Legislative Update: AB 392 (Weber) Peace Officers: Deadly Force

CCN: 33888 | POST Certification II | Reimbursement Plan I | 2 hours

Course Purpose

The purpose of this course is to provide peace officers with the legal updates relating to the use of deadly force in Assembly Bill 392 (Weber), signed into law by Governor Newsom on August 19, 2019. The law takes effect on January 1, 2020. This course shall be used in conjunction with the POST-developed training video available on the POST Learning Portal.

Learning Outcome

When responding to calls for service or upon viewing activity, students completing this course will understand the legal changes to Penal Code Sections 196 and 835a and comprehend the circumstances when a peace officer is authorized to use deadly force.

I. Registration, Introduction, and Course Overview

A. Registration
   1. Roster distribution
   2. A separate roster for this course must be submitted for separate credit in EDI and Plan I reimbursement eligibility

B. Introduction and course overview
   1. Show POST video, *AB: 392: California's Use of Force Standard, What You Need to Know*
   2. Provide a brief overview
      a. The changes in the penal code more clearly define a peace officer's role and responsibilities when exercising different force options, especially deadly force, while providing for more latitude when making the decision to use force.
      b. Objective reasonableness remains the standard for evaluating the use of force and will be reviewed in more detail further into the course.
      c. New language explicitly states the use of force shall be evaluated without the benefit of hindsight.

II. Penal Code Section 196

A. Justifiable Homicide
   1. Definition revised to rely more heavily on PC 835a
   2. PC 196 identifies the circumstances when a peace officer is justified to commit a homicide
      a. In obedience to any judgment of a competent court order
      b. When the homicide results from a peace officer's use of force that complies with Penal Code Section 835a B. What changed?

1. Removed "When necessarily committed in overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty"

2. Removed "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."

III. Penal Code Section 835a

A. PC 835a (a)
   1. The Legislature finds and declares:
      a. Peace officers must understand that the authority to use physical force is a serious responsibility that shall be exercised judiciously and with respect for human rights and the dignity and the sanctity of every human life
      b. The Legislature finds and declares that every person has a right to be free from excessive use of force by peace officers acting under the color of law
   2. It is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life
      a. Peace officers shall evaluate each situation in light of the particular circumstance of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer
      b. The standard changed with the addition of the word "*objectively*" reasonable officer
   3. Peace officers shall carefully and thoroughly evaluate the decision to use force in a manner that reflects the gravity of that authority and the serious consequences of the use of force, to ensure that officers use force consistent with law and agency policies
      a. Facilitate a discussion of agency policies relating to use of force
      b. These should be aligned with the revisions to PC 196 and PC 835
   4. The decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation
      a. Based on the totality of circumstances known to or perceived by the officer at the time
      b. Without the benefit of hindsight
      c. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force
   5. Peace officers must understand that individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions
      a. One's disability may affect their ability to understand or comply with commands from peace officers
      b. Estimates show that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement
         i. Individuals with disabilities may be impaired by the use, misuse, or discontinued use of medications or controlled substances that create further disruptions to compliance
         ii. An individual's disability(ies) may impair the ability to understand and comply with a peace officer's commands
      c. Discuss how officers should approach situations involving people with disabilities.
         i. What might cause an individual with a disability to have difficulty understanding or following directions from a peace officer?

ii. What is your agency's policy regarding uses of force involving people with disabilities?
iii. What are some tactics officers can use to try to determine if the subject has a disability and to gain compliance?
iv. What are some examples of use of force situations involving people with disabilities?

B. PC 835a (b)
1. 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.
2. The standard has changed from "reasonable" to "objectively reasonable."
3. **Facilitated Class Discussion:** Facilitate a whole class discussion using the following scenario.

- A call comes out that there is man with a knife in front of a school that is in session. Officers arrive to observe the subject is youthful looking, possibly a juvenile and may be a student at the school. Responding officers determine the subject is a juvenile and identify the weapon as a machete. The subject is wearing a backpack and moving towards the office. o Ask the class to provide possible actions to be taken by responding officers o Ask the class to provide possible reasons the subject may be running to school with what appears to be a machete
  - Possible reasons are not limited to but may include the following:
    - Is it a prop for a school play?
    - Is it Halloween?
    - Is the subject mentally ill?
    - Does the subject have a developmental disability?
    - Is the subject seeking revenge?
  - o Discuss how an objectively reasonable officer might proceed in any of these circumstances

C. PC 835a (c) (1)
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:
   a. To defend against an imminent threat of death or serious bodily injury to the officer or 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.
      i. Where feasible, a peace officer shall, before the use of force, make reasonable efforts to identify themselves as a peace officer and
      ii. warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts
2. Discuss how this aligns with your agency's policy
3. **Facilitated Class Discussion:** Return to previous scenario – it has now escalated to a potential use of deadly force

- Responding officers identify themselves and engage the subject. They determine he is a threat to campus safety. Officers attempt to de-escalate the situation by using verbal commands to try to disarm the suspect. The suspect refuses to comply and continues to brandish the machete and proceed towards the school office.
- Discuss how an objectively reasonable officer might proceed in this circumstance.

D. PC 835a (c) (2)

1. 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.
2. Discuss your agency policy in responding to solo suicidal subjects.

DI. PC 835a (d)

1. 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
2. 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 of 835a to effect the arrest or to prevent escape or to overcome resistance. The term "retreat" does not mean tactical repositioning or other de-escalation tactics. a. Discuss the meaning of "retreat"
   b. Show examples of "retreat" available on the public domain

DII. PC 835a (e)

1. This section defines key terms related to use of force 2. For the purposes of 835a, the following terms apply:
   a. "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
   b. 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
      i. 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
      ii. Discuss the difference between an imminent threat of death or serious bodily injury and imminent harm

DIII. Review of agency Use of Force policy

1. "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.
2. Discuss how your agency's policy may have changed relative to AB 392.

