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AB-26 Peace officers: use of force. (2021-2022)

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Assembly Bill No. 26

CHAPTER 403

An act to amend Section 7286 of the Government Code, relating to peace officers.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 26, Holden. Peace officers: use of force.

Existing law requires each law enforcement agency, on or before January 1, 2021, to maintain a policy that provides a minimum standard on the use of force. Existing law requires that policy, among other things, to require that officers report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be unnecessary, and to require that officers intercede when present and observing another officer using force that is clearly beyond that which is necessary, as specified.

This bill would require those law enforcement policies to require those officers to immediately report potential excessive force, as defined. The bill would additionally require those policies to, among other things, prohibit retaliation against officers that report violations of law or regulation of another officer to a supervisor, as specified, and to require that an officer who fails to intercede be disciplined up to and including in the same manner as the officer who used excessive force. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 7286 of the Government Code is amended to read:

7286. (a) For the purposes of this section:

(1) "Deadly force" means any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm.

(2) "Excessive force" means a level of force that is found to have violated Section 835a of the Penal Code, the requirements on the use of force required by this section, or any other law or statute.

(3) "Feasible" means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

(4) "Intercede" includes, but is not limited to, physically stopping the excessive use of force, recording the excessive force, if equipped with a body-worn camera, and documenting efforts to intervene, efforts to deescalate the offending officer's excessive use of force, and confronting the offending officer about the excessive force during the use of force and, if the officer continues, reporting to dispatch or the watch commander on duty and stating the offending officer's name, unit, location, time, and situation, in order to establish a duty for that officer to intervene.

(5) "Law enforcement agency" means any police department, sheriff's department, district attorney, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, the Department of Fish and Wildlife, and the Department of Justice.

(6) "Retaliation" means demotion, failure to promote to a higher position when warranted by merit, denial of access to training and professional development opportunities, denial of access to resources necessary for an officer to properly perform their duties, or intimidation, harassment, or the threat of injury while on duty or off duty.

(b) Each law enforcement agency shall, by no later than January 1, 2021, maintain a policy that provides a minimum standard on the use of force. Each agency's policy shall include all of the following:

(1) A requirement that officers utilize deescalation techniques, crisis intervention tactics, and other alternatives to force when feasible.

(2) A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

(3) A requirement that officers immediately report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of information actually known to the officer.

(4) A prohibition on retaliation against an officer that reports a suspected violation of a law or regulation of another officer to a supervisor or other person of the law enforcement agency who has the authority to investigate the violation.

(5) Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.

(6) A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

(7) Procedures for disclosing public records in accordance with Section 832.7.

(8) Procedures for the filing, investigation, and reporting of citizen complaints regarding use of force incidents.

(9) A requirement that an officer intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

(10) Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.

(11) An explicitly stated requirement that officers carry out duties, including use of force, in a manner that is fair and unbiased.

(12) Comprehensive and specific guidelines for the application of deadly force.

(13) Comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice in compliance with Section 12525.2.

(14) The role of supervisors in the review of use of force applications.

(15) A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.

(16) Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors.

(17) Training and guidelines regarding vulnerable populations, including, but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental, and developmental disabilities.

(18) Procedures to prohibit an officer from training other officers for a period of at least three years from the date that an abuse of force complaint against the officer is substantiated.

(19) A requirement that an officer that has received all required training on the requirement to intercede and fails to act pursuant to paragraph (9) be disciplined up to and including in the same manner as the officer that committed the excessive force.

(20) Comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

(21) Factors for evaluating and reviewing all use of force incidents.

(22) Minimum training and course titles required to meet the objectives in the use of force policy.

(23) A requirement for the regular review and updating of the policy to reflect developing practices and procedures.

(c) Each law enforcement agency shall make their use of force policy adopted pursuant to this section accessible to the public.

(d) This section does not supersede the collective bargaining procedures established pursuant to the Myers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4), the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4), or the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4).

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.