



Use of Force - Firearms

POLICE SERVICE OF SALINAS
ADVANCED OFFICER TRAINING 2023

Course Topics

- Law, case law, policy
- Moral Obligations
- De-Escalation
- Duty to Intercede
- Reverence for Human Life
- Rendering First-Aid
- LEOKA



Course Objectives

- Demonstrate Knowledge of use of force laws
- Demonstrate Knowledge of agency use of force policy
- Understanding of force options
 - Reverence for human life
 - De-Escalation and Verbal Commands
 - Rendering First-Aid
 - Legal Duty to Intercede and report excessive force



Before AB 392

Tennessee V Garner
Deadly Force
Fleeing Felon

Graham v Connor
Objectively Reasonable Force
PC 835a



Two Measures for Reasonableness

1. REASONABLE FORCE



2. PERSPECTIVE OF A
REASONABLE OFFICER



Significant Change to UOF Threshold per AB392



- 1) Subsections (b) and (c)(1) of PC 835a provide for a clear distinction between objectively reasonable and deadly force standards.
- 2) While objectively reasonable force may be utilized "to prevent escape, or to overcome resistance" to effect a lawful arrest, as soon as the circumstances reach a threshold for deadly force the standard increases to "necessary."

835a PC

Amended by Stats. 2019, Ch. 170, Sec. 2. (AB 392) Effective January 1, 2020.



(a) The Legislature finds and declares all of the following:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.

The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

835a PC



(2) 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.

835a PC

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.



835a PC

(4) 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.



835a PC



(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

835a PC

(b) 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.



835a PC

(c) (1) Notwithstanding subdivision (b), 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 to 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. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.



835a PC



(2) 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.



(d) 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 (b) and (c) to effect the arrest or to prevent escape or to overcome resistance. For the purposes of this subdivision, "retreat" does not mean tactical repositioning or other deescalation tactics.

835a PC



(e) For purposes of this section, the following definitions shall apply:

(1) "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.

(2) 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.

(3) "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.



Key Elements

196 PC- JUSTIFIABLE HOMICIDE

196 PC



Definition revised to rely more heavily on PC 835a – deadly force can only be used when necessary

Homicide is justifiable when committed by peace officers and those acting by their command in their aid and assistance, under either of the following circumstances:

- (a) In obedience to any judgment of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

(Amended by Stats. 2019, Ch. 170, Sec. 1. (AB 392) Effective January 1, 2020.)

196 PC



What changed?

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."



Senate Bill 230

AGENCY POLICIES



This bill would, by no later than January 1, 2021, require each law enforcement agency to maintain a *policy that provides guidelines on the use of force, utilizing deescalation techniques* and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. The bill would require each agency to make their use of force policy accessible to the public. By imposing additional duties on local agencies, this bill would create a state-mandated local program.



De-Escalation

Verbal communication vs verbal commands

How do verbal communication or commands affect the outcome of a situation?

Tactics – Tactical pause, slow down, gather information, develop a plan, time and distance

Decision making – immediacy, priorities, consider options, make decisions



Salinas Police Policy Lexipol

POLICY 300- USE OF FORCE

300.3.1 ALTERNATIVE TACTICS - DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, officers should consider actions that may increase officer safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding officers before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase officer jeopardy.

In addition, when reasonable, officers should evaluate the totality of circumstances presented at the time in each situation and, when feasible, consider and utilize reasonably available alternative tactics and techniques that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)). Such alternatives may include but are not limited to:

- (a) Attempts to de-escalate a situation.
- (b) If reasonably available, the use of crisis intervention techniques by properly trained personnel.



300.3.3 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to officers or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time (Penal Code § 835a).
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The conduct of the involved officer leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with officer commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).





Reverence for Human Life

DUTY TO INTERCEDE

What is “Reverence for Human Life”?

How does this coincide with Duty to Intercede?





PC 13519.10(b)(2) and PC 7286(b)(8)

Law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone.

When observing force, each officer should take into consideration the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject.

Any officer present observing another law enforcement officer or an employee using force that is **clearly** beyond that which is necessary, as determined by an **objectively reasonable** officer under the circumstances, **shall, when in a position to do so**, intercede.

Rendering First-Aid

Safety – Once it is safe

When – signs of distress, visible injury, complaint of injury or continuing pain, or unconscious

Extreme agitation – Used to be called excited delirium, may be at risk of sudden death. These calls should be considered a medical emergency. Stage medical or call for, as soon as practicable.





LEOKA – Law Enforcement Officers Killed in the Line of Duty

2019 – 48 felonious conduct, half were city police officers, 7 were in a city our size. (56,034 assaulted, 17,188 injured)

Officer stats – median age 40, 13 years experience, mostly white male patrol officers

Circumstances – 15 investigative/enforcement (6 traffic stops), 9 tactical situations, 5 unprovoked attack, 4 crimes in progress (2 robbery), 3 pursuit, 3 while making arrest, 3 while assisting another officer, 3 during disturbance call (1 was DV), 2 ambush, 1 court order

Weapons – 44 firearm (34 handgun), 10 fired and 6 attempted to fire, 14 were less than 5 feet away

Offender – 31 years old, majority male, 5'10" 180lbs, 9 were under the influence, 12 had no criminal record

2023 – 41 felonious conduct