



DEPARTMENT NOTICE

20-011
02/03/20

Modifications to California's Use of Force Standard (AB 392)

On August 19, 2019, Governor Gavin Newsom signed into law Assembly Bill 392, "California Act to Save Lives." AB 392, effective January 1, 2020, amends the language of the following statutes: Penal Code 196 and Penal Code 835a.

The legislature included in the revised Penal Code section 835a a finding and declaration of policy "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." Members must understand that elements of a use of force evaluation that had previously only been under the purview of civil and administrative investigations may now be considered within the purview of criminal investigations.

In instances where there is a conflict between the standards imposed by the state law versus Department policy, members shall adhere to the more restrictive standard. For example, Department General Order 5.01 (section VI.G.2.e.) states, "An officer shall not discharge a firearm at the operator or occupant of a moving vehicle unless the operator or occupant poses an immediate threat of death or serious bodily injury to the public or an officer by means other than the vehicle." PC 835a has no such specific prohibition; therefore, members must adhere to the more restrictive standard, as established by DGO 5.01.VI.G.2.e.

Training for members on AB 392 is currently being prepared by the Training Division. In the interim we are providing the following for review:

- The language of section PC 196 and 835a (pages 2 and 3 of this bulletin)
- A review of Department policy in comparison with the revised PC 835a
- POST training video: "[AB 392: California's New Use of Force Standards: What You Need to Know](#)"

Additional material from California POST can be found at this website: <https://post.ca.gov/Use-of-Force-Standards>.


WILLIAM SCOTT
Chief of Police

Per DB 19-156, sworn members are required to electronically acknowledge receipt and review of this Department Bulletin in HRMS. Any questions or clarification regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional guidance about the directive.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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.

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 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.

Section 835a PC (Effective January 1, 2020)	Related Section(s) of DGO 5.01, <i>Use of Force</i>
<p><u>Subsection (a)(1)</u></p> <p>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.</p>	<p><u>Introductory Paragraph</u> <i>The San Francisco Police Department's highest priority is safeguarding the life, dignity and liberty of all persons.</i></p> <p><u>Section I.A SAFEGUARDING LIFE AND HUMAN DIGNITY</u> <i>The authority to use force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously and with respect for human rights, dignity and life.</i></p>
<p><u>NOTES</u></p> <ul style="list-style-type: none"> • This section is a declaration of the legislature's findings and policy found in 835a. This is not the operative piece of the law. However, it does reflect the legislature's intent in revising the law. The legislature's findings and declaration of policy is consistent with current Department policy, procedure and training. • Although language in the section ("physical force") is more commonly used by law enforcement to refer to low to intermediate force options, 835a is clearly and obviously intended to apply to all force. • The phrase "sanctity of every human life" positively affirms that the Legislature is concerned about ensuring the rights and dignities of <i>all</i> parties. 	

Subsection (a)(2)

It is the intent of the Legislature that peace officers use deadly force only when necessary in the 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.

Section I.C POLICY: DE-ESCALATION

Officers shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Officers shall when feasible, attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety. Officers who act to de-escalate an incident, which can delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

Section I.D POLICY: PROPORTIONALITY

When determining the appropriate level of force, officers shall, when feasible, balance the severity of the offense committed and the level of resistance based on the totality of circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm.

Section III.C CONSIDERATIONS GOVERNING ALL USES OF FORCE: DE-ESCALATION

When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, officers shall when feasible, use the following de-escalation tactics in an effort to reduce the need or degree of force:...

Section VI.G FORCE OPTIONS: FIREARMS AND OTHER DEADLY FORCE

It is the policy of this Department to use deadly force only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers. The use of firearms and other deadly force is the most serious decision an officer may ever make. When safe and feasible under the totality of circumstances, officers shall consider other objectively reasonable force options before discharging a firearm or using other deadly force.

NOTES

- The legislature's findings and policy declare that officers in deadly force encounters—when safe and feasible—to contemplate “other available resources and techniques” that are available to them.
- DGO 5.01.I.C *Policy: De-Escalation* requires, when feasible, de-escalation techniques to decrease the likelihood of the need to use force in all situations.
- DGO 5.01.I.D, *Proportionality* & 5.01.III.C, *De-Escalation* require officers to adhere to these principles when “encountering a subject armed with a weapon *other than a firearm*.” See also DGO 5.21, CIT Response to Persons in Crisis Calls for Service.
- Department policy requires members in potential use of force encounters to attempt de-escalation with non-compliant subjects or subjects armed with a weapon other than a firearm. The revised law does not make a distinction as to the type of deadly weapon. Consistent with current Department training and procedures, members are expected to employ de-escalation techniques when it is feasible and safe to do so in all situations.

