

presents

Law Enforcement Practices & Liability Conference



Mental Health, Altered States, and Policing

MCLE: 1.5 Hours

Friday, May 26, 2023
8:30 a.m. - 10:00 a.m.

Speakers:

Howard Jordan, Consultant
Sloan Sakai Yeung & Wong, LLP

Mark Stadler,
Crisis Intervention Team Program Administrator
Ventura County

Missy Olinn, Partner
Manning, Kass, Ellrod, Ramirez, & Trester, LLP

Conference Reference Materials

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WRITTEN MATERIALS FOR PANEL ON
“Mental Health, Altered States, and Policing”

2023 LAW ENFORCEMENT PRACTICES AND LIABILITY CONFERENCE
Thursday May 25 – Friday May 26
San Diego County Bar Association Conference Room
401 West A St., Suite 1100, San Diego, CA 92101

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CALIFORNIA
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Law Enforcement Practices and Liability Conference

Mental Health, Altered States, and Policing

San Diego County Bar Association Conference Room
401 West A St., Suite 1100, San Diego, CA 92101

May 25-26, 2023

Mental Health, Altered States, and Policing

This session will discuss effective training, re-training, and policies for addressing individuals with mental health issues or suffering from altered mental states caused by various substances. The panel will discuss effective crisis intervention strategies to minimize the need for using deadly force in these circumstances, as well as and legislative updates.

SPEAKERS

Howard Jordan, former Chief, Oakland Police Department
Consultant/Investigator
Sloan Sakai Young & Wong, LLP
Management Strategies Group
Emeryville, CA

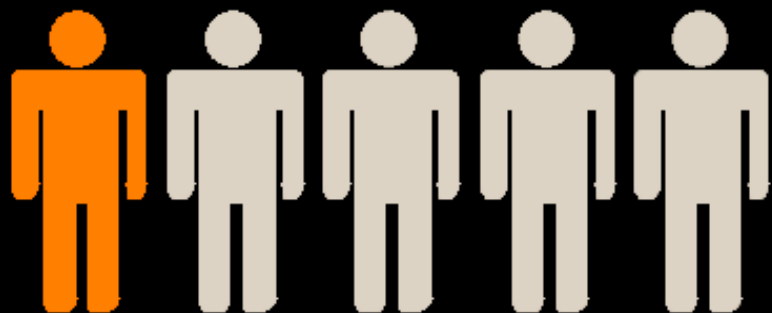
Mildred “Missy” K. O’Linn, Esq.
Partner, Manning, Kass, Ellrod, Ramirez, & Trester LLP
Los Angeles, CA

Mark Stadler, former Commander, Ventura Police Department
Senior Program Administrator, Crisis Intervention Team
Ventura County Sheriff’s Office
Ventura, CA

Officer Involved Shootings

- “People with **untreated** mental illnesses are **16x** more likely to be killed during a police encounter.”
 - *Treatment Advocacy Center, Dec. 2015*
- More than **half** of the OIS fatalities occurred in agencies that didn't provide officers de-escalation training.
 - *Washington Post, Dec. 2015*

