



June 19, 2018

***Via Electronic Mail***

The Honorable Shirley Weber  
Member, California State Assembly  
State Capitol, Room 3123  
Sacramento, CA 95814

**RE: AB 931 - Criminal procedure: use of force by peace officers - Support**

Dear Assembly Member Weber:

We write on behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF) to support AB 931, which will protect Californians by limiting law enforcement officers' use of deadly force to incidents in which such force is necessary to prevent imminent death or serious bodily injury.

LDF is the nation's oldest civil and human rights law organization. Founded in 1940 by Thurgood Marshall, who later became the first Black U.S. Supreme Court Justice, LDF uses litigation, public education, policy advocacy, community organizing and communications strategies to promote full, equal, and active citizenship for Black Americans and other people of color. Since our inception, LDF has fought to advance equitable access to education, voting, housing and employment opportunities for people of color. Additionally, we work to reform the criminal justice system by litigating cases nationwide, including in California, to address police misconduct, such as the excessive use of force.<sup>1</sup> Currently, through our Policing Reform Campaign, LDF works at the national level to incentivize best practices in policing, such as anti-bias and de-escalation training and enforcement, and in targeted communities to build the capacity of residents to change and monitor policing practices.

The California State Assembly's effort to change its rules governing when police can use deadly force is timely. Current law in California is far too permissive, authorizing police to use deadly force to make arrests, prevent escape, or overcome resistance.<sup>2</sup> Additionally, the current constitutional standard governing police use of force of "objective reasonableness," articulated by the Supreme Court in 1989 in *Graham v. Connor*, has proven terribly inadequate at protecting against avoidable losses of life at the hands of police. Together, the reasonableness standard and state laws like

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<sup>1</sup> See, e.g., *Thomas v. County of Los Angeles*, 978 F. 2d 504 (9<sup>th</sup> Cir. 1992) (class of Black and Latino residents of the City of Linwood, California sought injunctive relief and damages for unlawful searches, beatings and shootings by Los Angeles County Sheriff's deputies).

<sup>2</sup> Cal. Penal Code §§ 835a, 196.

California’s work to uphold, rather than condemn, acts of deadly force by police officers. They present a nearly impossible standard to meet, as shown by the scant successful criminal prosecutions of police officers even after the rarity of indictment and trial.

The racial impact of deadly police shootings in California is clear. Between 2006 and 2015, forty-three percent of those killed by California police were Latino, 30 percent were white, and 20 percent were Black. During this same time period, Blacks were shot and killed by police at almost five times the rate of whites and three times the rate of Latinos.<sup>3</sup>

Current state law and policing practices send a clear message to California police: You can shoot first, ask questions later, and be shielded from liability or consequences. Far too often, the result is another Black or brown life needlessly taken, followed by an immediate campaign from police officers and departments to ensure immunity from accountability, exacerbating fear and mistrust of police in communities of color.

AB 931 makes two key changes to the criminal standard that applies to police use of deadly force: First, the bill would change California’s law governing the use of force by police to permit lethal force “when necessary” to prevent imminent and serious bodily injury and death, and defines “necessary” to mean that, given the totality of the circumstances, a reasonable officer would conclude there was no reasonable alternative to the use of deadly force. Second, the bill defines “reasonable alternative” to mean the availability of tactics and methods that do not unreasonably increase the threat posed, such as verbal communications, warnings, de-escalation, and tactical alternatives intended to stabilize the situation and reduce the perceived threat, so that more time, options, and resources can be used to resolve the situation without resorting to deadly force. In doing so, the bill creates an affirmative legal obligation for officers to consider and pursue less lethal options before using deadly force. By creating a more rigorous criminal legal standard, AB 931 has the potential to save lives. AB 931 also allows California to adopt best practices promulgated by experts that are already in place in different jurisdictions and police departments around the country.

Needless police killings devastate families and terrorize communities, inflicting trauma that often further marginalizes poor communities of color. And studies show that police departments with more restrictive use of force policies not only have fewer shootings by police, but also lower rates of assaults against officers and lower crime rates.<sup>4</sup> One of the legislature’s primary goals is to protect public safety, and safeguarding Californians’ right to be safe from unnecessary deaths by law enforcement—and to demand accountability when the police harm those they are charged to serve—is a critical step in that direction.

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<sup>3</sup> Phillip Reese, *The facts about police shootings in California; Black, white and Latino*, SACRAMENTO BEE (July 14, 2016), <http://www.sacbee.com/site-services/databases/article89089872.html>.

<sup>4</sup> Sinyangwe, S., *Examining the Role of Use of Force Policies in Ending Police Violence*, Campaign Zero (2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2841872](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841872).

For these reasons, LDF supports the enactment of AB 931.

Sincerely yours,

A handwritten signature in blue ink that reads "Todd A. Cox". The signature is fluid and cursive, with the first name being the most prominent.

Todd A. Cox  
Director of Policy

Monique Dixon  
Deputy Director of Policy & Senior  
Counsel

Sonia Gill Hernandez  
Senior Policy Counsel, Policing  
Reform Campaign

Aaron Sussman  
Law and Policy Fellow

cc: Members, Senate Committee on Public Safety