Section 835a PC (Effective January 1, 2020)	Related Section(s) of DGO 5.01, <i>Use of Force</i>
<p><u>Subsection (a)(3)</u></p> <p>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.</p>	<p><u>Introduction</u></p> <p><i>It is the policy of the Department to review rigorously every instance in which a firearm is discharged, including exceptional circumstances, on a case by case basis to evaluate all facts to determine if the discharge is within policy.</i></p>
<p><u>NOTES</u></p>	
<ul style="list-style-type: none"> • The legislature's findings and policy are consistent with current Department policy, procedure and training. • The California legislature inserted the above language in the legislative findings the declaration that raises questions as to whether the Department's Use of Force policy will be used in analyzing whether the force is proper under California Penal Code section 835a. 	

Section 835a PC (Effective January 1, 2020)	Related Section(s) of DGO 5.01, <i>Use of Force</i>
<p><u>Subsection (a)(4)</u></p> <p>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 circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of circumstances shall account for occasions when the officers may be forced to make quick judgments about using force.</p>	<p><u>Section III. B CONSIDERATIONS GOVERNING ALL USES OF FORCE:</u></p> <p><u>USE OF FORCE EVALUATION</u></p> <p><i>The United States Supreme Court in Graham v. Connor (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. This General Order builds upon the broad principles in Graham by adding additional factors upon which an officer's use of force shall be evaluated. This General Order is more restrictive than the constitutional standard and state law. Officers must strive to use the minimal amount of force necessary.</i></p> <ol style="list-style-type: none"> 1. <i>The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.</i>
<p><u>NOTES</u></p>	
<ul style="list-style-type: none"> • The legislature's findings and policy are consistent with current Department policy, procedure and training. • The revised law updates 835(a)(4) to codify principles regarding the totality of circumstances as established by the Supreme Court of the United States in the 1989 Graham v. Connor decision. This language was absent from the prior version of 835a PC. 	

Subsection (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, as their disability may effect 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.

Section III.C.1 CONSIDERATIONS GOVERNING ALL USES OF FORCE: DE-ESCALATION

Officers shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Officers shall when feasible attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a mental condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable the officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety. Officers who act to delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

SECTION I.H.1 POLICY: VULNERABLE POPULATIONS

The use of force against vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities and people with limited English proficiency—can undermine public trust and should be used as a last resort, when all other reasonable means have been exhausted.

NOTES

- The legislature's findings and policy are consistent with current Department policy, procedure and training.

Subsection (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, prevent escape, or to overcome resistance.

**Section III.A CONSIDERATIONS GOVERNING ALL USES OF FORCE:
USE OF FORCE MUST BE FOR A LAWFUL PURPOSE**

Officers may use reasonable force options in the performance of their duties, in the following circumstances:

1. *To effect a lawful arrest, detention, or search.*
2. *To overcome resistance or prevent escape.*
3. *To prevent the commission of a public offense.*
4. *In defense of others or in self-defense.*
5. *To gain compliance with a lawful order.*
6. *To prevent a person from injuring himself/herself. However an officer is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.*

NOTES

- The legislature's findings and policy are consistent with current Department policy, procedure and training.
- The revised law codifies the third party "objectively reasonable" standard in California law, as set forth in the Graham v. Connor decision.
- The revised law maintains the "EPO" authorizations for the use of reasonable force: Effect arrest; Prevent escape, Overcome resistance. See POST Learning Domain 20 (Use of Force/De-Escalation).

Subsection (c)(1)

Notwithstanding subdivision (b), a peace officer is justified in using deadly force 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 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.

Section VI.G FORCE OPTIONS: FIREARMS AND DEADLY FORCE

It is the policy of this Department to use deadly force only as a last resort when reasonable alternatives have been exhausted or are not feasible to protect the safety of the public and police officers. The use of firearms and other deadly force is the most serious decision an officer may ever make. When safe and feasible under the totality of circumstances, officers shall consider other objectively reasonable force options before discharging a firearm or using other deadly force.

