

## Carlye Slover

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**From:** Julie Fry  
**Sent:** Wednesday, December 4, 2019 4:29 PM  
**To:** Dennis Curran  
**Cc:** Brandon Garry  
**Subject:** AB 392 Meeting Follow-up  
**Attachments:** Lexopl Slides.pdf; AB392\_ECO 12-4-19.docx; 1.06.61 Policy\_ Use of Force.pdf; Lexipol Video Notes.pdf

Thank you for your time today.

I attached the Lexipol slides (PDF) and webinar weblink ( <https://info.lexipol.com/ca-ab392> ), POST expanded course outline and our policy.

### Action Items for Course Completion:

- Update POST Expanded Course Outline (add any additional videos, scenarios, policy, etc)
- Decide on Instructors (Official Instructor Training - tentatively Jan 14) – First Aid Instructors (all comfortable with discussion /Q&A ??)
- Submit Course to POST (this should be done by end of year)
- Create Powerpoint (attached Lexipol slides are a very good start) This will need to be ready to use on Jan 14
- Will Managers need to do this training? Can they watch the 14 minute POST video and sign attestation for it and understanding use of force policy?

POST says it usually takes about 30 days to get a course approved, so let's look to have the outline ready by **Dec 19<sup>th</sup>** (since we are only adding a few things) and maybe the rough powerpoint by **Dec 31** (so we have time to switch out logos and such).

Thanks again. I hope all my resources and notes are helpful. Please let me know if there is anything else you need from me or if I forgot something.

Take care and enjoy your day.

Deputy Julie Fry

**Training Coordinator**

Law Enforcement Training Center-MCDF Range

11990 Marsh Creek Road

Business [REDACTED]

Cell [REDACTED]

Fax [REDACTED]

[REDACTED]@so.cccounty.us



# THE “ACT TO SAVE LIVES”

What Law Enforcement Needs to Know  
About CA AB392



# DISCLAIMER

The materials provided in this webinar are for general informational and educational purposes only. The materials are not intended to be and should not be considered legal advice or opinions. You should not act upon any information presented without first seeking legal counsel on your specific matter.



# TODAY'S PRESENTER



**Bruce Praet**

Co-Founder, Lexipol

Partner, Ferguson, Praet & Sherman

# CA AB392

- Known as the “Act to Save Lives” or the “Stephon Clark Law”
- Effective January 1, 2020 – Amends Penal Code §§196 and 835a
- Is LE now limited to use of force only when “necessary”? **NO!**
- So, what is the “new standard”?  
Same “objective reasonableness” as *Graham v. Connor* (more on that in a minute)



# HOW DID WE GET HERE?

- Stephon Clark incident
- AB931 – knee-jerk reaction (defeated 2018)
- AB392 – if defeated, would have initiated unpredictable public vote
- SB230 – Compliance by Jan. 1, 2021
  - Policy mandates (Lexipol will provide in advance)
  - Training mandates (POST developing)

# WHY WOULD “NECESSARY” BE PROBLEMATIC?

- Full Employment Act for “experts” using 20/20 hindsight
- Replica or unloaded gun = criminal/civil liability
- Bane Act – state court with attorneys’ fees
- If “necessary” only = retire ASAP (crime will skyrocket)

# CAN I GO TO JAIL IF I USE FORCE THAT IS NOT “NECESSARY”?

- Penal Code §196:
  - Deadly force justified per court order, OR
  - If justified by 835a (i.e., “objectively reasonable”)



# BUT 835(a)(2) SAYS DEADLY FORCE ONLY “WHEN NECESSARY”

- KEY LANGUAGE – “*As set forth below*”
- Below = *Graham* “objective reasonableness”

# **BUT (a)(2) ALSO REQUIRES OFFICERS TO “EVALUATE AND USE AVAILABLE RESOURCES AND TECHNIQUES”**

- KEY LANGUAGE – *“If reasonably safe and feasible to an objectively reasonable officer”*
- Acceptable and realistic legal standard

## (a)(4) MIRRORS THE *GRAHAM* STANDARD

- *“Totality of circumstances”*
- *“Without benefit of hindsight”*
- *“Officers may be forced to make quick judgments about the use of force”*



# **(a)(5) RECOGNIZES FREQUENCY OF MENTAL HEALTH ENCOUNTERS**

- Always good to consider (5150 vs. 11550)
- Now, we need to get legislature to fund mental health services

# (C)(1) JUSTIFIES USE OF DEADLY FORCE

But only when officer “*reasonably believes*” based on “*totality of circumstances*” it is necessary:

- To defend against an “imminent” threat of death or “serious bodily injury”
  - Use of “imminent” is important (not “immediate”)
  - Perspective of reasonable officer believing the subject has the present ability, opportunity and apparent intent
  - Purely subjective fear is insufficient
  - Unlike vague GBI in AB1421, “serious bodily injury” well defined in PC 243(f)(4) (e.g., fracture, extensive sutures)



# (C)(1) JUSTIFIES USE OF DEADLY FORCE

But only when officer “*reasonably believes*” based on “*totality of circumstances*” it is necessary:

- To apprehend a “fleeing felon”
  - Mirrors *Tennessee v. Garner*
  - Warning, if feasible (Note: “. . . or I’ll shoot” w/ BWC)
  - Unless reasonable belief the person is aware of officer and deadly force



