

CALIFORNIA ASSEMBLY BILL 392

Does This New Legislation Affect the Decision to Shoot a Hostage Taker?

By **LIEUTENANT TRAVIS NORTON**
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California Assembly Bill 392 (AB 392) significantly changed the use-of-force laws in California. One officer in Northern California has already been charged with voluntary manslaughterⁱ based on the new law, and with the current political climate, there are likely to be more. These circumstances make it critical to identify the blind spots tactical teams have concerning these new laws. One such blind spot that has serious implications pertains to when a hostage taker can be shot. It is important to first review the language in the law that is most concerning in these circumstances. Consider the following from AB 392:

“A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”ⁱⁱ

This language is problematic when deciding whether or not to shoot a hostage taker for several reasons. To help explain why the language is problematic, consider the following scenario:

A domestic violence incident has devolved into a hostage situation. The husband, who is confirmed to be armed with a handgun, has hit his wife in the

face, taken her hostage and threatened to shoot her. However, his threats are not enough to precipitate SWAT to conduct a crisis entry. Thirty minutes later, the suspect suddenly appears at the front door with a handgun at his side. He then turns around to go back inside. What do you do?

Prior to the new law, the suspect would be neutralized because he showed hostile intent (threats) and the present ability (firearm) to harm the hostage. Neutralizing the hostage taker prevents him from carrying out his threat to kill the hostage in the future. This also aligns with the priority of life – saving the hostage at the expense of the suspect. However, with the new law, this is no longer the case. In this scenario, the decision to neutralize the hostage taker is not based on imminent harm. In fact, the decision is based on the fear of future harm to the hostage, which falls outside of the language in AB 392. This new law also precludes a deliberate assault until the fate of the hostage, for all intents and purposes, is sealed. Additionally, it eliminates exploiting windows of opportunity that often occur with the probability of saving the hostage, but without the absolute certainty that their death is “imminent.” Finally, it defaults the initiative to the hostage taker and dooms a hostage to the designs of the hostage taker with no realistic hope of rescue, or even intervention beyond negotiation.ⁱⁱⁱ

This problem also sheds light on an issue with the priority of life in these circumstances. With the above scenario, the suspect is now above the hostage

on the priority list. While there are other circumstances where the priority is changed, this is troublesome because the suspect's life appears to be more valuable than the hostage.

CATO suggests teams speak with their agencies' legal representatives about hostage situations as

pertaining to AB 392. We also suggest that pre-plans are formulated for these events. These plans should include decision-making exercises, reality-based training scenarios and tabletops with command staff. Tactical teams must be prepared for these events and how the new laws will affect your crisis decision making. Stay safe.

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ⁱ <https://www.kron4.com/news/bay-area/san-leandro-officer-charged-in-death-of-black-man-released-on-bail/>

ⁱⁱ https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201920200AB392&showamends=false

ⁱⁱⁱ Sid Heal, personal conversation, 07-08-21