PRISONS AND JAILS



1 IN 5 PEOPLE HELD IN AMERICA'S PRISONS AND JAILS HAS A RECENT HISTORY OF MENTAL ILLNESS

7 IN 10 YOUTH IN THE JUVENILE JUSTICE SYSTEMS HAVE AT LEAST ONE MENTAL HEALTH DISORDER



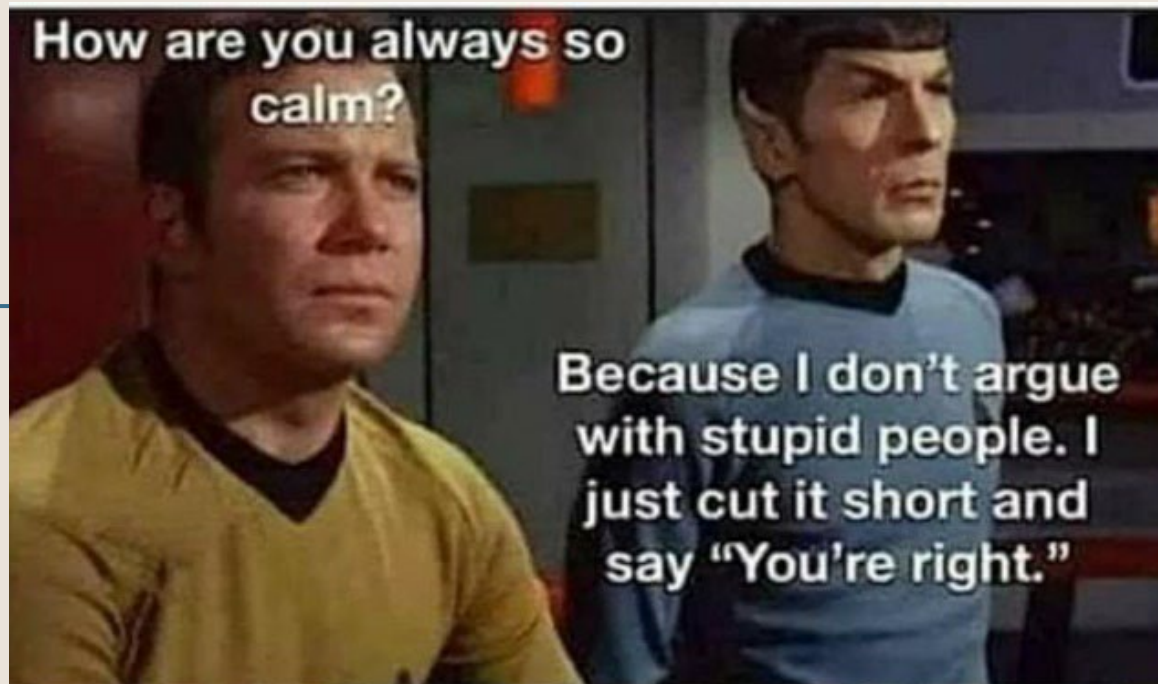
DEFINITIONS

- mental health issues
- altered states



De-escalation

- Definition
- Best practices for training and re-training peace officers:
 - communication;
 - time & distance;
 - whether to act now (window of opportunity), or wait;
 - accurate risk evaluation;
 - additional police resources;
 - additional non-police resources; and
 - use of force.



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Sean Moore – Jan. 6, 2017

2019/04/14 23:07:16 GMT -4

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P.O. Davis: Put the knife--
Trawick: What, I'm--cooking. I'm
cooking.
P.O. Davis: Put the knife down.

Kawaski Trawick – Apr. 14, 2019

“Disturbed man with gun” – Nov. 27, 2019



“Suicidal man with weapons” – Nov. 7, 2021

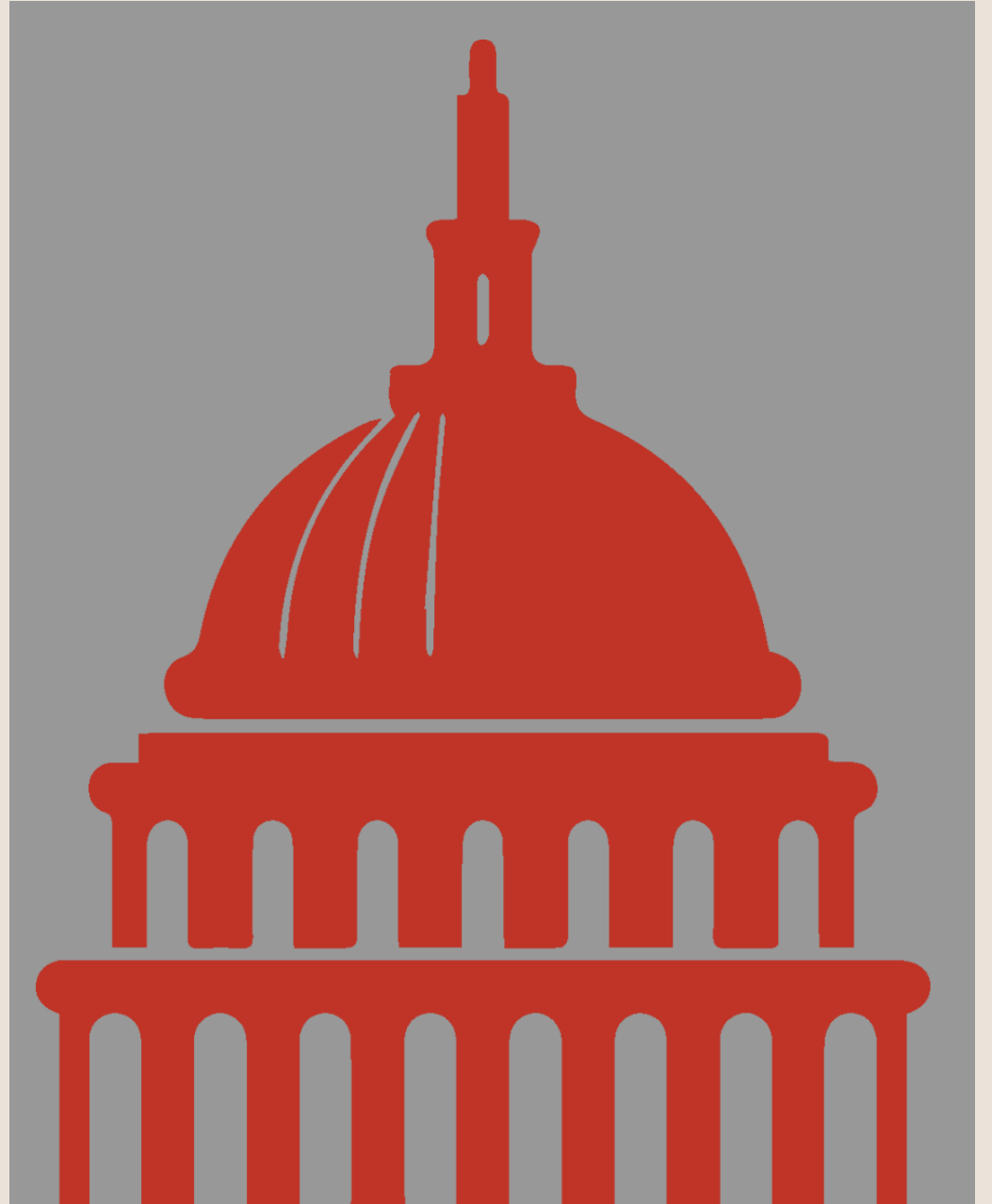
Officer mental health and impacts on effective policing

