
THIRD READING

Bill No: AB 48
Author: Lorena Gonzalez (D), Cristina Garcia (D) and Kalra (D), et al.
Amended: 8/26/21 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 7/6/21
AYES: Bradford, Kamlager, Skinner, Wiener
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 46-19, 6/1/21 - See last page for vote

SUBJECT: Law enforcement: kinetic energy projectiles and chemical agents

SOURCE: California Faculty Association

DIGEST: This bill places a general ban on the use of kinetic energy projectiles and specified chemical agents by law enforcement upon public assemblies, subject to specified exemptions. This bill also increases the requirements that law enforcement agencies report specified uses of force to the Department of Justice.

ANALYSIS:

Existing law:

- 1) States that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. (U.S. Const., 1st Amend.)
- 2) States that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law

may not restrain or abridge liberty of speech or press. (Cal. Const. Art., I, Sec. 2, subd. (a).)

- 3) States that the people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. (Cal. Const., Art. I, Sec. 3, subd. (a).)
- 4) Requires the Commission on Peace Officer Standards and Training (POST) to implement a course or courses of instruction for the training of law enforcement officers in the handling of acts of civil disobedience and adopt guidelines that may be followed by police agencies in responding to acts of civil disobedience. (Pen. Code, § 13151.5, subd. (a).)
- 5) Provides that any use of force or violence, disturbing the public peace, or any threat to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot. (Pen. Code, § 405.)
- 6) Provides that an “unlawful assembly” occurs whenever two or more persons assemble together to do an unlawful act, or do a lawful act in a violent, boisterous, or tumultuous manner. (Pen. Code, § 407.)
- 7) Provides that every person who participates in any rout or unlawful assembly is guilty of a misdemeanor. (Pen. Code, § 408.)
- 8) Provides that every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor. (Pen. Code, § 409.)
- 9) Provides that any peace officer who has reasonable cause to believe that a 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. (Pen. Code, § 835a, subd. (b).)
- 10) Defines a “less lethal weapon” as any device that propels ammunition that is designed to immobilize, or incapacitate, or stun a human being through the infliction of any less than lethal impairment of physical condition, function or senses, including physical pain or discomfort. (Penal Code, § 12601(a).)
- 11) Defines “less lethal ammunition” as any ammunition that:

- a) Is designed to be used in any less lethal weapon or any other kind of weapon (including, but not limited to, firearms, pistols, revolvers, shotguns, rifles, and spring, compressed air, and compressed gas weapons); and
 - b) When used in the less lethal weapon or other weapon is designed to immobilize or incapacitate or stun a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. (Penal Code, § 12601(b).)
- 12) Requires that each law enforcement agency annually furnish to the California Department of Justice (DOJ) a report of all instances when a peace officer employed by that agency is involved in any of the following:
- a) An incident involving the shooting of a civilian by a peace officer.
 - b) An incident involving the shooting of a peace officer by a civilian.
 - c) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
 - d) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death. (Penal Code, § 12525.2.)
- 13) Specifies that for each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:
- a) The gender, race, and age of each individual who was shot, injured, or killed.
 - b) The date, time, and location of the incident.
 - c) Whether the civilian was armed, and, if so, the type of weapon.
 - d) The type of force used against the officer, the civilian, or both, including the types of weapons used.
 - e) The number of officers involved in the incident.
 - f) The number of civilians involved in the incident.
 - g) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders. (Penal Code, § 12525.2.)

This bill:

- 1) Mandates that, except as specified, kinetic energy projectiles and chemical agents shall not be used by law enforcement agencies to disperse assemblies, protests, or demonstrations.
- 2) Specifies that projectiles and chemical agents may only be deployed under limited circumstances. Specifically, they may only be deployed by a peace officer that has received training on their proper use by POST for crowd

control when the use is objectively reasonable to defend against a threat to life or serious bodily injury to an individual, including the peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control and with the following requirements:

- a) De-escalation techniques and use of force alternatives have been attempted, when objectively reasonable, and failed.
 - b) Repeated, audible announcements are made of the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations if necessary and in multiple languages if appropriate.
 - 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 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 provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
 - i) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
- 3) Disallows, specifically, the use of energy projectiles or chemical agents, even with the exemptions, solely due to any of the following:
 - a) A violation of an imposed curfew.
 - b) A verbal threat.
 - c) Noncompliance with a law enforcement directive.
 - 4) Permits only the commanding officer at the scene of an assembly to authorize the use of tear gas.

- 5) Defines “kinetic energy projectiles” as any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.
- 6) Defines “chemical agents” as any chemical which can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.
- 7) Exempts correctional facilities and county detention facilities.
- 8) Does not prohibit law enforcement agencies from adopting more stringent policies.
- 9) Requires that local law enforcement agencies report specified information related to use of force by their agencies to the DOJ on a monthly basis rather than on a yearly basis as specified under current law.
- 10) Requires that each agency shall provide within 60 days of each incident, a summary on its website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent for crowd control. However, agencies may extend that period for 30-days, but no longer than 90-days from the time of the incident upon a showing of just cause. The summary shall include:
 - a) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.
 - b) The type of kinetic energy projectile or chemical agent deployed.
 - c) The number of rounds or quantity of chemical agent dispersed.
 - d) The number of injuries.
 - e) The justification for using the less-lethal weapon including de-escalation techniques or protocols and other measures that were taken at the time of the event to avoid the necessity of using the weapons.
- 11) Requires DOJ to post on its website a compiled list linking to each law enforcement agency’s reports.

