SB 230: Countdown to 2021 Compliance

Walter Katz



Introduction

Every use-of-force incident has the potential to undermine community trust, expose officers to liability and create myriad risks for an agency. The combined operational impact of AB 392 and SB 230 reflects California's desire to emphasize de-escalation and alternatives to deadly force.

Agency leaders will be responsible for carefully reviewing current use-of-force policies, training their officers on AB 392's new standards, and assuring a robust and effective internal review process is in place.

"[I]t is the intent ... that peace officers use deadly force only when necessary in defense of human life." Source: AB 392

AB 392 requires officers only respond with deadly force when a threat of death or serious bodily injury is "imminent," meaning the assailant has "the present, opportunity, and apparent intent to immediately cause death or serious bodily injury" to the officer or another person. Officers are also required to use available resources and techniques other than deadly force If "reasonably safe and feasible to an objectively reasonable officer."

SB 230, as one police chief said, is equally – if not more so – important as AB392, the landmark bill recently signed by Governor Newsom that rewrote California's deadly force standard.



According to the Public Policy Institute, there were 78,500 sworn and 41,000 civilian law enforcement staff employed by law enforcement agencies in 2017.



California's Timeline of Transformative Legislation

AB 953

- Date in effect: January 1, 2016
- Summary: Intended to eliminate racial and identity profiling in policing. This regulation requires agencies to collect data specific to race and led to the creation of the Racial and Identity Profiling Advisory Board.

AB 71

- Date in effect: January 1, 2017
- Summary: Mandates California agencies annually report to the Attorney General any incidents involving an officer shooting a civilian, the shooting of a LEO, use of force resulting in death or serious bodily injury, civilian assault on a LEO causing death or serious bodily injury.

AB 748

- Date in effect: July 1, 2019
- Summary: Set requirements for releasing audio and video recordings related to critical incidents, e.g., firearms discharge or use of force resulting in death or great bodily injury.

SB 1421

- Date in effect: January 1, 2019
- Summary: Established updated requirements for releasing records of varying types related to specific conduct or allegations of conduct, e.g., dishonesty or discharging a firearm.

AB 392

- Date in effect: January 1, 2020
- Summary: Restricts deadly use of force to situations in which serious bodily injury is "imminent," and introduces the "reasonableness" consideration that officers must use available resources and techniques other than deadly force.



Until AB 392, California's use-of-force standard had not been amended since it was enacted in 1872.

SB 230

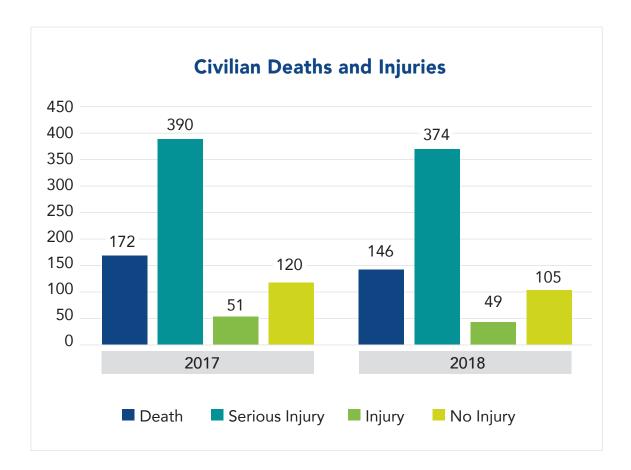
- Date in effect: January 1, 2021
- Summary: Requires agencies to enact a broad set of policies for how LEOs train to use force, new considerations for the actual use of force, and the subsequent internal evaluation of critical incidents.



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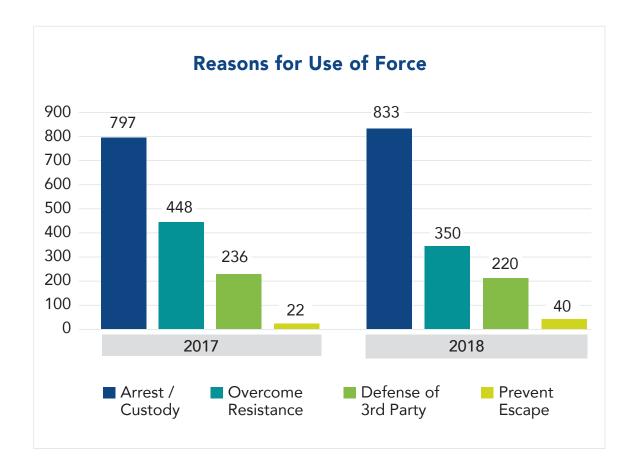
A Brief Retrospective on California's Use of Force

In 2018, 677 civilians in California were involved in officer use-of-force incidents that resulted in death or serious bodily injury – or an officer discharging his or her firearm. Those incidents resulted in 146 civilian deaths¹ – a decrease from the 741 civilians involved in serious force incidents in 2017 that resulted in 172 deaths².



