Police review boards upheld 2 misconduct reports in 2018; 1 was overturned

By Emilie Raguso, Dec. 19, 2019, 1:28 p.m.

Berkeley Police Review Commission members during a meeting in 2019 (file photo). Photo: Emilie Raguso

Berkeley’s Police Review Commission sustained just two allegations of misconduct in 2018, and one was later overturned on appeal, according to the PRC’s annual report.

Community members filed 13 complaints against Berkeley police in 2018, the lowest number in the past five years. The complaints themselves are confidential, but the PRC releases statistics about them every year.

The PRC closed, dismissed or rejected 10 complaints in 2018 (including some from the prior year) and held a hearing, called a board of inquiry, in relation to five others. Of 38 allegations made in those five complaints, 23 were not sustained and 13 were deemed to be unfounded. Two of the 38 allegations were sustained, commissioners ruled: one for discourtesy and one for improper police procedures.

But, of those two findings, one was ultimately overturned* by a state judge on appeal. The report did not identify which finding was overturned, but the judge ruled that one of them was unfounded after what’s known as a Caloca hearing. Those hearings are confidential so no additional information was available.

There were no sustained findings of excessive force or discrimination by police from 2014 through 2018, according to the report. PRC boards have not sustained an excessive force finding since 2013, when there were two.

The boards — made of three PRC members, at least two of whom must agree before a finding can be made — usually sustain just one or two allegations out of an average of about 35 each year.

Some of the allegations sustained by the PRC, however, are later overturned when reviewed by a state judge. From 2014-18, the PRC sustained seven allegations in total. Three were later overturned by a judge as unfounded or not sustained. Two others — in 2016 and 2017 — were upheld.

The report does not indicate which allegations were upheld at that time, but it appears that both may have stemmed from 2016 decisions. That year, the PRC sustained two allegations: one for discourtesy and one for improper investigation.

Over the five years covered in the report, boards of inquiry have found 84% of the allegations they’ve heard to be either not sustained or unfounded. In 8% of the allegations, officers have been exonerated. During that time, 4% of the allegations have been sustained.

*Update: An earlier version of this story said both of the allegations upheld were overturned. This revised version corrects that error.
Several efforts to reform Berkeley’s approach to police oversight failed in 2018, though reformers have pledged to keep working until the city or its citizens creates a new process. A ballot measure to change the city charter in relation to police oversight could come before voters in 2020.

Some community members have said the number of complaints the PRC receives is so low because people either do not know how to make complaints or are afraid to do so. The PRC complaint process is explained on the city website.

The Berkeley Police Department handled 74,087 calls for service in 2018, nearly 10% fewer than in the prior year. At the end of the year, BPD’s official tally of officers was at 159, according to the PRC report. Recent news from BPD puts that number closer to 170 now, but not all of those officers are on full, active duty.

The PRC also collects demographic data about who files complaints about Berkeley police. In 2018, seven of the complainants were white, four were black, one was Asian and one was listed as other. Seven were male and six were female, according to the report.

Three city staffs, who are part of the city manager’s office, support the PRC in various administrative and investigative roles. As of 2019, their combined salaries and benefits totalled $546,335, according to data from the city.

The Berkeley Police Department keeps its own statistics on allegations of misconduct, which include some of the reports from the PRC. According to 2018 data from BPD, its Internal Affairs (IA) division tallied 78 allegations across 38 complaints. None of the complaints filed by people outside the department were sustained.

According to department data, BPD officers used force during 13 incidents in 2018. Complaints were filed in six of those incidents. None were sustained by IA.

BPD used a non-lethal weapon in one of those incidents. All the other force officers used, according to BPD data, was physical, meaning they used their bodies but no weapon. BPD reported no instances where pepper spray, a baton or a gun were used during an arrest.

BPD has not had an officer-involved shooting since 2012.

According to BPD data, IA did sustain 11 internal complaints, which “include at-fault vehicle collisions.” No further information was immediately available.

*The annual report misstates in its summary that one allegation of misconduct was upheld on appeal. Berkeleyside asked PRC staffers about it because the section on appeals states that it was actually overturned. They confirmed the summary was in error and plan to post a correction.*
Ms. Lee,

This is to update the Commission regarding the Use of Force policy draft and the recent law change concerns I expressed in the last PRC meeting of December.

I wanted to let the Commission know that I’ve issued a Special Order to ensure our staff is aware of the requirements of the new law, and that our current GO U-2 Use of Force remains in effect.