# (C)(2) SAYS OFFICERS CANNOT SHOOT TO PREVENT SUICIDE

- *Hayes v. County of San Diego*
- Suicidal subject = back off (zero liability)
- Unless danger to officer or others = “objective reasonableness”

## **(D) RETAINS “NO DUTY TO RETREAT” AND “NOT AGGRESSOR”**

- “Tactical repositioning” and “de-escalation” are not considered retreat
- Both still good options “if feasible”

## (E)(3) CODIFIES *HAYES*

- OK to consider officer's pre-force tactics when determining negligence
- BUT, "conduct of subject" must also be considered in "totality of circumstances"



# QUESTIONS & MORE INFORMATION

[webinars@lexipol.com](mailto:webinars@lexipol.com)

**Bruce Praet**

[\[REDACTED\]@aol.com](mailto:[REDACTED]@aol.com)

[info.lexipol.com/CA-AB392](http://info.lexipol.com/CA-AB392)

- Webinar recording
- PDF of slides

# Legislative Update: AB 392 (Weber) Peace Officers: Deadly Force

CCN: 33888 | POST Certification II | Reimbursement Plan I | 2 hours

## Course Purpose

The purpose of this course is to provide peace officers with the legal updates relating to the use of deadly force in Assembly Bill 392 (Weber), signed into law by Governor Newsom on August 19, 2019. The law takes effect on January 1, 2020. This course shall be used in conjunction with the POST-developed training video available on the POST Learning Portal.

## Learning Outcome

When responding to calls for service or upon viewing activity, students completing this course will understand the legal changes to Penal Code Sections 196 and 835a and comprehend the circumstances when a peace officer is authorized to use deadly force.

### I. Registration, Introduction, and Course Overview

- A. Registration
  - 1. Roster distribution
  - 2. A separate roster for this course must be submitted for separate credit in EDI and Plan I reimbursement eligibility
- B. Introduction and course overview
  - 1. Show POST video, *AB: 392: California's Use of Force Standard, What You Need to Know*
  - 2. Provide a brief overview
    - a. The changes in the penal code more clearly define a peace officer's role and responsibilities when exercising different force options, especially deadly force, while providing for more latitude when making the decision to use force.
    - b. Objective reasonableness remains the standard for evaluating the use of force and will be reviewed in more detail further into the course.
    - c. New language explicitly states the use of force shall be evaluated without the benefit of hindsight.

### II. Penal Code Section 196

- A. Justifiable Homicide
  - 1. Definition revised to rely more heavily on PC 835a
  - 2. 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
    - b. When the homicide results from a peace officer's use of force that complies with Penal Code Section 835a
- B. What changed?
  - 1. Removed "When necessarily committed in overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty"
  - 2. 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."

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### III. Penal Code Section 835a

#### A. PC 835a (a)

1. The Legislature finds and declares:
  - a. 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
  - b. 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
2. It is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life
  - a. 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
  - b. The standard changed with the addition of the word “*objectively*” reasonable officer
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, to ensure that officers use force consistent with law and agency policies
  - a. Facilitate a discussion of agency policies relating to use of force
  - b. These should be aligned with the revisions to PC 196 and PC 835
4. The decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation
  - a. Based on the totality of circumstances known to or perceived by the officer at the time
  - b. Without the benefit of hindsight
  - c. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force
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
  - a. One’s disability may affect their ability to understand or comply with commands from peace officers
  - b. Estimates show that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement
    - i. Individuals with disabilities may be impaired by the use, misuse, or discontinued use of medications or controlled substances that create further disruptions to compliance
    - ii. An individual’s disability(ies) may impair the ability to understand and comply with a peace officer’s commands
  - c. Discuss how officers should approach situations involving people with disabilities.
    - i. What might cause an individual with a disability to have difficulty understanding or following directions from a peace officer?
    - ii. What is your agency’s policy regarding uses of force involving people with disabilities?
    - iii. What are some tactics officers can use to try to determine if the subject has a disability and to gain compliance?
    - iv. What are some examples of use of force situations involving people with disabilities?

#### B. PC 835a (b)



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1. 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.
2. The standard has changed from “reasonable” to “objectively reasonable.”
3. **Facilitated Class Discussion:** Facilitate a whole class discussion using the following 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.
    - o Ask the class to provide possible actions to be taken by responding officers
    - o Ask the class to provide possible reasons the subject may be running to school with what appears to be a machete
      - Possible reasons are not limited to but may include the following:
        - Is it a prop for a school play?
        - Is it Halloween?
        - Is the subject mentally ill?
        - Does the subject have a developmental disability?
        - Is the subject seeking revenge?
    - o Discuss how an objectively reasonable officer might proceed in any of these circumstances

### C. PC 835a (c) (1)

1. 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 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.
    - i. Where feasible, a peace officer shall, before the use of force, make reasonable efforts to identify themselves as a peace officer and
    - ii. warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts
2. Discuss how this aligns with your agency's policy
3. **Facilitated Class Discussion:** Return to previous scenario – it has now escalated to a potential use of deadly force
  - 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.
  - Discuss how an objectively reasonable officer might proceed in this circumstance.

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### D. PC 835a (c) (2)

1. 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.
2. Discuss your agency policy in responding to solo suicidal subjects.