2020



POST USE OF FORCE STANDARDS AND GUIDELINES



COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

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This document represents the collective effort of individuals from several organizations, agencies and communities. The content contained herein does not necessarily represent the viewpoint or position of every advisor or author, however, it does represent the diverse perspectives and meaningful dialogue that is necessary to come together in a collaborative and respectful process.

Project Advisors*

Angela Averiett, *Deputy Chief, Bay Area Rapid Transit Police Department*

Nancy Beninati, *Deputy Attorney General, California Department of Justice*

Peter Bibring, *Director of Police Practices and Senior Staff Attorney, ACLU*

Sandra Brown, *Lieutenant (Ret.), Palo Alto Police Department, Racial and Identity Profiling Act Board Member*

John Carli, *Chief, Vacaville Police Department*

Leonard Gonzales, *Chair, California League of United Latin American Citizens*

Michael Hinckley, *Attorney, The Law Offices of Michael Hinckley*

Charles Johnson, *FBI Agent (Ret.), Professor, Chabot College*

Orlando Mayes, *Lieutenant, Sacramento County Sheriff's Office*

Bruce Praet, *Attorney and Co-founder, Lexipol*

David Rose, *Peace Officer (Ret.), Placer County Sheriff's Office*

Luke South, *Captain, Orange County Sheriff's Department*

Jack Tucker, *Commander, Alameda County Sheriff's Office*

Shawn Welch, *President, Contra Costa County Deputy Sheriff's Association, Peace Officers Research Association of California Representative*

Project Staff*

Kathy Hobson, *POST – Project Recorder*

Cheryl Mackey, *Attorney and Administration of Justice Department Chair, Chabot College – Project Facilitator/Writer*

Darryl McAllister, *Chief of Police (Ret.) Union City Police Department – Project Facilitator/Writer*

Ashlee Nelson, *Assistant, Chabot College - Project Cover Design*

Jessica Vile, *POST Grant Coordinator, Chabot College – Project Special Assistant*

*This document may be updated and revised at a later date to reflect changing statutes, case law, and/or best practices. The above represents those individuals who were asked to provide advice and support for the document completed in October 2020.

FOREWORD

Trust between law enforcement and the communities they serve is essential to the legitimacy of our justice system, and the safe and effective delivery of policing services. This has been underscored by recent events around the country involving use of force, and the resulting heightened scrutiny from media, legislators, and in some instances, civil and criminal court. While California leads the nation in regard to use of force department policy requirements, robust officer training, and commitment to the sanctity of human life, there is need to continuously advance policies and strategies to stem the tide of perceived conflict between police officers and some communities. In hope of fostering strong and productive community-police relationships, a commitment to implement clear standards and guidance is imperative to allay communities' concerns and increase trust between law enforcement and the public.

To this end, California Penal Code Sections 13519.10, 835a and Section 7286 of the Government Code added new language and requirements to all California law enforcement agency use of force policies, establishing minimum standards, reporting procedures and heightening California's requirements for employing deadly force. Effective January 1, 2021, all law enforcement agencies are required to maintain a policy which includes these minimum standards, utilizing de-escalation techniques and other alternatives to use of force, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents. Additionally, all agencies must make their policies publicly available.

These guidelines include the statewide minimum standards law enforcement executives are now required to incorporate into their agency's use of force policy. The guidelines incorporate best practices and are intended to assist with implementation of the practical requirements of these requisite minimum standards. They are also intended to support the development of effective training, agency policies, and internal accountability measures that promote expanded strategies and tactics that safeguard the lives of officers and the communities they serve.

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PURPOSE

This model policy framework articulates statewide standards and provides guidelines for law enforcement agencies to use as a resource in the creation of their use of force policy pursuant to Section 7286 of the Government Code. Each agency is required to adopt and promulgate a policy that includes the use and application of lethal and non-lethal force, de-escalation and crisis intervention techniques, and factors for evaluating and reviewing all use of force incidents. Communities have a strong interest in ensuring that interactions with law enforcement will be fair, consistent with constitutional and statutory requirements, and guided by public safety. Accordingly, the authority to use force when necessary to accomplish a lawful end is a serious responsibility given to peace officers and must be exercised judiciously to safeguard the life, dignity, and liberty of all persons without prejudice. That authority is grounded in the responsibility of officers to carry out their duties without bias and to comply with applicable law and agency policy. Equally important is law enforcement's obligation to educate and train officers to exercise that authority utilizing best practices while prioritizing the safety of the public, other officers, and themselves.

In a use of force situation, law enforcement officers shall be guided by the principle of reverence for human life and should use only the amount of force necessary to mitigate an incident, make an arrest, or protect themselves or others from harm. Agencies should consider tactics and techniques that may mitigate an officer's need to use a higher level of force to resolve a situation safely while still protecting the public, other officers, and themselves.

POLICY

This framework recognizes the legislative intent to codify a minimum standard for policies and training and articulates additional guidelines related to the use of lethal and non-lethal force. It also outlines the baseline constitutional standards for the use of force established by the Fourth Amendment, including that an officer's use of force be "objectively reasonable."[1] Under this standard, an officer may only use force that a reasonable officer would when facing similar circumstances. The objectively reasonable standard is based on the totality of the circumstances and acknowledges that officers "are often forced to make split-second judgments," and should not be subjected to "the 20/20 vision of hindsight." Furthermore, California Penal Code section 835a prescribes the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance. As such, these guidelines identify the minimum standards set by Sections 13519.10 and 835a of the Penal Code, and Section 7286 of the Government Code. They also provide policy guidance concerning best practices and the practical requirements of these standards.

Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision-making in the broad range of possible use of force situations. It

[1] See, e.g., *Graham v. Connor*, 490 U.S. 386 (1989), and *Tennessee v. Garner*, 471 U.S. 1 (1985)

is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, an agency's policy shall provide that de-escalation techniques must be used whenever feasible, that force only be used when objectively reasonable or in the case of deadly force, when necessary to counter an imminent threat of death or serious bodily injury, and that the amount of force used is proportionate to the situation that an officer encounters.

No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. Further, these standards and guidelines are not intended to create or impose any legal obligations or basis for legal liability absent direction by a legislative body, court, or agency. Nevertheless, an agency's use of force policies and training may be introduced in legal proceedings involving an officer's use of force and may be considered as a factor in determining the reasonableness of the officer's actions.

STANDARDS AND GUIDELINES

The authority to use force 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. Use of force must be for a lawful objective. Officers may use force to meet legitimate law enforcement objectives including:

a. To effect a lawful arrest, detention, or search;
b. To overcome resistance or to prevent escape;
c. To prevent the commission of a public offense;
d. In defense of others or in self-defense;
e. To gain compliance with a lawful order;
f. To prevent harm to the officer or another person during intervention in a suicide or other attempt to self-inflict injury.

Fair and Unbiased Policing

STANDARD #1: Officers shall carry out their duties, including use of force, in a manner that is fair and unbiased.

1) An agency is responsible for ensuring leadership, communicating organizational values to the department and the community, and its policy shall require that officers carry out their duties, including use of force, in a manner that is fair and unbiased.
2) In the development of its policy, an agency should consider language that addresses the impact of organizational and individual biases in the carrying out of duties.
3) An agency's policy should define both implicit and explicit bias and explain the potential impact either or both may have, intentionally or unintentionally, on interactions between officers and members of the public.

De-escalation and Force Alternatives

STANDARD #2: Officers shall utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when safe and feasible to do so.

4) An agency's policy shall require that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible. The intent of de-escalation techniques and strategies applies, when safe and feasible, throughout the course of any interaction with an individual, even after force is administered. An agency should provide guidance on when and how to use communication, de-escalation, and crisis intervention strategies to defuse and resolve encounters, without the use of force, when safe and feasible to do so. Agencies are encouraged to consider the following:

    a. When feasible, officers should approach a situation with the intent to de-escalate and consider the value of establishing time and distance in a confrontation where a use of force may be inherent.
    b. Communication should be the first option, if the situation safely allows the time and distance for communication to occur. Officers should maintain communication throughout any encounter under such circumstances.
    c. Officers should communicate and endeavor to persuade, advise, and provide clear instructions and warnings when safe and feasible to do so. Officers should consider the use of non-verbal methods to communicate when verbal directions may not be appropriate. This may include situations involving language barriers, or when people are unable to hear or understand verbal commands. It would also be advisable for an agency to include the following components and strategy considerations for officers involved in situations that could lead to a use of force:

        i. How to approach, greet, engage, adapt, repair, and close the event in an effective manner;
        ii. Tactical methods not limited to time, distance, cover, and concealment;
        iii. The impact of volume, tone, pace, and demeanor on communication;
        iv. Giving respect and dignity;
        v. Active listening;
        vi. Ability to give and receive constructive feedback;
        vii. Mindful attention;
        viii. Providing a voice to others and the value of allowing people to "vent";
        ix. Non-verbal communication and behavioral cues;

x. Questioning strategies: open vs closed-ended;
xi. Persuasion strategies: rational, personal, or ethical appeals;
xii. Dealing with difficult or dominating people;
xiii. Inappropriate communication;
xiv. WAIT Strategy – "Why Am I Talking?"

d. Officers should consider whether an individual's non-compliance may be due to a medical condition, mental impairment, substance interaction, developmental or physical disabilities, or other considerations that may be beyond the individual's control. If safe and feasible, officers should use de-escalation techniques, alternative resources (such as calling in additional trained personnel), and force-mitigation techniques to avoid the use of unnecessary force.

Application of Use of Force

STANDARD #3: Officers may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.

5) Officers shall be guided by the principle of reverence for human life in all decision-making. Therefore, the officer's use of force must be proportionate given the totality of the circumstance. As such, an agency's policy shall require that an officer may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance. When determining whether to apply force and evaluating whether an officer has used reasonable and/or necessary force, factors to consider include, but are not limited to:

a. Whether there is a legal basis for the use of force;
b. Whether the individual posed an imminent threat to the public, other officers, and themselves;
c. The nature and severity of the threat;
d. The nature and severity of the situation;
e. Whether the individual was attempting to evade arrest by flight;
f. The level of resistance by the individual;
g. The conduct of the individual involved in the confrontation, as perceived by the officer at the time of the incident;
h. The number of officers on scene;
i. The conduct of the involved officer(s);
j. Medical conditions, mental impairment, substance interaction, developmental disabilities, and other physical and mental characteristics;

k. The risk of harm to the officer, bystanders, and the individual by using force;
l. Prior knowledge or contact with the individual or awareness of any propensity for violence;
m. Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others;
n. The apparent need for immediate control of the individual or prompt resolution of the situation;
o. The environmental factors and/or other exigent circumstances;
The training and experience of the officer(s).

6) Officers should continuously assess a situation and consider various options as circumstances change. If a force option proves ineffective, officers should continue to seek the most effective and safest response that is proportional to the threat. This may involve using a force alternative of similar level, de-escalation, or in some cases an escalation of force options, but the level of force used should still be proportional to the threat.