Section VI.G.2 FORCE OPTIONS: DISCHARGE OF FIREARMS OR OTHER DEADLY USE OF FORCE

- a. *PERMISSIBLE CIRCUMSTANCES. Except as limited by Sections VI.G.2.d. and e., an officer may discharge a firearm or use other deadly force in any of the following circumstances. The circumstances below (2.a.i-iv) apply to a discharge of a firearm or the application of deadly force:*
- i. *In self-defense when the officer has reasonable cause to believe that he or she is in immediate danger of death or serious bodily injury; or*
 - ii. *In defense of another person when the officer has reasonable cause to believe that the person is in immediate danger of death or serious bodily injury. However an officer may not discharge a firearm at, or use deadly force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or another person; or*
 - iii. *To apprehend a person when both of the following circumstances exist:*
 - *The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND*
 - *The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed; or*
 - iv. *To kill an animal posing an immediate threat.*

NOTES

- The legislature's findings and policy are consistent with current Department policy, procedure and training.
- The revised law specifies that deadly force is justified only when it the officer reasonably concludes that the force was necessary under the totality of circumstances in order to **EITHER** (A) defend against an imminent threat of serious bodily injury or death, **OR** (B) prevent the escape of a person whom the officer reasonably believes will cause serious bodily injury or death to someone unless apprehended immediately.
- PC 835a (c)(1)(B) codifies the United States Supreme Court's 1985 Tennessee v. Garner decision limiting use of deadly force to stop a fleeing felon.

Subsection (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.

Section III.A.6 CONSIDERATIONS GOVERNING ALL USES OF FORCE: USE OF FORCE MUST BE FOR A LAWFUL PURPOSE

However, an officer is prohibited from using lethal force against a person who presents only a danger to himself/herself and does not pose an immediate threat of death or serious bodily injury to another person or officer.

Section VI.G.2.a.ii FORCE OPTIONS: DISCHARGE OF FIREARMS OR OTHER USE OF DEADLY FORCE

...However an officer may not discharge a firearm at, or use deadly force against, a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an immediate danger of death or serious bodily injury to the officer or another person

NOTES

- The legislature's findings and policy are consistent with current Department policy, procedure and training.

Subsection (d)

A peace officer who attempts to make an arrest need not retreat or desist from their efforts by reason of the resistance or threatened resistance from the person being arrested. A peace officer shall not be deemed the 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 prevent escape or overcome resistance. For purposes of this subdivision, “retreat” does not mean tactical repositioning or other de-escalation tactics.

Section I.C POLICY: DE-ESCALATION

Officers shall, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance. Officers shall when feasible attempt to understand and consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a mental condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject’s situation may enable the officers to calm the subject and allow officers to use de-escalation techniques while maintaining public and officer safety. Officers who act to delay taking a subject into custody, while keeping the public and officers safe, will not be found to have neglected their duty. They will be found to have fulfilled it.

Section I.D POLICY: PROPORTIONALITY

When determining the appropriate level of force, officers shall, when feasible, balance the severity of the offense committed and the level of resistance based on the totality of circumstances known to or perceived by the officer at the time. It is particularly important that officers apply proportionality and critical decision making when encountering a subject who is armed with a weapon other than a firearm.

Section III.C CONSIDERATIONS GOVERNING ALL USES OF FORCE: DE-ESCALATION

When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, officers shall when feasible, use the following de-escalation tactics in an effort to reduce the need or degree of force:

1. *Attempt to isolate and contain the subject;*
2. *Create time and distance from the subject by establishing a buffer zone (reactionary gap) and utilize cover to avoid creating an immediate threat that may require the use of force;*
3. *Request additional resources, such as CIT trained officers, Crisis/Hostage Negotiation Team or ERIW;*
4. *Designate and officers to establish rapport and engage in communication with the subject;*
5. *Tactically re-position as often as necessary to maintain the reactionary gap, protect the public, and preserve officer safety; and*
6. *Continue de-escalation techniques and take as much time as reasonably necessary to resolve the incident, without having to use force, if feasible.*

NOTES

- The revised law retains protections from the prior version of 835a PC. An officer need not retreat or desist because of resistance; nor shall the officer be deemed the aggressor when using objectively reasonable force to overcome resistance from a subject to be arrested.
- While retaining the right of officers to self-defense and to stand ground in the face of resistance, the revised Section 835a specifically states that “tactical repositioning” and “de-escalation tactics” are not retreat-related tactics.
- Members are reminded that weapons impact strategic considerations; however, consistent with current Department policy, training and procedures, members are expected to employ de-escalation techniques when it is feasible and safe to do so. In a potentially violent encounter, members are expected to respond based upon the nature of the threat posed, rather than a specific weapon to which the subject may have access.

