#### Officer-Involved Shooting Investigations after AB 392



Fresno County District Attorney's Office February 2020



### **Assembly Bill 392**

Effective January 1, 2020:

Amends PC 196 (justifiable homicide by a peace officer)

Amends PC 835a (state standard for use of force by a peace officer)

#### PC 196

#### (revised to rely more heavily on PC 835a)

Homicide is justifiable when committed by peace officers and those acting in their aid and assistance.

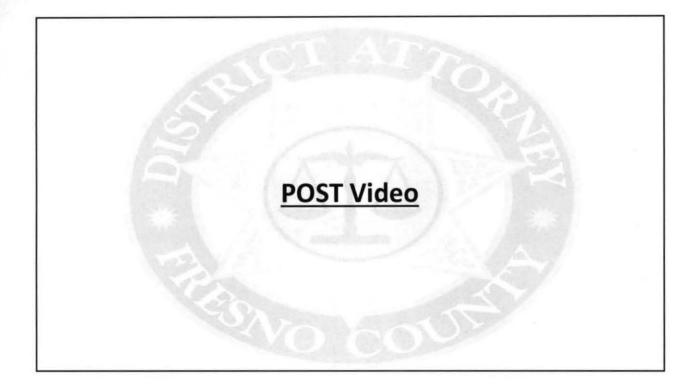
- (a) In obedience to any judgement of a competent court.
- (b) When the homicide results from a peace officer's use of force that is in compliance with Section 835a.

#### WHATS 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; or,
- 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.

#### PC 835a(a)(2)

- Intent of the Legislature is 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 present circumstances, and use available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer.



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#### **TERMS AND DEFINITIONS**

PC 835a(e)

"<u>DEADLY FORCE</u>" – 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.

"IMMINENT" – a threat of death or SBI 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 SBI to the peace officer or another person.

An imminent harm <u>is not</u> 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.

"TOTALITY OF THE CIRCUMSTANCES" – all facts known to the officer at the time, including conduct of the officer and subject up to the use of deadly force.

#### **TERMS AND DEFINITIONS**

PC 835a(e)

#### NOT DEFINED:

"NECESSARY"

#### Dictionary Definition:

"<u>NECESSARY</u>" – absolutely essential; indispensable; needed to achieve a certain result or effect; requisite; unavoidably determined by conditions or circumstances; inevitable.



<u>PC 835a(a)(3)</u> – The decision to use force shall be evaluated in order to ensure that the officers use force consistent with law and agency policies.

What does this mean?

#### San Mateo OIS

September 2019
Suspects in a string of retail thefts
Officers found running car illegally parked
Attempted traffic stop

# WARNING

THE FOLLOWING VIDEO CONTAINS GRAPHIC CONTENT THAT MAY BE DISTURBING TO SOME VIEWERS DISCRETION IS ADVISED

San Mateo OIS

Pending investigation

#### PC 835a(a)(4)

- Decision by officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation.
- Based on the totality of circumstances known or perceived by the officer at the time.
- · Without the benefit of hindsight.
- The totality of circumstances shall account for occasions when officers may be forced to make quick judgments.

(Mirrors the language from the US Supreme Court found in the 1989 case of Graham v. Connor)

#### PC 835a(a)(5)

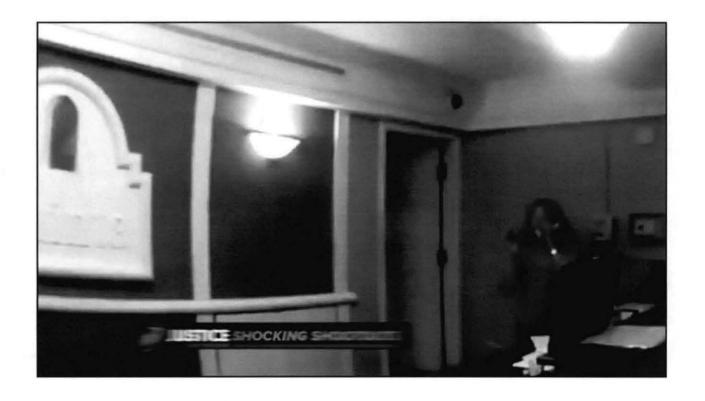
 Individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions...



 Disability may affect their ability to understand or comply with commands.

#### **Bossier City Louisiana OIS**

October 2019
La Quinta Inn
911 call of woman in lobby with scissors
screaming on the phone
1 officer responded



## **Bossier City Louisiana OIS**

Found to be justified

#### PC 835a(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.



(The standard is unchanged)

#### PC835a(c)(1)

Peace officer is justified in using deadly force only when they reasonably believe, based on the totality of the circumstances, that such force is necessary either:

- To defend against an imminent threat of death or SBI.
- B. To apprehend a fleeing person for any felony that threatened or resulted in death or SBI, if the officer reasonably believes that the person will cause death or SBI 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
  - Warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of these facts.

#### 835a(c)(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.



Solo suicidal subjects
Tactics / Training / Policy

#### **Athens Georgia OIS**

July 2019

River Club Apartments on Macon Highway

Complaint of "man with a knife, covered in blood,
acting erratically"

2 officers responded

# WARNING

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# Athens Georgia OIS Found to be justified

#### PC 835a(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 purposes of this subdivision, "retreat" does not mean tactical repositioning or other de-escalation tactics.

# Areas of Inquiry . . .

#### Mesa Arizona OIS

January 2016
La Quinta Inn & Suites

Daniel Shaver – pest control worker
Showing friends a scoped rifle
Pointed out the window
6 officers responded

Warning: Explicit Content

#### **Mesa Arizona OIS**

Air rifle
Officer prosecuted for 2<sup>nd</sup> Degree Murder
and Manslaughter
Found Not Guilty