At the last PRC meeting, I mentioned that I potentially would need to issue the entirety of the new Force policy on Jan. 1, though it had not yet gone to the PRC Subcommittee and full PRC for review. I considered this possible action in order to ensure our folks are fully aware of the new requirements of the law.

Upon further review, and based in part on the concerns voiced by the PRC Chair and commission, I decided to issue a Special Order which would both address our immediate concerns regarding the new law, while not requiring immediate implementation of the new draft Policy 300 - Use of Force.

This approach will, I hope, re-assure Commission members that the process for review and input is preserved, and we look forward to working with the PRC Subcommittee and the full PRC to obtain input on the Force policy draft, prior to moving it further through the implementation process.

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700
Special Order 2020-0001

1101.1  PC 835; CHANGES IN PENAL CODE
On January 1, 2020, CA Penal Code 835a, which governs use of force by police officers, became law. Per Departmental Training Order 2019-00277, all sworn personnel were required to view POST’s Training video, “AB 392: California’s New Use of Force Standards: What You Need to Know”, which can be found at https://lp.post.ca.gov/activity/3023. POST also created a publicly available resource page which includes this video and other resources, at https://post.ca.gov/use-of-force-standards.

BPD’s current Use of Force Policy, General Order U-2, is being revised not only to incorporate provisions of PC 835a, but also as a result of a Council referral. The revised policy will be issued as Policy 300 in 2020.

Effective immediately, and until such time as the revised Use of Force policy is issued, General Order U-2 remains in effect, and sworn personnel shall further ensure their actions are in accordance with the new requirements of PC 835a, including but not limited to the provisions below:

PC 835a(b) amends the “reasonable force” standard to “objectively reasonable force.”

PC 835a(c)(1) amends deadly force standards to include “totality of the circumstances” when:
  • Defending against imminent threat of death or serious bodily injury to an officer or to another person.
  • Apprehending a fleeing person for a felony
    o Involving threatened or actual death or serious bodily injury;
    o Where immediate apprehension is reasonably believed to be needed in order to prevent death or serious bodily injury to another; and
    o Which requires, when reasonable, that officers identify themselves and warn of intent to use force.

PC 835a(c)(2) prohibits using deadly force against persons who pose a danger only to themselves.

PC 835a(d) amends self-defense language to include “objectively reasonable” force.

PC 835a(e) adds definitions for deadly force, imminent, and totality of the circumstances.

This order is meant to highlight legal requirements pertaining to use of force by sworn personnel in light of the recent changes to CA Penal Code 835a, and will be in effect until it is rescinded or issued in the form of a revised use of force policy.

Andrew R. Greenwood
Chief of Police
Issued: Jan. 3, 2020
Greetings,

Sorry for the delay; my planned time in town over the holidays shifted around, and caused some delay...

Attached are:
- Policy 300 Draft for PRC Review and input. Comments in the doc generally indicate the source for language. There are small boxes reading “Best Practice” or “Federal”, etc... the boxes are original Lexipol references. BPD has brought over some language from our original policy, as well as new language covering a number of sections.
- Lexipol’s latest force policy, which includes their new law material.
- AB-392
- Penal Code 835a

I’d also like to share this link with the Commission: [https://post.ca.gov/use-of-force-standards](https://post.ca.gov/use-of-force-standards). This was created by the California Peace Officer Standards and Training (POST) Commission as a source of information for law enforcement and the public. In particular, I’d invite all commissioners to view the 15 minute training video, which our sworn personnel viewed in December. It’s a solid introduction to the new changes in law.

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700
AB 392 and Peace Officer Use of Force Standards

Background

On August 19, 2019, Governor Newsom signed AB 392 which both redefines the circumstances under which a homicide by a peace officer is deemed justifiable and affirmatively prescribes the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance.

Affected Statutes

AB 392, effective January 1, 2020, amends the language of the following statutes and includes:

Penal Code 196 PC

The circumstances of justifiable homicide change from when "overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty" to "the homicide results from a peace officer’s use of force that is in compliance with PC 835a."

Penal Code 835a PC

PC 835a(a) added to reflect legislative intent including:

- Use of force authority conferred on peace officers is a serious responsibility.
- Deadly force should be used only when necessary.
- Use of force decisions are to be evaluated carefully and from a "reasonable officer" perspective.
- Individuals with disabilities may be affected in their ability to understand or comply with peace officer commands.

