

Laws/Policies/Procedures/Documentation



PURPOSE OF FORCE

The purpose of force is to ultimately:

GAIN or maintain CONTROL of an individual or situation.

Use only the force reasonable to OVERCOME resistance and to gain control of the suspect

CVPD DPM 300.2

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Officers are involved on a daily basis in numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties. Officers must have an understanding of, and true appreciation for, their authority and limitations.

This is especially true with respect to overcoming resistance while engaged in the performance of law enforcement duties. The Department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

CVPD DPM 300.3

300.3 USE OF FORCE Officers shall use only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain, and rapidly evolving.

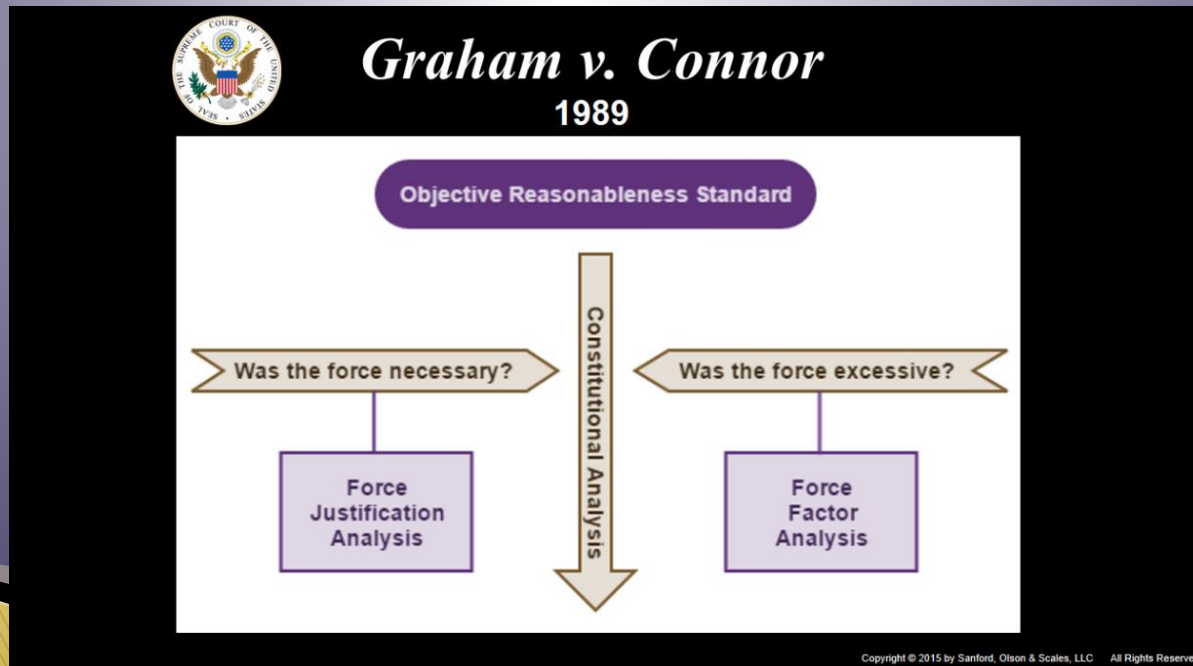
Given that no policy can realistically predict every possible situation an officer might encounter, officers are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code § 7286(b)). While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force

GRAHAM V. Connor (VIDEO)



Graham v. Connor

In 1989, the United States Supreme Court decided the case of *Graham v. Connor*, 490 U.S. 386, (1989), which established that a peace officer's use of force, under the Fourth Amendment, would be judged using the "objective reasonableness" standard.