Background

When it comes to use of force by law enforcement against a member of the public, the general rule for how much force a law enforcement officer can use in response to a given situation is determined by a reasonableness test. It requires the careful balancing the nature and quality of the force against the countervailing government interest at stake. (*See Graham v. Connor* (1989) 490 U.S. 386, 396.) In other words, was the amount and type of force reasonably necessary in light of the police need to prevent the person from doing whatever it was that they were doing at the time the use of force happened. Three important factors to that test are 1) the severity of the crime at issue, 2) whether the suspect poses an immediate threat to the safety of the officers or others, and 3) whether the person is actively resisting arrest or attempting to evade arrest by flight. (*Ibid.*)

Recently California refined its use of force statutes in order to apply clearer guidance to law enforcement and the public regarding the when the use of deadly force is appropriate. Specifically, AB 392 (Weber, Chapter 170, Statutes of 2019) provided that an officer may use deadly force in order to prevent an imminent threat of death or serious bodily injury to the officer or to another person, or 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. AB 392 further specified situations in which deadly force would not be appropriate. In addition, the Legislature also passed SB 230 (Caballero, Chapter 285, Statutes of 2019), which required law enforcement agencies to update their training and policies relating to the use of force.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- *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 AB 48. 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.

- *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 bill could reach into the hundreds of thousands of dollars in the high end. (General Fund, special funds, local funds)

Unknown costs to DOJ 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 AB 48.

SUPPORT: (Verified 8/26/21)

California Faculty Association (source)
Alliance San Diego
Asian Solidarity Collective
Black Leadership Council
Borderlands for Equity
California Attorneys for Criminal Justice
California Black Media
California Broadcasters Association
California Federation of Teachers AFL-CIO
California Labor Federation, AFL-CIO
California Nurses Association
California Public Defenders Association
California State PTA
California Teachers Association
Californiahealth+ Advocates
Californians for Safety and Justice
Californians News Publishers Association

Change Begins With Me Indivisible Group
Change for Justice
City of Alameda
City of Petaluma
Community Advocates for Just and Moral Governance
Consumer Attorneys of California
County of Los Angeles
County of Los Angeles Board of Supervisors
Del Cerro for Black Lives Matter
Democratic Club of Vista
Democratic Woman's Club of San Diego County
Disability Rights California
Ethnic Media Services
First Amendment Coalition
Health Access California
Hillcrest Indivisible
Legal Services for Prisoners With Children
Mission Impact Philanthropy
Muslim American Society-social Services Foundation
National Association of Social Workers, California Chapter
Oakland Privacy
Partnership for The Advancement of New Americans
Pillars of The Community
Racial Justice Coalition of San Diego
Riseup
San Diego Progressive Democratic Club
San Francisco Public Defender
SD-QTPOC Colectivo
SEIU California
Showing Up for Racial Justice North County San Diego
Showing Up for Racial Justice San Diego
Social Workers for Equity & Leadership
Team Justice
Think Dignity
University of California Student Association
University of California, Santa Cruz, Student Union Assembly
Uprise Theatre
We the People - San Diego

OPPOSITION: (Verified 8/26/21)

Arcadia Police Officers' Association
Burbank Police Officers Association
California Coalition of School Safety Professionals
California Peace Officers Association
California State Sheriffs' Association
California Statewide Law Enforcement Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
League of California Cities
Los Angeles County Sheriff's Department
Los Angeles Professional Peace Officers Association
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Southwest California Legislative Council
Upland Police Officers Association

ARGUMENTS IN SUPPORT: According to the California Faculty Association, “AB 48 will increase the safety of Californians exercising their right to assemble and protest by prohibiting the use of kinetic energy projectiles and chemical agents on peaceful protestors and facilitating curfews, prohibiting the use of tear gas by law enforcement to disperse crowds, and creating clear standards for the use of ‘less-lethal’ weapons. AB 48 would also require data collection on the use of these weapons and any resulting injuries. Exercising the constitutionally protected right to peacefully protest should not result in a disability, injury, or death at the hands of law enforcement.”

ARGUMENTS IN OPPOSITION: According to the California State Sheriffs’ Association, “[B]y restricting when and under what conditions 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.”

ASSEMBLY FLOOR: 46-19, 6/1/21

AYES: 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

NOES: Bigelow, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Nguyen, O'Donnell, Patterson, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Chen, Cooley, Cooper, Daly, Frazier, Gray, Grayson, Mayes, Medina, Muratsuchi, Quirk-Silva, Ramos, Rodriguez, Villapudua

Prepared by: Gabe Caswell / PUB. S. /
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