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**Sent:** 7/15/2018 4:06:27 PM  
**Subject:** Fwd: Force Science responds: "Necessary" vs. "Reasonable" force proposal

Dennis,

What I'm forwarding is a good explanation on parts of the state bill that is trying to redefine how a peace officer's use-of-force is evaluated. It's an educational piece that also explains what an officer encounters when exercising force. Please have DFTC distribute for staff training. Thanks.

**Christian Hsu**

Captain

Pomona Police Department

Begin forwarded message:

**From:** Force Science News <[info@forcesciencenews.com](mailto:info@forcesciencenews.com)>  
**Date:** July 15, 2018 at 14:58:35 PDT  
**To:** Undisclosed-Recipients;;  
**Subject:** Force Science responds: "Necessary" vs. "Reasonable" force proposal  
**Reply-To:** <[info@forcescience.org](mailto:info@forcescience.org)>



July 15, 2018

*Force Sciencetm News*

Chuck Remsberg  
Editor-in-Chief

[www.forcescience.org](http://www.forcescience.org)

### **Force Science assesses proposed "Necessary" deadly force standard**

As noted in *Force Science News* #363, a bill is working its way through the California Assembly that would significantly change the grounds on which LEOs in that state can justify their use of deadly force.

Rejecting the US Supreme Court's long-standing "reasonableness" standard, this bill (No. 931) mandates that "a peace officer may use deadly force *only* when such force is *necessary* to prevent *imminent* death or serious bodily injury to the officer or to another person...." (emphasis added)

“Reasonable alternatives may include...verbal communications, warnings, deescalation, and tactical repositioning, along with other tactics and techniques intended to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of deadly force.”

This measure was introduced after two Sacramento officers, responding one night last winter to a 911 complaint about someone breaking car windows, confronted a young black man with what they thought was a gun in his hand as he headed toward his grandmother’s backyard nearby. “Fearing for their lives,” they shot and killed him.

No gun was found, but his cell phone was recovered near his body.

Bill No. 931, drafted after days of turbulent street demonstrations to protest police shootings, is avidly supported by the usual panoply of activist groups, including Black Lives Matter and the ACLU. It is vigorously opposed by law enforcement organizations such as the California Peace Officers Assn., the Peace Officers Research Assn. of California (PORAC), and the policy-advisory firm Lexipol as a dangerous and ill-conceived action with the potential for establishing an unrealistic and worrisome precedent.

The Force Science Institute joins the police organizations in their concern.

Meanwhile, the Force Science Institute issues this position statement in opposition to California Assembly Bill 931, which seeks to establish a “necessity” standard for the legal use of deadly force by peace officers:

This proposed legislation appears to be a well-intentioned effort to stop “mistake-of-fact” shootings. These are incidents where an officer fires, allegedly in defense against a perceived deadly threat, but when the smoke clears the subject turns out to be unarmed or wielding some nonlethal object like a cell phone.

In attempting to solve that tragic problem, however, this bill creates others that are equally serious because it fails to reflect an understanding of deadly force realities.”

**ERRONEOUS SHOOTINGS.** Typically, mistake-of-fact shootings occur during a confluence of adverse factors largely beyond an officer’s control:

- **Often, the scene is dark or poorly lit.** Distinction of detail may be difficult or impossible—considerably less clear, in fact, than a body cam recording may appear later because of the camera’s superior light-enhancing capability.
- **Decisions are tremendously time-pressured.** Once a potential deadly threat is perceived, the officer must decide within a fraction of a second what to do about it to stay ahead of the reactionary curve, leaving little if any time for reflective analysis. By necessity, the decision will usually be based on fragmentary information; only later may the officer learn the full circumstances he was dealing with.
- **Most critical is the subject’s behavior.** A refusal to comply with an officer’s lawful commands adds urgency and a sense of peril to any encounter. Indeed, the overwhelming majority of mistake-of-fact shootings on record—and other high-profile, controversial police shootings as well—would not have occurred had the subjects chosen to cooperate with officers from the outset.

In establishing in *Graham v. Connor* that police use of force must be “reasonable” under the circumstances, the Supreme Court wisely recognized that real-life encounters tend to

be “tense, uncertain, and rapidly evolving,” with unfortunate errors sometimes resulting. That is in keeping with the scientific reality of human performance.

In contrast, by requiring that police use deadly force only when “necessary,” the crafters of Bill No. 931 are presuming a level of officer influence over circumstances that doesn’t exist and are striving to create a level of perfection that can’t possibly be attained.

What we believe the bill *will* create is far greater hazards for officers and their agencies.

**ADVERSE PREDICTIONS.** Force Science predicts these major adverse consequences if Bill 931 becomes law:

1) While *Graham* cautions against judging officers’ actions with 20/20 hindsight, trying to determine after the fact whether a given use of deadly force was truly ‘*necessary*’ invites Monday-morning quarterbacking. Likewise the term ‘imminent’ is open to varied interpretation, as well. In the calm vacuum after a shooting, every aspect of the event can and likely will be parsed and alternative scenarios constructed ad infinitum.

2) As plaintiffs’ attorneys exploit the nebulous terms ‘necessary’ and ‘imminent,’ the volume of civil suits—already at a national high in California—will skyrocket. Officers will likely be at greater risk of facing criminal charges for alleged improper force, too. The legislator who instigated the bill has told reporters she wants to “encourage prosecutors to consider whether officers could have deescalated a situation with verbal warnings or used nonlethal force” rather than resorting to gunfire.

3) Decisions take time and hesitation adds even more time. Frequently and alarmingly, a perceived assailant, while non-complying, acts in a fashion that creates a direct and immediate perceived threat for the officer. If that threat were real and the officer didn’t respond, he could be seriously injured or killed.

**ASSENT & DISSENT.** There are aspects of Bill No. 931 that Force Science supports. .

We do favor—and we teach—deescalation tactics and calming techniques for defusing volatile situations—when they are practical and safe and *when subjects are willing to cooperate with them*.

We also favor a section of the bill that prohibits deadly force against an individual who poses a danger only to himself and not to a peace officer or another person.

And, of course, we actively support and promote expanded training to enhance an officer’s ability to tactically contain and control a situation and we also support more training on officer decision-making in situations where lives are at stake.

But Force Science strongly opposes deviating from the reasonableness standard of *Graham v. Connor* as Bill No. 931 requires.

**JUSTIFIED PRIDE.** Although the narrative fostered by anti-police activists and some mainstream and social media is of cops out of control, the Force Science Institute believes law enforcement can take justifiable pride in its remarkable use-of-force record.

Only 0.086 per cent of police/citizen contacts result in the police use of any force and only a slight fraction of a per cent of any force escalates to deadly force. Only a mere fraction of that mere fraction is deemed to be unjustified under the legal standard that now prevails.

That is the hard-won reality that politicians should be honoring.

**Editor's note:** According to Shaun Rundle, deputy director and legislative affairs representative for the California Peace Officers' Assn., a committee hearing on Bill No. 931 will be held in the state Assembly on Aug. 9. Assuming approval there, a legislative floor vote will then be held. If the bill is passed, the governor will have until Sept. 30 to sign it into law.

The bill's originator, Shirley Weber, has agreed to speak about the measure at the COPSWEST Conference in Sacramento on Sept. 19. **WHAT ARE YOUR THOUGHTS?** E-mail us at: [editor@forcescience.org](mailto:editor@forcescience.org). We'd like to hear what *FS News* readers have to say!

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