

RESOLUTION 10-01-2022

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 resulting in the unnecessary death of an
5 unarmed person shall be compensable.

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

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

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

22 (f) a compensation claim or lawsuit shall not be filed against any law enforcement agency
23 individual employee under this section. A law enforcement agency employee shall appear on
24 written notice at any proceeding brought under this section.

25 (g) If the decedent was not armed with an operational, inoperational or replica firearm,
26 nor an imminent threat of serious injury nor to the life of the officer of another person when shot
27 by law enforcement, the claim against the agency shall be approved.

28 (h) The Department of General Services or local or regional government agency shall
29 negotiate a compensation amount for an approved survivor’s claim against a law enforcement
30 agency. In state law enforcement agency cases, the Controller shall certify the negotiated
31 compensation amount for the claimant or representative of a minor or dependent adult
32 appointment. If a negotiated compensation amount cannot be reached, or if the claim is
33 disapproved, the claim may proceed to state court as a survivor’s compensation claim under this
34 section. Compensation, whether negotiated or provided by a judgment against the agency, may
35 be paid in full or on a multi-year schedule as the claimant or representative may elect.

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

38 (j) Compensation for a death resulting from a state law enforcement agency firearm
39 deployment shall be paid upon an appropriation for that purpose by the Legislature.

40 (k), If elected, compensation under this section shall preclude additional compensation
41 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: Unnecessary law enforcement firearm deaths of unarmed persons are a source of great concern. The California Attorney General estimates 40 such California fatalities annually. Such deaths are compensable under current state and federal law provided negligence, excess force or other wrongful individual conduct can be proven. That is often not the case. Various causes -- mistaken judgments, confusion, well-founded fear, panic incidents, unintentional firearm discharges or intentional firearm discharges in compliance with training and protocols -- can result in what hindsight shows are unnecessary fatalities. Adding to proof problems, in early 2022, the *Washington Post* reported 81% of fatal police shootings were not accompanied with camera footage. Unnecessary law enforcement firearm fatalities are not reliably compensated and they should be. See “Wrongful death suits rarely filed; families seldom win.” Las Vegas Review-Journal, November 27, 2011.

The Solution: The solution is reliable recourse to compensation for family survivors of unarmed persons unnecessarily fatally shot by law enforcement. The proposed agency liability statute authorizing survivor 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 can be preferable to 42 U.S.C. Sec. 1983 because that federal statute requires wrongful conduct by “Any person.” The proposed statute gives plaintiff’s attorneys a statutory option to secure compensation in meritorious cases where causation or fault are ambiguous or not adequately provable against individuals.

IMPACT STATEMENT

The impact of this resolution is uncertain. However, it would make California the first state in the nation to accept law enforcement agency statutory liability for unnecessary firearm deaths. There is also a potential savings to law enforcement agencies by eliminating defense litigation costs and significantly reducing attorney fees for claimants.

CURRENT OR PRIOR RELATED LEGISLATION

SB 299 (Leyva) would enable police fatal shooting survivor claims to be made on the state crime victim compensation fund. The bill is stalled in the Assembly. There is resistance to the characterization of claimants as crime victims when the bill has no criminal proceedings requirement.

AUTHOR AND/OR PERMANENT CONTACT

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RESPONSIBLE FLOOR DELEGATE

Peter Pursley, Esq.

RESOLUTION 10-02-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Government Code section 12525.2 to read as follows:

- 1 § 12525.2
2 (a) Beginning January 1, 2023, ~~Each~~ law enforcement agency shall annually furnish to the
3 Department of Justice, in a manner defined and prescribed by the Attorney General, a report
4 of
5 all instances when a peace officer employed by that agency is involved in any of the
6 following:
7 (1) An incident involving the shooting of a civilian by a peace officer.
8 (2) An incident involving the shooting of a peace officer by a civilian.
9 (3) An incident in which the use of force by a peace officer against a civilian result in serious
10 bodily injury or death.
11 (4) An incident in which use of force by a civilian against a peace officer results in serious
12 bodily injury or death.
13 (5) All incidents in which an Electronic Control Weapon (ECW) was used whether or not the
14 person was injured or killed or there was subsequent use of another weapon.
15 (b) For each incident reported under subdivision (a), the information reported to the
16 Department of Justice shall include, but not be limited to, all of the following:
17 (1) The gender, race, and age of each individual who was shocked, shot, injured, or killed.
18 (2) The date, time, and location of the incident.
19 (3) Whether the civilian was armed, and, if so, the type of weapon.
20 (4) The type of force used against the officer, the civilian, or both, including the types of
21 weapons used.
22 (5) The number of officers involved in the incident.
23 (6) The number of civilians involved in the incident.
24 (7) A brief description regarding the circumstances surrounding the incident, which may
25 include the nature of injuries to officers and civilians and perceptions on behavior or mental
26 disorders.
27 (8) Additional reporting required for ECW use includes: the number and length of shocks,
28 the number of officers firing ECWs, whether the ECW was successful in stopping the threat,
29 whether there was subsequent use of another weapon, and any death or injuries after the ECW was
30 deployed.
31 (c) Each year, the Department of Justice shall include a summary of information contained in
32 the reports received pursuant to subdivision (a) in its annual crime report issued by the department
33 pursuant to Section 13010 of the Penal Code. This information shall be classified according to the
34 reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed,
35 the report shall list the officer’s employing jurisdiction and the jurisdiction where the injury or death
36 occurred, if they are not the same. This subdivision does not authorize the release to the public of the
37 badge number or other unique identifying information of the peace officer involved.
38 (d) For purposes of this section, “serious bodily injury” means a bodily injury that involves a
39 substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss
40 or impairment of the function of a bodily member or organ.