7) Officers should use caution when applying force to lawfully seize and/or prevent the destruction of evidence.

8) An 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. In this circumstance, retreat does not mean tactical repositioning or other de-escalation techniques.

9) An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with Penal Code section 835a to effect an arrest, to prevent escape, or to overcome resistance.

STANDARD #4: An agency shall provide comprehensive and specific guidelines regarding approved methods and devices available for the application of force.

10) Depending on their assessment of the threat, officers are expected to make decisions based on the range of options available to them. An agency's policy shall include comprehensive and specific guidance for approved methods and devices available for the application of force. This should include approved force options, approved devices for those force options, and methods for using those devices.

a. Force Devices: A device is a particular tool or implement used to apply force. Examples may include baton, electronic controlled device (ECD), firearm, and beanbag shotgun. An agency should specify any prohibitions

on devices for force, personal firearms or non-approved personal weapons.

b. Force Methods: A method is a technique or manner of using a force option. For example, pain compliance holds, and open palm strikes are methods of bodily force; shooting at moving vehicles, warning shots, and pointing of weapons are methods for use of firearms. An agency should specify methods of force that are prohibited.

11) Agency policy should be thoroughly inclusive of all approved force options. An agency should avoid language such as "The following is a list of force options. This is not a complete list." For the list of approved options to be comprehensive, it should be complete.

12) An agency is encouraged to set forth a provision for exigent circumstances under which an officer may use force methods or devices that are not specifically described in the policy, but only when all approved methods and devices would be clearly ineffective, unreasonable, disproportionate, or unavailable. These exceptions are inherently broad that they do not provide "comprehensive and specific guidance."

13) An agency is encouraged to specifically authorize or prohibit force options, including, but not limited to:

a. Verbal commands/instructions/police presence;
b. Physical force;
c. Compliance techniques;
d. Holding techniques;
e. Impact weapons (baton);
f. Chemical agents (pepper spray, O.C. spray, etc.);
g. Canine apprehension;
h. Vehicle intervention (deflection);
i. Firearms, including display, warning shots, and shooting at moving vehicles;
j. Personal body weapons;
k. Impact projectile (rubber bullets, beanbag shotgun).

Application of Deadly Force

STANDARD #5: An agency shall provide comprehensive and specific guidelines for the application of deadly force.

The authority to use physical force, especially deadly force, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity for the sanctity of every human life. California Penal Code section 835a prescribes the circumstances under which deadly force by an officer is deemed justifiable to include when the officer reasonably believes, based on the totality of the circumstances, that

deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for a 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 the person is immediately apprehended. As such, an agency policy shall provide specific and comprehensive guidelines for the application of deadly force.

14) An agency policy shall provide specific and comprehensive guidelines for the application of deadly force.

15) Deadly force is that force which a reasonable person would consider likely to cause death or serious bodily harm. Deadly force includes, but is not limited to, discharge of a firearm.

16) The policy shall advise officers they must evaluate and use other reasonably available resources and techniques if an objectively reasonable officer would consider it safe and feasible to do so, under the totality of the circumstances, when determining whether to use deadly force. To the extent that it is reasonably practical, officers should consider their surroundings and potential risks to bystanders prior to using deadly force, such as use of a firearm.

17) The policy shall advise officers that, in determining whether deadly force is necessary, they shall evaluate each situation in light of the particular circumstances of each case, and they must use other reasonably available resources and techniques if an objectively reasonable officer would consider it safe and feasible to do so.

18) Use of deadly force is justified only when the officer reasonably believes it is necessary in the following circumstances:

    a. To defend the officer or others from what the officer reasonably believes is an imminent threat of death or serious bodily injury to the officer or 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.

19) An 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. In this circumstance, retreat does not mean tactical repositioning or other de-escalation techniques.

20) An officer shall not be deemed an aggressor or lose the right to self-defense by the use of objectively reasonable force in compliance with Penal Code section 835a to effect the arrest, to prevent escape, or to overcome resistance.

21) Deadly force may not be used against a person based on the danger that person poses to him/herself, including a suicidal individual, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or to another person.

22) Agencies shall train their officers to include the heightened scrutiny of use of deadly force under AB 392, which prescribes the circumstances in which a homicide by a peace officer is deemed justifiable and the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance.

Use of Firearms

STANDARD #6: An agency shall provide clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.

23) Officers, in carrying out their duties, shall, when feasible, apply de-escalation techniques before resorting to the use of a firearm. The pointing of a firearm at an individual is considered a non-deadly use of force. While the drawing and/or pointing of a firearm can discourage resistance and ensure officer and public safety in potentially dangerous circumstances, it can also escalate a situation. Unnecessarily or prematurely drawing a firearm could limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of members of the public, and could result in an unwarranted or unintentional discharge of the firearm. As such, an agency's policy shall provide clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.

24) An officer should not draw a firearm solely based on the mere existence of a potential risk (e.g. public contact, pedestrian/traffic stop), but rather on the totality of the circumstances known to the officer at the time. It is recommended that an agency's policy include the following requirements for drawing and exhibiting a firearm:
    a. When circumstances create an objectively reasonable belief that it may be immediately necessary for the officer to use deadly force;
    b. When, consistent with training, circumstances create a reasonable belief that display of a firearm helps establish or maintain control in a potentially dangerous situation;

c. If feasible, when drawn an officer should keep the firearm in the low ready or other position not directed toward an individual (e.g. building search);
d. The officer shall, as soon as practicable, secure or holster the firearm.

