AB 392 and Peace Officer Use of Force Standards

Background

On August 19, 2019, Governor Newsom signed AB 392 which both redefines the circumstances under which a homicide by a peace officer is deemed justifiable and affirmatively 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.

Affected Statutes

AB 392, effective January 1, 2020, amends the language of the following statutes and includes:

Penal Code 196 PC

- The circumstances of justifiable homicide change from when "overcoming actual resistance to the execution of some legal process or in the discharge of any other legal duty" to "the homicide results from a peace officer's use of force that is in compliance with PC 835a." Penal Code 835a PC

- PC 835a(a) added to reflect legislative intent including:
  - Use of force authority conferred on peace officers is a serious responsibility.
  - Deadly force should be used only when necessary.
  - Use of force decisions are to be evaluated carefully and from a "reasonable officer" perspective.
  - Individuals with disabilities may be affected in their ability to understand or comply with peace officer commands.
- PC 835a(b) amends reasonable force standard to "objectively reasonable force"
- PC 835a(c)(1) amends deadly force standards to include "totality of the circumstances" when:
  - defending against imminent threat of death or serious bodily injury
  - apprehending fleeing persons for felony
    - involving threatened or actual death or serious bodily injury
    - immediate apprehension is reasonably believed to be needed
    - requires, when reasonable, that officers identify themselves and warn of intent to use force
- PC 835a(c)(2) includes prohibition on using deadly force against persons who pose a danger only to themselves.
- PC 835a(d) amends self-defense language to include objectively reasonable force.
- PC 835a(e) added definitions for deadly force, imminent, and totality of the circumstances.