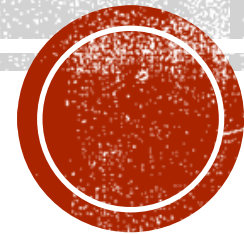


LEGISLATIVE UPDATE

AB 392

Peace Officers: DEADLY FORCE



COURSE PURPOSE

- To discuss new language in the law
- Highlight meaningful changes
- Analyze how the new law may affect law enforcement
- To provide legal updates related to the use of deadly force per AB 392
- Understand the legal changes to Penal Code 196PC and 835aPC
- Address any concerns
- We have a lot of experience in the room so please speak up if you have something to share



BACKGROUND

- <https://a79.asmdc.org/priorities/california-act-save-lives-ab392>



AFFECTED STATUTES

- **PENAL CODE 196 PC** (Justifiable Homicide by a Peace Officer)
- **PENAL CODE 835(a) PC** (Authority to Use Force)
- **AB 392** Effectively moves the UOF requirements from PC 196 to PC 835a



CURRENT STATUTE-196 PC

- Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either-
 1. In obedience to any judgement of a competent court order; or,
 2. When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or,
 3. 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.”



WHAT CHANGED?

- **196 PC**
- Revised to rely more on Penal Code 835(a) (Authority to Use Force)
- “The homicide results from a peace officer’s use of force that is in compliance with 835a PC”
- 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 felony and who are fleeing from justice or resisting such arrest.”*



CURRENT STATUTE-835 PC

- Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance
- A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance



GRAVITY, PERSPECTIVE, AND EVALUATION OF ALTERNATIVES TO THE USE OF FORCE

- **835a(a) PC**

- 1. The Legislature finds and declares:**

- 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 dignity and the sanctity of every human life
 - Every person has a right to be free from excessive force by peace officers acting under the color of law

- 2. 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 (**De-Escalation/Less-Lethal**) if reasonably safe and feasible to an objectively reasonable officer
 - The standard changed with the addition of the word “*objectively*” reasonable officer



GRAVITY, PERSPECTIVE, AND EVALUATION OF ALTERNATIVES TO THE USE OF FORCE

3. 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

4. The decision 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
- Without the benefit of hindsight
- The totality of the circumstances shall account for occasions when officers may be forced to make quick judgements about using force



835 PC-DISABILITIES

5. Peace officers must understand that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions

- **One's disability may affect their ability to understand or comply with commands from peace officers**
- **Estimates show that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement**
- **Individuals 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(ies) may impair the ability to understand and comply with a peace officer's commands**



835 PC-OBJECTIVELY REASONABLE

- **835a(b) PC**

- Any peace officer who has reasonable cause to believe that a person to be arrested has committed a public offense may use **objectively** reasonable force to effect the arrest, prevent escape, or to overcome resistance
- The only change is the insertion of “*objectively*” for a new standard of “***objectively reasonable***”
- We have been using the “objectively reasonable” standard for years
- It is the standard in *Graham vs Connor*
- It is the Federal standard



835 PC- DEADLY FORCE

835a(c)(1)PC

- **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.
 - 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-(Plain clothes, unmarked vehicles take additional measures)



SUICIDAL SUBJECTS

- **835a(c)(2) PC**

- 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.
- Anyone want to share an example? Briefly explain situation and what steps were taken to walk away?



NEED NOT RETREAT OR DESIST

- **835a(d) PC**

- 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.



KEY TERMS IN AB 392

835a(e) PC

- **Defines key terms related to use of force:**
 - **Deadly Force-**“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
 - **Imminent-** 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



835A(E) PC CONTINUED

- **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.



SENATE BILL 230

- SB 230 incorporates the best practices already proven by other cities and states to be effective in reducing serious use-of-force incidents — making it the most comprehensive legislation dealing with use-of-force policies and training in the country. SB 230 will proactively and effectively result in better public safety outcomes for everyone because it will:
- Require that every California law enforcement officer receive the most robust training in the nation strictly designed to minimize the use of force.
- Set specific policy requirements on de-escalation, an officer's duty to intercede, rendering medical aid, proportional use of force, interacting with vulnerable populations and more.
- Specify that use-of-force policies and training may be considered in legal proceedings.
- Increase transparency by setting forth detailed, standardized requirements for reporting all instances when force is used in our communities.



PORAC'S STANCE ON AB 392

AB 392 brings California's legal standard for when force can be used in line with the U.S. Supreme Court standard — a standard that law enforcement agencies and departments throughout California already adhere to. PORAC worked diligently with the authors of AB 392 and our state's legislative leaders to amend the original version of AB 392 to prevent the adoption of any language that would make it even more challenging for our officers to protect our communities and themselves — a testament of their commitment to standing behind our law enforcement community as they work to improve public safety for everyone. Because of these amendments, nearly all California law enforcement organizations took a neutral position on the legislation. PORAC's highest priority was to ensure that AB 392 would not add to the dangers that our men and women in uniform face every day. The language contained in AB 392 is consistent with current case law and will now be codified in California law as well. AB 392 will not significantly impact the way law enforcement officers perform their daily jobs as the bill still retains the "reasonableness" standard set forth in the Supreme Court's 1989 *Graham v. Connor* ruling.

