Assessing the Impact of Proposed Changes to California’s Deadly Force Standard

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The recent announcement that no officers will be charged for killing Stephon Clark is the latest reminder that police violence and the laws allowing it to go unpunished must be urgently addressed. Between 2013 and 2018, California police killed 1,071 people - the largest number of any state and the 10th highest rate when accounting for population size.

In response to this crisis, California lawmakers have introduced legislation to change the state’s deadly force law. California’s existing deadly force law allows police officers to use deadly force when “reasonable,” even if such force was not necessary. The proposed legislation, Assembly Bill 392, changes this by limiting deadly force to situations where such force is “necessary” to stop an imminent threat of death or serious injury. The legislation defines “necessary” to be situations where:

“given the totality of the circumstances, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another person”

Under this new standard, officers would be required to use alternatives other than deadly force such as de-escalation and non-lethal force options whenever these tactics could reasonably address the situation. Furthermore, officers’ conduct leading up to the use deadly force would be considered when determining whether such force was legally justifiable. Officers found to have used deadly force when such force was not necessary based on the facts available to them at the time would be subject to criminal prosecution.

To determine the impact this legislation could have on police violence in California, we conducted an extensive review of the research literature, reviewed the deadly force policies of the largest cities in California and across the nation, and analyzed available data from the California Department of Justice on the use of deadly force statewide. Our findings suggest Assembly Bill 392 could impact a significant portion of deadly force incidents in the state - enabling greater accountability and reducing police shootings without leading to negative outcomes in terms of officer or community safety.

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Analysis of Police Shootings in California

California’s URSUS database requires law enforcement agencies to report every police shooting and other use of force incident causing death or serious injury in the state. Beginning in 2016, this database now includes 647 police shootings incidents spanning 2016 and 2017. Police shot at a total of 681 people during these incidents, of which 304 were killed and another 257 injured.

Since AB 392 would both limit deadly force to situations where there is an imminent threat of death or serious injury and require officers to use non-lethal alternatives to deadly force whenever reasonably possible, we examined the following research questions:

1. How often did police report an imminent threat of death or serious injury when they shot at someone?
2. How often did police report attempting non-lethal alternatives before shooting at someone?

A full accounting of how and when police use deadly force compared to non-lethal alternatives would, ideally, involve an examination of both those incidents where officers used deadly force and incidents where officers used non-lethal force without resorting to deadly force. However, the data made available by the state are limited to police shootings and other uses of deadly force. Nevertheless, we believe a focus on police shootings specifically can provide insight into how some of these shootings may have been prevented or otherwise led to a different outcome under a stricter legal standard.

Police Shootings by Alleged Threat Level

Law enforcement agencies reported to California’s URSUS database the level of resistance, if any, officers said the person presented - including levels from no resistance to “passively non-compliant,” “actively resisting,” “assaultive” and “life-threatening.” As we’ve seen from previous cases where video footage contradicts police accounts, these reports from law enforcement may overestimate or exaggerate the extent of the threat. Nevertheless, even the information reported by police indicates a significant proportion of police shootings were not in response to a threat of death or serious injury. Of the 647 police shootings incidents, at least 202 (31%) incidents did not pose a threat “likely to result in serious injury or possibly the death of the officer or another person,” as per the CA Department of Justice’s guidelines. According to law enforcement agencies themselves then, nearly a third of police shootings in California from 2016-2017 were not in response to the threat of death or serious injury - including 78 people who police reported as “passively non-compliant,” “fleeing,” or not resisting at all when they were shot at by officers. And yet, under California’s existing deadly force law, only one of the

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1 California law defines “serious bodily injury” as a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

2 LA Sheriff’s Deputy Luke Liu was charged with voluntary manslaughter in December, 2018 for shooting Francisco Garcia in 2016. This case is still ongoing at the time of this publication.

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647 police shootings during this time period resulted in an officer being prosecuted for breaking the law.

Use of Non-Lethal Alternatives
Since AB 392 would limit deadly force to those situations where lesser force options would be ineffective at resolving the situation, we investigated the extent to which officers reported using less drastic force options prior to discharging their firearms in these incidents. In the instructions provided by the California Department of Justice, law enforcement agencies were provided with a range of force options, from use of hands/feet to the use of impact and electronic control weapons, and instructed to “Select the type(s) of force used by the officer(s) against the civilian. Check all that apply.” Officers only checked another force option in addition to using a firearm in 114 of the 647 police shootings. After reviewing District Attorney’s statements, articles, police reports and videos of the incidents, we found in 29 of the 114 cases that police only used another type of force after shooting at someone (for example, sending a K-9 after someone they had shot at) and 4 cases where one officer used non-lethal force at the same time as another officer shot someone. We also obtained articles and DA statements from 459 of the remaining 533 incidents where police did not indicate they used another form of force to check their accuracy. Of these 459 incidents, 21 involved officers using another form of force before shooting and 4 had one officer shoot while another used other force at the same time. Altogether, police tried using non-lethal force before escalating to deadly force in only 16% (105) of California’s 647 police shootings and police shot without first attempting any other type of force in 84% of police shootings.

The tendency among officers to shoot as a first response, rather than use non-lethal alternatives, does not appear to be explained by the urgency of the situation officers faced. Even in situations where police said they faced little or no resistance, they used firearms as a first response and did not attempt to use other force options to resolve the situation. And in 79% of cases where police shot at unarmed people, they did not attempt to use non-lethal force options before using their firearms.

