

TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

DAVID NISLEIT
CHIEF OF POLICE

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CALIFORNIA ASSEMBLY BILL 392

I. Purpose

The purpose of this Training Bulletin is to explain California Assembly Bill 392, which became effective on January 1, 2020, and provide direction regarding police officer use of force in response to resistance and proper force documentation.

II. Background

The bill amends California Penal Code sections 835a and 196, which address the use of force by peace officers in California. The bill states that deadly force is justified when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or great bodily injury to the officer or to another person, or to apprehend a fleeing person for a felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that person will cause death or serious bodily injury to another unless that person is immediately apprehended.

III. Definitions

It is important for officers to understand the term **Imminent**, as well as the definition of **Totality of the Circumstances**.

Imminent: Is about to occur or take place very soon. 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

Totality of the Circumstances: 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.

IV. Penal Code Sections 196 and 835a

Penal Code sections 196 and 835a have been amended to read as follows:

Penal Code Section 196

Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

Penal Code Section 835a

(Please note the bold sections)

(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. **The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.**

(2) As set forth below, it is the intent of the Legislature that peace **officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.**

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) **That 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 the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.**

(5) **That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with**

disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

(b) 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.

(c) (1) Notwithstanding subdivision (b), **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:**

(A) To defend against an imminent threat of death or serious bodily injury to the officer or to another person.

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

(2) 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.

(d) 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 (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, **“retreat” does not mean tactical repositioning or other de-escalation tactics.**

(e) For purposes of this section, the following definitions shall apply:

(1) **“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.

(2) 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

(3) “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.

V. Discussion

When feasible, officers shall take reasonable steps in the pre-planning of responses to critical incidents, taking into consideration the need for additional officers, force options and other available resources. An officer may encounter situations that do not afford the time, distance or opportunity to employ these techniques. In light of the Legislature’s statements of intent, officers will need to document what force or tactical options were available at the time of the incident, and why they were or were not used. Officers will need to explain why they did not choose certain force options. If deadly force is used, officers may be asked if other options were available and why they were not used, even if deadly force was reasonable.

With this focus, it is extremely important for officers to know how their equipment works and its proper uses and limitations. If officers are unsure about the proper use of their equipment, please refer to the appropriate department procedures or contact the training unit responsible for overseeing its field use.

Pre-planning and de-escalation will be weighed and considered heavily in all aspects of deadly force cases. If you have time, use it! Ask yourself why you need to rush in right now? Refer to section III, which defines an imminent threat. The law and public policy are emphasizing de-escalation. You must determine if the situation presents an exigent circumstance that demands your immediate action. If not, wait! Consider that 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. An officer’s decision making leading up to their use of force will carry weight and be carefully reviewed. When feasible, slow things down, pre-plan, request available resources to your location and attempt to de-escalate. Following the incident, be prepared to document all of your actions and decisions used to resolve the incident.

NOTE: Department Procedure 1.04 will be updated to include segments of this Training Bulletin.