The primary reason described by officers – both in 2017 and 2018 – for using serious or deadly force, was to effect an arrest or to take a civilian into custody. In 40 incidents in 2018 and 22 incidents in 2017, an officer used serious force to prevent an escape. With the enactment of AB 392, new restrictions on using deadly force during an attempted escape mean there will be more scrutiny than ever before³.





What SB 230 Compliance Looks Like

As of 2008, there were 509 law enforcement agencies in California.

Once it takes effect, SB 230 will require law enforcement agencies to implement new use-of-force policies. These policies will include everything from updated training up to and including the investigation and outcomes of a critical incident. New policies need to be in place by January 1, 2021.

California's 500-plus agencies will need to train nearly 80,000 peace officers in a very short amount of time.



Agencies will have to enact and maintain policies covering the following topics involving use-of-force incidents:

- De-escalation techniques
- Crisis intervention
- Vulnerable persons (pregnant women, children, the elderly and the disabled)
- Tactics, such as using time and distance
- Deadly force guidelines
- Alternatives to force
- Proportional force
- Approved methods and devices
- Fair and unbiased policing
- Guidelines for drawing or pointing a firearm
- Shooting at or from moving vehicles
- Consideration of surroundings and bystanders
- Intervening when observing force clearly beyond which is necessary

Agencies will also have to enact policies for actions taken in the immediate aftermath of the force incident, including:

- Providing, if properly trained, or promptly procuring medical aid
- Prompt internal reporting and notification
- Reporting the witnessing of potential excessive force



Chiefs and Sheriffs will also have to put policies in place regarding supervision, accountability and transparency, including:

- Supervisors' roles in reviewing uses of force
- Factors for evaluating and reviewing use-of-force incidents
- Procedures for the filing, investigation and reporting of force complaints
- Procedures for complying with Penal Code § 832.7 (public disclosure of records)
- Procedures for complying with Government Code § 12525.2 (reporting of serious force to the State Attorney General)

Of course, policy without training is meaningless, and each of the described requirements will demand training of your peace officers. SB 230 specifically requires:

- Training standards and requirements relating to knowledge and understanding of use-of-force policies
- Training for situations involving vulnerable persons, including those with physical, mental or developmental disabilities
- Minimum training and course titles required to meet force policy objectives

State legislation has now fully entered areas that were until recently the domain of department policy. SB 230 states "in all circumstances, officers are expected to exercise sound judgment and critical decision-making when using force options."

This is not an expectation without teeth, as the very next subparagraph allows for the introduction of an agency's policies and training as evidence in proceedings for consideration of the totality of circumstances of the involved officer. In other words, your agency's policies and training regime are going be part of the record in administrative, civil and criminal matters.



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How to Successfully Implement and Comply with SB 230

Designing and enacting the appropriate policies and then training all officers or deputies will require a significant organizational effort. With the right tools in place, though, not only will the coming transformation be manageable, they will bring about lasting change.

The coming challenge will be an opportunity to rethink how your agency does a lot of its work. You will be able to ask questions you often do not have the time to get to.

Develop the Right Policies and Procedures

Your policies will need to comply with new state laws as well as local rules and collective bargaining agreement provisions.

Support Compliance with Training Software or LMS

The learning and training mandates of SB 230 are vast, and departments will be under pressure to complete the training by January 1, 2021. This will require extensive tracking as new courses are brought online and rolled out to sworn staff.

In providing human capital solutions to the law enforcement community, Benchmark Analytics[®] has developed a learning management system (LMS) that meets the unique needs of public safety. The LMS includes the capability for managing certifications and has a specific configuration incorporating California POST requirements.

Benchmark will further customize its LMS solution for a partner department's unique training and course titles.



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Monitor and Evaluate Each Use-of-Force Incident

AB 392 amends Section 835a of the Penal Code to state "the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers."

The Benchmark Management System[®] (BMS) delivers a complete police force management system with which to carry out a thorough investigation of serious use-of-force incidents and complaints, including evidence management and command-channel review.