### DI. PC 835a (d)

1. 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
2. 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.
  - a. Discuss the meaning of “retreat”
  - b. Show examples of “retreat” available on the public domain

### DII. PC 835a (e)

1. This section defines key terms related to use of force
2. For the purposes of 835a, the following terms apply:
  - a. “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
  - b. 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
    - i. 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
    - ii. Discuss the difference between an imminent threat of death or serious bodily injury and imminent harm

### DIII. Review of agency Use of Force policy

1. “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.
2. Discuss how your agency’s policy may have changed relative to AB 392.

<p align="center"><b>Contra Costa County</b>  <b>Office of the Sheriff</b>    <b>General Policy and Procedure</b></p>	<p align="center"><b>CCCSO</b></p>	<p align="center"><b>NUMBER: 1.06.61</b></p>
	<p><b>RELATED ORDERS:</b>  C.A.L.E. 1.1; PC 835-845, 2652.5, 12403, 12601;  Board of Corrections, Minimum Jail Standards,  Title 15; CCCSO 1.07.31, 1.07.12, 1.06.52,  1.06.35, 1.05.58, 1.05.70, 1.06.62; Police  Executive Research Forum Conducted Energy  Policy and Training Guidelines for Consideration  2005.</p>	
<p><b>ISSUE DATE:</b> 2-1-2006  <b>REVISION DATE:</b> 12-19-2017</p>	<p><b>CLEARANCE:</b>    <b>Office of the Sheriff</b></p>	
<p><b>CHAPTER:</b>    <b>Office of the Sheriff Operations</b></p>	<p><b>SUBJECT:</b>    <b>Use of Force</b></p>	

**I. POLICY.**

- A. Deputies shall use only that degree of force that is objectively reasonable to protect themselves and others, or to overcome resistance to their lawful authority.

**II. DEFINITIONS.**

- A. **CHEMICAL AGENT:** A substance in either liquid or solid form, intended to produce temporary irritation and physical discomfort in a person, containing formulations of chloroacetophenone (CN), chlorobenzylidene malononitrile (CS), or oleoresin capsicum (OC).
- B. **DEADLY FORCE:** Any use of force that creates a substantial risk of causing death or serious bodily injury.
- C. **DISTRACTION DEVICE:** A device that produces a loud report, brilliant flash, smoke and may disperse a quantity of small rubber balls in a circular pattern that is intended to temporarily distract and disorient a person.
- D. **DEPLOY:** Making a force option ready for use by taking it out of a vehicle, holster or other mode of carry.
- E. **DISCHARGE:** Firing or activating a weapon.
- F. **POLICE INVOLVED DISCHARGE OF A FIREARM:** Any police investigation directly involving two or more people in which an on-duty or off-duty police employee has fired his or her weapon as an intentional use of force that does not result in serious injury.
- G. **DISPLAY:** Showing a weapon for effect without discharging it.
- H. **ELECTRONIC WEAPON:** A device that uses propelled probes or direct contact and is designed to subdue a person by inducing involuntary muscle contractions that cause temporary incapacitation.
- I. **CYCLE:** Single trigger pull and release resulting in an electrical charge for a duration of 5-seconds.



- J. FORCE: Any physical effort, use or discharge of a weapon used to control, restrain, or overcome the resistance of another.
- K. IMPACT PROJECTILE WEAPON: Any device that is designed to, or that has been converted to expel or propel a projectile by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort.
- L. AUTHORIZED PERSONNEL: All sworn personnel and other personnel specifically authorized and fully trained and certified, as necessary, to carry and use an Electronic Weapon (EW) as specified in this policy.
- M. NON-DEADLY FORCE: Any use of force other than that which is deadly force. This includes any physical efforts used to control or restrain another, or to overcome the resistance of another, other than the mere application of temporary restraining devices on a compliant person.

### **III. GENERAL.**

- A. DECISION TO USE FORCE. A Deputy's decision to use force shall take into consideration the facts and circumstances of each individual situation. Factors a Deputy should consider when deciding to use force in a given situation include but are not limited to:
  - 1. Severity of the crime at issue;
  - 2. Whether the suspects pose an immediate threat to the safety of Deputies or others;
  - 3. Whether the suspects are actively resisting arrest or attempting to evade arrest by flight;
  - 4. The time available to make decisions;
  - 5. Number of Deputies versus number of suspects;
  - 6. Proximity to potential weapons (the Deputy's or others);
  - 7. Age, size and relative strength of Deputy versus suspect;
  - 8. Suspect's special knowledge or skill level;
  - 9. Deputy's injury or exhaustion;
  - 10. Suspect's mental illness, emotional disturbance, or drug usage and impact on pain tolerance or rationality of response;
  - 11. Knowledge of/or prior contacts with suspect;
  - 12. The opportunity when feasible to give a warning in cases where force may result in serious injury, unless such a warning would increase the risk of greater injury to Deputies, citizens, or the suspect;
  - 13. Potential for and risk of escape;
  - 14. Environmental factors, i.e. lighting, terrain, etc.

