

KERN COUNTY SHERIFF'S OFFICE

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TRAINING BULLETIN

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California Penal Code 835a and Deadly Force Incident Update

This training bulletin is intended to highlight the legal requirements that govern the use of deadly force. Deputies must be able to navigate these complex legal issues in often life-threatening circumstances. This bulletin seeks to clarify the information deputies must be expected to articulate in the investigation following a deadly force incident.

California Penal Code 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.

Deadly Force

Deadly force can only be used, when necessary, in defense of human life. Deadly force shall be used only as a last resort when reasonable alternatives, including de-escalation strategies, crisis intervention techniques, and other tactics have been exhausted or are not feasible to protect the safety of the public and deputies. It is the policy of the Sheriff's Office that deputies shall only use deadly force upon another person when the deputy reasonably believes, based on the totality of circumstances, that such force is necessary for either of the following:

(A) To defend against an **IMMINENT THREAT** of death or serious bodily injury to the officer or to another person.

IMMINENT THREAT – A threat of death or serious bodily injury is “imminent” when, based on the totality of the circumstances, a reasonable peace 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 [PC 835a(e)(2)].

The following definitions of ability, opportunity, and apparent intent are not taken from any Sheriff's Office policy and are intended to bring clarification and context to our legal requirements when using lethal force.

- a. Ability – Possession of needed powers or resources to accomplish an objective. For example, a suspect having the ability is in the possession of or near access to an object capable of committing death or serious bodily injury (e.g. knife).
- b. Opportunity – possessing adequate position, chance or prospect of committing an act. Being in possession of a deadly weapon does not necessarily mean a suspect can commit death or serious bodily injury. For example, a suspect in possession of a knife would not have the opportunity to stab a deputy if there are obstacles in place preventing them from doing so.
- c. Apparent Intent – the actual intent to perform some act along with a desire for the consequences that result from that act. It implies that an individual not only intended to perform the act but also aimed to achieve a particular outcome or consequence through that act. This is subjective and based on the perspective of the deputy at the time force is used. What about the suspect's actions that led the deputy to believe the suspect possessed the intent? For example, a suspect armed with a knife swings or advances toward an officer.

Imminent Threat Example: A suspect swinging a knife at a deputy when the deputy is in close enough proximity to potentially sustain an injury from it is an example of ability, opportunity, and intent.

(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.

This is the basic fleeing felon rule outlined in *Tennessee v. Garner* and can be broken down into four points:

- a. Life-threatening escape – The officer has probable cause to believe the suspect poses a threat of serious physical harm to the officer or others if not immediately apprehended or stopped.
- b. Life-threatening felony – The suspect threatened the officer or others with a weapon or there is probable cause to believe suspect has committed a crime involving the infliction of serious bodily harm.
- c. Give warning when feasible – When feasible officers shall, prior to the use of force, identify themselves and warn lethal force will be used. “Sheriff’s Office! Stop or I’ll shoot!”
- d. Necessary to prevent escape – Officers must have probable cause to believe that lethal force is necessary to prevent escape.

Feasible – Means reasonably capable of being done or carried out under the circumstances to successfully achieve the arrest or lawful objective without increasing risk to the deputy or another person.

Fleeing Felon Example: A suspect committed a robbery in which they shot at an innocent victim. The still armed suspect then fled toward a school or heavily populated area.

In all circumstances, policy requires a deputy issue a warning and utilize de-escalation unless it is not safe and feasible to do so. Deputies must be prepared to articulate their perspective if warnings and de-escalation are not safe and feasible.

By signing this training bulletin, you are indicating you have reviewed the above training bulletin in its entirety. All sworn personnel in the Deputy Sheriff, Detentions Deputy, and Park Ranger ranks are required to complete this training **no later than July 11, 2025**.