

Use of Force

300.1 PURPOSE AND SCOPE

This policy provides guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, Detectives/Investigators are expected to use these guidelines to make such decisions in a professional, impartial, and reasonable manner (Government Code § 7286).

In addition to the methods, techniques, and tools set forth below, the guidelines for the reasonable application of force contained in this policy shall apply to all policies addressing the potential use of force, including but not limited to the Control Devices and Techniques and Conducted Energy Device policies.

Retaliation prohibitions for reporting suspected violations are addressed in the Anti-Retaliation Policy.

300.1.1 DEFINITIONS

Definitions related to this policy include:

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 (Penal Code § 835a).

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 Detective/ Investigator or another person (Government Code § 7286(a)).

Force - The application of physical techniques or tactics, chemical agents, or weapons to another person. It is not a use of force when a person allows themselves to be searched, escorted, handcuffed, or restrained.

Serious bodily injury - A serious impairment of physical condition, including but not limited to the following: 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 (Penal Code § 243(f)(4)).

Totality of the circumstances - All facts known to the Detective/Investigator at the time, including the conduct of the officer and the subject leading up to the use of force (Penal Code § 835a).

300.2 POLICY

It is the policy of the Enforcement Branch within the Department of Insurance that Detectives and Investigators may, when warranted, use reasonable force, that is, only that amount of force that reasonably appears necessary given the facts and totality of the circumstances known to or perceived by the Detectives or Investigators at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

The use of force by law enforcement personnel is a matter of critical concern, both to the public and to the law enforcement community. Detectives/Investigators are involved on a daily basis in

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numerous and varied interactions and, when warranted, may use reasonable force in carrying out their duties.

The Enforcement Branch recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting Detectives/Investigators with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation and a careful balancing of all interests.

Investigators should consider extricating themselves as their primary option.

300.2.1 FAIR AND UNBIASED USE OF FORCE

Detectives/Investigators are expected to carry out their duties, including the use of force, in a manner that is fair and unbiased (Government Code § 7286(b)). See the Bias-Based Policing Policy for additional guidance.

300.2.2 DUTY TO INTERCEDE

Any Detective/Investigator present and observing another law enforcement officer or an employee using force that is clearly beyond that which is necessary, as determined by an objectively reasonable Detective/Investigator under the circumstances, shall, when in a position to do so, intercede (as defined by Government Code § 7286) to prevent the use of unreasonable force.

When observing force used by a law enforcement officer, each Detective/Investigator should take into account the totality of the circumstances and the possibility that other law enforcement officers may have additional information regarding the threat posed by the subject (Government Code § 7286(b)).

300.2.3 FAILURE TO INTERCEDE

A Detective/Investigator who has received the required training on the duty to intercede and then fails to act to intercede when required by law, may be disciplined in the same manner as the Detective/Investigator who used force beyond that which is necessary (Government Code § 7286(b)).

300.2.4 DUTY TO REPORT EXCESSIVE FORCE

Any Detective/Investigator who observes a law enforcement officer or an employee use force that potentially exceeds what the Detective/Investigator reasonably believes to be necessary shall immediately report these observations to a supervisor (Government Code § 7286(b)).

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

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Detectives/Investigators 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 Detective/Investigator at the time of the event to accomplish a legitimate law enforcement purpose (Penal Code § 835a).

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The reasonableness of force will be judged from the perspective of a reasonable Detective/Investigator on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that Detectives/Investigators 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 a Detective/Investigator might encounter, Detectives/Investigators are entrusted to use well-reasoned discretion in determining the appropriate use of force in each incident. Detectives/Investigators 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)).

It is also recognized that circumstances may arise in which Detectives/Investigators reasonably believe that it would be impractical or ineffective to use any of the approved or authorized tools, weapons, or methods provided by the Enforcement Branch. Detectives/Investigators may find it more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.

While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires a Detective/Investigator to retreat or be exposed to possible physical injury before applying reasonable force.

300.3.2 ALTERNATIVE TACTICS - DE-ESCALATION

As time and circumstances reasonably permit, and when community and officer safety would not be compromised, Detectives/Investigators should consider actions that may increase Detective/Investigator safety and may decrease the need for using force:

- (a) Summoning additional resources that are able to respond in a reasonably timely manner.
- (b) Formulating a plan with responding Detectives/Investigators before entering an unstable situation that does not reasonably appear to require immediate intervention.
- (c) Employing other tactics that do not unreasonably increase Detective/Investigator jeopardy.

