

**From:** De Sylva, Sam  
**Sent:** Wednesday, November 20, 2019 4:28 PM  
**To:** Perez, John Eduardo  
**Subject:** AB 392 Webinar! 20min and you will understand it!

<https://info.lexipol.com/webinar-ca-ab392-ty>

Chief,

This Webinar is extremely informative and I believe we should mandate everyone in the Department to watch it. It is only about 20 minutes. About 35minutes if you watch the questions and answer section. Many Officers have reached out to me regarding AB 392. There are a lot of misconceptions about AB 392 going around. I do not want Police Officers being afraid to do their job, especially because of a misunderstanding on an Assemble Bill.

**What the Webinar will discuss:**

- Is it true, that you can now only use force when **necessary**? NO. **This is not true.** The new standard is the exact same thing we have had for the last 50 years. That is Graham Vs. Connor “Objective reasonableness” standard.
- Webinar will discuss how Stephon Clark shooting prompted AB 931 by the legislator which was eventually defeated in 2018.
- If AB 392 was defeated by Law Enforcement, then the decision would have gone to the voter (and this may have drastically limited law enforcement because of the lack of understanding by the average citizen). It was in the best interest of Law enforcement to work with Lawmakers on AB 392 and Law enforcement was successful in achieving about 95% of what was important. This is what is very important for our Officer to know.
- SB 230 is also discussed and prepares us what to prepare for in 2021.
- Webinar will discuss how the word necessary could have posed a problem. Further if necessary was placed into law like the legislator intended, because of the California BANE Act, attorneys would have been able to recover attorney fees in State Court and they would not have had to take it Federal court.
- Officers ask me why does PC 835(a)(2) still have “When Necessary.” That is not concerning because it is followed by objective reasonableness (language in Graham Vs. Connor). All subsections in PC 835 is followed by reasonable, reasonable belief, and when reasonable and feasible by a reasonable officer.
- PC 835(a)(4) Mirrors the Graham standard. – *“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.”*
- The language in PC 835(a) is still able to acknowledge what the Supreme Court acknowledged 50 years ago, that is Officers may have to use quick judgement about using force. That ability to make a split second decision.
- Further discusses the benefits of 835(a)(5) on how the legislator has recognized the increase of individuals with mental health and individuals under the influence of controlled substances. They discuss the importance of documenting this in reports and how this can now help Law Enforcement.
- Discusses the difference between imminent vs immediate and how Law Enforcement was successful in getting the legislator to recognize this.
- More clear definition on Serious Bodily Injury which is defined by PC 243(f)(4) and getting rid of the confusing language

discussed in AB1421 of Great Bodily Injury.

- How Law Enforcement was able to retain the Tennessee V. Garner language – “Apprehend fleeing felon” The Attorney on the video will discuss the importance of knowing and if feasible what kind of warning to give. This is an attorney speaking with experience of defending Police Officers and how Jurors view what is seen on BWCs and patrol car dash cams.

As the former FTO Coordinator, I see the value in this Webinar over other 100’s of webinars that comes across my desk. If there is any work that needs to be done in getting everyone to watch this, I can do it. However I believe if you mandate it, Officer may know the importance of it.

Sam

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