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

PROPONENT: National Lawyers Guild, San Francisco Bay Area Chapter

STATEMENT OF REASONS

The Problem: ECWs are hand-held weapons that fire two projectiles from a range of seven to 15 feet and use 50,000 volt shocks to induce temporary paralysis. ECWs are purportedly used by police throughout California as an alternative to lethal force. Despite the assertion that ECWs are a safe alternative to lethal force, many incidents have resulted in serious injury or death. There were four deaths after ECW deployment in San Mateo County alone in the past year. Despite the assertion that ECWs are safe, the manufacturer has continually revised its warnings restricting use. A recent article published by *Reuters* discusses the 1,028 deaths since 2000 involving ECWs and warns, “Nearly 80 percent of the population could fit into one of the higher risk groups identified by Taser’s maker. ...”(<https://www.reuters.com/investigates/special-report/usa-taser-vulnerable/>) Many incidents of ECW use show police deploying the weapons to control verbally resisting or otherwise non-compliant individuals in situations justifying only minimal force, many times causing serious injury or death.

In spite of the dangers of ECWs there are no statewide regulations regarding use. Collection data on use of ECWs will provide needed facts to inform development of statewide ECW regulations.

The Solution: The National Lawyers Guild urges the Conference to ask the California Legislature to enact legislation that establishes mandatory reporting under §12525.2 of the California Government of all incidents in which ECW’s are used, tracking the number and length of shocks, the number of officers firing ECWs in the incident, the race of the person shocked, whether there were mental health issues involved, the threat to the officer, whether the ECW was successful in stopping the threat, whether there was subsequent use of another weapon, and any death or injuries after the ECW was deployed caused by the ECW, a subsequent use of force, or any health or physical problems of the person shocked.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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RESPONSIBLE FLOOR DELEGATE

Richard P. Koch

RESOLUTIN 10-03-2022

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 141, to read as follows:

1 § 141

2 (a) Except as provided in subdivisions (b) and (c), a person who knowingly, willfully,
3 intentionally, and wrongfully alters, modifies, plants, places, manufactures, conceals, or moves
4 any physical matter, digital image, or video recording, with the specific intent that the action will
5 result in a person being charged with a crime or with the specific intent that the physical matter
6 will be wrongfully produced as genuine or true upon a trial, proceeding, or inquiry, is guilty of a
7 misdemeanor.

8 (b) A peace officer who knowingly, willfully, intentionally, and wrongfully alters,
9 modifies, plants, places, manufactures, conceals, or moves any physical matter, digital image, or
10 video recording, or causes a peace officer's body worn camera to have an unclear image(s)
11 and/or sound(s), or not to function, or intentionally fails to turn on his or her body worn camera,
12 with the specific intent that such action or inaction will result in a person being charged with a
13 crime or with the specific intent that the physical matter, digital image, or video recording will
14 be concealed or destroyed, or fraudulently represented as the original evidence upon a trial,
15 proceeding, or inquiry, or that the action or inaction will conceal the misconduct of the officer, is
16 guilty of a felony punishable by two, three, or five years in the state prison.

17 (c) A peace officer, who fails to produce body worn evidence or evidence that his or her
18 body worn camera was malfunctioning or unavailable at the time of an use of force event, shall
19 be presumed to be engaged in misconduct and the jury shall be so instructed.

20 (d) ~~(e)~~ A prosecuting attorney who intentionally and in bad faith alters, modifies, or
21 withholds any physical matter, digital image, video recording, or relevant exculpatory material or
22 information, knowing that it is relevant and material to the outcome of the case, with the specific
23 intent that the physical matter, digital image, video recording, or relevant exculpatory material or
24 information will be concealed or destroyed, or fraudulently represented as the original evidence
25 upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to
26 subdivision (h) of Section 1170 for 16 months, or two or three years.

27 (e) ~~(d)~~ This section does not preclude prosecution under both this section and any other
28 law.

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

PROPONENT: Michele Anderson, Holy Parker, Renee Sanders, Margo Bouchet, Ashley Bobo, Beverly Williams, Christina Adams, Amy Proctov, Emily Dixon, Shaun Dabby Jacobs

STATEMENT OF REASONS

The Problem: The use of deadly force against unarmed individual, in particular men from diverse populations, is on the rise. Statistical data suggest that the use of body worn cameras

will reduce aggression, the use of deadly force and civilian complaints. However, avoiding the capture or recording of any of acts misconduct or brutality can be avoided by simply choosing when to turn on or off the camera.

The Solution: This resolution would clarify that it is evidence tampering if a peace officer knowingly causes his or her body camera to have unclear images or sound, or if a peace officer causes his or her body camera not to work or intentionally fails to turn on his body worn camera or turns off his body worn camera during to avoid capturing evidence of misconduct. This would strengthen and protect the integrity of enforcement operations and criminal prosecutions. Officers wearing body cameras would be less aggressive, more respectful when they interact with the public and will be reluctant to use unnecessary force. This resolution would also establish a rebuttable presumption that the officer was engaged in misconduct, unless he can prove that his body camera was malfunctioning or not working at the time of use of force event. It would also strengthen policies regarding the maintenance and use of body worn cameras.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None

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