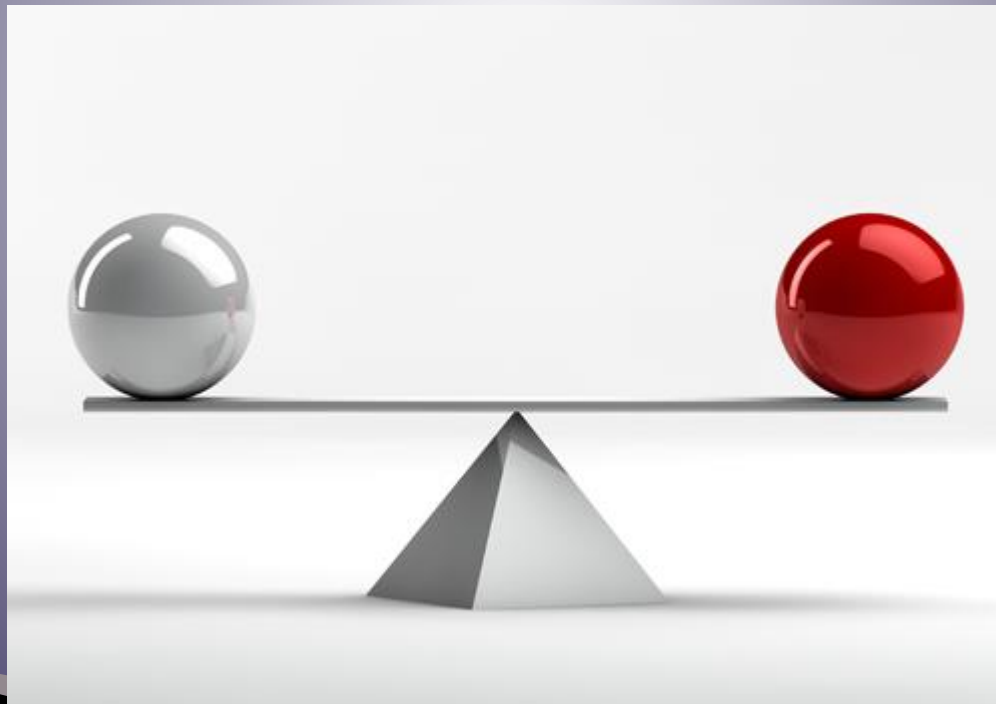
Objective Reasonableness

1. Must be fact specific
2. Based on the totality of the circumstances
3. At the time that the force was used
4. Judged from the perspective of a Reasonable Officer on the scene
5. Rather than with the 20/20 vision of hindsight



Reasonable Officer Standard

Would another officer facing like of similar circumstances act in the same way or use similar judgment?



Graham Factors

1. Whether the suspect posed an immediate threat to the safety of the officers or others
2. The severity of the crime at issue
3. Whether the suspect was actively resisting arrest
2. Whether the suspect was attempting to evade arrest by flight



TASER DEPLOYMENT



Other factors which may determine reasonableness

- Is there an opportunity to warn prior to force being used?
- Did the Officer assess the subject's ability to cease resistance and/or comply with the officer's commands
- The availability of other reasonable **force options**
- The number of officers/subjects
- The age, size, and relative strength of officers/subjects
- Any specialized knowledge, skills, or abilities of subjects
- Prior contact
- Injury or exhaustion of officers
- Access to potential weapons
- Environmental factors, such as lighting, footing, sound conditions, crowds, traffic, and other hazards
- Reason to believe mentally ill, emotionally disturbed, or under the influence of alcohol or drugs

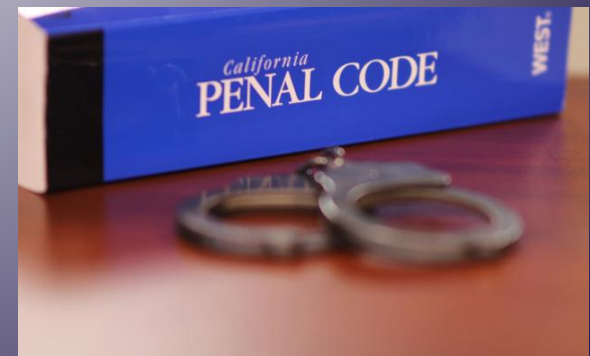
AB 392

- ❑ California Assembly Bill 392 was signed into law by Gov. Newsom and takes effect Jan 1, 2020.
- ❑ This bill was paired with SB 230
- ❑ This Bill amends Ca. PC 835a, which regulates the use of force by Peace Officers in Ca.