PC 835a(b) amends reasonable force standard to "objectively reasonable force"

PC 835a(c)(1) amends deadly force standards to include "totality of the circumstances" when:

- defending against imminent threat of death or serious bodily injury
- apprehending fleeing persons for felony
  - involving threatened or actual death or serious bodily injury
  - immediate apprehension is reasonably believed to be needed
- requires, when reasonable, that officers identify themselves and warn of intent to use force
Use of Force Standards

PC 835a(c)(2) includes prohibition on using deadly force against persons who pose a danger only to themselves.

PC 835a(d) amends self-defense language to include objectively reasonable force.

PC 835a(e) added definitions for deadly force, imminent, and totality of the circumstances.

Use of Force Information and Training Courses

The following special video or training courses are related to this subject:

POST video that is identical on the Learning Portal and to the public, provides expert commentary on changes with the new law.

The video may be viewed through the Learning Portal or general viewing:

Learning Portal Video (recommended for CA POST agency personnel to receive notation on POST Profile)

General Public Video

AB 392: Use of Force Standards

General Public Video

AB 392 Use of Force Update, Course #33888, 2 hours (Available November 2019)

Use of Force: Totality of the Circumstances Training Video (2017)

California peace officers should be thoroughly familiar with use of force laws and their agency's policy and procedures regarding use of force. Questions and clarification regarding local policy or legal interpretations should be directed to the appropriate agency representative.
Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly Force - 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 (Penal Code § 835a).

Force - The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.

Less-Than-Lethal Force – Any use of force which, due to possible physiological effects of application, presents less potential for causing death or serious injury than conventional lethal force options. Less-than-lethal force options include, but are not limited to, a specialized launcher, or other authorized device that can discharge, fire, launch or otherwise propel single or multiple flexible or non-flexible projectiles designed to cause physiological effects consistent with blunt force impact.

Non-Lethal Force – Any use of force other than lethal force or less-than-lethal force.

Compliant – Cooperative and/or response to lawful commands.

Passive Resistance - Noncompliance to lawful authority without physical resistance or mechanical enhancement.

Active Resistance - Use of physical effort or mechanical resistance in achieving and/or maintaining noncompliance.

Control Techniques – Control holds, Personal Impact Weapons, and Take Downs.

Personal Body Weapons - An officer’s use of his/her body part, including but not limited to hand, foot, knee, elbow, shoulder, hip, arm, leg or head by means of kinetic energy transfer (impact) to gain control of a subject.
Blue Team (BT) - Computer software that allows officers to enter use of force and other incidents from a Department computer.

Concealment - Anything which conceals a person from view.

Cover - Anything which provides protection from bullets or other projectiles fired or thrown. Cover is subjective and its effectiveness depends upon the threat's ballistic capability (handgun, rifle, etc.).

Blocking - The positioning of a police vehicle in the path of an occupied subject vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal.

Ramming - The use of a vehicle to intentionally hit another vehicle

Serious Bodily Injury - A bodily injury that creates a substantial risk of death, causes serious, permanent disfigurement or results in a prolonged loss or impairment of the functioning of any bodily member or organ.

Officer (or) Police Officer - Any sworn peace officer.

Authorized Employee - Any non-sworn employee who has received defensive tactics training and has been authorized by the Chief of Police to use non-lethal force.

Employee - Any non-sworn employee of the Berkeley Police Department, including those deemed "authorized employees."

300.2 POLICY

Best Practice
The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity, without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE

Best Practice
Any officer present and observing another officer using force that is clearly beyond that which is
objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee or member of another department use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.

300.3 USE OF FORCE

Officers shall use only that amount of force that is objectively reasonable given the facts and totality of the circumstances known or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. (Penal Code § 835a)

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident, rather than with the 20 / 20 vision of hindsight. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving. This policy takes into consideration that there are a range of reasonable responses to each situation. (Graham v. Connor 490 U.S. 386 (1989))

The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." (Graham v. Connor 490 U.S. 386 (1989))

In deciding what type of reasonable force to use, officers and employees must use sound judgment and their training to assess the degree of threat in a given situation, and to determine what departmentally authorized force technique or weapons will bring the situation under control in a reasonable manner.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome
resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835a).

300.3.2 USE OF FORCE TO SEIZE EVIDENCE
In general, officers may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. In the instance when force is used an officer shall not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Officers are encouraged to use techniques and methods taught by the department for the specific purpose of collecting evidence.