In addition, when reasonable and feasible, Detectives/Investigators shall evaluate the totality of circumstances presented at the time in each situation and, when reasonable and feasible, shall determine and utilize reasonably available de-escalation techniques, crisis intervention tactics, and other alternatives, if any, that may persuade an individual to voluntarily comply or may mitigate the need to use a higher level of force to resolve the situation before applying force (Government Code § 7286(b)).

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300.3.3 USE OF FORCE TO EFFECT AN ARREST

Any peace officer may use objectively reasonable force to effect an arrest, to prevent escape, or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape, or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code § 835a).

300.3.4 FACTORS USED TO DETERMINE THE REASONABLENESS OF FORCE

When determining whether to apply force and evaluating whether a Detective/Investigator has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit (Government Code § 7286(b)). These factors include but are not limited to:

- (a) The apparent immediacy and severity of the threat to Detectives/Investigators or others (Penal Code § 835a).
- (b) The conduct of the individual being confronted, as reasonably perceived by the Detective/Investigator at the time (Penal Code § 835a).
- (c) Detective/Investigator/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of Detectives/Investigators available vs. subjects).
- (d) The conduct of the involved Detective/Investigator leading up to the use of force (Penal Code § 835a).
- (e) The effects of suspected drugs or alcohol.
- (f) The individual's apparent mental state or capacity (Penal Code § 835a).
- (g) The individual's apparent ability to understand and comply with Detective/Investigator commands (Penal Code § 835a).
- (h) Proximity of weapons or dangerous improvised devices.
- (i) The degree to which the subject has been effectively restrained and their ability to resist despite being restrained.
- (j) The availability of other reasonable and feasible options and their possible effectiveness (Penal Code § 835a).
- (k) Seriousness of the suspected offense or reason for contact with the individual prior to and at the time force is used.
- (l) Training and experience of the Detective/Investigator.
- (m) Potential for injury to Detectives/Investigators, suspects, bystanders, and others.
- (n) Whether the person appears to be resisting, attempting to evade arrest by flight, or is attacking the Detective/Investigator.
- (o) The risk and reasonably foreseeable consequences of escape.

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- (p) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (q) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the Detective/Investigator or others.
- (r) Prior contacts with the subject or awareness of any propensity for violence.
- (s) Any other exigent circumstances.

300.3.5 COMPLIANCE TECHNIQUES

Compliance techniques may be effective in controlling a physically or actively resisting individual. Detectives/Investigators may only apply those compliance techniques for which they have successfully completed Enforcement Branch-approved training. Detectives/Investigators utilizing any compliance technique should consider:

- (a) The degree to which the application of the technique may be controlled given the level of resistance.
- (b) Whether the person can comply with the direction or orders of the Detective/Investigator.
- (c) Whether the person has been given sufficient opportunity to comply.

The application of any compliance technique shall be discontinued once the Detective/Investigator determines that compliance has been achieved.

300.3.6 RESTRICTIONS ON THE USE OF CAROTID CONTROL HOLD

Detectives/Investigators of the Enforcement Branch are not authorized to use a carotid restraint hold. A carotid restraint means a vascular neck restraint or any similar restraint, hold, or other defensive tactic in which pressure is applied to the sides of a person's neck that involves a substantial risk of restricting blood flow and may render the person unconscious in order to subdue or control the person (Government Code § 7286.5).

300.3.7 RESTRICTIONS ON THE USE OF A CHOKE HOLD

Detectives/Investigators of the Enforcement Branch are not authorized to use a choke hold. A choke hold means any defensive tactic or force option in which direct pressure is applied to a person's trachea or windpipe (Government Code § 7286.5).

300.3.8 ADDITIONAL RESTRICTIONS

Terms such as "positional asphyxia," "restraint asphyxia," and "excited delirium" continue to remain the subject of debate among experts and medical professionals, are not universally recognized medical conditions, and frequently involve other collateral or controlling factors such as narcotics or alcohol influence or pre-existing medical conditions. While it is impractical to restrict a Detective's/Investigator's use of reasonable control methods when attempting to restrain a combative individual, Detectives/Investigators are not authorized to use any restraint or transportation method which might unreasonably impair an individual's breathing or respiratory capacity for a period beyond the point when the individual has been adequately and safely

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controlled. Once the individual is safely secured, Detectives/Investigators should promptly check and continuously monitor the individual's condition for signs of medical distress (Government Code § 7286.5).

