

AB 392: Use of Force Update



Monterey Police
Department



Why are we here?

- Assembly Bill 392, signed into law on August 19, 2019.
- The law takes effect on January 1, 2020.



What Changed?

- More clearly defines a peace officer's role and responsibilities when exercising different force options, especially deadly force.
- Objective reasonableness remains the standard for evaluating the use of force and will be reviewed in more detail further into the course.
- New language explicitly states the use of force shall be evaluated without the benefit of hindsight.



**P.O.S.T. Video – AB 392:
California’s Use of Force Standard,
What You Need to Know**



Penal Code 196 – Justifiable Homicide

- PC 196 identifies the circumstances when a peace officer is justified to commit a homicide
 - a. In obedience to any judgment of a competent court order (example: Death Row Execution)
 - b. When the homicide results from a peace officer's use of force that complies with Penal Code Section 835a



Penal Code 196 – Justifiable Homicide What Changed?

- Removed “When necessarily committed in overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty.”
- Removed “When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with [a] felony and who are fleeing from justice or resisting such arrest.”



Penal Code 835a(a) – Legislature Finds:

- Peace officers must understand that the authority to use physical force is a serious responsibility that shall be exercised judiciously and with respect for human rights and the dignity and the sanctity of every human life.
- The Legislature finds and declares that every person has a right to be free from excessive use of force by peace officers acting under the color of law.



Penal Code 835a(a) – Legislature Intent:

- Peace officers use deadly force only when necessary in defense of human life.
- Peace officers shall evaluate each situation in light of the particular circumstance of each case and **shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.**
- The standard changed with the addition of the word “objectively” reasonable officer.



Penal Code 835a(a) – Legislature Intent:

- Peace officers shall carefully and thoroughly evaluate the decision to use force in a manner that reflects the gravity of that authority and the serious consequences of the use of force, to ensure that officers use force consistent with law and agency policies.



Penal Code 835a(a) – Evaluation:

- The decision by a peace officer to use force **shall be evaluated from the perspective of a reasonable officer in the same situation.**
- Based on the totality of circumstances known to or perceived by the officer at the time.
- Without the benefit of hindsight.
- The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force.



Penal Code 835a(a) – Disabilities:

- Individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions.
- Disability may affect their ability to understand or comply with commands from peace officers.
- Estimates show that individuals with disabilities are involved in between 1/3 and 1/2 of all fatal encounters with law enforcement.



Penal Code 835a(a) – Disabilities:

- Individuals with disabilities may be impaired by the use, misuse, or discontinued use of medications or controlled substances that create further disruptions to compliance.
- An individual's disability or disabilities may impair the ability to understand and comply with a peace officer's commands.



Penal Code 835a(a) – Disabilities Discussion:

- What might cause an individual with a disability to have difficulty understanding or following directions from a peace officer?
- Agency's policy regarding uses of force involving people with disabilities?
- What are some tactics officers can use to try to determine if the subject has a disability and to gain compliance?
- What are some examples of use of force situations involving people with disabilities?



Penal Code 835a(b) – Use of Force:

- Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.
- The standard is unchanged.

*Underlined added for emphasis



Penal Code 835a(b) – Scenario:

A call comes out that there is man with a knife in front of a school that is in session. Officers arrive to observe the subject is youthful looking, possibly a juvenile and may be a student at the school. Responding officers determine the subject is a juvenile and identify the weapon as a machete. The subject is wearing a backpack and moving towards the office.



Penal Code 835a(c)(1) – Deadly Force:

- A peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances that such force is **necessary** for either of the following reasons:
 - To defend against an imminent threat of death or serious bodily injury to the officer or another person.
 - To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.



Penal Code 835a(c)(1) – Deadly Force:

- Where feasible, a peace officer shall, before the use of force, make reasonable efforts to identify themselves as a peace officer and
- Warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.



Penal Code 835a(c)(1) – Scenario Part II:

- Responding officers identify themselves and engage the subject. They determine he is a threat to campus safety. Officers attempt to de-escalate the situation by using verbal commands to try to disarm the suspect. The suspect refuses to comply and continues to brandish the machete and proceed towards the school office.



Penal Code 835a(c)(2) – Deadly Force:

- A peace officer **shall not** use deadly force against a person based on the danger that person poses to themselves if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

*Bold and underlined added for emphasis



Penal Code 835a(d) – Self Defense:

- A peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance of the person being arrested .
- A peace officer **shall not** be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with subdivisions of 835a to effect the arrest or to prevent escape or to overcome resistance. The term “retreat” does not mean tactical repositioning or other de-escalation tactics.



Penal Code 835a(e) – Key Terms:

- For the purposes of 835a, the following terms apply:
- “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm.
- 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.



Penal Code 835a(e) – Key Terms:

- 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.**



Penal Code 835a(e) – Imminent Harm:



Fresno 2017 OIS: Isiah Murrietta-Golding



Penal Code 835a(e) – Key Terms:

- 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**
- “Totality of the circumstances” means all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force.