



New POST Standards for 2021

Author: Maurice Sinsley

As you may recall from our previous bulletins, **Senate Bill 230** (Caballero D-Salinas) became law on January 1, 2020, requiring all law enforcement agencies to implement comprehensive use of force policies according to *Government Code* §7286. Under SB230, effective January 1, 2021, all law enforcement agencies must maintain use-of-force policies that include requirements for de-escalation and crisis intervention techniques, the use of lethal and non-lethal force, and reporting procedures.

An essential requirement of SB230 was for POST, the Commission on Peace Officer Standards and Training, to develop uniform guidelines on the use of force and reporting. On November 4, 2020, the revised “POST Use of Force Standards and Guidelines” established 21 standards and 84 guidelines for agencies to incorporate into their use of force policies. Although many of the guidelines are already followed by most agencies, some create confusion about what is *required* vs. what is *recommended*.

POST Standard #6

Standard #6 recommends that agencies provide clear rules regarding *when* an officer *may or may not* (1) draw a firearm, (2) point a gun at an individual, and (3) that any intentional pointing of a gun at an individual should be reported internally.

The rationale for these new standards come from a line of cases from the 9th Circuit Court of Appeals that has held the pointing of a gun at someone may constitute excessive force, even if it does not cause physical injury.¹ In high crime areas where officers routinely draw their weapons, confusion about whether such incidents must be reported as a use of force may increase the risk to officers.

To be clear, *Standard #6* requires an agency to have a policy on *when* an officer may or may not draw a firearm. It does not require a policy to internally report every incident where an officer merely draws a weapon, in the low ready or other position, and not pointed at an individual. While *Standard #6* requires that any intentional pointing of a firearm at an individual **be reported internally**, it does not require that such incidents be reported **externally**.

POST Standard #12

Under existing law,² all law enforcement agencies must report use-of-force data to the Department of Justice (CalDOJ). *Standard #12* restates the CalDOJ reporting requirements and requires agencies to require prompt internal reporting of a use of force incident.

¹ *Robinson v. Solano County*, 278 F.3d1007, 1013-14 (9th Cir. 2002).

² *Government Code* §12525.2. and §12525.5.



Standard #12 does not change what data must be reported and, like *Standard #6*, does not require agencies to report incidents where an officer draws a firearm or points a firearm at an individual.

It is crucial to keep in mind that while transparency is essential to increasing public trust in law enforcement, agency policies should always balance what is required by law and what is imperative to officer safety. *Anything less is unacceptable.*

In the meantime,

Stay Safe and Healthy!

***MAURICE SINSLEY** is an associate attorney with Stone Busailah, LLP., who has 30-years of fire service experience in Southern California.*