300.3.9 USE OF FORCE TO SEIZE EVIDENCE

In general, Detectives/Investigators may use reasonable force to lawfully seize evidence and to prevent the destruction of evidence. However, Detectives/Investigators are discouraged from using force solely to prevent a person from swallowing evidence or contraband. In the instance when force is used, Detectives/Investigators should not intentionally use any technique that restricts blood flow to the head, restricts respiration or which creates a reasonable likelihood that blood flow to the head or respiration would be restricted. Detectives/Investigators are encouraged to use techniques and methods taught by the Enforcement Branch Training Unit for this specific purpose.

300.4 DEADLY FORCE APPLICATIONS

Where feasible, the Detective shall, prior to the use of deadly force, make reasonable efforts to identify himself as a peace officer and to warn that deadly force may be used, unless the Detective has objectively reasonable grounds to believe the person is aware of those facts (Penal Code § 835a).

If an objectively reasonable Detective would consider it safe and feasible to do so under the totality of the circumstances, Detectives shall evaluate and use other reasonably available resources and techniques when determining whether to use deadly force. To the extent that it is reasonably practical, Detectives should consider their surroundings and any potential risks to bystanders prior to discharging a firearm (Government Code § 7286(b)).

The use of deadly force is only justified when the Detective reasonably believes it is necessary in the following circumstances (Penal Code § 835a):

- (a) A Detective may use deadly force to protect himself or others from what the Detective reasonably believes is an imminent threat of death or serious bodily injury to the Detective or another person.
- (b) A Detective may use deadly force to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the Detective reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

Detectives shall not use deadly force against a person based on the danger that person poses to himself, if an objectively reasonable Detective would believe the person does not pose an imminent threat of death or serious bodily injury to the Detective or to another person (Penal Code § 835a).

Additionally, a Detective shall not use deadly force against a person whose actions are a threat solely to property unless the person poses an imminent danger of death or serious physical injury to the Detective or others in close proximity.

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An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, a reasonable Detective 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 Detective or another person. A Detective'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).

300.4.1 SHOOTING AT OR FROM MOVING VEHICLES

Shots fired at or from a moving vehicle are rarely effective and involve considerations and risks in addition to the justification for the use of deadly force. When feasible, Detectives should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. A Detective should only discharge a firearm at a moving vehicle or its occupants when the Detective reasonably believes there are no other reasonable means available to avert the imminent threat of the vehicle, or if deadly force other than the vehicle is directed at the Detective or others (Government Code § 7286(b)).

Detectives should not shoot at any part of a vehicle in an attempt to disable the vehicle.

300.4.2 DISPLAYING OF FIREARMS

Given that individuals might perceive the display of a firearm as a potential application of force, Detectives should carefully evaluate each tactical situation and use sound discretion when drawing a firearm in public by considering the following guidelines (Government Code § 7286(b)):

- (a) If the Detective does not initially perceive a threat but reasonably believes that the potential for such threat exists, firearms should generally be kept in the low-ready or other position not directed toward an individual.
- (b) If the Detective reasonably believes that a threat exists based on the totality of circumstances presented at the time (e.g., high-risk stop, tactical entry, armed encounter), firearms may be directed toward such imminent threat until the Detective no longer perceives such threat.

Once it is reasonably safe to do so, Detectives should carefully secure all firearms.

300.5 REPORTING THE USE OF FORCE

Any use of force by Detectives/Investigators of the Enforcement Branch shall be documented promptly, completely, and accurately in an appropriate report, depending on the nature of the incident (e.g., Team Leader Report, Arrest Report, and/or Information Report). These reports should capture why the force was used, any injuries, medical treatment if needed, witnesses, and any other related information pertaining to the use of force. The Detective/Investigator should articulate the factors perceived and why they believed the use of force was reasonable under the circumstances. To collect data for purposes of training, resource allocation, analysis, and related purposes, the Enforcement Branch may require the completion of additional report forms, as specified in Enforcement Branch policy, procedure, or law. See the Report Preparation Policy for additional circumstances that may require documentation.

