



CSU CHANNEL ISLANDS POLICE DEPARTMENT

TRAINING BULLETIN #2020-01

USE OF FORCE UPDATE: AB 392

Recently, Governor Gavin Newsom signed Assembly Bill 392 into law amending California Penal Code Sections 196 and 835a. The effect of the bill is largely to codify existing case law regarding use of force.

The language of the amended law reflects the legislature's intent that law enforcement should use deadly force only when necessary in defense of human life and that law enforcement should use other available resources and techniques when safe and feasible to do so. (PC 835a(a)(2))

- For training purposes, officers should familiarize themselves with the other resources and techniques available to them, so those resources and techniques can be deployed when safe and feasible to do so.

The law states that the use of deadly force is justified only when the officer reasonably believes based on the totality of circumstances, that the force is necessary:

- To defend against an imminent threat of death or serious bodily injury to the officer or to another person. (PC 835a(c)(1)(A))
- To apprehend a fleeing person for any felony that 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 apprehended. (PC 835a(c)(1)(B))
 - In this situation, where feasible, prior to using force, you should identify yourself as a peace officer and warn that deadly force may be used, unless you have objectively reasonable grounds to believe the person is aware of those facts

The law defines the totality of circumstances to mean 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. (PC 835a(e)(3))

A peace officer shall NOT use deadly force against a subject based on the fact that that person poses a danger to themselves, if the officer does not reasonably believe the person poses an imminent threat of death or serious bodily injury to the peace officer or to another person. (PC 835a(c)(2))

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The law reiterates the principle that a peace officer attempting to make or making an arrest need not retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested. The law adds, however, that “retreat” does not mean tactical repositioning or other de-escalation tactics. (PC 835a)(d))

- For this reason, officers should familiarize themselves with tactical repositioning and de-escalation tactics that may be available to them in certain circumstances.

Any use of force is to be “thoroughly” and “carefully” investigated by the law enforcement agency.

The full text of the new law is set forth at the end of this bulletin

Here are some best practices in light of the new law:

- Before you’re involved in a use of force incident
 - Be familiar with our agency’s use of force policy.
 - Practice transition drills and manipulation of your tools.
 - Mentally rehearse scenarios in your head, during briefings and with your partners.
- During a use of force
 - Turn on your body worn camera any time you’re taking a law enforcement action.
 - Verbally identify yourself as a police officer and give clear commands.
 - Where feasible, tell the subject they’re being arrested prior to attempting to place them in handcuffs.
 - Where no imminent threat is present, attempt to slow the pace on calls involving uncooperative subjects, especially if mental illness is a factor.
 - Make attempts to deescalate a situation if safe and feasible to do so.
 - In deadly force situations, if no imminent threat exists, attempt to use non-deadly resources prior to the use of deadly force.
 - The decision to use force should be based on objective facts present at the time you use force, not hypothetical scenarios (e.g., “He could have tried to...”)
 - If you’re going to use intermediate force, ensure you’re facing at least active resistance and an objectively reasonable threat from the suspect.
 - If you’re going to use deadly force, ensure you or someone else is facing life threatening resistance and an imminent threat.
 - When it’s clearly reasonable and within policy to use non-deadly or intermediate force, consider that often times using minimal force early in an incident stops the incident from escalating to a more severe use of force later on.

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- After a use of force
 - Provide medical attention for anyone involved, if needed.
 - Notify your supervisor, obtain witness statements and secure video footage from cameras in the area.
 - Ensure the suspect is interviewed about the incident and injuries are photographed.
 - Always debrief use of force incidents with your shift. There are always things we can improve on.
 - Take the time to write a thorough report:
 - Review your body camera footage before writing your report.
 - Be detailed when describing the crime that was committed; the actions of the suspect, yourself and others involved in the incident; and the need to use force in that moment.
 - Elaborate on the threats the suspect posed to officers and the public including everything you saw, heard, felt, smelled, etc...
 - Explain your attempts to deescalate the situation or use less intrusive means to take the person into custody. If it wasn't safe or feasible to do so, explain why.
 - Avoid vague statements like "the subject resisted", "had the desired affect" and "escorted to the ground". Explain what specifically happened in detail.

Updated Penal Code 196, as of January 1, 2020

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.

Updated Penal Code 835a(a)-(e), as of January 1, 2020

P.C. 835a The Legislature finds and declares all of the following:

P.C. 835a(a):

(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.

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(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.

P.C. 835a(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.

P.C. 835a(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.

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(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.

P.C. 835a(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 deescalation tactics.

P.C. 835a(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.