- B. **USE OF FORCE.** The amount of force used shall only be the amount that is objectively reasonable to control the resistance encountered in light of all the relevant circumstances. The force used should not be escalated unless it's reasonably determined that a lower level of force would not be adequate, or such a level of force is attempted and found to be inadequate. When deciding to use force, Deputies should consider the following specific factors for evaluating their use of force:
1. The need for the use of force;
  2. The relationship between the need and the amount of force to be used;
  3. The extent of potential injuries that could result;
  4. The threat reasonably perceived by the Deputy;
  5. Other available force options that could temper the severity of a forceful response.
- C. **AUTHORIZED WEAPONS AND FORCE TECHNIQUES.** Deputy Sheriffs shall only carry and should only use approved weapons and force techniques for which they have received and completed P.O.S.T. certified and/or Sheriff's Office authorized training. However, it is recognized that deputies are expected to make split-second decisions in circumstances that are tense, uncertain and rapidly evolving, regarding the amount and type of force option(s) necessary in a particular situation. It may become necessary for Deputies to improvise a response to a rapidly evolving set of circumstances, wherein the use of standard weapons and/or force option techniques would be impractical or ineffective. In such circumstances, the improvised weapon or force option technique must be objectively reasonable and used only to that degree reasonably necessary to accomplish a legitimate law enforcement purpose. The need to use such force option will be clearly stated in the required reports.
- D. **FORCE OPTIONS.** The Office of the Sheriff recognizes a Deputy's need for a degree of flexibility in making use of force assessments given the fluid dynamics of a confrontation. The standard for evaluating a Deputy's use of force is "reasonableness under the facts and circumstances known to the Deputy at the time." Therefore, a Deputy may choose any of the following force options, including no use of force, provided the force option selected is objectively reasonable.
1. Professional Presence Non-Verbal and Verbal (no force). Includes display of authority as a peace officer and such non-verbal means of communication as body language, demeanor, and manner of approaching. Verbalization involves the directions and commands given to the subject.
  2. Control, Search and Handcuff. Includes restraining and detaining by a Deputy laying hands on a subject with the intention of gaining control of the subject. Examples include the use of a firm grip, escort position or grappling types of techniques designed to hold a subject down by using the weight of a Deputy's body. Also included in this level would be the application of temporary restraining devices such as handcuffs and leg restraints (hobble devices).
  3. Defensive Tactics. Includes techniques such as control holds, joint

manipulations, pressure point applications, takedowns, and ground grappling.

4. Chemical Agents. Includes substances in either liquid or solid form, including chloroacetophenone (CN), chlorobenzylidene malononitrile (CS), or oleoresin capsicum (OC).
  - a. Pepper Spray. Oleoresin Capsicum (10% by volume.)
  - b. First Defense MK-9 Magnum "Pepper Fogger". This Oleoresin Capsicum fogging device is employed primarily, though not exclusively, in situations where potentially vicious animals are an obstacle to a law enforcement operation. Use of this device is to reduce the necessity of having to dispatch a family pet in order to gain access to the targeted property.
    - Whenever possible, a prearranged contingency briefing for taking care of potentially vicious animals shall take place prior to taking action. When appropriate, Animal Control should be called to ascertain availability.
5. Electronic Weapon (EW). A department authorized hand held device or shield, which imparts an electrical charge.
6. Personal Weapons. Includes parts of the human body such as hands, feet, elbows and knees to strike a suspect.
7. Intermediate Weapons. Includes impact weapons such as straight batons, side handle batons, and collapsible batons of either variety used in the application of a control technique or in an impact mode.
8. K-9. The deployment of a specially trained dog by a certified handler. The function of the dog is to conduct building searches, assist in arrest or prevention of escape of serious or violent offenders, protect Deputy or others from death or serious injury, or other assignments with approval of K-9 Unit Supervisor.
9. Specialized Weapons. Includes items such as impact projectiles or ammunition which is designed to immobilize, incapacitate or stun a human being through the infliction of any less lethal impairment of physical condition, function, or senses, including physical pain or discomfort.
10. Carotid Restraint. Includes upper body control holds such as the Lateral Vascular Neck Restraint (LVNR).
11. Firearms. Includes handguns, rifles, shotguns, and automatic weapons authorized for use by the Office of the Sheriff.
12. Deadly Force. The use of deadly force is not limited to the use of firearms. Deadly force options may include the intentional use of legal intervention techniques and any physical means which creates a substantial risk of causing death or serious bodily injury. Note that any force option listed above may be categorized as "deadly force" when used intentionally in a manner that falls within the definition of deadly force. For example, intentionally directing a baton strike to the head of a suspect would be a use of deadly force. A Deputy may use deadly force



only where he or she has probable cause to believe that a suspect poses a significant threat of death or serious physical injury to the Deputy or others.