Section 835a PC (Effective January 1, 2020)	Related Section(s) of DGO 5.01, <i>Use of Force</i>
<p><u>Subsection (e)(1)</u></p> <p>For purposes of this section, the following definitions shall apply:</p> <p>(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.</p>	<p><u>Section II.G DEFINITIONS: SERIOUS BODILY INJURY</u> <i>A serious impairment of physical condition, including but not limited to loss of consciousness, concussion, bone fracture, protracted loss or impairment of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement</i></p> <p><u>Section V.C LEVELS OF FORCE: DEADLY FORCE</u> <i>Any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, and certain interventions to stop a subject’s vehicle (see DGO 5.05, Response and Pursuit Driving).</i></p>
<p><u>NOTES</u></p> <ul style="list-style-type: none"> • The legislature’s findings and policy are consistent with current Department policy, procedure and training. • The law elevates the standard of risk from the use of force to a “substantial” one; this is consistent with current SFPD policy. DGO 5.01.V.C defines deadly force as a use of force “substantially likely to cause serious bodily injury or death.” 	

Section 835a PC (Effective January 1, 2020)	Related Section(s) of DGO 5.01, <i>Use of Force</i>
<p><u>Subsection (e)(2)</u></p> <p>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.</p>	<p><u>Section II.B DEFINITIONS: IMMEDIATE THREAT</u> <i>An immediate threat is considered to exist if a person has demonstrated actions that would lead one to reasonably believe that the suspect will continue to pose a threat if not apprehended without delay. A person is an immediate threat if the officer reasonably believes the person has the present intent, means, opportunity and ability to complete the threat regardless of whether the threatened action has been initiated.</i></p>
<p><u>NOTES</u></p> <ul style="list-style-type: none"> • The revised law’s definition of “imminent” includes language associated with an “immediate” threat, referring to the subject’s intent to “immediately cause death or serious bodily injury” and codifying that the officer must reasonably believe that the imminent threat is one that must be “instantly confronted.” • An officer must be prepared to articulate facts to justify his/her use of deadly force. As currently trained, fear alone is insufficient to meet legal and Department standards. 	

Subsection (e)(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.

Section III.B CONSIDERATIONS GOVERNING ALL USES OF FORCE: USE OF FORCE EVALUATION

The United States Supreme Court in Graham v. Connor (1989) 490 U.S. 386 held that an officer's use of force must be objectively reasonable under the totality of circumstances known to the officer at the time. This General Order builds upon the broad principles in Graham by adding additional factors upon which an officer's use of force shall be evaluated. This General Order is more restrictive than the constitutional standard and state law. Officers must use the minimal amount of force necessary.

1. *The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than 20/20 hindsight, and without regard to the officer's underlying intent or motivation.*
2. *Factors for evaluating the use of force include but are not limited to:*
 - a. *Severity of the crime at issue*
 - b. *Whether the suspect posed an immediate threat to the safety of the officers or others;*
 - c. *Whether the suspect is actively resisting arrest or attempting to evade arrest by flight;*
 - d. *Whether the use of force is proportional to the threat;*
 - e. *The availability of other feasible, less intrusive force options;*
 - f. *The officer's tactical conduct and decisions preceding the use of force;*
 - g. *Whether the officer has reason to believe that the subject is mentally ill, has a physical, developmental or cognitive disability, is emotionally disturbed or is under the influence of alcohol or drugs;*
 - h. *Whether there was an opportunity to warn about the use of force prior to force being use, and if so, was such a warning given;*
 - i. *Whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands;*
 - j. *Specialized knowledge, skills, or abilities of subjects;*
 - k. *Prior contact;*
 - l. *Environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic and other hazards; and*
 - m. *Whether the subject's escape could pose a future safety risk.*

Not all of the above factors may be present or relevant in a particular situation, and there may be additional factors not listed.

NOTES

- The revised law codifies the totality of the circumstances, as articulated in the Graham v. Connor decision, as part of the use of force evaluation.
- The revised law codifies the requirement for total review of the use of force critical incident, consistent with findings in prior civil cases, Hayes v. San Diego and Mendez v. Los Angeles.