

AB392 USE OF FORCE LEGISLATION



August 2019

Goals of New Law

- Amends 196 PC and 835a PC
- Redefines circumstances where homicide by LEO is justifiable

Previous 835a PC

- ① 835a. Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.
- ① A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

196PC Old vs. New

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

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

~~1. (a) In obedience to any judgment of a competent Court; or, court.~~

~~2. (b) When necessarily committed in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty; or, the homicide results from a peace officer's use of force that is in compliance with Section 835a.~~

~~3. 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.~~

So what is the amended 835a PC
language?

New 835a PC –

Read Full Text. Summaries below...

- ◎ (a)(1) –
 - Force is a serious responsibility
 - Exercise judiciously
 - Respect human rights, dignity & sanctity of life
 - People have right to be free from excessive force under color of law

New 835a PC –

◎ (a)(2) –

- Deadly force authorized when necessary in defense of life
- Officers evaluate each situation in light of particular circumstances of that case
- Use available resources/techniques if reasonably safe & feasible to objectively reasonable officer

New 835a PC –

◎ (a)(3) –

- Decision to use force shall be evaluated carefully & thoroughly reflecting...
- ...Gravity of authority...
- ...Serious consequences of use of force
- Use force consistent with law & policy

New 835a PC –

◎ (a)(4) –

- Force shall be evaluated from:
 - Perspective of reasonable officer in same situation based on,
 - Totality of circumstances known/perceived at time (rather than hindsight)
 - Recognizes officers forced to make quick judgments about force

Note: still evaluated by what reasonable officer knew at time of incident, not hindsight

New 835a PC –

◎ (a)(5) –

- People with:
 - Physical, mental health, developmental/intellectual disabilities are:
 - More likely to experience greater levels force due to impaired ability to understand/comply with commands
 - 1/3 to 1/2 fatal LEO encounters

New 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

New 835a PC –

◎ (c)(1) –

- Notwithstanding subdivision (b), a peace officer is justified in using deadly force upon another person only when the officer reasonable believes, based on the totality of the circumstances, that **such force is necessary** for either of the following reasons:

◎ (c)(1)(A)

- Defend against threat of death/GBI to officer or another person
- (c)(1)(B) - To apprehend fleeing felon. Threat or result of death/GBI, if officer reasonably believes death/GBI will result unless immediately caught...

◎ ...And, when feasible, LEO shall, prior to force:

- Reasonable effort to ID as police
- Warn deadly force may be used
- ...unless objectively reasonable grounds exist to believe person is aware of these facts.
- Best practice: When possible, announce “Police. Stop or you may be shot.” Avoids argument of: *all my client saw was a dark shadowy figure dressed in all black with a bright flashlight...how were they to know it was the police?*

New 835a PC –

◎ (2) –

- LEO shall not use deadly force based on danger that person poses to themselves, if there is no threat to LEO or others

**i.e. mental health incident where nobody else is threatened

New 835a PC –

- ◎ (d) –
 - LEO need not retreat due to resistance if in compliance with sections already discussed.
 - “Retreat” does not mean tactical repositioning (move to cover, create distance, reposition vehicle/officers to gain time or position advantage to evaluate other options) or other de-escalation tactics (keep tactical repositioning and de-escalation in mind...)

New 835a PC –

- ◎ (e) – Definitions:
 - (1) “Deadly Force” – likely to cause death/GBI with or without a firearm
 - (3) “Totality of circumstances” – all known facts, conduct of officer and conduct of subject leading up to use of deadly force
 - And...

New 835a PC –

- ◎ (e)(2) “Imminent” – given totality of circumstances, would subject immediately cause death/GBI based on:
 - Present ability (example: armed w/ weapon)
 - Opportunity (proximity to victims to use weapon)
 - Apparent intent (subject’s statements or actions of death/GBI)

Decision-Making Tree

We’ll come back to this...

New 835a PC – What does this mean for you?

- Officer reasonably believes, given totality of circumstances, that deadly force is necessary.

- Isn't this already what our mindset and training is? State law now basically mirrors our Lexipol policy.

Policy 300 – Use of Force

- ⦿ Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.
- ⦿ 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.

Policy 300 – Use of Force

- 300.4 DEADLY FORCE APPLICATIONS Use of deadly force is justified in the following circumstances:
- (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.
- (b) An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended. Under such circumstances, a verbal warning should precede the use of deadly force, where feasible.

- ◎ The president of San Francisco POA summarized AB 392:

“The language [of the bill] is consistent with current case law, but would now be codified in California law. This new language is no different than what we already are held accountable to by the Department.”

“Necessary”

- ◎ Think of necessary as meeting the 3-prong guidelines of law:
 - Was there a **present ability** to inflict death/GBI?
 - Did the subject have the **opportunity** to inflict death/GBI?
 - Was there **apparent intent** to inflict death/GBI?

Scenario #1:

- ⦿ Man with knife in park. Nobody else around. Officer 100 yards away. Announces “Police, don’t move or you may be shot.” Subject advances 10 yards, officer fires rifle.
- ⦿ Did this meet the imminent threat when the rifle was fired?
 - Present ability?
 - Opportunity?
 - Apparent intent?