#### **IV. PROCEDURE 1.**

A. USE OF CHEMICAL AGENTS. Chemical agents (CN Mace or aerosol OC) will only be used as a defensive or control weapon in those instances that threaten the safety of the Deputy or other persons, to overcome resistance, to prevent escape and to effect an arrest. Chemical agents will not be used against compliant persons. Application:

1. The primary target area for application of chemical agents is the facial area with coverage of the forehead, and brow. A secondary target area is the nose and mouth.
2. Use short, multiple one-half second bursts, spraying into the facial area (bursts of longer duration seldom increase effectiveness but do increase the possibility of injury).
3. CN Mace is most effective at a distance of approximately five to seven feet, although it can be used up to ten to twelve feet in calm air. Aerosol OC is most effective at a distance of approximately five to ten feet, although it can be used up to fifteen feet in calm air. If it is necessary to use CN Mace or aerosol OC at less than five feet, Deputies should avoid aiming directly at eyes.
4. Deployment sequence
  - a. Spray the person.
  - b. Command the person to get on the ground.
  - c. Evaluate the person's response. If necessary, repeat the first two steps.
  - d. Control the person. Handcuff if necessary. Avoid pressing down on the person's back.
  - e. Care for the person. Provide medical treatment and decontamination as soon as possible.
5. Aerosol OC is effective against persons and animals, i.e. angry or attacking dogs. CN Mace is only effective against persons and will not incapacitate animals.
  - The MK-9 Magnum "Pepper Fogger" is an effective use of OC against angry or attacking dogs due to the area it covers and the amount that is released. Its purpose is to disable the animal in question so that Animal Control or Deputies can safely contain it before there is a necessity to dispatch it.
6. Once deployed, the use of chemical agents must be reported to the immediate Supervisor and recorded in a crime or incident report.
7. In any facility where ICE Detainees are permanently housed, (1) No chemical agent other than OC may be used on ICE Detainees, and (2) No chemical agent other than OC may be stored.

- B. USE OF ELECTRONIC WEAPONS (EW). Electronic Weapons can be used safely and effectively to temporarily incapacitate a subject. A subject who receives a discharge from an EW through a probe or a drive stun discharge should experience considerable discomfort for the duration of the application. The subject will normally recover and be physically functional after the application is terminated.
1. Electronic Weapons will only be used by authorized personnel who are trained and certified in their use and authorized by his/her Division Commander.
    - a. The Electronic Weapon will be maintained in an authorized holster on the authorized personnel's non-dominant side and drawn with the non-dominant hand to avoid possible confusion with their firearm. Cross draw of the Electronic Weapon is not authorized, except under exigent circumstances. Personnel who are authorized to use and carry EWs may carry a second cartridge.
    - b. Only Office of the Sheriff authorized EWs will be used by authorized personnel.
    - c. An EW which has been discharged will be taken out of service until it has been checked by qualified personnel and approved for redeployment, except in a continuing incident or exigent circumstances.
  2. The EW, with proper probe placement, may incapacitate the following:
    - a. Humans
    - b. Domesticated animals
    - c. Wild animals
  3. Electronic Weapons will not routinely be used against the following subjects except under exigent circumstances:
    - a. Subjects who are demonstrating passive resistance or are unresponsive.
    - b. Women who are known to be pregnant
    - c. Subjects who appear to be elderly
    - d. Subjects who appear frail
    - e. Young children
    - f. Subjects who are handcuffed or restrained unless they are actively resisting or attempting to harm themselves or others.
    - g. Subjects who are in a location where they could fall from a substantial height or into a pool, river, or other body of water where it is likely they would suffer serious injury or death due to the fall.
  4. Electronic Weapons shall not be used:
    - a. In a punitive manner, or to extract contraband or evidence.

- b. In an environment where potentially flammable, volatile, or explosive materials are known to be stored (such as a clandestine lab).
  - c. If it is known the subject has been exposed to flammable liquids. (Some oleoresin capsicum sprays carried by allied agencies contain flammable carriers)
  - d. Against a person in control of a motor vehicle if it is reasonable to believe the vehicle could be put into motion or is in motion.
  - e. On ICE Detainees housed within the detention facilities.
5. Electronic Weapons may be used to:
- a. Control, detain or arrest a person who is actively resisting and/or poses an immediate threat to the Deputy or others.
  - b. Protect a person from serious self-injury or suicide.
  - c. Prevent escape.
  - d. Conduct an extraction of an aggressive or resistant person from a jail cell when other methods pose greater risk to individuals involved.
6. Authorized personnel may display the EW and the EWs electrical arc if he/she reasonably believes it will avert a potentially dangerous situation or physical confrontation and the authorized personnel has ensured the cartridge has been removed from the EW.
7. When feasible, prior to discharging the EW, the authorized personnel should announce their intent to discharge the EW unless:
- a. The announcement would place the authorized personnel at risk
  - b. The circumstances do not allow time for the announcement
8. The authorized personnel shall avoid intentionally targeting the:
- a. Head
  - b. Face
  - c. Neck
  - d. Throat
  - e. Groin
  - f. Spine



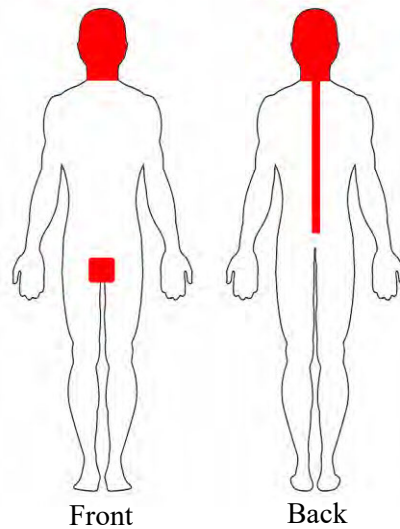


Diagram of a subject, male or female, front and back, showing in red those areas where user should not intentionally aim EWs.