- impacts on officers; and
- best practices for training and re-training.



Legislative changes & caselaw

- consent decree for Oakland P.D. (2003);
- Cal. SB 29 (2015);
- Cal. AB 392 (2019) (Cal. Penal Code § 835a);
- etc.



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Mental Health, Altered States, and Policing

QUESTIONS?



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Howard Jordan

Consultant

EXPERIENCE

Mr. Jordan is a licensed private investigator at Jordan Consulting and Investigations, a self-established company that offers an array of services, including law enforcement consultations, legal services, investigations, and background investigations. Mr. Jordan has a professional background in law enforcement and rose through the ranks to serve as Chief of Police for the City of Oakland.

RELATED EXPERIENCE

Mr. Jordan is a Police Practice and Procedures Expert. He is a graduate of the 219th FBI National Academy and the Police Executive Research Forum's Senior Management Institute in Policing. He shares his wealth of knowledge and experience in the law enforcement profession with others, serving as a mentor for executive leadership and as an adjunct professor at Diablo Valley College and Merritt College.

MEMBERSHIPS

- California Police Chiefs Association, California Association of Licensed Investigators
- Police Executive Research Forum (PERF)
- Advisory Board of the University of San Francisco, International Institute of Criminal Justice Leadership

MILDRED K. O'LINN

Partner



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Mildred K. O'Linn is a partner in the Los Angeles office of Manning Kass, Ellrod, Ramirez, Trester LLP. Ms. O'Linn has an unparalleled background as an attorney and technical expert in peace officer civil liability, training and tactics and the defense of governmental entities. Ms. O'Linn was a police officer for eight years at the Kent State University Police Department. Subsequently, she served as the Legal and Technical Advisor for the Law Enforcement Television Network, Inc. (LETN).

In her 35 year legal career, Ms. O'Linn has been repeatedly recognized for her skills as litigator and in 2009 Ms. O'Linn was accepted as a member of the distinguished American Board of Trial Advocates (ABOTA), an award only bestowed upon proven trial attorneys. In 2011 she was inducted into the Litigation Counsel of America as a Senior Fellow, an invitation-only trial lawyer honorary society representing less than one-half of one percent of American lawyers. Most recently in 2020, Ms. O'Linn was a featured speaker in the LA-ABOTA Masters in Trial Program, "Put Your Pants on and Pick a Jury" series in the Civil Rights - Police Misconduct presentation.

Since coming to California in 1991, she has served the law enforcement community on a variety of committees and provided training to tens of thousands of peace officers. In 1992 Ms. O'Linn served as a member of both the California POST Use of Force Committee and as a member of the California Peace Officers' Association committee to develop a model use of force policy. Between 1992 and 1995, Ms. O'Linn was a member of the Los Angeles Police Department's Use of Force Training Review Committee and served on the Los Angeles Police Department's Civilian Martial Arts Advisory Panel in development of the LAPD's arrest and control curriculum. She has served on numerous additional California POST committees including: Ethical Decision-Making; Officer

Involved Shootings; Dog Encounters: Keeping Officers Safe Committee; Learning Domain 20: Use of Force; Law Enforcement Officers Killed and Assaulted; the Mental Health Course Development Workshop; the De-escalation Curriculum Development Workshop; and Crowd Management, Intervention, and Control Guidelines. The training concepts she has developed are considered revolutionary and include the Constitutional Law Crate, the Use of Force Equation, the CRISIS Communications Crate and the 835a Anagram. Missy also serves on the PoliceOne Editorial Advisory Board and has published numerous articles on law enforcement related topics.

In 2012, Ms. O'Linn was retained to assist the City of Spokane Washington Use of Force Commission in reviewing the agencies use of force policies and training and their FTO program and then in 2015 served as a consultant in the City's response to the collaborative reform issues with the federal DOJ. She served on the Los Angeles County Chiefs of Police Public Outreach Committee and on the Legal Affairs Committee and the Professional Development Committee for the Major County Sheriffs of America.

