

19-19 - Deadly Force

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services



DEADLY FORCE

On August 19, 2019, Governor Gavin Newsom signed Assembly Bill 392 (AB 392) into law. AB 392, which will take effect on January 1, 2020, modifies Penal Code sections 196 and 835a with regard to homicide and effecting an arrest. These amendments to existing law codify the practices and case law that Department personnel already follow on a regular basis when employing deadly force.

An amended portion of Penal Code section 835a (2) states:

“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.”

The use of a term, such as “objectively reasonable and necessary” (and the statements that follow in support of), in force reporting should help to show a deputy’s actions meet the “necessary” requirement of AB 392. In addition, this term also echoes the verbiage and findings in the Supreme Court case, *Graham vs. Connor*. AB 392 and previous case law all support the justification of a law enforcement officer’s use of force from the perspective of an objectively reasonable officer, with commensurate training and experience, without the benefit of 20/20 hindsight. Deputies need to keep in mind, the “necessary” requirement is an evaluation of a “situation judged in light of the particular circumstances.” The accurate articulation and recording of all of these “particular circumstances” will provide a more complete picture of the use of force event.

The verbiage, “shall use other resources and techniques...” used in AB 392 should not cause deputies to hesitate when the need for deadly force occurs. A deputy’s use of force report should include time and distance considerations, as well as the availability of other force options. In addition, deputies should account for all failed less than lethal force options, redeployment, and/or de-escalation tactics to further outline the necessary use of deadly force. Lastly, articulating a deputy’s consideration of less than lethal force options and tactics, coupled with the reasoning for not using them, are also additional factors that should be routinely documented.

Peace officers maintain the right to self-defense and are not required to retreat. Tactical re-deployment and de-escalation does not equal a retreat.

Penal Code section 835a (e)(2) defines a threat of death or serious bodily injury as “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, but is one that, from appearances, must be instantly confronted and addressed.”

This portion of the law points out additional pieces of information deputies should include when documenting their use of deadly force. Present ability, opportunity, and apparent intent of the suspect to immediately cause death or serious bodily injury are all items which should be described in the documentation of a deadly force incident.

The terms **imminent** and **immediately** are sometimes interchanged in this section. **Imminent** is defined as “likely to happen without delay,” while **immediately** means, “without delay.” Deputies should understand the difference between these two terms and use them appropriately in their documentation.

When employing deadly force in a fleeing felon situation, the practices and procedures outlined in Tennessee vs. Garner still apply. The amendments to existing law require officers when feasible, make reasonable efforts to identify themselves as a peace officer and warn the felon of the impending use of deadly force.

The adherence to these recommendations for not only deadly force incidents, but all uses of force incidents, will reinforce good force reporting and documentation practices for Department personnel and assist in mitigating the risks to deputies from criminal prosecution and civil litigation.

Deputy personnel should take the time to read AB 392 completely and thoroughly to familiarize themselves with ALL the pending changes to the law. Please refer to the following link to read the full text of the assembly bill. [Assembly Bill 392](#)

Information regarding the content of this newsletter may be directed to Field Operations Support Services, at [REDACTED TEXT]