What are the changes to 835a

- No significant changes to current law
- Maintains Graham v. Connor standard
- Addition of verbiage already in current case law
- P.C. 196 Justifiable Homicide by a peace officer
 - Refers to provisions in 835a P.C.
 - Tennessee v. Garner
- P.C. 835a (d) Tactical Repositioning or other de-escalation tactics
 - Alternatives and considerations



SB 230

- With the passage and implementation of SB 230, California will be the first state in the nation to:
 - Mandate every California law enforcement officer to receive the most robust training in the nation strictly designed to minimize the use of force.
- Require every law enforcement officer to adhere to specific, publicly available guidelines for when they are authorized to use force.



SB 230

- Establish specific policy requirements across all law enforcement departments on de-escalation, rendering medical aid, proportional use of force and more.
- Standardize detailed reporting requirements for all instances when force is used.
- Specify that use of force policies and training are considered in legal proceedings.



Penal Code Section 834a states

“If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using FORCE or any WEAPON to resist such arrest.”



Penal Code Section 835a

“Any officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to over resistance.”



Penal Code Section 835a

“A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”



Penal Code Section 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.
(Amended by Stats. 2019, Ch. 170, Sec. 1. (AB 392) Effective January 1, 2020.)



CVPD DPM 300.5 DEADLY FORCE APPLICATIONS

- ▶ The use of deadly force is only justified when the officer reasonably believes it is necessary in the following circumstances (Penal Code § 835a): (a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes is an imminent threat of death or serious bodily injury to the officer or another person.
- ▶ (b) An officer may use deadly force 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. Officers shall not use deadly force against a person based on the danger that person poses to him/ herself, 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 (Penal Code § 835a).
- ▶ An “imminent” threat of death or serious bodily injury exists 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 officer or another person. An officer’s subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention (Penal Code § 835a).

WHAT WERE THE FORCE FACTORS? TACTICAL RETREAT, VERBAL COMMANDS, ATTEMPTS TO DE-ESCALATE



Definitions

- Levels of Resistance
 - Compliant Behavior
 - Passive Resistance
 - Active Resistance
 - Assaultive Behavior
 - Life Threatening Resistance



Duty to Intervene..

- Any officer present and observing another officer using control technique that is clearly beyond that which is objectively reasonable under the totality of the circumstances shall, when in a position to do so, intervene to prevent the use of unreasonable or inappropriate techniques being used.



Duty to Intervene..

- An officer who observes another officer using a technique that exceeds the degree permitted by law or is outside agency policy or procedure should promptly report these observations to a supervisor.



What the community expects of police?

TO BE TREATED WITH RESPECT AND DIGNITY

TO MAINTAIN SOCIAL ORDER, MANAGE CONFLICTS, SOLVE PROBLEMS

TO LISTEN TO THEM, TREAT THEM FAIRLY AND TRUST

USE ONLY FORCE WHICH IS NECESSARY TO SUBDUE

MAINTAIN THE PUBLIC TRUST

BUILD COMMUNITY PARTNERSHIPS

HELP MAINTAIN A HIGH QUALITY OF LIFE

Reasonable? Why?



Documenting Force

- Proper documentation of use of force incidents
- Articulation of events
- Any use of force by a member of this department shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident.
- The officer should articulate the factors perceived and why he/she believed the use of force was reasonable under the circumstances.
- To collect data for purposes of training, resource allocation, analysis, and related purposes, the Department may require the completion of additional report forms, as specified in department policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

Questions?