Ms. O'Linn has received numerous awards and acknowledgments for excellence in representation and for her contributions to the defense of the law enforcement community from various agencies. In 2005 she was named the Los Angeles County Deputy Sheriffs Association's recipient of the Award for Civilian Leadership. In December, 2006 Ms. O'Linn received a Meritorious Service Award from the City of Gretna, Louisiana Police Department for her assistance to law enforcement in the aftermath of Hurricane Katrina. More recently, the State of California awarded her the California POST Lifetime Achievement Award for Excellence in Law Enforcement Training and she was inducted into Safariland Training Group's "Monadnock Hall of Fame" for her dedicated service to educating those who are tasked to protect others.

Practice Areas

- Governmental Entity Liability
- Employment Law

Admissions

- California
- Texas

BIOGRAPHY: Mark Stadler

Mark Stadler has over 36 years of law enforcement experience; he became the Ventura County Law Enforcement Crisis Intervention Team (CIT) Program Administrator in July 2015 after retiring as a Commander from the Ventura Police Department in California. Commander Stadler is a founding member of Ventura County's CIT program in 2001. He holds a Bachelor's degree in Criminology and a Master's degree in Organizational Management from the University of La Verne. He is a law enforcement Medal of Valor recipient, a graduate of the California Peace Officer Standards and Training's, Supervisory Leadership Institute, and Command College. He is an instructor at the Ventura County Criminal Justice Training Center, and is a Senior Adjunct Professor for the University of La Verne. He is a current Board Member for the California Crisis Intervention Training Association – CACITA, and the Ventura County National Alliance on Mental Illness (NAMI).

Basic Course Workbook Series Student Materials

**Learning Domain 20
Use of Force/Deescalation
Version 5.4**

Chapter 2

Deescalation

Overview

Learning need Peace officers must understand how the principles of deescalation can enhance contacts with the public and may result in improved decision-making, reduction in situational intensity, and opportunities for outcomes with greater voluntary compliance.

Learning objectives The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">• define <i>deescalation</i>.	20.02.06
<ul style="list-style-type: none">• recognize the four core concepts of deescalation<ul style="list-style-type: none">- Self-control- Effective communication- Scene assessment and management- Force options	20.02.07
<ul style="list-style-type: none">• understand the components of a Critical Decision-Making Model.<ul style="list-style-type: none">- Collect Information- Assess situation, threats, and risks- Law and policy- Plan- Act, review, and reassess	20.02.08
<ul style="list-style-type: none">• recognize how tactical methods that use time, distance, cover, and concealment assist in deescalation.	20.02.09
<ul style="list-style-type: none">• recognize how strategic communication may enhance deescalation.	20.02.10

Continued on next page

Overview, Continued

In this chapter This chapter focuses on principles of deescalation. Refer to the following chart for specific topics.

Topic	See Page
Deescalation	2-3
Critical Decision-Making Model	2-6
Strategic Communication	2-10
Workbook Learning Activities	2-14

Deescalation

Introduction Peace officers must understand that the principles of deescalation can provide effective tools during contacts with the public and may result in improved decision-making, reduction in situational intensity, and providing outcomes with greater voluntary compliance.

Definition Deescalation is the process of using strategies and techniques intended to decrease the intensity of the situation.

Common misconceptions of deescalation Common misconceptions of deescalation include, but are not limited to:

- If an officer uses force, that means they failed to de-escalate
- It is a soft form of policing
- Officers are losing control at scenes
- Officers are being required to walk away or retreat
- Officers are letting their guard down
- De-escalation is too difficult to apply in rapidly changing situations

Benefits of deescalation Benefits of the practice of deescalation include, but are not limited to:

- Positive impact on public trust
- Reduced danger to officer and the public
- Improved community cooperation
- Positive impact on officer wellness

Continued on next page

Deescalation, Continued

**The history of
deescalation:
Senate Bill 230
(2019-2020)**

The highest priority of California law is safeguarding the life, dignity, and liberty of all persons, without prejudice to anyone. Law enforcement officers shall be guided by the principle of reverence for human life in all investigative, enforcement, and other contacts between officers and members of the public. When officers are called upon to detain or arrest a suspect who is uncooperative or actively resisting, may attempt to flee, poses a danger to others, or poses a danger to themselves, they should consider tactics and techniques that may persuade the suspect to voluntarily comply or may mitigate the needs to use a higher level of force to resolve the situation safely.

Vesting officers with the authority to use necessary force as determined by an objectively reasonable officer and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests. 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.

The intent of Senate Bill 230 (2019-2020) is to establish the minimum standard for policies and reporting procedures regarding California law enforcement agencies' use of force. The purpose of these use of force policies is to provide law enforcement agencies with guidance regarding the use and application of force to ensure such applications are used only to effect arrests or lawful detentions, overcome resistance, or bring a situation under legitimate control.

No policy can anticipate every conceivable situation or exceptional circumstance which officers may face. In all circumstances, officers are expected to exercise sound judgment and critical decision making when using force options.

A law enforcement agency's use of force policies and training may be introduced as evidence in proceedings involving an officer's use of force. The policies and training may be considered as a factor in the totality of circumstances in determining whether the officer acted reasonably but shall not be considered as imposing a legal duty on the officer to act in accordance with such policing and training. Every instance in which a firearm is discharged, including exceptional circumstances, shall be reviewed by the department on a case-by-case basis to evaluate all facts and to determine if the incident is within policy and in accordance with training.