25) Any drawing and exhibiting of a firearm should conform to the agency's policy on the use of firearms.

26) Any intentional pointing of a firearm at an individual by an officer should be reported.

27) Officers are authorized to use firearms to stop an animal in circumstances where the animal reasonably appears to pose an imminent threat to human safety, and alternative methods are not reasonably available or would likely be ineffective.

28) Additional guidance with regard to implementation or the handling of firearms for circumstances other than uses of force may be addressed in an agency's separate corresponding policy (e.g. firearms training, firearms equipment specifications, firearms care and maintenance, dispatching or euthanizing potentially dangerous or injured animals).

STANDARD #7: Officers shall consider their surrounding and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.

29) Any discharge of a firearm entails significant risk of an unintended outcome and may endanger the lives of bystanders. An agency's policy shall include a requirement that, to the extent reasonably practical under the circumstances, officers must consider their surroundings (including location and traffic), and potential risks to bystanders before discharging a firearm.

30) Warning shots are discouraged and should only be used in exceptional circumstances to avoid the need to use deadly force. Generally, warning shots should be directed in a manner that minimizes the risk of injury to bystanders, ricochet dangers and property damage.

STANDARD #8: An agency shall provide comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

31) Discharging a firearm at or from a moving vehicle entails great potential risk of death or serious bodily injury to vehicle occupants, bystanders, and officers. Safety may be jeopardized by loss of control of the vehicle or unnecessary shootings of occupants or bystanders. To mitigate risk, an agency shall provide

comprehensive and specific guidelines under which the discharge of a firearm at or from a moving vehicle may or may not be permitted.

32) Officers should only discharge a firearm at or from a moving vehicle to counter an imminent threat of death or serious bodily injury to the officer or another individual, by an occupant in the vehicle.

33) Officers should avoid positioning themselves or intentionally remaining in the path of a moving vehicle and should take reasonable steps to move out of the path of an approaching vehicle before discharging a firearm at the vehicle or occupants.

34) Officers should only discharge a weapon at a moving vehicle or its occupants under the following conditions:

   a. The vehicle poses an imminent threat of death or serious bodily injury to the officer or any person;
   b. The officer has no reasonable alternative course of action to prevent death or serious bodily injury.

35) An agency's policy regarding discharging a firearm at or from a moving vehicle may not cover every situation that may arise. In all situations, officers are expected to exercise sound judgment based on reverence for human life. Any deviations from the provisions of an agency's policy should be examined rigorously on a case-by-case basis. The involved officer must be able to clearly articulate the reasons for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

Intervention and Reporting Requirements

STANDARD #9: Officers shall intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account the possibility that other officers may have additional information regarding the threat posed by a subject.

36) Officers should recognize and act upon the duty to intercede if they witness another officer applying unnecessary or excessive force. Such force may include any force that violates applicable law and/or agency policy. As such, an agency policy shall require that officers intercede when present and observing another officer using force that is clearly beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances, taking into account

the possibility that other officers may have additional information regarding the threat posed by a subject.

37) An agency's policy should encourage officers to intercede when another officer is using or is about to use unnecessary or excessive force. That intercession should occur before a situation escalates to the use of the unnecessary or excessive force. Intercession may be verbal and/or physical.

38) Officers who observe force that is clearly beyond that which is necessary as determined by an objectively reasonable officer under the circumstances, should take appropriate action to cause the unnecessary or excessive force to immediately cease. Intercession may be verbal and/or physical. The duty of an officer to intercede is not relieved by nor should it be deferrable to other officers or supervisors at the scene.

39) Supervisors who observe force that is clearly beyond that which is necessary as determined by an objectively reasonable officer under the circumstances, should issue a verbal command to the officer and take appropriate action to cause the unnecessary or excessive force to immediately cease.

STANDARD #10: Officers shall report potential excessive force to a superior officer when present and observing another officer using force that the officer believes to be beyond that which is necessary, as determined by an objectively reasonable officer under the circumstances based upon the totality of the information known to the officer at the time of the use of force.

40) Officers who witness potential excessive force by another officer have a duty to report the incident to a supervisor or superior officer as soon as feasible. The agency's policy shall require that officers who witness potential excessive force, based upon the totality of the information known to the officer at the time of the use of force, shall report the observations to a superior officer.

41) The notification should occur as soon as the reporting officer can feasibly do so after the officer became aware of the possible use of excessive force.

42) To impose a meaningful requirement that officers report potential excessive force that the officer believes to be beyond that which is necessary, an agency should adopt and specify in policy a clear process for reporting potential excessive force to a supervisor or superior officer.

43) An agency should develop a procedure for supervisorial review once a potential excessive use of force is reported. Those procedures should include specific guidance regarding the supervisor assuming control of the scene if applicable,

determining who will be responsible for the investigation, and preparing a preliminary report or findings that include recommendations for corrective action and/or possible referral for further action.

Medical Aid

STANDARD #11: Officers shall promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.

44) The highest priority of officers is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone. Officers have a duty, as soon as it safe and practical, to provide or request medical aid. As such, an agency's policy shall require that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so (Government Code § 7286(b)).

45) Whenever a person requires or reasonably requests medical attention after a use of force incident, an officer should request medical aid (such as calling for emergency medical services) and/or if properly trained, provide medical attention (such as first aid and/or transport to an emergency medical facility), as soon as feasible. Medical assistance should be obtained for any person who exhibits signs of:

a. Physical distress;
b. Visible injury;
c. Alleged injury or complaint of continuous pain;
d. Experienced a lack of consciousness;
e. Any other reason the officer may deem necessary, based on training and experience.

