

New Law Regulates Use of Deadly Force by Peace Officers

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ATTORNEYS

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The Governor has signed **Assembly Bill 392 ("AB 392")**, which changes the standards for the use of deadly force by peace officers. The legislation, which underwent significant revisions in the months before the Governor's approval, will take effect on January 1, 2020.

AB 392 amends Penal Code section 835a to authorize peace officers to use deadly force only "when necessary in defense of human life." To determine "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." Under the new law, an officer's decision to use force is "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."

AB 392 further amends Penal Code section 835a to specify two situations in which an officer's use of deadly force is justified. One situation is when, based on the totality of the circumstances, the officer reasonably believes that use of deadly force is necessary to "defend against an imminent threat of death or serious bodily injury to the officer or to another person." The other situation is when, based on the totality of the circumstances, the officer reasonably believes that use of deadly force is necessary 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."

The new law purports to create a new "when necessary" standard for when officers may use deadly force; however, the additional provisions of section 835a, including the determination of whether deadly force is necessary, appear to bring the standard closer to the objectively reasonable standard set forth in *Graham v. Connor* (1989) 490 U.S. 386. It is unclear to what extent AB 392 will influence prosecutions against peace officers for unlawful use of deadly force.

For more information on **AB 392**, use of force considerations, or police practices in general, please contact **Jennifer Petrusis** or **Charles G. Bakaly IV**.