Continued on next page

Deescalation, Continued

Core concepts

Peace officers should attempt to recognize the public's physical and psychological reactions to situations. Peace officers should also try to recognize their own physical and psychological reactions to situations. Tactics and techniques may assist in decreasing the situational intensity of a situation and gain voluntary compliance.

- **Self-control** – understanding of physical and psychological reactions of the public and law enforcement officers may assist in maintaining self-control.
 - **Effective communication** – clear commands and questions, good observation and listening skills, and appropriate terminology will enhance the likelihood of success.
 - **Scene assessment and management** – when possible, provides officers with an accurate picture of what is occurring and assists in the management of force options.
 - **Force options** – reasonable use of force techniques may reduce situational intensity for the safety of all parties.
-

Areas of performance where deescalation concepts may assist

Voluntary compliance requires clearly communicated instructions using deescalation techniques.

When possible, officers should consider mitigating unintended consequences. Doing so may assist in the overall deescalation of an event and aids in public trust.

There can be many officers and public safety issues when attempting to use deescalation techniques. Police legitimacy is greatly affected by the use or non-use of deescalation techniques. Remember the importance of voice, neutrality, trustworthiness, and respect.

Critical Decision-Making Model

Introduction

Critical Decision-Making Model (CDM) is loosely derived from the United Kingdom's model and is one process that may be valuable in helping peace officers assess and respond to critical incidents. CDM is one of many models that enhance critical decision-making.

Respect for human life and dignity

When forming a plan to address a law enforcement event, officers should keep in mind the universal respect for human life and dignity.

Components of critical decision-making model

The components of a Critical Decision-Making Model include:

- Collecting information
 - Assessing the situation, threats, and risks
 - Law and policy
 - Plan
 - Act, review, and reassess
-

Collect information

The collection of information prior to and during the use of deescalation and a threat risk assessment may be considered while using deescalation techniques.

Deescalation techniques that are attempted or actually utilized should be documented in the appropriate reports related to an incident.

Deescalation techniques that can be documented include, but are not limited to:

- Information gathered prior to arriving at the scene
 - Use of distance
 - Use of additional officers
 - Communication and verbalization techniques utilized
 - The level of success or failure of each deescalation technique
-

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Critical Decision-Making Model, Continued

Assessing the situation, threats, and risks

Assessing the situation includes, but is not limited to:

- Determining if the situation poses a threat or risk to others
- Determining if the threat requires an immediate response
- Determining if there is an imminent threat that requires action

Assessing the threats includes, but is not limited to:

- Awareness of the situation
- Assessing and requesting appropriate resources
- Cover and concealment
- Distance between officers and subjects

Assessing the risks includes, but is not limited to:

- The subject's behavior
 - The subject's condition
 - Possible communication issues
 - The subject's access to weapons
 - The subject's special skills or knowledge
-

Law and policy

Peace officers need to consider:

- Is there a legal reason or obligation to act?
 - What legal powers does the officer have based on federal, state, and local ordinances?
 - Are the officer's actions within agency policy?
-

Plan

Peace officers should:

- Identify roles and responsibilities
 - Contingencies
 - Options and resources
 - Utilization of time
-

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Critical Decision-Making Model, Continued

Act, review, and reassess

Deescalation is dynamic and officers should:

- Implement a plan and prepare to adjust, if needed
 - Assess whether the action has the desired effect
 - If the action has the desired effect, is there anything more that can be done?
 - Review what lessons can be learned following the conclusion of the contact
-

The effect of time on peace officer planning and tactics

Although rapidly evolving and/or violent incidents may not allow officers to try and “slow things down,” using the time when safe and practical to do so, may aid in reducing the intensity of the situation. Although there are situations where officers cannot delay in acting, many can be handled safely and effectively by allowing more time to transpire.

These strategies and techniques to deescalate a situation may affect officer safety, situational awareness, and tactical repositioning:

Creating distance may calm an irate individual and help reduce the person’s intensity. But if doing so poses a loss of situational control, or officer or public safety are further jeopardized, then adding distance may be counterproductive to achieving a positive outcome.

Situational awareness is a critical consideration in deescalation. Recognizing what may be an immediate threat, seeing people or items causing agitation to a violent suspect, or understanding how some stimuli are altering behavior aid an officer in responding well to an incident.

Continued on next page

Critical Decision-Making Model, Continued

The effect of time on peace officer planning and tactics,
continued

Tactical repositioning is often utilized for officer safety and it can also be considered as a deescalation technique. An officer being less, or more, visible can affect the actions of others. The vantage points from which officers observe must provide for officer safety. Different positions may also direct someone's attention elsewhere, draw them away from threats, and/or help deescalate a situation.

