does not mean that one dismisses or condones actions taken by peace officers that are excessive, unnecessary, or unreasonable under the circumstances. To the contrary, any such behavior should not, and can never be, accepted in our society. A "no" vote, however, means that although current law regarding the use of deadly force by peace officers may need review and revisions to better reflect the world today, those revisions need to incorporate more clearly defined parameters in order to allow the men and women that serve and protect our communities to do so without confusion or uncertainty. Without that, there are dangers to the public.

(Word Count, excluding Title and Works Cited = 781)

## Works Cited

Assembly Committee on Public Safety. *AB-392 Peace Officers: Deadly Force, Bill Analysis*,  
*Assembly Public Safety*. 2019.

Cal Penal Code § 187

Cal Penal Code § 196

Cal Penal Code § 211

Cal Penal Code § 261

Cal Penal Code § 835a

*Graham v. Connor*, 490 U.S. 386 (1989)

*Tennessee v. Garner*, 471 U.S. 1 (1985)