

# ORANGE COUNTY SHERIFF'S DEPARTMENT



## S.A.F.E. Division

### ASSEMBLY BILL (AB) 392 – PEACE OFFICERS USE OF DEADLY FORCE

#### INTEGRITY ♦ SERVICE ♦ PROFESSIONALISM ♦ VIGILANCE

The purpose of the S.A.F.E. Bulletin is to promote and support best practices and exceptional law enforcement services free from prejudice or favor, with leadership, integrity, and respect.

Assembly Bill 392 amends CPC 835a, effective January 1, 2020. AB 392 covers numerous points and states when a peace officer may use deadly force. Although AB 392 uses the word “necessary” when discussing the use of deadly force, the standard for determining whether deadly force may be used is still based on a reasonable officer standard and its accompanying factors as stated in CPC 835a(a)(4). Below are some points to take away from AB 392.

#### APPLICATION OF DEADLY FORCE

Pursuant to CPC 835a(a)(4): 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. These are the same use of force standards established in *Graham v. Connor*.

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.

As stated in CPC 835a(c)(1), 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:

1. To defend against an **imminent threat of death or serious bodily injury** to the officer or to another person; or
2. 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.

As stated above “necessary” is used in discussing the application of deadly force by a peace officer. However, the controlling standard is still a reasonable officer standard and its accompanying factors as stated in CPC 835a(a)(4).



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### OPERATIONAL DEFINITIONS

1. **Totality of the circumstances:** 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.
2. **Imminent:** 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. **Serious bodily injury:** is defined in CPC 243(f)(4) as a serious impairment of physical condition including but not limited to the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement.
4. **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.

### NO DUTY TO RETREAT

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. Retreat does not mean tactical repositioning or other de-escalation tactics.

### NO USE OF DEADLY FORCE WHEN THREAT ONLY TO SUBJECT

AB 392 states 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.

### PRACTICAL APPLICATIONS AND RESOURCES ON AB 392

When responding to a situation that may involve a potential use of force, Deputies should consider de-escalation techniques, less lethal options, and attempt to achieve voluntary compliance. Additionally, Deputies should game plan prior to entering a potentially volatile situation and should be readily familiar with Policy 300 Use of Force.

For additional reading and training on AB 392, visit <https://post.ca.gov/use-of-force-standards>, [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB392](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB392) and <https://info.lexipol.com/webinar-ca-ab392>