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. 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.
(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 (Penal Code § 835a).
(e) The effects of 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).
(k) Seriousness of the suspected offense or reason for contact with the individual.
(l) Training and experience of the officer.
(m) Potential for injury to officers, suspects, and others.
(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.

Commented [GA24]: Items in below listed with the PC 835a citation are new to the law.
300.3.4 DE-ESCALATION TACTICS

De-escalation tactics and techniques are actions which may be used by officers which seek to minimize the need to use force during an incident. Such tactics and techniques may increase the likelihood of voluntary compliance when employed and should be used when it is safe to do so, without compromising law enforcement objectives and priorities. De-escalation tactics emphasize slowing an incident down to allow time, distance and flexibility for the situation to resolve. The application of these tactics is intended to increase the potential for resolution with a minimal reliance on the use of force, or without using force at all.

If immediate action is not necessary, an officer(s) should attempt to use verbal de-escalation techniques. When available and when practicable, a Crisis Intervention Team (CIT) officer, crisis negotiator, or Berkeley Mental Health Mobile Crisis Team member should be called upon as a resource.

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion and other tactics and alternatives to higher levels of force. Officers may move to a position that is tactically more secure or allows them greater distance to consider or deploy a greater variety of force options.

When time and circumstances allow, officers should consider the following tactical principles:

- Make a tactical approach to the scene.
- Maintain a safe distance.
- Use available cover or concealment and identify escape routes.
- Stage Berkeley Fire Department.
- Control vehicle and pedestrian traffic.
- Establish communication, preferably with one officer.
- Create an emergency plan and a deliberate plan with contingencies.
- The officer's physical actions may also de-escalate a potentially volatile/violent situation; e.g., exhibiting relaxed body language.

When time and circumstances reasonably permit, officers should consider whether a subject's
lack of compliance is a deliberate attempt to resist or is the result of an inability to comply based on factors such as:

(a) Medical conditions
(b) Mental impairment
(c) Developmental disability
(d) Physical Disability
(e) Physical limitation
(f) Language barrier
(g) Drug interaction
(h) Behavioral crisis

300.3.5 PAIN COMPLIANCE TECHNIQUES

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

(a) The degree to which the application of the technique may be controlled given the level of resistance.
(b) Whether the person can comply with the direction or orders of the officer.
(c) Whether the person has been given sufficient opportunity to comply.

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.6 USE OF NON-LETHAL FORCE

When lethal force and less-than-lethal force are not authorized, officers and authorized employees may use reasonable approved non-lethal force techniques and weapons in the following circumstances:

a) To protect themselves or another person from physical injury;
b) To restrain or subdue a resistant individual; or
c) To bring an unlawful situation safely and effectively under control.

300.3.7 CAROTID CONTROL HOLD PROHIBITION

The use of a Carotid Restraint Hold is prohibited. Carotid Restraint Hold: Council Resolution No. 52.605 - N.S., February 14, 1985, "Prohibiting use of 'chokehold' for law enforcement purposes in
the City of Berkeley" states: "Be it resolved by the Council of the City of Berkeley as follows: That the chokehold, including but not limited to the carotid restraint and the bar-arm hold, is hereby banned from use for law enforcement purposes in the City of Berkeley."

The term bar-arm refers to a variety of techniques. As defined in the City Council Resolution, "bar-arm hold" refers to any use of the forearm to exert pressure against the front of the neck. However, other types of arm hold techniques (e.g., those that involve control of the arm, wrist or elbow) remain authorized.

300.4 DEADLY FORCE APPLICATIONS

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.

(b) An officer may use deadly force 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, the officer shall, prior to the use of deadly 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.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists 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 officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 DIRECTED FIRE

Officers may use controlled gunfire that is directed at the suspect, reducing the suspect's ability to

Commented [OJ28]: Our policy used Lexipol language verbatim. This is the updated version from Lexipol that incorporates the new law that goes into effect in 2020. The most significant change is the second to last paragraph prohibiting the use of deadly force against someone who is only a danger to him or herself.

Commented [GA29]: BPD Language
return fire while a group or individual movement is conducted.

Officers may employ this tactic when dealing with a suspect who poses an immediate and ongoing lethal threat and only under circumstances where the use of deadly force is legally justified. Target acquisition and communication are key elements in the successful use of this tactic. Officers remain accountable for every round fired under these circumstances.

