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CLIENT BULLETIN

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LEGISLATURE AMENDS CONTROVERSIAL USE OF FORCE BILL

Responding to pressure from the State Coalition of Probation Organizations and other law enforcement groups, state legislators last week amended their controversial use of force bill to remove provisions that drastically increased civil and criminal liability for peace officers who use deadly force. The revisions to AB 392, however, continue to restrict the use of deadly force by peace officers to those situations where the force is deemed “necessary” under “the totality of the circumstances” to prevent imminent death or serious bodily injury to the officer or another person.

Under the amended bill, homicide by a peace officer still is justified only when “the officer reasonably believes, based on the totality of the circumstances, that [the] force is necessary” to (1) defend against an imminent threat of death or great bodily injury to the officer or another person or (2) to apprehend a fleeing felon when the felony involved actual or threatened death or serious bodily injury. The officer using deadly force to apprehend a fleeing felon must reasonably believe the felon will cause death or seriously bodily injury unless immediately apprehended. The bill defines “totality of the circumstances” to include the officer’s own conduct.

Stricken from the legislation are provisions that required peace officers to exhaust all reasonable alternatives before using deadly force and subjected officers to prosecution if the use of deadly force was caused by the officer’s own negligence. The authors also removed provisions imposing liability on officers in civil and administrative proceedings involving the use of force. The authors returned to the bill language stating an officer making or attempting an arrest need not retreat or desist if the suspect resists.

AB 392 and a companion state Senate bill requiring additional use of force training are likely to become California law. The bill’s coauthors include the Senate president pro tem, the chairs of the Assembly and Senate Public Safety Committees, and other key legislators, and Governor Gavin Newsom has expressed support for the bill.

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