

CONCURRENCE IN SENATE AMENDMENTS
AB 48 (Lorena Gonzalez, et al.)
As Amended August 26, 2021
Majority vote

SUMMARY

Provides that the use of kinetic energy projectiles or chemical agents, as defined, shall only be used by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training (POST) for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and in compliance with specified requirements.

Senate Amendments

Authorize the use of kinetic energy projectiles or chemical agents in order to bring an objectively dangerous and unlawful situation safely and effectively under control. Require, prior to the use of kinetic energy projectiles or chemical agents, repeated, audible announcements announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, only when it is objectively reasonable to do so. Make changes to the time frame for reporting incidents pertaining to the use of kinetic energy projectiles and chemical agents, allows law enforcement agencies to publish summaries of such incidents on their internet website, and requires the Department of Justice (DOJ) to post on its internet website a compiled list linking each law enforcement agency's reports of incidents in which kinetic energy projectile or chemical agent was used. Specify that these provisions do not apply within a county detention facility.

COMMENTS

As Passed by the Assembly this bill:

- 1) Banned the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse an assembly, protest, demonstration, or gathering unless their use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, and when the following conditions are met:
 - a) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
 - b) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, as specified.
 - c) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
 - d) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.

- e) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
 - f) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
 - g) An objectively reasonable effort has been made to extract individuals in distress.
 - h) Medical assistance is promptly procured or provided for injured persons.
 - i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
- 2) Prohibited the use of kinetic energy projectiles or chemical agents solely due to a violation of an imposed curfew, a verbal threat, or noncompliance with a law enforcement directive.
 - 3) Required that if the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize its use.
 - 4) Defined "kinetic energy projectiles" and "chemical agents" for purposes of this bill.
 - 5) Required, beginning January 1, 2023, that each law enforcement agency provide a monthly report to the Department of Justice (DOJ) of all instances in which a peace officer used a kinetic energy projectile or chemical agent that resulted in a reported injury to any person.
 - 6) Required each law enforcement agency to produce monthly reports, instead of annual reports, and an annual summary report regarding specified use of force incidents.
 - 7) Specified that these provisions do not apply within Department of Corrections and Rehabilitation correctional facility.

According to the Author

"Numerous protesters, bystanders, and journalists have been maimed and permanently injured by 'less lethal' weapons such as rubber bullets and beanbag rounds at the hands of law enforcement during protests this past year. No one who is simply exercising their right to protest should be scared to face serious injury or death because police officers are indiscriminately firing rubber bullets or harmful chemical agents. AB 48 will set clear standards on when and how these weapons are used by law enforcement in order to increase the safety of Californians exercising their right to assemble and protest."

Arguments in Support

According to this bill's co-sponsors, the *California News Publisher's Association*, *California Broadcasters Association*, *California Black Media*, *Ethnic Media Services*, and the *First Amendment Coalition*: "The widespread use of rubber bullets and tear gas against protesters following the death of George Floyd, have made it clear that limitations on the use of these tactics are necessary. AB 48 will protect the public, and the press, who are almost always among the public, covering these demonstrations, and are also harmed when these tactics are used to disperse those protesting, by limiting the circumstances that kinetic energy projectiles, such as rubber bullets, and chemical agents. The prohibition against the use of these serious and often harmful weapons simply to disperse a crowd or for violation of an imposed curfew, frequently

used to bring an end to protests, will ensure that police give pause before using these "non-lethal" methods."

Arguments in Opposition

According to the *California State Sheriffs' Association*: "Restricting the use of less-lethal options limits the tools that are at an officer's disposal to protect public safety. Different circumstances may call for different responses and more or less force may be required. However, by restricting when an officer may use those tools, their response to a particular situation may end up being guided by choices about practices that may be acceptable or unacceptable to some instead of what measure is most appropriate in the context of the event.

"We are also concerned about mandating specific tactics directly in statute as AB 48 would. Again, it is difficult to legislate around situations that are rarely identical, and a "standard" approach may neglect a situation's unique features and the training of peace officers to assess and respond to these events. Experienced law enforcement practitioners and regulators are better positioned to set out guidelines through policy that steer officer practices and recognize the fluidity of situations that are prone to rapid evolution.

"Finally, additional use of force reporting will add workload and costs that are not accounted for in this bill. For this reason, and those stated above, we must respectfully oppose AB 48."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) *Training and policy revisions*: Unknown, potentially-significant one-time costs likely in the tens of thousands for all state (and local) law enforcement agencies to update their policies in accordance with the restrictions in this bill. Some agencies employ a contract service to ensure their policies reflect recent changes in statutory and case law. Actual costs to each agency would vary depending on how aligned their current policies are with this bill. (General Fund, various funds)

Additionally, some state (and local) law enforcement agencies may have to retrain their officers on new tactics and responses related to dispersing gatherings to the extent that the current practices of their departments are different from the provisions of this bill. The California Highway Patrol (CHP), for instance, indicates no additional training costs, as it conducts civil disturbance training annually.

- 2) *Monthly data reporting & collecting*: Unknown, potentially-significant costs in the thousands of dollars to law enforcement agencies to shift the reporting of use of force data from annually to monthly. Local costs to comply with this change would be subject to reimbursement by the state to the extent that the Commission on State Mandates determines that this bill imposes a state-mandated local program. Considering that there are over 500 local law enforcement agencies across the state, costs to implement this measure could reach into the hundreds of thousands of dollars in the high end. (General Fund, special funds, local funds)

Unknown costs to the Department of Justice to compile and keep updated on its website a list of links to summary reports by law enforcement agencies. The Department of Corrections and Rehabilitation indicates ongoing annual overtime workload costs ranging between

\$276,000 and \$366,000 for analytical staff at each institution to collect and report the data, while CHP anticipates requiring 1.0 new Associate Governmental Program Analyst at annual costs of \$140,231 to comply with the reporting provisions of this bill.

VOTES:

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Lee, Quirk, Santiago, Wicks

NO: Lackey, Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 46-19-14

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Mullin, Nazarian, Petrie-Norris, Quirk, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Salas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Bigelow, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, O'Donnell, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

ABS, ABST OR NV: Chen, Cooley, Cooper, Daly, Frazier, Gray, Grayson, Mayes, Medina, Muratsuchi, Quirk-Silva, Ramos, Rodriguez, Villapudua

SENATE FLOOR: 26-10-4

YES: Allen, Atkins, Becker, Bradford, Caballero, Cortese, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Hurtado, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Archuleta, Dodd, Roth, Stern

UPDATED

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