3 Police reports to the URSUS program specified the order of force used in 47 of the 114 incidents. We obtained media reports, DA statements and other documents to determine the order of force used in the remaining 67 incidents. Links to these incidents and sources for each determination can be found here.

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When disaggregated by race, the data reveal another disturbing pattern: Black and Latinx people were more likely to be shot by officers who did not first attempt to use non-lethal force. Police were 1.5x as likely to attempt a lesser force option on a White person than a Black person prior to shooting. When officers are afforded broad discretion to use force whenever “reasonable,” racial bias appears to color the interpretation of what level and order of force is “reasonable” against different groups.

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These findings suggest that California police are using deadly force in a range of situations where non-lethal alternatives might have been used instead. Only 16% of California’s police shootings occurred after officers had first attempted non-lethal force options to address the situation. Officers were no more likely to try other options prior to shooting someone who posed less of a perceived threat or who was known to be unarmed - situations where officers might reasonably have had more time and space to use non-lethal alternatives. And when officers did attempt alternatives to deadly force, they did so in ways that appear to be influenced by racial bias.

AB 392 would address this issue directly by imposing a legal requirement that officers use non-lethal force whenever possible rather than using deadly force. Moreover, the research literature shows this policy has proven effective at reducing police shootings in the jurisdictions where it has been implemented locally to date.

**The Effectiveness of Reforming Use of Force Standards in Reducing Police Violence:**

The relationship between police use of force standards and use of force outcomes has been well established in the research literature. Studies show that when cities make their deadly force policies more restrictive, it leads to significant reductions in police shootings. Studies have shown there were significant reductions in police shootings after more restrictive deadly force policies were adopted in New York City, Omaha, Kansas City, Los Angeles, Dallas, and Memphis. When Philadelphia adopted a new deadly force policy in 1980 that limited deadly force to only be used, “in defense of life when no alternatives exist,” police shootings dropped 67% within one year and remained at historically low rates thereafter. More recently, on March 10, 2017, Stockton adopted a use of force standard consistent with AB 392 and has seen a change from 11 police shootings between 2015-2016 to 3 shootings from 2017-2018 – a 73% reduction.

National-level research has confirmed this relationship between use of force standards and outcomes. For example, an analysis of 91 of the 100 largest US cities found that police departments that required officers to attempt all other reasonable means prior to using deadly force had 25% fewer police-involved killings and better outcomes in terms of officer and community safety. And when the Supreme Court established a more restrictive constitutional standard for evaluating police deadly force in its Tennessee vs Garner ruling, it led to a significant reduction in killings by police nationwide – including a 24% reduction in states that had to update their deadly force laws in response to the ruling. These studies provide evidentiary support for the impact AB 392 could have in reducing police shootings in California. Moreover, recent research has also found that police departments that have stricter use of force standards are actually safer for officers and do not have higher crime rates than jurisdictions that have not implemented these reforms.

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Which Use of Force Standards are California Police Departments Currently Using?
While California’s existing deadly force law sets a minimum legal standard for prosecution, individual police departments can choose to adopt stricter use of force standards as administrative policies. We reviewed the police department policy manuals of 90 of the 100 largest cities in California to determine the extent to which they imposed restrictions similar to the legal standard that AB 392 would require. Only 16 of the 90 California departments (18%) required officers to use de-escalation whenever possible prior to using force and only 7 departments (8%) required officers to use all available means of apprehension, including de-escalation and non-lethal force, prior to resorting to the use of deadly force. This is much lower than the 42% and 43%, respectively, of the 100 largest police departments nationwide that have such policies in place. As such, California is less restrictive on police deadly force than the national average – a factor that may help explain the relatively high rate of police deadly force in the state. This also suggests that enacting AB 392 would update the use of force policies of the vast majority of law enforcement agencies in the state and, in turn, produce larger effects in reducing deadly force.

Comparing AB 392 to SB 230
In addition to AB 392, another group of California lawmakers have introduced Senate Bill 230 with a focus on police use of force. This bill does not establish the restrictive deadly force standard proposed by AB 392. Instead, it states the legislature’s intention for police departments to adopt administrative use of force policies that “provide guidelines” on topics such as “the application of deadly force,” and “situations under which the discharge of a firearm at a moving vehicle may or may not be permitted.” Since policies such as requiring officers to use available non-lethal alternatives have been found to reduce deadly force when they are adopted as requirements, the fact that SB 230 does not specify these requirements in many cases will limit its impact. Indeed, most California police departments already have policies for the topics

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proposed by this legislation. For example, while 82 of the 90 departments have policies that specify “situations under which the discharge of a firearm at a moving vehicle may or may not be permitted,” only 2 departments limit police shootings at moving vehicles to the extent recommended by both advocates and law enforcement experts including the Police Executive Research Forum and the US Department of Justice. Without clearly specifying which requirements officers should be subject to, SB 230 will likely preserve the existing patchwork of use of force policies among California’s departments and will not lead to meaningful limits on how and when officers use force. As such, SB 230’s impact on police violence would likely be marginal at best.

Given these facts, it’s not clear why anyone would oppose the idea that officers should de-escalate situations whenever possible. Furthermore, why should the law continue to provide legal cover to officers who shoot people unnecessarily? Assembly Bill 392 is a common sense proposal, grounded in research evidence, to reduce police violence and make California safer.

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