46) Officers should pay particular attention to vulnerable populations, including but not limited to, children, elderly persons, pregnant individuals and individuals with physical, mental and developmental disabilities, whose vulnerabilities could exacerbate the impact or risk of injury.

47) Prior to booking or release, officers should continuously monitor an individual until medical assessment is provided. Medical assessment may consist of examination by fire personnel, emergency medical technicians, paramedics, hospital staff, or medical staff at the jail.

48) If an individual refuses medical attention, the refusal should be fully documented in any related reports. When practicable, the refusal should be witnessed by another officer or medical personnel and/or recorded.

49) Following a use of force incident, the on-scene supervisor, or, if the on-scene supervisor is not available, the primary officer should ensure that any person providing medical assistance or receiving custody of an individual on which force was used, is informed that the person was subjected to force. Notification should include all relevant information, including the type and level of force used, duration of the force or struggle, visible injuries, respiration impairment, and any other information an objectively reasonable officer would believe relevant to the health and safety of the individual.

50) An individual who appears extremely agitated or exhibits violent and irrational behavior, accompanied by other physical symptoms (e.g. profuse sweating, imperviousness to pain, extraordinary strength beyond their physical characteristics) or who requires a protracted physical encounter with multiple officers, should be treated with emergency medical attention as soon as feasible.

Reporting the Use of Force

STANDARD #12: An agency shall provide comprehensive and detailed requirements for prompt internal reporting and notification regarding a use of force incident, including agency reporting use of force incidents to the Department of Justice as specified.

51) An agency policy should require that any officer who observes, has knowledge of, or engages in use of force that is unnecessary and/or a violation of applicable law or agency policy has a duty to promptly notify the department. The notification should occur to a supervising officer as soon as practicable after the officer became aware of or engaged in the use of force incident.

52) Depending on the degree of force and nature of the incident, the use of force should be documented promptly, accurately and completely in a written report, describing the facts and circumstances surrounding the incident and factors that may have led to the officer's decision to use force. An agency's policy should address possible outcomes for substantial omissions or misrepresentations in reporting.

53) An investigative report and/or supplemental report regarding the incident may be necessary to ensure accurate data collection for purposes of training, resource allocation, analysis and related purposes.

54) Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury shall be reported to the Department

of Justice as required by Section 12525.2 of the Government Code. The report shall include all instances when an officer is involved in any of the following:

a. An incident involving the shooting of an individual by an officer;
b. An incident involving the shooting of an officer by an individual;
c. An incident in which the use of force by an officer against an individual results in serious bodily injury (as defined ~~by Penal Code section 243(f)(4)~~ by Government Code 12525.2(d)) or death;
d. An incident in which the use of force by an individual against an officer results in serious bodily injury or death.

55) The information reported to the Department of Justice shall include, but not be limited to, the following:

a. The gender, race, and age of anyone who was shot, injured, or killed;
b. Date, time, and location of the incident;
c. Whether an individual was armed and if so, type of weapon;
d. The type of force used against the officer, individual, or both, including the type(s) of weapons used;
e. The number of officers involved in the incident;
f. The number of individuals involved in the incident;
g. A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and individuals and perceptions of behavior or mental disorders.

Supervisor's Responsibility

STANDARD #13: An agency should develop clear procedures and requirements detailing a supervisor's responsibility in the review of use of force applications.

56) An agency's policy should require that when notified of a reportable use of force by an officer under their supervision, supervisors should respond to the scene unless a response is impractical or poses a danger.

57) When a supervisor is able to respond to a reported use of force incident, under Section 7286(b)(13) of the Government Code, the supervisor is expected to:

a. Obtain the basic facts from officers involved in the incident;
b. Ensure any injured parties are examined and treated;
c. Promptly identify individuals who may have witnessed the use of force occurrence and obtain statements from the witnesses. Supervisors should separate witnesses if feasible to do so;
d. When possible, obtain a separately recorded interview with the individual upon whom force was applied. If the interview is conducted without voluntary waiver of Miranda rights, the following shall apply:

i. The content of the interview should not be summarized or included in any related criminal charges.
ii. The fact that a recorded interview was conducted should be documented in a property or other report.
iii. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

e. Ensure that photographs have been taken of any areas involving visible injury or complaint of pain, as well as overall photographs of uninjured areas. These photographs should be retained until all potential for civil litigation has expired.

f. Ensure compliance with proper agency reporting procedures and submit reporting through appropriate channels.

g. Determine if there is any indication that the individual may pursue civil litigation. If there is an indication of potential litigation, the supervisor should provide notification of a potential claim to appropriate agency personnel.

58) The supervisor should review all reports for accuracy and completeness and ensure all relevant facts of an incident are documented and properly reported.

59) An agency policy should provide for a supervisor review process that initially evaluates the circumstances surrounding the use of force incident and the supervisor should promptly address any areas of concern, including notification of appropriate personnel in the chain of command, potential policy changes, training needs, weapons or equipment issues, and/or discipline (administrative investigation).

60) Any recommendations to modify policy, apply remedial training beyond what can be performed by the supervisor, recommended changes to weapons or equipment, or to apply discipline should be documented in a report and submitted to appropriate agency personnel.

61) A designated member of command staff should review all submitted reports and any other relevant information if necessary (e.g. body-worn camera video, photographs, and/or documents), with appropriate agency personnel to ensure compliance with the agency's use of force policy.

Use of Force Incident Review

STANDARD #14: An agency's policy shall include factors for evaluating and reviewing all use of force incidents.