- ⦿ Man with knife in park. Nobody else around. Officer 100 yards away. Announces “Police, don’t move or you may be shot.” Subject advances 10 yards, officer fires rifle.
- ⦿ Did this meet the imminent threat when the rifle was fired?
 - Present ability? **Yes** – armed
 - Opportunity? **NO** – Proximity. Other tactics could be used first. Cover, retreat, backup, less-lethal, etc
 - Apparent intent? **Possibly**

So, was it **NECESSARY** to use deadly force?

Scenario #2:

- ⦿ Traffic stop. Driver immediately exits vehicle and points gun at officer.
- ⦿ Did this meet the imminent threat when the rifle was fired?
 - Present ability? **Yes**
 - Opportunity? **Yes**
 - Apparent intent? **Yes**

Did the officer reasonably believe deadly force was necessary?

“Necessary”

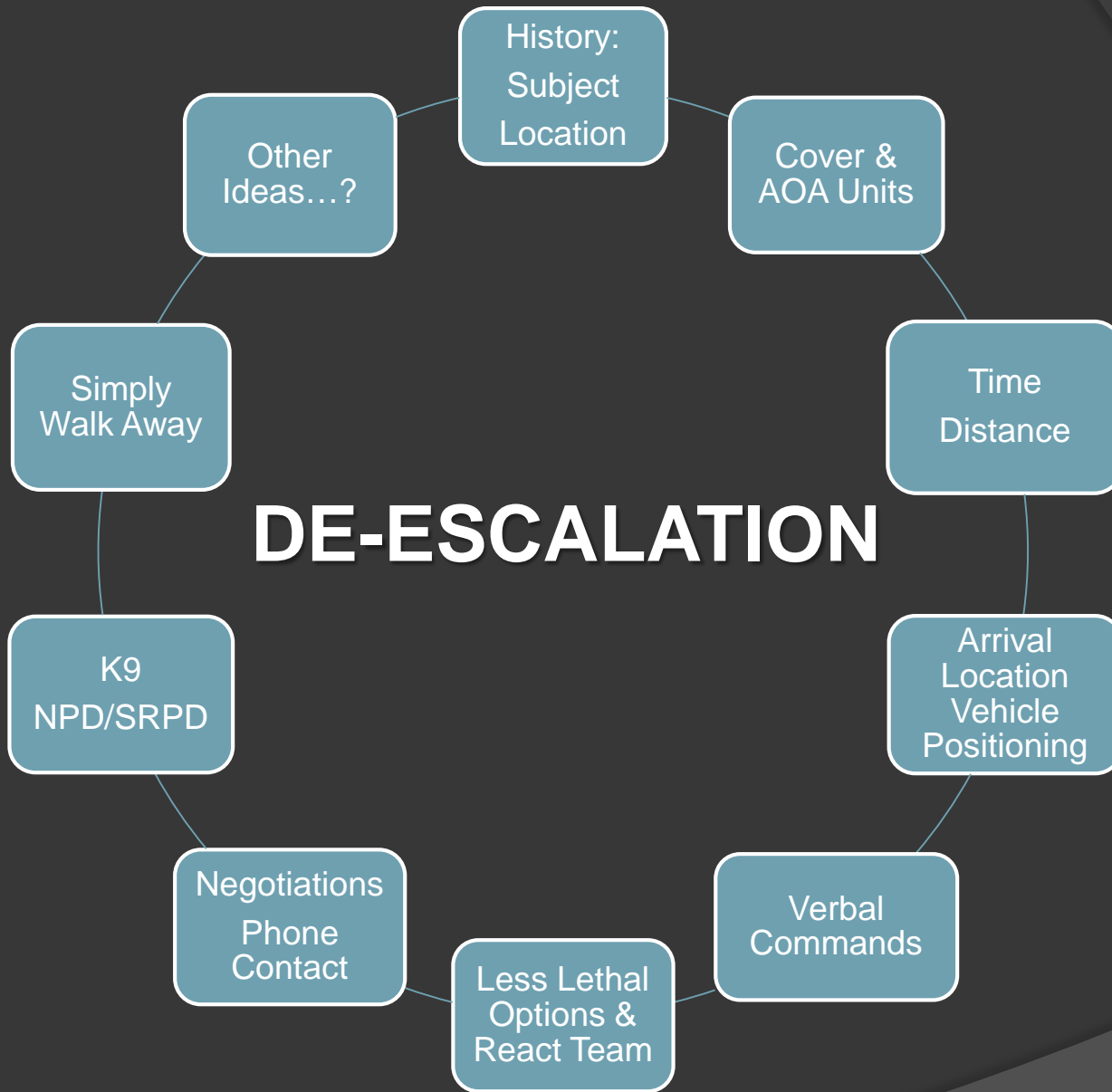
- Is the use of deadly force a result of suspect’s actions or poor tactics/decision-making? What created the necessity? *Suspect driven vs officer created*
- We already train to use various de-escalation techniques when feasible.
- Retreat: does not mean give up, but use time and distance to make decisions when feasible

WHAT

DE-ESCALATION

TACTICS CAN YOU THINK

OF...???



Time & circumstances permitting. Situations can be tense/rapidly evolving. Officer safety is paramount; these and other tactics may or may not be feasible in every situation. Create a plan, communicate that plan, anticipate plan B. Adapt. Overcome.

Athens Knife Suspect Shooting

- What repositioning and de-escalation tactics are used in this video?
- What other options might the officers used?
- Was this shooting necessary?

Remember:

**We utilize these tactics to try
and avoid using force.**

**But at the end of the day,
suspects' actions dictate our
force response.**