9. While targeting the upper chest is not prohibited, the upper chest is not the preferred target area and should be avoided when possible. The preferred target area is to “split the belt line,” one probe above and one probe below the waist.
10. After the initial EW cycle, the subject should be evaluated for compliance. Only the necessary number of cycles to affect an arrest shall be used.
11. If the subject refuses to comply after the initial or multiple EW cycles, the authorized personnel should consider whether additional cycles are making sufficient progress toward compliance/restraint or if transition to a different force option is warranted.
12. Multiple EWs should not normally be used on the same subject at the same time, but based on sound judgment and based on the needs of the tactical situation and/ or officer safety, multiple EWs may be deployed (subject armed with a weapon).
13. Prolonged exposure without evaluation could have adverse effects on a subject’s health. Repeated exposure or exposure to multiple EWs electrical discharge may cause strong muscle contractions which may impair breathing and respiration, particularly when the probes are placed across the chest.
14. Use of the EW should be combined with physical restraint techniques to minimize the duration of the struggle and EW use. Additional authorized personnel on scene of an EW deployment can attempt to restrain and handcuff a subject during an active EW cycle.
15. Touching the subject between the probes or contacting the wires while the EW is activated may cause the authorized personnel to experience the effects of the EW. If the user attempting to handcuff the subject experiences the effects of the EW, the user should reposition his/her body and then re-approach to handcuff the subject.
16. After the subject is taken into custody in a patrol setting, which includes incidents related to Custody Alternative Facility (CAF), Health Services

Security (HSS), and Satellite Court Houses (Courts outside of Martinez), the subject's medical condition will be assessed prior to transport. Factors to consider when determining proper transport/medical treatment:

- a. Behavior of the individual prior to the discharge of the Electronic Weapon
  - b. Additional known/pre-existing medical conditions
  - c. Probe location
  - d. Secondary Injuries suffered by the individual during the application of the EW.
  - e. Signs of medical distress (excessive sweating, rapid or labored breathing, level of consciousness, etc.)
17. If there are any signs of medical distress or complications, the authorized personnel will request EMS personnel to evaluate and treat the subject prior to transport.
18. Upon exposure to an EW in a Detention Facility, or any Martinez Court House, the individual who was exposed will be examined by medical personnel (Jail Nurse, Paramedic, etc.). Medical evaluation will be verified by the on-duty supervisor.
- a. On-duty medical staff will evaluate the condition of the individual with emphasis on any injuries that may have been sustained because of the use of an EW.
  - b. If the EW probes have penetrated the skin, the puncture sites shall be located and brought to the attention of medical staff for the treatment and removal if necessary.
  - c. If any of the probes are embedded in the following areas, the subject shall be transported to Contra Costa Regional Medical Center (CCRMC) for probe removal:
    - Head
    - Face
    - Neck
    - Throat
    - Groin
    - Spine
19. If the probes are still imbedded in the subject, avoid transporting the subject in a position that could further embed the probes in the subject. If this is not possible in a Patrol vehicle, an ambulance will be requested to transport.
20. If a circumstance exists that requires the removal of one or both probes to facilitate transport/treatment, the authorized personnel will advise their Supervisor and follow the proper procedure outlined in their training for probe removal.
21. When handling probes which have been used in a deployment or a

subject who was exposed to a probe deployment, the authorized personnel will take precautions for Bloodborne Pathogens and use proper evidence handling guidelines when logging the probes into evidence.

22. Whether by Patrol vehicle or ambulance, the subject will be transported to Contra Costa Regional Medical Center (CCRMC) where the probes will be removed and the subject will be medically cleared prior to booking at the Martinez Detention Facility.
23. Activations of an Electronic Weapon against an individual will be reported to a Supervisor as soon as practical.
24. The Training Division will implement annual proficiency training which shall be required for all personnel who are authorized to carry and use EWs.

C. **USE OF DISTRACTION DEVICES.** Distraction devices will only be used as a defensive or control device in those instances that threaten the safety of the Deputy or other persons. When properly deployed as part of an overall tactical plan, the distraction device can afford an enhanced margin of officer safety.

1. The primary target area for deployment of a distraction device is the floor area immediately inside a primary entry point, i.e. a door or other available means of ingress into a room or structure. A secondary deployment area may be any area where activation of the device will provide an enhanced margin of officer safety by attracting a suspect's attention to the area of activation.
  - a. Prior to deploying a distraction device, the Deputy deploying the device will visually check the immediate area where the device is to be deployed in order to ensure that no persons are in that immediate area. Extreme caution should be used upon deployment of a distraction device in areas where there is potential for fire hazard due to flammable vapors, gases, substances or other flame hazard.

