

Carlye Slover

From: Julie Fry
Sent: Wednesday, December 11, 2019 2:35 PM
To: Veronique Balea;Matthew Buckley;Eddie Caragan;Vincent Durant;Charlene Jacquez;Mark Johnson;Ryan Montoya;Maynard Patacsil;Noele Spangler;James Williams;Jennifer Yen;Candice Christopherson;Dj
Cc: Dennis Curran;Mark Rodriguez;Victoria Singleton
Subject: First Aid / AB 392 Instructor Meeting
Attachments: Course E EVOG First Aid.xlsx; Lexopl Slides.pdf; AB392_ECO 12-4-19.pdf

Good afternoon all

Several of you have been reaching out to me to sign up to instruct for first aid. I apologize for being so late, but I had to add AB 392 training to the day.

I have reserved the classroom at **Sally Ride for 8AM on Thu Jan 16** (just before the EVOG meeting). I am going to talk to them about allowing us to go on the course with them to knock out your EVOG AO 😊.

Here is some updated info:

On our meeting day, Sgt Curran will do a training on AB 392 to help us facilitate that portion of the class. With that, I have separated the hours into 4 blocks. If you feel you can lead the AB 392 POST presentation and answer questions, please sign up for the whole day. If you feel uncomfortable answering questions on use of force, then you can choose just the CPR time blocks. I attached the sign-up calendar (see First Aid tab). Please let me know which blocks you would like to instruct (I am asking a minimum of 4 blocks, unless you are already teaching EVOG). If you need to wait until the shift change schedule is out, then please email as soon as you are able.

I have attached the POST expanded course outline (not final) and a link to a Lexipol video which we are using to make our AB392 powerpoint. This will help if you have questions about the AB 392 course.

For the CPR/First Aid portion of the class: we need to cover the skills demonstration and bloodborne pathogens. We are planning on doing the fit testing the same as last year.

If you need an Instructor Update Course (more than 3 years), please let me know you are committed to attend. I am looking maybe early January for the Instructor Transitional Update Course.

Lastly, Feb 12 and Mar 31 are court AO days. They will do the CITD update course (4 hours) instead of the skills and AB392. For those that teach CITD, you can sign up for those days too.

Thank you all for your time and I am looking forward to a great AO First Aid season.

Call or email me if you have any questions 😊

Take care and enjoy your day!

Deputy Julie Fry

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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.

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

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- Webinar recording
- PDF of slides