300.4.2 SHOOTING AT OR FROM MOVING VEHICLES

Firearms should not be discharged at a stationary or moving vehicle, the occupants of a vehicle, or the tires of a vehicle unless a person in the vehicle is imminently threatening an officer or another person present with deadly force. The moving vehicle alone does not presumptively constitute a threat that justifies the use of deadly force.

Officers shall not move into, remain, or otherwise position themselves in the path of a vehicle in an effort to detain or apprehend the occupants. Any officer in the path of a moving vehicle shall immediately attempt to move to a position of safety rather than discharging a firearm at the vehicle or any of the occupants.

Because this policy may not cover every situation that may arise, a deviation from this policy may be reasonable, depending on the circumstances. A deviation from this policy would, for instance, be justified if the officer used a firearm in an attempt to stop an imminent vehicle attack on a crowd or a mass casualty terrorist event.

Factors that may be used to evaluate the reasonableness of the use of a firearm against a vehicle include:

(a) The availability and use of cover, distance and / or tactical relocation
(b) Incident command and personnel placement
(c) Tactical approach
(d) Regard for viable target acquisition and background including location, other traffic, the presence of innocent persons, and police officers

300.5 USE OF VEHICLES

Officers shall not use police vehicles to ram or block other vehicles, persons, or moving objects in a manner that reasonably appears to constitute the use of lethal force, except under circumstances outlined in section 300.4 and in Policy V-6 that covers vehicle operations.

The Vehicle Containment Technique (VCT) is the positioning of a police vehicle in the path of a suspect vehicle where contact between the vehicles is not anticipated or is anticipated to be minimal. VCT shall only to be used on vehicles that are either stationary or moving at a slow speed. This technique is designed to contain a suspect vehicle to a single stationary location, thereby preventing a pursuit from initiating, or a potentially violent situation (e.g. a hostage situation or person barricaded inside a vehicle) from becoming mobile.

When properly utilized, the VCT can give officers time, distance, and cover in order to safely and effectively resolve a situation.

300.6 REPORTING REQUIREMENTS

Best Practice
Any use of force described in 300.6.2 shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) he or she must also complete a "Use of Pepper Spray Report."

A use of force report is not required when a person is handcuffed, searched, or subject to a control hold and there is no injury or complaint of injury.

300.6.1 INTENTIONALLY POINTING A FIREARM AT AN INDIVIDUAL
Whenever an officer intentionally points a firearm at an individual they shall document the occurrence on a Blue Team report. Officers shall articulate the facts that lead them to point a firearm at an individual and advise a supervisor prior to the end of shift so they can review the report documenting the incident.

Officers are not required to document drawing or deploying a firearm if they do not intentionally point it at a subject.

300.6.2 NOTIFICATION TO SUPERVISORS
Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

(a) The application caused a visible injury.

(b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.

(c) The individual subjected to the force complained of injury or continuing pain as a result of the use of force.

(d) Any application of less than lethal munitions or pepper spray.

(e) The individual was struck by a baton

(f) The individual subjected to the force was rendered unconscious.

(g) The individual was struck with a personal body weapon or was subjected to a take-down.

(h) An individual alleges any of the above has occurred.

300.6.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Record Management policy.

300.7 MEDICAL CONSIDERATION
When an officer or employee uses force that results in injury, or when a subject complains that an injury has been inflicted, the officer or employee shall ensure that the subject receives appropriate medical care.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force.

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical evaluation as soon as practicable and have medical personnel stage away if appropriate.

300.8 SUPERVISOR RESPONSIBILITY

Best Practice

When a supervisor is able to respond to an incident in which there has been a reported application of force as defined in 300.6.2 and the scene is secure, the supervisor is expected to:

(a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

(b) Ensure that any injured parties are examined and treated.

(c) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

(d) Identify any witnesses not already included in related reports.

(e) Review and approve all related reports

(f) Review body worn camera footage related to the incident.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.9 WATCH COMMANDER RESPONSIBILITY

Best Practice

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.
300.10 USE OF FORCE ADMINISTRATIVE REVIEW

The Division Captain shall review the Use of Force Report (and when applicable, Use of Pepper Spray Report) and route the report to the Chief of Police with a recommendation of findings. The Chief of Police may convene a Review Board as outlined in Policy 301 instead of utilizing Division Captain Review.