D. **USE OF IMPACT PROJECTILE WEAPONS.**

1. Impact projectile weapons are intended primarily for use against persons who engage in conduct that is likely to result in serious harm to themselves or other person(s).
2. Such conduct includes but is not limited to, violent, combative, assaultive, and/or resistive behavior; when the person is either armed or unarmed.
3. Upon assessing and determining the need for the impact projectile weapon, the Deputy will request a Supervisor to respond. Additionally, the Deputy will advise the Supervisor of the circumstances. The Supervisor, if available, should make an assessment of the circumstances and situation. In determining whether or not the impact projectile weapon system should be used, the Supervisor, or Deputy when no Supervisor is available, will consider among other factors, the following:
  - a. The individual is violently attacking, resisting, combative, and/or armed;



- b. Tactical considerations indicate that the use of impact projectile system would provide greater officer safety and reduce the likelihood of serious or lethal injury to the suspect(s).
- 4. If the circumstances permit, the Supervisor or Deputy should make an attempt to have the subject submit to lawful authority without the use of the impact projectile weapon, and if feasible, should warn the subject of the intended use of the weapon should the subject not submit to lawful authority.
- 5. If the circumstances permit the Supervisor or Deputy to authorize the use of the impact projectile weapon, it shall be deployed as prescribed and in accordance with Sheriff's Office approved training. Prior to deployment:
  - a. A cover Deputy or Supervisor shall be assigned to the Deputy deploying the impact Projectile weapon;
  - b. Deputies shall be prepared and ready to take the suspect into custody following deployment;
  - c. Deputies on the scene should be advised prior to the deployment of the impact projectile weapon.
- 6. Impact projectile weapons shall be treated the same as firearms for safety practices. Refer to Office of the Sheriff Policy Section 1.07.12, Firearms Safety and Qualification for firearm safety practices.
- E. USE OF BATON. When properly used, the baton can frustrate attacks on Deputies and aid in overcoming a hostile arrest situation.
  - 1. The baton may be used as a defensive or control weapon in those instances that threaten the safety of Deputies or other persons, or to subdue and arrest combative persons. Deputies will not use the baton against non-combative persons. However, Deputies may use the baton as a control device when directing, controlling, or escorting uncooperative persons.
  - 2. The Detention Division maintains specific restrictions regarding the use and carrying of batons. Absent authorization from the Facility Commander, batons shall not be carried into the security area of any Detention Facility.
- F. USE OF CAROTID HOLD. The use of the Carotid hold is only authorized in life-threatening situations where other methods of restraint or less lethal or non-lethal weapons are not accessible or have been determined to be ineffective.
  - 1. Chokeholds are not authorized restraint techniques.
- G. USE OF FIREARM/DEADLY FORCE.
  - 1. A firearm may be discharged only for one or more of the following circumstances:
    - a. At an approved target range, or for evidence examination purposes;
    - b. When killing a seriously wounded animal when other disposal is impractical or when killing an animal that poses an immediate threat of physical harm. Attempts should be made to:

- Wait for Animal Control, if possible;
  - Confine or contain the animal, if possible;
  - Consider deployment of pepper (OC) spray or other less lethal force;
  - Use lethal force as a last resort, if other options are not reasonable.
- c. When necessary in the defense of one's own life or to prevent serious physical harm;
  - d. When necessary in the defense of any person in immediate danger of death or serious physical injury;
  - e. To capture or prevent the escape of a person when ALL the conditions below are met:
    - There is reasonable belief the person is committing or has committed a violent felony which involves the use of deadly force;
    - The person's use of deadly force threatens or results in the death or serious bodily injury of another person; and
    - All other available means of apprehending the person have failed.
2. WHEN FIREARMS WILL NOT BE DISCHARGED. Firearms will not be discharged:
    - a. As a warning;
    - b. To effect the capture or prevent the escape of a person who is reasonably believed to be committing, or have committed, a felony which DOES NOT involve the use or threat to use deadly force;
    - c. In any misdemeanor case;
    - d. From or at a moving vehicle except in the defense of one's own life or the life of another person.

## **V. PROCEDURE 2.**

- A. PROVIDING MEDICAL AID AFTER USE OF FORCE. When use of force causes injury, which would reasonably require medical attention, the Deputies using such force will ensure the injured person receives proper medical attention as soon as possible.
  1. Deputies will normally transport or arrange for transport of injured persons to the Contra Costa Regional Medical Center, unless the nature and/or extent of the injuries necessitate transport to a closer facility, or as directed by a Supervisor.
  2. Medical Refusal
    - a. Individuals who have had an EW exposure must make all refusals for medical treatment directly to medical personnel.

- b The reporting deputy will ensure the refusal, and the staff member's name receiving the refusal, are documented in their report.

## **VI. PROCEDURE 3.**

- A. REPORTING USE OF FORCE. Any member of the Office of the Sheriff who either uses force or witnesses the use of force by another member of this Office shall, as soon as possible, make an oral report to their immediate Supervisor. All such reports shall be made no later than the end of duty shift on which the force was used. In all cases where there is a use of force, as defined in this policy, a DR will be drawn and details of the use of force will be reported by the Deputy who used the force on either a Crime Report, or Detention Incident Report as applicable. All such reports will include:
  - 1. Type of force used;
  - 2. Reason for the use of force;
  - 3. Extent of injury;
  - 4. Other pertinent information the Deputy wishes to include;
  - 5. If an animal shooting, conditions set forth in G, 1, b of this policy shall be observed.
  - 6. If the incident preceding the use of force would normally be reported on a Crime Report, the details of the use shall be included in that report
  - 7. Use of force reports where impact projectile weapons or distraction devices are used will also include:
    - a. Name of the Deputy deploying the munition;
    - b. Supervisor's name authorizing deployment;
    - c. Number of munitions deployed;
    - d. Distance between the suspect and the Deputy deploying the munition;
    - e. Area of suspect's body struck by the munition(s); and
    - f. Suspect's reaction to the munition.
    - g. If the subject is admitted to the hospital, send a copy of the report to: Office of the County Administrator, Risk Management Division, Assistant Risk Manager, 2530 Arnold Dr., Ste 140, Martinez, CA. 94553, Attn: Liability Claims or fax to number 335-1421 within 24 hours of the incident. An emergency room visit does not constitute a hospital admission.
  - 8. Use of force against animals shall be documented in a separate memo to the Patrol Commander. A copy of the police report shall be attached to the memo. (The police report alone is not a substitute for this memo.) All such memos shall be cataloged by the Patrol Division for annual review by the Sheriff's Executive Team.