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300.5.1 NOTIFICATION TO SUPERVISORS

Any use of force by a Detective/Investigator shall be reported immediately to a supervisor, including but not limited to the following circumstances (Penal Code § 832.13):

- (a) The application caused a visible injury.
- (b) The application would lead a reasonable Detective/Investigator to conclude that the individual may have experienced more than momentary discomfort.
- (c) The individual subjected to the force complained of injury or continuing pain.
- (d) The individual indicates intent to pursue litigation.
- (e) Any application of a conducted energy device (CED) or control device (e.g. baton or Oleoresin Capsicum (O.C.) Spray).
- (f) Any application of a restraint device other than handcuffs, shackles, or belly chains.
- (g) The individual subjected to the force was rendered unconscious.
- (h) An individual was struck or kicked.
- (i) An individual alleges unreasonable force was used or that any of the above has occurred.

As used in this subsection, "immediately" means as soon as it is safe and feasible to do so.

300.5.2 REPORT RESTRICTIONS

Detectives/Investigators shall not use the term "excited delirium" to describe an individual in an incident report. Detectives/Investigators may describe the characteristics of an individual's conduct, but shall not generally describe the individual's demeanor, conduct, or physical and mental condition at issue as "excited delirium" (Health and Safety Code § 24402).

300.5.3 REPORTING TO CALIFORNIA DEPARTMENT OF JUSTICE

Statistical data regarding all officer-involved shootings and incidents involving use of force resulting in serious bodily injury is to be reported to the California Department of Justice as required by Government Code § 12525.2.

300.6 MEDICAL CONSIDERATIONS

Once it is reasonably safe to do so, properly trained Detectives/Investigators should promptly provide or procure medical assistance for any person injured or claiming to have been injured in a use of force incident (Government Code § 7286(b)).

Prior to booking or release, medical assistance shall be obtained for any person who exhibits signs of physical distress, who has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until the individual can be medically assessed.

Based upon the Detective's/Investigator's initial assessment of the nature and extent of the subject's injuries, medical assistance may consist of examination by fire personnel, paramedics, hospital staff, or medical staff at the jail. If any such individual refuses medical attention, such

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a refusal shall be fully documented in related reports and, whenever practicable, should be witnessed by another Detective/Investigator and/or medical personnel. If a recording is made of the contact or an interview with the individual, any refusal should be included in the recording, if possible.

The on-scene supervisor or, if the on-scene supervisor is not available, the primary handling Detective/Investigator shall ensure that any person providing medical care or receiving custody of a person following any use of force is informed that the person was subjected to force. This notification shall include a description of the force used and any other circumstances the Detective/Investigator reasonably believes would be potential safety or medical risks to the subject (e.g., prolonged struggle, extreme agitation, impaired respiration).

Persons who exhibit extreme agitation, violent irrational behavior accompanied by profuse sweating, extraordinary strength beyond their physical characteristics and imperviousness to pain, or who require a protracted physical encounter with multiple Detectives/Investigators to be brought under control, may be at an increased risk of sudden death. Calls involving these persons should be considered medical emergencies. Detectives/Investigators who reasonably suspect a medical emergency should request medical assistance as soon as practicable and have medical personnel stage away if appropriate.

300.7 USE OF FORCE COMPLAINTS

The receipt, processing, and investigation of civilian complaints involving use of force incidents should be handled in accordance with the Enforcement Branch's Personnel Complaints Policy (Government Code § 7286(b)).

300.8 SUPERVISOR RESPONSIBILITY

A Detective Sergeant/Supervising Investigator or Captain/Regional Supervising Investigator (RSI) should respond to any reported use of force, if reasonably available. The responding Detective Sergeant/Supervising Investigator or Captain/RSI is expected to (Government Code § 7286(b)):

- (a) Obtain the basic facts from the involved Detectives/Investigators. Absent an allegation of misconduct or excessive force, this will be considered a routine contact in the normal course of duties.
- (b) Ensure that any injured parties are examined and treated.
- (c) When possible, separately obtain a recorded interview with the subject upon whom force was applied. If this interview is conducted without the person having voluntarily waived his/her *Miranda* rights, the following shall apply:
 - 1. The content of the interview should not be summarized or included in any related criminal charges.
 - 2. The fact that a recorded interview was conducted should be documented in a property or other report.
 - 3. The recording of the interview should be distinctly marked for retention until all potential for civil litigation has expired.