The Chief of Police will make a finding that the use of force was either within policy or initiate additional administrative review/investigation as may be appropriate.

Any determination concerning the propriety of force used will be based on the facts and information available to the officer at the time the force was employed, and not upon information gained after the fact.

All Use of Force Reports will be reviewed to determine whether Departmental use of force regulations, policies, or procedures were: 1) violated or followed; 2) clearly understood, effective, and relevant to the situation; and/or; 3) require revision or additional training.

Use of Force Reports will be held in file for at least five (5) years.

300.11 TRAINING

Best Practice

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

300.12 USE OF FORCE ADMINISTRATIVE REVIEW

Best Practice

The Professional Standards Division Captain or his or her designee shall prepare an analysis report on use of force incidents to be included as part of the Police Department's Annual Crime Report to Council. The report shall not contain the names of officers, suspects or case numbers, and should include:

(a) An analysis of use of force incidents with demographic details of the individual impacted and type of force used
(b) The identification of any trends in the use of force by members.
(c) Training needs recommendations.
(d) Equipment needs recommendations.
(e) Policy revisions

Commented [OJ34]: Changed language so the information is included as part of the Crime Report.
Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, every member of this department is expected to use these guidelines to make such decisions in a professional, impartial and reasonable manner.

300.1.1 DEFINITIONS

Definitions related to this policy include:

Deadly force - 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 (Penal Code § 835a).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed, or restrained.

300.2 POLICY

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

Officers must have an understanding of, and true appreciation for, their authority and limitations. This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties.

The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

300.2.1 DUTY TO INTERCEDE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law should promptly report these observations to a supervisor.

300.3 USE OF FORCE
Use of Force

Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident.

It is also recognized that circumstances may arise in which officers reasonably believe that it would be impractical or ineffective to use any of the tools, weapons, or methods provided by the Department. Officers may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.1 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

300.3.2 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. 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.
Use of Force

(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 (Penal Code § 835a).
(e) The effects of 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).
(k) Seriousness of the suspected offense or reason for contact with the individual.
(l) Training and experience of the officer.
(m) Potential for injury to officers, suspects, and others.
(n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.
(o) The risk and reasonably foreseeable consequences of escape.
(p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
(q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
(r) Prior contacts with the subject or awareness of any propensity for violence.
(s) Any other exigent circumstances.

300.3.3 PAIN COMPLIANCE TECHNIQUES

Best Practice

Pain compliance techniques may be effective in controlling a physically or actively resisting individual. Officers may only apply those pain compliance techniques for which they have successfully completed department-approved training. Officers utilizing any pain compliance technique should consider:

(a) The degree to which the application of the technique may be controlled given the level of resistance.
(b) Whether the person can comply with the direction or orders of the officer.
(c) Whether the person has been given sufficient opportunity to comply.
Use of Force

The application of any pain compliance technique shall be discontinued once the officer determines that compliance has been achieved.

300.3.4 CAROTID CONTROL HOLD

The proper application of the carotid control hold may be effective in restraining a violent or combative individual. However, due to the potential for injury, the use of the carotid control hold is subject to the following:

(a) The officer shall have successfully completed department-approved training in the use and application of the carotid control hold.

(b) The carotid control hold may only be used when circumstances perceived by the officer at the time indicate that such application reasonably appears necessary to control a person in any of the following circumstances:

1. The subject is violent or physically resisting.
2. The subject, by words or actions, has demonstrated an intention to be violent and reasonably appears to have the potential to harm officers, him/herself or others.

(c) The application of a carotid control hold on the following individuals should generally be avoided unless the totality of the circumstances indicates that other available options reasonably appear ineffective, or would present a greater danger to the officer, the subject or others, and the officer reasonably believes that the need to control the individual outweighs the risk of applying a carotid control hold:

1. Females who are known to be pregnant
2. Elderly individuals
3. Obvious juveniles
4. Individuals who appear to have Down syndrome or who appear to have obvious neck deformities or malformations, or visible neck injuries

(d) Any individual who has had the carotid control hold applied, regardless of whether he/she was rendered unconscious, shall be promptly examined by paramedics or other qualified medical personnel and should be monitored until examined by paramedics or other appropriate medical personnel.

(e) The officer shall inform any person receiving custody, or any person placed in a position of providing care, that the individual has been subjected to the carotid control hold and whether the subject lost consciousness as a result.