Gaining useful information prior to arriving at an incident and continuing to update it during the call may assist officers with a better understanding, while possibly providing additional solutions not recognized without the information. For example:

- Knowing a despondent person's child recently died would be helpful to an officer trying to assist them.
- Information on past law enforcement contacts with the individual.
- Gathering information on medications or medical issues of the individual
- Contacting family member
- Assess whether the action has the desired affect
- If the action has the desired effect, is there anything more that can be done?
- Review what lessons can be learned following the conclusion of the contacting family members for additional information on the individual.

When documenting incidents where deescalation techniques are utilized, officers should include specific words spoken and suspect actions taken and not taken. The documentation should provide a clear understanding of what the officer was facing, the actions taken, the observations made, and other important facts related to the officer's and other's actions.

Strategic Communication

Introduction Peace officers are contact professionals, which means that they represent more than themselves. Officers should realize that using good verbal skills may increase the likelihood of successful deescalation and/or voluntary compliance. Officers should understand that words do not always work, or they may not have the opportunity to use them.

Definition Strategic communication is the use of verbal and non-verbal techniques to aid in controlling a situation and enhancing officer and community safety.

Officer and public safety in strategic communication While strategic communication is one approach that may assist officers in effectively communicating with members of the public and gaining voluntary compliance, officers should never sacrifice their safety, the safety of other officers, or the safety of the public. With this in mind, officers need to focus on maintaining situational awareness and a tactical advantage.

Benefits of strategic communication Some of the benefits of strategic communication may be, but are not limited to:

- Deescalation
- Maintaining officer and community safety
- Gaining voluntary compliance
- Building rapport
- Decreasing citizen complaints

The importance of how to communicate your message Remember – two way to communicate a message

Professional

- Be flexible enough to look beyond your perspective and be empathetic
- Always use your language as if you had an audience

Unprofessional

- The unprofessional use of language designed to escalate the situation
- Not knowing your audience
- Antagonistic/sarcastic reactions

Remember there is an expectation by the public and the courts that law enforcement officers should act professionally.

Continued on next page

Strategic Communication, Continued

How to handle verbal abuse-deflection and redirection

Officers may need to deal with persons who are angry or upset or verbally lash out at officers. Instead of responding in kind, officers may be able to deflect or redirect the conversation in a more positive direction.

This can be done with the use of verbal deflectors

Some examples of verbal deflectors are:

- “Appreciate that, but...”
- “I understand that, but...”
- “I got that, however...”
- “Maybe so, but...”
- “I hear that, however...”

Verbal deflectors allow the officer to focus on the issue and not the attitude. The phrase also acknowledges the other person’s concerns.

The key to using verbal deflectors is to deflect the comment then to immediately add “but” or “however”

For example:

- Subject: “You’re an asshole!”

Officer: “I hear that; however, I need you to sign the citation.”

Examples of strategic communication models

There are various strategic communication models. Two examples are LEAPS and the 5-step technique.

LEAPS

LEAPS can provide officers with an approach to communication that may assist in deescalating a situation and gathering important information. While some situations may lend themselves to using LEAPS in chronological order (i.e. L-E-A-P-S). In other situations, officers may find it more effective to proceed in a different order (e.g. A-L-P-S-E) or just use some of LEAPS (e.g. L-A-S-E).

Continued on next page

Strategic Communication, Continued

	Skill	Example
L	- Listen	<ul style="list-style-type: none">- Project a “listening face”- Active listening consists of being open, hearing the other person, interpreting what is being said, and acting appropriately.
E	- Empathize	<ul style="list-style-type: none">- Project an “empathetic face”- Develop a sense of “otherness”- Citizens have a point of view, right or wrong. Officers do not have to agree but should try to understand their perspective.
A	- Ask	<ul style="list-style-type: none">- Use fact-finding questions- Set context- Vary the questions to lessen resistance.
P	- Paraphrase	<ul style="list-style-type: none">- Put the other person’s meaning into your words.
S	- Summarize	<ul style="list-style-type: none">- Explain how the problem will be resolved.

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Strategic Communication, Continued

Uncooperative and difficult persons – 5-step technique

Officers sometimes interact with persons who do not appear to present a physical threat to the safety of officers or others, but who are nonetheless uncooperative or difficult (e.g. a motorist who does not want to sign a ticket). In these situations, officers may find it useful to use a five-step approach in an effort to deescalate the situation and gain voluntary compliance (i.e. getting the motorist to sign the ticket and be on their way). The five steps are intended to be followed in chronological order; however, circumstances may dictate a different order, different response, or immediate action.

1. Ask – ethical appeal (“I need you to...”)
2. Set context – reasonable appeal (tell them why)
3. Present Options – personal appeal (always present the positive option first)
4. Confirmation stage – practical appeal (“Is there anything else I can say to gain your cooperation? I’d like to think you’d work with me.”)
5. ACT – disengage to wait for further assistance or immediately move to a force option

Note: 8 step is elaborated in LD 22 – Vehicle Pullovers

Documentation

It is important for officers to thoroughly document their strategic communication attempts in a well-written report. Remember that the officer’s report is a critical part of the review process and helps others assess the reasonableness of their actions.