## **VII. PROCEDURE 4.**

### **A. REPORTING USE OF AN EW.**

1. The discharge of an EW during training does not require a report. The display of an EW does not require a report.
2. When an EW is discharged in the performance of law enforcement duties, the Deputy will thoroughly document the incident, including the details that led to its use, all pertinent aspects of the use, and all significant results and effects in a crime report. Custody Services Bureau incidents shall also be documented in a JMS incident report. In connection with the required crime report, the Supervisor will download the EW firing data to a computer workstation, and will associate the firing data with the report.
3. The discharge of an EW to control an animal normally requires prior permission from the Supervisor. Should exigent circumstances prevent prior authorization; the Supervisor will be advised as soon as possible. A memorandum to the Division Commander via the chain of command outlining the need for the action shall follow the incident.
4. When any other discharge of an EW occurs, such as an unintentional discharge and there are no injuries or death, the following shall be done:
  - a. The Deputy who discharged the EW shall notify his/her Supervisor or the senior Deputy on duty as soon as time and circumstances permit.
  - b. The Deputy will document the circumstances which led to the discharge of the EW in a memo to their Division Commander.
5. When any other discharge of an EW occurs, such as in an unintentional discharge and there are injuries or death, the following shall be done:
  - a. The Deputy who discharged the EW shall notify his/her Supervisor or the senior Deputy on duty as soon as time and circumstances permit.
  - b. The senior Deputy or the Deputy's Supervisor is responsible for securing the scene and advising their Area/Facility Commander or the Watch Commander of the details of the incident.
  - c. If the circumstances meet the requirements of Office of the Sheriff Policy and Procedure Section 1.06.62, Police Involved Fatal or Serious Injury Incidents, the provisions of that policy will be followed.
  - d. If the injury is minor, the Area/Facility Commander will conduct an investigation into the incident and report their findings to their Division Commander.
6. Should a thorough investigation of the incident indicate the need for corrective action the Division Commander will initiate appropriate procedures as covered in Office of the Sheriff Policy Section 1.05.58, Corrective Counseling System and Section 1.05.70, Personnel Management Regulations.



## **VIII. PROCEDURE 5.**

### **A. REPORTING USE OF FIREARMS.**

1. The discharge of a firearm at a target range or for evidence collection does not require a report.
2. The discharge of a firearm to dispatch an animal normally requires prior permission from the Supervisor. Should exigent circumstances prevent prior authorization, the Supervisor will be advised as soon as possible. A memorandum to the employee's Division Commander via the chain of command outlining the need for the action shall follow the incident.
3. Accidental discharges that result in no serious injuries or deaths, the following shall be done:
  - a. The Deputy who discharged the firearm shall notify his/her Supervisor or the senior Deputy on duty as soon as time and circumstances permit.
  - b. The Deputy's Supervisor will notify the Division Commander and shall protect the scene and identify witnesses pending further instructions from the Division Commander.
  - c. The Deputy's Division Commander shall conduct an investigation.
    - If the incident occurs when the Division Commander is either off duty or unavailable, the Patrol Station House Commander shall be notified and will immediately and personally conduct the investigation when notified.
    - The Station House Commander will submit an inter-office memo to the Deputy's Division Commander detailing the incident and the investigation.
    - If the area Station House Commander is unavailable, the Watch Commander will conduct the investigation.
    - Should a thorough investigation of the incident indicate the need for corrective action, the Division Commander will initiate appropriate procedures as covered in Office of the Sheriff Policy Section 1.05.58, Corrective Counseling System and Section 1.05.70, Personnel Management Regulations.
  - d. Following the investigation of the incident, a detailed written report shall be submitted via the chain of command to the Sheriff. This report shall include the observations and conclusions of the Division Commander.
4. When any on-duty or off-duty discharge of a firearm by an Office of the Sheriff employee results in death or serious injury, Office of the Sheriff Policy Section 1.06.62, Police Involved Fatal or Serious Injury Incidents Policy shall apply.

- a. The Division Commander will receive a detailed written report concerning the incident completed by the Internal Affairs Detail, after review by the Undersheriff. This report shall be reviewed in conjunction with any other documents and/or information available and the Division Commander will submit a recommendation via the chain of command to the Sheriff/Undersheriff.
- 5. When a Police Involved Discharge of a Firearm On Duty occurs, the following shall apply.
  - a. The Deputy who discharged the firearm shall immediately notify his/her Supervisor.
  - b. The Deputy's Supervisor will ensure that the Deputy Sheriff's Association is contacted and notified of the event.
  - c. The Deputy's Unit Manager or Watch Commander shall investigate. If the Unit Manager or Watch Commander is unavailable, the Division Commander will respond and investigate.