BMS is built to be configured to specific agency needs like those emerging in California. For example, BMS can easily help your agency comply with the strict timing requirements of the Peace Officer Bill of Rights so critical deadlines are never missed. Benchmark also has the added capability to automatically notify your records or discovery unit so your agency can stay in compliance with the Public Records Act and the recent significant opening of records under Penal Code section 832.7.

Have a System to Collect Data Relevant to SB 230 Compliance

The Benchmark Management System includes a use-of-force module that can be readily configured to streamline your agency's compliance with California's requirements. This puts a platform at your agency's fingertips that allows for thorough documentation and capture of data, such as officer and civilian information, geographic and lighting characteristics, the sequence and types of weapons used, and injuries sustained.

In Benchmark, users can easily indicate whether a force incident falls within the California Code definition of "serious" force. Workflows can be developed to automatically notify your internal affairs team and activate timers to track video recording release schedules, helping your agency stay in compliance with Government Code section 6254. Additionally, Benchmark automatically flags the appropriate data fields for later export to the California Department of Justice URSUS use-of-force reporting platform.



5 Measure and Analyze the Data You Collect

In a changing landscape, "[police] forces must put analysis at the heart of their decision-making processes."⁴ BMS is designed to give agency executives and supervisors the tools they need to review data, analyses and progress or designated periods of time . . . from a week or several months, to a year or more. Moreover, with its built-in analytics and machine learning capabilities, BMS gets smarter over time so you can uncover new insights with which to raise your department's performance to a higher level.

6 Codify the Differences in High-Performing Officers and Off-Track Personnel

Not knowing is not a management practice. You end up just hoping you can make it through the next watch without an event occurring that will endanger your officers, or the public, or put your agency's reputation at risk by undermining community trust. A sophisticated early intervention system ought to be preventative by design so officers can, in fact, get the additional support they need as soon as possible. First Sign[®] Early Intervention is a first-of-its-kind research-based early intervention system that incorporates officer history, context of assignment and patterns of problematic behavior instead of relying on simplistic threshold-based systems.



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Act on What You Learn

Identifying an officer who is at risk of engaging in adverse behavior is just the first step. Next, a department has to develop effective interventions and provide the additional support to get the officers who need it, back on track. To address this critical need, Benchmark has developed a proactive intervention support platform called the Case Action Response Engine® or C.A.R.E. With C.A.R.E., you have access to proven best practices, demonstrated to be most effective at moving employee behavior in the right direction with non-punitive interventions. You can facilitate the intervention planning process with templates of actionable steps, goal-setting and follow-up actions, and also provide your supervisors with the capability to provide meaningful progress reports.

Closing

The California legislature has transformed the regulation of policing in use force, use-of-force data reporting, officer activity reporting as it relates to racial identity, and transparency. The reforms have placed significant requirements on law enforcement agencies and will continue to do so. To discuss plans for your agency's compliance with SB 230, schedule time to speak with our Police Practices Consulting team.

Sources and Notes

- ¹ Use of Force Incident Reporting, 2018, California Department of Justice.
- ² Use of Force Incident Reporting, 2017, California Department of Justice.
- ³ Section 196 of the Penal Code is amended to say that "a peace officer is justified in use of force. . . to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended."
- ⁴ Policing a vision for 2025, McKinsey & Company, January 2017, at p. 12.



About Walter Katz

By Walter Katz

Walter Katz joins Benchmark Analytics after having spent his career serving the public. Beginning with a seventeen-year stint as deputy public defender in Southern California through his 2017 appointment as Deputy Chief of Staff for Public Safety to Chicago by Mayor Rahm Emanuel.

Other notable experience includes:



- As Deputy Chief of Staff for Public Safety in Chicago, Walter oversaw the most complex and multi-layered oversight structure in the United States, which included a civilian investigation office, a police board, a public safety inspector general, and a Federal court-appointed monitor
- From 2014 2017, Walter served as the Independent Police Auditor for the City of San José, managing the independent oversight of police misconduct investigations, community outreach, and policy recommendations
- Served as Deputy Inspector General for the County of Los Angeles Office of Inspector General AOIGB, overseeing the Los Angeles County Sheriff's Department ALASDB, where he:
 - Led the implementation of LASD's body-worn cameras
 - Developed a framework to increase transparency of civilian complaint data
 - Evaluated the results of disciplinary investigations

Walter received his law degree from the McGeorge School of Law at the University of the Pacific and his undergraduate degree from the University of Nevada, Reno. He is a former board member of the National Association of Civilian Oversight of Law Enforcement ANACOLEB.