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)

Title 4. Standards and Training of Local Law Enforcement Officers (Refs & Annos)

Chapter 1. Commission on Peace Officer Standards and Training (Refs & Annos)

Article 2. Field Services, Standards, and Certification (Refs & Annos)

West's Ann.Cal.Penal Code § 13515.28

§ 13515.28. Field training officers; crisis intervention behavioral health training

Effective: January 1, 2016

[Currentness](#)

(a)(1) The commission shall require the field training officers who provide instruction in the field training program to have at least eight hours of crisis intervention behavioral health training to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. This course shall include classroom instruction and instructor-led active learning, such as scenario-based training, and shall be taught in segments that are at least four hours long.

(2) If a field training officer has completed eight hours of crisis intervention behavioral health training within the past 24 months, or if a field training officer has completed 40 hours of crisis intervention behavioral health training, the requirement described in paragraph (1) shall not apply.

(b) The crisis intervention behavioral health training shall address issues relating to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:

(1) The cause and nature of mental illnesses and intellectual disabilities.

(2)(A) How to identify indicators of mental illness, intellectual disability, and substance use disorders.

(B) How to distinguish between mental illness, intellectual disability, and substance use disorders.

(C) How to respond appropriately in a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders.

(3) Conflict resolution and deescalation techniques for potentially dangerous situations.

(4) Appropriate language usage when interacting with potentially emotionally distressed persons.

(5) Community and state resources available to serve persons with mental illness or intellectual disability, and how these resources can be best utilized by law enforcement.

(6) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.

(c) Field training officers assigned or appointed before January 1, 2017, shall complete the crisis intervention behavioral health training by June 30, 2017. Field training officers assigned or appointed on or after January 1, 2017, shall complete the crisis intervention behavioral health training within 180 days of assignment or appointment.

(d) This section does not prevent an agency from requiring its field training officers to complete additional hours of crisis intervention behavioral health training or requiring its field training officers to complete that training earlier than as required by this section.

Credits

(Added by Stats.2015, c. 469 (S.B.29), § 1, eff. Jan. 1, 2016.)

West's Ann. Cal. Penal Code § 13515.28, CA PENAL § 13515.28

Current with Ch. 1 of 2023-24 1st Ex.Sess, and urgency legislation through Ch. 2 of 2023 Reg.Sess. Some statute sections may be more current, see credits for details.

2015 Cal. Legis. Serv. Ch. 469 (S.B. 29) (WEST)

CALIFORNIA 2015 LEGISLATIVE SERVICE

2015 Portion of 2015-2016 Regular Session

Additions are indicated by **Text**; deletions by

~~***~~.

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

CHAPTER 469

S.B. No. 29

PEACE OFFICERS—TRAINING—MENTAL HEALTH

AN ACT to add Sections 13515.28, 13515.29, and 13515.295 to the Penal Code, relating to peace officer training standards.

[Filed with Secretary of State October 3, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 29, Beall. Peace officer training: mental health.

Existing law requires specified categories of law enforcement officers to meet training standards pursuant to courses of training certified by the Commission on Peace Officer Standards and Training (POST). Existing law requires POST to include in its basic training course adequate instruction in the handling of persons with developmental disabilities or mental illness, or both. Existing law also requires POST to establish and keep updated a continuing education classroom training course relating to law enforcement interaction with developmentally disabled and mentally ill persons.

This bill would require POST to require field training officers who are instructors for the field training program to have at least 8 hours of crisis intervention behavioral health training, as specified. The bill would also require POST to require as part of its existing field training officer course, at least 4 hours of training relating to competencies of the field training program and police training program that addresses how to interact with persons with mental illness or intellectual disability, to be completed as specified.

By requiring local law enforcement field training officers to have at least 8 additional hours of training and imposing additional training costs on local law enforcement agencies, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 13515.28 is added to the Penal Code, to read:

<< CA PENAL § 13515.28 >>

13515.28. (a)(1) The commission shall require the field training officers who provide instruction in the field training program to have at least eight hours of crisis intervention behavioral health training to better train new peace officers on how to effectively interact with persons with mental illness or intellectual disability. This course shall include classroom instruction and instructor-led active learning, such as scenario-based training, and shall be taught in segments that are at least four hours long.

(2) If a field training officer has completed eight hours of crisis intervention behavioral health training within the past 24 months, or if a field training officer has completed 40 hours of crisis intervention behavioral health training, the requirement described in paragraph (1) shall not apply.

(b) The crisis intervention behavioral health training shall address issues relating to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:

(1) The cause and nature of mental illnesses and intellectual disabilities.

(2)(A) How to identify indicators of mental illness, intellectual disability, and substance use disorders.

(B) How to distinguish between mental illness, intellectual disability, and substance use disorders.

(C) How to respond appropriately in a variety of situations involving persons with mental illness, intellectual disability, and substance use disorders.

(3) Conflict resolution and deescalation techniques for potentially dangerous situations.

(4) Appropriate language usage when interacting with potentially emotionally distressed persons.