62) An agency should document all uses of force greater than physical contact, involve an allegation of use of force or injury, and/or involve the pointing of a firearm or an electronic control weapon at an individual as a threat of force. Once a use of force incident report has been completed, it should be reviewed according to set agency procedure. The procedure may include the following:

a. Review the report of the officer involved in the incident;
b. Review the report(s) of additional responding officers;
c. Review the supervisor's report for findings;
d. Review the designated member of command staff's report for findings;
e. Review the officer's body-worn camera footage and, if available, body-worn camera footage from additional responding officers;
f. Compare the officer's actions on the body-worn camera with the officer's incident report;
g. If there are any issue(s) identified with any application of force, documentation, or body-worn cameras, appropriate command staff and reviewing supervisor should be contacted and made aware of the issue(s) and a date should be set as to when the issues must be resolved and/or corrected;
h. If any criminal or rule violations are identified, the matter should be referred to internal affairs or designated command staff for further investigation.

63) When evaluating and reviewing whether an officer has used reasonable force, an agency is encouraged to consider the factors listed under Standard #3 Section 6 of this document.

64) An agency should collect and analyze use of force data and annually prepare a summary report on use of force incidents. This summary report should be published and made available to the public upon request. The report should not contain the names of involved officers, individuals or case numbers. The report should include demographic information about the officers and individuals involved in use of force incidents and the circumstances under which they occurred. It should also discuss efforts to prevent types of bias and discrimination.

65) The summary report should identify patterns or trends that may indicate policy ineffectiveness and/or policy modification needs, training needs and recommendations, or equipment needs and recommendations.

Policy Review and Availability

STANDARD #15: An agency's policy shall be accessible to the public.

66) This may include, but is not limited to, publishing the agency's use of force policy on its department website or data portal. Making the policy accessible helps to educate the public, increases communication and community trust, enhances transparency, and provides cost and labor-related savings associated with responding to individual requests.

STANDARD #16: An agency shall regularly review and update its use of force policy to reflect developing practices and procedures.

67) An agency shall develop a system which provides for the regular review, analysis, and update of its use of force policy to reflect developing practices, procedures and legal standards. Any resulting analysis should include:

a. Identification of individual and organizational trends in the use of force;
b. Training needs recommendations;
c. Equipment needs recommendations;
d. Policy review recommendations.

68) An agency's policy should include specific timelines on evaluating and updating its use of force policy to comport with industry best practices. Agencies should conduct a review and/or audit of its use of force reports on a regular basis with the goal of improving use of force processes. An agency should also review and consider the agency's use of force data, civilian complaints, and any other relevant data that the agency collects when updating its policy.

69) An agency is encouraged to review its policy annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

70) Officers should engage in ongoing review of their agency's policy and training on use of force.

STANDARD #17: An agency shall develop procedures for filing, investigating and reporting of citizen complaints regarding use of force incidents.

71) An agency policy shall establish guidelines governing the manner in which the agency will respond to complaints by members of the public against its agency or employees. The policy should include procedures to facilitate the accessible, fair and transparent filing, investigation and reporting of complaints from members of the public regarding use of force incidents.

72) An agency should accommodate multiple methods of receiving and accepting complaints, whether reported verbally, in writing, by video, e-mail or other

depiction to ensure documentation of the complaint and provide the ability for an investigation.

73) A public complaint form, or other means to file a complaint, should be available upon request. Where agencies do not use dedicated forms, the agency should have a specific, dedicated process for tracking complaints once received. Information about how to file a complaint should be available at municipal offices and other appropriate identified locations. If an agency has a website, an electronic version of the complaint form should be on the site, capable of being filled out and transmitted electronically. The means of collecting complaint information, whether via written forms or another specific mechanism, should capture all information necessary to initiate the intake of the complaint.

74) The complaint process should accommodate languages spoken by a substantial proportion of residents of the region.

75) An agency must review complaints for possible investigation when substantive allegations of unlawful conduct are made.

STANDARD #18: An agency shall develop procedures for disclosing public records related to use of force.

76) An agency shall have procedure and/or policy on public disclosure of public records related to use of force in accordance with the California Public Records Act, Section 832.7 of the Penal Code, and other applicable law. Section 832.7 maintains that officer personnel records are confidential; however, it does allow for the release of records related to use of force. Agency policy shall make records relating to officer use of force available for disclosure if there is a report, investigation, or finding of any of the following:

   a. An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
   b. An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in serious bodily injury.

Training Requirements

STANDARD #19: An agency shall develop training and guidelines regarding vulnerable populations, including but not limited to, children, elderly persons, people who are pregnant, and people with physical, mental and developmental disabilities.

77) Officers are most effective when trained to engage with diverse populations, situations, and circumstances and to adapt accordingly. Adaptive approaches are especially important for policing vulnerable populations. As such, an agency must develop and implement training regarding vulnerable populations, including but not limited to, children, elderly persons, people who are pregnant, and persons with physical, mental and developmental disabilities.

78) It is recommended that an agency consider the following when developing its policy:

a. Build and strengthen relationships with the community, engage in dialogue and provide education to the community about its policy;
b. Collaborate with others, including formal community-based organizations and leaders, to develop a multidisciplinary approach to working with vulnerable populations in the community;
c. Conduct public meetings on use of force concerns with vulnerable populations;
d. Provide orientation of and with vulnerable populations, including but not limited to, children, elderly persons, people who are pregnant, and persons with physical, mental and developmental disabilities.

79) An agency should ensure that officers possess the expertise and experience needed to deal with vulnerable populations as their status may affect their capability to understand or comply with directives from officers.

STANDARD #20: An agency's policy shall maintain standards and requirements relating to demonstrated knowledge and understanding of the agency's use of force policy by officers, investigators, and supervisors.

80) All appropriate personnel, including officers, investigators, supervisors, and managers shall be properly trained on the agency's use of force policy. The agency will follow all legislatively mandated training requirements.