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- (d) Once any initial medical assessment has been completed or first aid has been rendered, 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.
- (e) Identify any witnesses not already included in related reports.
- (f) Review and approve all related reports.
- (g) Determine if there is any indication that the subject may pursue civil litigation.
 - 1. If there is an indication of potential civil litigation, the supervisor should complete and route a notification of a potential claim through the appropriate channels.
- (h) Evaluate the circumstances surrounding the incident and initiate an administrative investigation if there is a question of policy non-compliance or if for any reason further investigation may be appropriate.
- (i) In the event an Investigator is involved in the incident, notification will be made via the chain-of-command to the RSI or authorized designee, as soon as reasonably possible.
- (j) Notification of the incident will be made to the Deputy Commissioner, via the appropriate chain-of-command.

The Detective Sergeant/Supervising Investigator should prepare a report outlining the use of force and address the following issues:

- (a) Application of force.
- (b) Individuals involved.
- (c) Witnesses.
- (d) Media exposure.

In the event that a supervisor is unable to respond to the scene of an incident involving the reported application of force, the supervisor is still expected to complete as many of the above items as circumstances permit.

300.8.1 CAPTAIN/REGIONAL SUPERVISING INVESTIGATOR RESPONSIBILITY

The Captain/RSI shall review each use of force report prepared by personnel within their command, including reports prepared by the involved Detective/Investigator and Detective Sergeant/Supervising Investigator, to ensure compliance with this policy. If the Captain/RSI is the reporting party or authored the use of force report, the next level supervisor in the chain-of-command shall conduct the review.

All use of force documentation shall be forwarded through the chain-of-command to the respective Division Chief or authorized designee. The Division Chief will forward the documentation to the Deputy Commissioner, as well as the Professional Standards Unit Captain for review of potential policy and training issues, as well as required reporting to the California Department of Justice. All use of force documentation shall be forwarded through the chain-of-command and submitted to the Deputy Commissioner by their respective Division Chief or authorized designee.

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300.9 USE OF FORCE ANALYSIS

At least annually, the Deputy Chief in charge of the Enforcement Branch Training Unit should prepare an analysis report on use of force incidents. The report should be submitted to the Deputy Commissioner via chain-of-command. The report should not contain the names of Detectives/Investigators, suspects, or case numbers, and should include:

- (a) The identification of any trends in the use of force by members.
- (b) Training needs recommendations.
- (c) Equipment needs recommendations.
- (d) Policy revision recommendations.

300.10 POLICY REVIEW

The Deputy Commissioner or the authorized designee should regularly review and update this policy to reflect developing practices and procedures (Government Code § 7286(b)).

300.11 POLICY AVAILABILITY

The Deputy Commissioner or the authorized designee should ensure this policy is accessible to the public (Government Code § 7286(c)).

300.12 PUBLIC RECORDS REQUESTS

Requests for public records involving a Detective's/Investigator's personnel records shall be processed in accordance with Penal Code § 832.7 and the Personnel Records, Personnel Complaints, and Records Maintenance and Release policies (Government Code § 7286(b)).

300.13 TRAINING

Detectives, Investigators, and Supervisors will receive annual training on this policy and demonstrate their knowledge and understanding (Government Code § 7286(b)).

300.13.1 TRAINING REQUIREMENTS

Required annual training shall include:

- (a) Legal updates.
- (b) De-escalation tactics, including alternatives to force.
- (c) The duty to intercede.
- (d) The duty to request and/or render medical aid.
- (e) Warning shots (see the Firearms Policy).
- (f) All other subjects covered in this policy (e.g., use of deadly force, chokeholds and carotid holds, discharge of a firearm at or from a moving vehicle, verbal warnings).

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300.13.2 STATE-SPECIFIC TRAINING REQUIREMENTS

Required state-specific training shall include guidelines regarding vulnerable populations, including but not limited to children, elderly persons, pregnant individuals, and individuals with physical, mental, and developmental disabilities (Government Code § 7286(b)).

Additionally, training should include training courses required by and consistent with POST guidelines set forth in Penal Code § 13519.10.