(5) Community and state resources available to serve persons with mental illness or intellectual disability, and how these resources can be best utilized by law enforcement.

(6) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.

(c) Field training officers assigned or appointed before January 1, 2017, shall complete the crisis intervention behavioral health training by June 30, 2017. Field training officers assigned or appointed on or after January 1, 2017, shall complete the crisis intervention behavioral health training within 180 days of assignment or appointment.

(d) This section does not prevent an agency from requiring its field training officers to complete additional hours of crisis intervention behavioral health training or requiring its field training officers to complete that training earlier than as required by this section.

SEC. 2. Section 13515.29 is added to the Penal Code, to read:

<< CA PENAL § 13515.29 >>

13515.29. (a) The commission shall establish and keep updated a field training officer course relating to competencies of the field training program and police training program that addresses how to interact with persons with mental illness or intellectual disability.

(b) This course shall consist of at least four hours of classroom instruction and instructor-led active learning, such as scenario-based training, shall address issues related to stigma, and shall be culturally relevant and appropriate.

(c) All prospective field training officers shall complete the course described in subdivisions (a) and (b) as part of the existing field training officer program.

(d) The commission shall implement the provisions of this section on or before August 1, 2016.

SEC. 3. Section 13515.295 is added to the Penal Code, to read:

<< CA PENAL § 13515.295 >>

13515.295. (a) The commission shall, by May 1, 2016, conduct a review and evaluation of the required competencies of the field training program and police training program to identify areas where additional training is necessary to better prepare law enforcement officers to effectively address incidents involving persons with a mental illness or intellectual disability.

(b) Upon identifying what additional training is needed, the commission shall update the training in consultation with appropriate community, local, and state organizations, and agencies that have expertise in the area of mental illness, intellectual disabilities, and substance abuse disorders, and with appropriate consumer and family advocate groups.

(c) The training shall address issues related to stigma, shall be culturally relevant and appropriate, and shall include all of the following topics:

(1) How to identify indicators of mental illness, intellectual disability, substance use disorders, neurological disorders, traumatic brain injury, post-traumatic stress disorder, and dementia.

(2) Autism spectrum disorder.

(3) Genetic disorders, including, but not limited to, Down syndrome.

(4) Conflict resolution and deescalation techniques for potentially dangerous situations.

(5) Alternatives to the use of force when interacting with potentially dangerous persons with mental illness or intellectual disabilities.

(6) The perspective of individuals or families who have experiences with persons with mental illness, intellectual disability, and substance use disorders.

(7) Involuntary holds.

(8) Community and state resources available to serve persons with mental illness or intellectual disability, and how these resources can be best utilized by law enforcement.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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West's Annotated California Codes
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure
Title 3. Additional Provisions Regarding Criminal Procedure (Refs & Annos)
Chapter 5. Arrest, by Whom and How Made (Refs & Annos)

West's Ann.Cal.Penal Code § 835a

§ 835a. Legislative findings and declarations; use of force to effect arrest,
prevent escape, or overcome resistance; use of deadly force; definitions

Effective: January 1, 2020

Currentness

(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.

Credits

(Added by Stats.1957, c. 2147, p. 3807, § 11. Amended by Stats.2019, c. 170 (A.B.392), § 2, eff. Jan. 1, 2020.)

[Notes of Decisions \(86\)](#)

West's Ann. Cal. Penal Code § 835a, CA PENAL § 835a

Current with Ch. 1 of 2023-24 1st Ex.Sess, and urgency legislation through Ch. 2 of 2023 Reg.Sess. Some statute sections may be more current, see credits for details.

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2019 Cal. Legis. Serv. Ch. 170 (A.B. 392) (WEST)

CALIFORNIA 2019 LEGISLATIVE SERVICE

2019 Portion of 2019-2020 Regular Session

Additions are indicated by **Text**; deletions by

~~***~~

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

CHAPTER 170

A.B. No. 392

LAW ENFORCEMENT OFFICERS—DEADLY FORCE—JUSTIFIABLE USE OF FORCE

AN ACT to amend Sections 196 and 835a of the Penal Code, relating to peace officers.

[Filed with Secretary of State August 19, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 392, Weber. Peace officers: deadly force.

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.

Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law does not require an officer to retreat or desist from an attempt to make an arrest because of resistance or threatened resistance of the person being arrested.

Under existing law, a homicide committed by a peace officer is justifiable when necessarily committed in arresting a person who has committed a felony and the person is fleeing or resisting such arrest.

Existing case law deems such a homicide to be a seizure under the Fourth Amendment of the Constitution of the United States, and as such, requires the actions to be reasonable.

This bill would redefine the circumstances under which a homicide by a peace 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.

The bill would also affirmatively prescribe the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape, or to overcome resistance.

The people of the State of California do enact as follows:

SECTION 1. Section 196 of the Penal Code is amended to read:

<< CA PENAL § 196 >>

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.

SEC. 2. Section 835a of the Penal Code is amended to read:

<< CA PENAL § 835a >>

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.