

RESOLUTION 10-01-2021

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Government Code section 815.2.5, to read as follows:

1 § 815.2.5

2 (a) This section shall be known, and may be cited as the Unarmed Decedent Agency
3 Liability and Family Compensation Act of 2022.

4 (b) Law enforcement firearm deployment is an ultrahazardous activity. Law enforcement
5 firearm deployment resulting in the death of a nonthreatening, unarmed person shall be
6 compensable.

7 (c) Whenever a firearm deployment by an officer of a California state, city, county or city
8 and county law enforcement agency, or by an officer of a University of California police
9 department, a California State University police department, a California Community College
10 police department, or a police department of a school district, or other local or regional law
11 enforcement or public safety agency, in the course and scope of employment, results in the death
12 of an unarmed person who did not present a threat necessitating a fatal response from law
13 enforcement, the eligible surviving family members shall receive compensation by the agency
14 for their loss.

15 (d) For purposes of this section, “eligible surviving family members” shall include a
16 spouse or domestic partner, parents, children, and dependent relatives specified in Code of Civil
17 Procedure Sec. 377.60.

18 (e) An eligible surviving family member may file a compensation claim against a
19 California law enforcement agency under this section with the Department of General services or
20 local or regional government entity within 6 months of receiving notice from that law
21 enforcement agency of the family member’s death as a result of a firearm deployment by the
22 agency.

23 (f) A compensation claim or lawsuit shall not be filed against any law enforcement
24 agency individual employee under this section.

25 (g) If the decedent was not armed with a weapon or simulated weapon, and the deceased
26 did not present a threat necessitating a fatal response from law enforcement, the claim against the
27 agency shall be approved, unless evidence of the deceased having been unarmed or not having
28 been a threat necessitating a fatal response by law enforcement is contradicted by more credible
29 evidence such as corroborated law officer testimony.

30 (h) The Department of General services or local or regional government entity shall
31 negotiate a compensation amount for an approved survivor’s compensation claim against a law
32 enforcement agency. In state law enforcement agency cases, the Controller shall certify the
33 negotiated compensation amount for the claimant or representative of a minor or dependent adult
34 claimant. If a negotiated compensation amount cannot be reached, or if the claim is disapproved,
35 the claim may proceed to state court as a survivor’s compensation claim under this section.

36 Compensation, whether negotiated or provided by a judgment against the agency, may be
37 paid in full or on a multi-year schedule as the claimant or representative may elect.

38 (i) Eligible surviving family members shall be entitled to reasonable attorney fees for
39 assistance with preparing, submitting, negotiating, litigating, and securing payment of claims.

40 (j) Compensation for a death resulting from a state law enforcement agency firearm
41 deployment shall be paid upon an appropriation for that purpose by the Legislature.
42 (k) If elected, compensation under this section shall preclude additional compensation
43 from federal claims for the same fatality.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

STATEMENT OF REASONS

The Problem (including Existing Law): Law enforcement firearm deaths of non-threatening unarmed persons are a source of great concern. Such deaths are compensable under current state and federal law provided negligence, excess force or other wrongful conduct by an individual law enforcement officer can be proven. That is not always the case. Various causes – mistaken judgments, confusion, well-founded fear, panic incidents, unintentional firearm discharges or intentional firearm discharges in compliance with training and regulations – can result in what hindsight shows are unnecessary fatalities but do not necessarily establish viable claims for survivor compensation under current law. See “Wrongful death suits rarely filed; families seldom win,” Las Vegas Review-Journal, November 27, 2011. Georgetown law professor Rosa Brooks who served as an armed reserve police officer with the DC Metro Police Department reports in her 2021 book, “Tangled Up in Blue,” police are sometimes trained to be on edge constantly.

Beyond the challenge of understanding factors that can influence law officer behavior when discharging a firearm, there is reluctance within the public to find wrongdoing by law enforcement. In a South Carolina police officer’s 2015 criminal trial for fatally shooting fleeing unarmed motorist Walter Scott, the jury received video evidence and bystander testimony that after the shooting, the officer went to his vehicle, retrieved a taser weapon then placed that taser next to the deceased Mr. Scott’s body. The officer testified Mr. Scott had taken possession of the taser before the fatal shooting. The eyewitness testified Mr. Scott never touched the taser. The jury could not reach a verdict.

The Washington Post annually reports law enforcement fatal shootings nationwide. From 2015 through 2020, 71 unarmed persons were fatally shot by California law enforcement. Data for 2020 show 10 fatalities of unarmed persons with four additional decedents classified as “weapon unknown.”

The Solution: The solution is reliable recourse to compensation for family survivors of a non-threatening unarmed decedent. The proposed law enforcement agency strict liability statute authorizing compensation without requiring a finding of individual law officer wrongdoing meets that need. Proof of an unnecessary firearm fatality is sufficient under the proposed statute to establish agency liability. In ambiguous cases, the proposed statute is preferable to 42 U.S.C. Sec. 1983 because that federal statute requires wrongful conduct by “Any person.” The proposed statute does not impose personal liability, only agency liability, and expressly prohibits filing claims against individual agency employees. There is no persuasive reason to not treat unnecessary deaths as compensable without requiring proof of individual law officer wrongful conduct.

Handling a loaded firearm is an ultrahazardous activity and appropriate for strict liability. When construction demolition explosions cause unintended damage, strict liability imposes responsibility on the demolition enterprise, not the individual engineer who pushed the plunger and ignited the explosives. Adoption of the proposed statute would give attorneys a reliable option to secure compensation for survivors of unnecessary law enforcement firearm fatalities in cases where causation or fault are ambiguous, unclear, or unprovable.

IMPACT STATEMENT

The impact of this resolution is uncertain. While this proposed statute creates a form of strict liability for claims made under the proposed statute, there is also a potential savings to law enforcement agencies by eliminating defense litigation costs and significantly reducing potential attorney fee awards that would otherwise be incurred if the claims were litigated in court.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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