(f) Any officer attempting or applying the carotid control hold shall promptly notify a supervisor of the use or attempted use of such hold.
Use of Force

(g) The use or attempted use of the carotid control hold shall be thoroughly documented by the officer in any related reports.

300.4 DEADLY FORCE APPLICATIONS

If an objectively reasonable officer would consider it safe and feasible to do so under the totality of the circumstances, officers should evaluate the use of other reasonably available resources and techniques when determining whether to use deadly force. The use of deadly force is only justified in the following circumstances (Penal Code § 835a):

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.

(b) An officer may use deadly force 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, the 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.

Officers shall not use deadly force against a person based on the danger that person poses to him/herself, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person (Penal Code § 835a).

An "imminent" threat of death or serious bodily injury exists 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 officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.5 REPORTING THE USE OF FORCE

Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident. The officer should
Use of Force

articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure or law.

300.5.1 NOTIFICATION TO SUPERVISORS

Supervisory notification shall be made as soon as practicable following the application of force in any of the following circumstances:

(a) The application caused a visible injury.
(b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort.
(c) The individual subjected to the force complained of injury or continuing pain.
(d) The individual indicates intent to pursue litigation.
(e) Any application of a TASER device or control device.
(f) Any application of a restraint device other than handcuffs, shackles or belly chains.
(g) The individual subjected to the force was rendered unconscious.
(h) An individual was struck or kicked.
(i) An individual alleges any of the above has occurred.

300.5.2 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2. See the Records Management policy.

300.6 MEDICAL CONSIDERATION

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

Based upon the officer's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff or medical staff at the jail. If any such individual refuses medical attention, such a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another officer and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.
Use of Force

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling officer shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the officer reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain (sometimes called “excited delirium”), or who require a protracted physical encounter with multiple officers to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Officers who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 SUPERVISOR RESPONSIBILITY

Best Practice

When a supervisor is able to respond to an incident in which there has been a reported application of force, the supervisor is expected to:

(a) Obtain the basic facts from the involved officers. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.

(b) Ensure that any injured parties are examined and treated.

(c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her Miranda rights, the following shall apply:
   1. The content of the interview should not be summarized or included in any related criminal charges.
   2. The fact that a recorded interview was conducted should be documented in a property or other report.
   3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

(d) Once any initial medical assessment has been completed or first aid has been rendered, ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

(e) Identify any witnesses not already included in related reports.

(f) Review and approve all related reports.
(g) Determine if there is any indication that the subject may pursue civil litigation.
   1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.

(h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.7.1 WATCH COMMANDER RESPONSIBILITY

The Watch Commander shall review each use of force by any personnel within his/her command to ensure compliance with this policy and to address any training issues.

300.8 TRAINING

Officers will receive periodic training on this policy and demonstrate their knowledge and understanding.

300.9 USE OF FORCE ANALYSIS

At least annually, the Operations Division Captain should prepare an analysis report on use of force incidents. The report should be submitted to the Chief of Police. The report should not contain the names of officers, suspects or case numbers, and should include:

(a) The identification of any trends in the use of force by members.
(b) Training needs recommendations.
(c) Equipment needs recommendations.
(d) Policy revision recommendations.
Assembly Bill No. 392

CHAPTER 170

An act to amend Sections 196 and 835a of the Penal Code, relating to peace officers.

[Approved by Governor August 19, 2019. Filed with Secretary of State August 19, 2019.]

LEGISLATIVE COUNSEL'S DIGEST


Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.

Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law does not require an officer to retreat or desist from an attempt to make an arrest because of resistance or threatened resistance of the person being arrested.

Under existing law, a homicide committed by a peace officer is justifiable when necessarily committed in arresting a person who has committed a felony and the person is fleeing or resisting such arrest.

Existing case law deems such a homicide to be a seizure under the Fourth Amendment of the Constitution of the United States, and as such, requires the actions to be reasonable.

This bill would redefine the circumstances under which a homicide by a peace officer is deemed justifiable to include when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for a 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 the person is immediately apprehended.

The bill would also affirmatively prescribe the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance.

The people of the State of California do enact as follows:

SECTION 1. Section 196 of the Penal Code is amended to read:

196. 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.

SEC. 2. Section 835a of the Penal Code is amended to read:
835a. (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.
(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.
(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.
(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.
(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.
(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.
(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.

(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 de-escalation tactics.

(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.
State of California

PENAL CODE

Section 835a

835a. (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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

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