81) Training should be ongoing and consistent with the standards set forth in Section 13519.10 of the Penal Code, to include developing practices, procedures and evolving legal standards.

STANDARD #21: An agency's policy shall include minimum training and course titles required to meet the objectives in its use of force policy.

82) POST offers training and video courses to assist law enforcement in the identification, investigation, documentation and reporting of use of force. These courses provide officers with information and skills necessary to effectively

identify, investigate, document and report use of force incidents. POST also maintains an extensive array of training videos on applicable topics such as working with those with mental illness and intellectual disabilities, hate crimes, and working with diverse communities.

83) For more information on POST training opportunities and available videos, visit the POST website at www.post.ca.gov. In conjunction with POST training opportunities, trainers may utilize other state and federal agencies that offer training courses, such as the U.S. Department of Justice.

Appendix

Definitions

Complaint
One or more allegations by a person that an employee of an agency, or the agency itself, has behaved inappropriately as defined by the person making the allegation. The person making the allegation is a complainant.

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.

Explicit Bias
Conscious belief or attitude toward a specific social group that may lead an individual to act in discriminatory ways.

Feasible
Reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the officer or another person.

Imminent
Pursuant to California Penal Code Section 835a(e)(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."

Implicit Bias
Unconscious belief or attitude toward a specific social group that may lead an individual to unknowingly act in discriminatory ways. People are generally unaware of their implicit biases and may even hold contradictory conscious beliefs.

Law Enforcement Agency
Any police department, sheriff's department, district attorney's office, county probation department, transit agency police department, school district police department, the police department of any campus of the University of California, the California State University, or community college, the Department of the California Highway Patrol, the Department of Fish and Wildlife, and the Department of Justice.

Necessary
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.

Objectively Reasonable
The legal standard used to determine the lawfulness of a use of force is based on the Fourth Amendment to the United States Constitution. See *Graham v. Connor*, 490 U.S. 386 (1989). *Graham* states, in part, "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation. The test of reasonableness is not capable of precise definition or mechanical application."

The force must be reasonable under the circumstances known to or reasonably believed by the officer at the time the force was used. Therefore, an agency will examine all uses of force from an objective standard rather than a subjective standard.

Serious Bodily Injury
Pursuant to California Penal Code Section 243(f)(4) Serious Bodily Injury includes but is not limited to 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.

For purposes of each agency's requirement to report use of force incidents to the California Department of Justice, pursuant to Government Code Section 12525.2(d), serious bodily injury means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

Totality of the Circumstances
All facts known to or reasonably perceived by the officer at the time, including the conduct of the officer and the subject leading up to the use of force.

Warning Shot
The intentional discharge of a firearm off target not intended to hit a person, to warn others that deadly force is imminent.

Statutes and Legal Requirements

Items listed in this section include sections from the California Penal Code (CPC) and California Government Code (CGC).

CPC 196 – Defines circumstances surrounding justifiable homicide.

CPC 243(f)(4) – Defines serious bodily injury.

CPC 835a – Defines the use of force authority conferred on peace officers.

CPC 835a(a)(2) – Defines the standard of necessary.

CPC 835a(b) – Defines the standard of "objectively reasonable force."

CPC 835a(c)(1) – Articulates deadly force standards.

CPC 835a(c)(2) – Prohibition on using deadly force against persons who pose a danger only to themselves.

CPC 835a(d) – Defines self-defense language to include objectively reasonable force.

CPC 835a(e) – Defines deadly force, imminent, and totality of the circumstances.

Training and Policy Requirements

CPC 13519.10 – Defines use of force training requirements for peace officers.

CGC 7286 – Requirement that each law enforcement agency is required to create, adopt and promulgate a use of force policy.

Reporting Requirements

CPC 832.7 – Procedures for disclosing public records.

CGC 12525.2 – Internal reporting and notification regarding a use of force incident, including reporting use of force incidents to the Department of Justice.

Additional Resources

California Department of Justice. *URSUS* (2018). *Use of Force Incident Reporting*.

California Department of Justice. (2019). *Crime in California*.

Haskins, Paul A. (2019). "*Conducted Energy Devices: Policies on Use Evolve To Reflect Research and Field Deployment Experience*," NIJ Journal 281.

International Association of Chiefs of Police & Office of Community Oriented Policing Services. (2012). *Emerging Use of Force Issues: Balancing Public and Officer Safety.*

International Association of Chiefs of Police. (2001). *Police Use of Force in America.*

McEwen, T. (1996). *National Data Collection on Police Use of Force*, U.S. Department of Justice, Bureau of Justice Statistics.

National Institute of Justice. (2012). *Police Use of Force*.

President's Task Force on 21st Century Policing. (2015). *Final Report of the President's Task Force on 21st Century Policing*, Washington, DC: Office of Community Oriented Policing Services.

U.S. Department of Justice, National Institute of Justice, Bureau of Justice Statistics. (1999). *Use of Force by Police: Overview of National and Local Data*, Washington, DC: U.S. Government Printing Office.

Related Links

Law Enforcement Officers Killed and Assaulted (https://www.fbi.gov/services/cjis/ucr/publications#LEOKA)

National Use of Force Data Collection
https://www.fbi.gov/services/cjis/ucr/use-of-force

Racial and Identity Profiling Board Annual Report 2020
https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf

Racial and Identity Profiling Advisory Board 2020 Report – Best Practices
https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-best-practices-2020.pdf

Use of Force Incident Reporting Dashboard
https://openjustice.doj.ca.gov/exploration/use-of-force

2015-DLE-05 Use of Force Incident Reporting
https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/dle-2015-05.pdf