

AMENDED IN ASSEMBLY MARCH 16, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 48

**Introduced by Assembly Members Lorena Gonzalez,
Cristina Garcia, and Kalra**

~~(Principal coauthors: Assembly Members Carrillo, Chiu, McCarty,
Robert Rivas, and Ting)~~

~~(Principal coauthors: Senators Gonzalez and Wiener)~~

~~(Principal coauthor: Assembly Member Carrillo)~~

~~(Coauthors: Assembly Members Chiu, Lee, McCarty, Robert Rivas,
and Ting)~~

~~(Coauthors: Senators Gonzalez and Wiener)~~

December 7, 2020

An act to amend Section 12525.2 of the Government Code, and to add Section 13652 to the Penal Code, relating to law enforcement.

LEGISLATIVE COUNSEL'S DIGEST

AB 48, as amended, Lorena Gonzalez. Law enforcement: kinetic energy projectiles and chemical agents.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents, as defined, *agents* by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance

with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. ~~The bill would prohibit the use of chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas by law enforcement agencies to disperse any assembly, protest, or demonstration.~~ The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer. *The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalononitrile gas.* The bill would make these provisions inapplicable within a state prison facility.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. The bill would also require each law enforcement agency, beginning on January 1, 2023, to report any incident in which a kinetic energy projectile or chemical agent is used against a person resulting in a reported injury. The bill would require those agencies, commencing on March 31, 2024, to annually publish a report on their use of kinetic energy projectiles and chemical agents. By imposing new duties on law enforcement agencies, this bill would create 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 the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 12525.2 of the Government Code is
2 amended to read:

1 12525.2. (a) Each law enforcement agency shall monthly
2 furnish to the Department of Justice, in a manner defined and
3 prescribed by the Attorney General, a report of all instances when
4 a peace officer employed by that agency is involved in any of the
5 following:

6 (1) An incident involving the shooting of a civilian by a peace
7 officer.

8 (2) An incident involving the shooting of a peace officer by a
9 civilian.

10 (3) An incident in which the use of force by a peace officer
11 against a civilian results in serious bodily injury or death.

12 (4) An incident in which use of force by a civilian against a
13 peace officer results in serious bodily injury or death.

14 (5) Commencing January 1, 2023, an incident in which a peace
15 officer uses a kinetic energy projectile or chemical agent, as those
16 terms are defined in Section 13652 of the Penal Code, resulting in
17 a reported injury to any person. Each law enforcement agency
18 shall also annually, commencing March 31, 2024, publish a
19 summary of incidents described in this paragraph.

20 (b) For each incident reported under paragraphs (1) to (4),
21 inclusive, of subdivision (a), the information reported to the
22 Department of Justice shall include, but not be limited to, all of
23 the following:

24 (1) The gender, race, and age of each individual who was shot,
25 injured, or killed.

26 (2) The date, time, and location of the incident.

27 (3) Whether the civilian was armed, and, if so, the type of
28 weapon.

29 (4) The type of force used against the officer, the civilian, or
30 both, including the types of weapons used.

31 (5) The number of officers involved in the incident.

32 (6) The number of civilians involved in the incident.

33 (7) A brief description regarding the circumstances surrounding
34 the incident, which may include the nature of injuries to officers
35 and civilians and perceptions on behavior or mental disorders.

36 (c) For each incident reported under paragraph (5) of subdivision
37 (a), the information reported to the Department of Justice shall
38 include, but not be limited to, all of the following:

39 (1) The type of kinetic energy projectile or chemical agent
40 deployed.

1 (2) The number of rounds fired or quantity of a chemical agent
2 dispersed, as applicable.

3 (3) The justification for using a kinetic energy projectile or
4 chemical agent.

5 (4) Whether any person was injured as a result of the kinetic
6 energy projectile or chemical agent deployment.

7 (d) Each year, the Department of Justice shall include a summary
8 of information contained in the reports received pursuant to
9 subdivision (a) through the department’s OpenJustice Web portal
10 pursuant to Section 13010 of the Penal Code. This information
11 shall be classified according to the reporting law enforcement
12 jurisdiction. In cases involving a peace officer who is injured or
13 killed, the report shall list the officer’s employing jurisdiction and
14 the jurisdiction where the injury or death occurred, if they are not
15 the same. This subdivision does not authorize the release to the
16 public of the badge number or other unique identifying information
17 of the peace officer involved.

18 (e) For purposes of this section, “serious bodily injury” means
19 a bodily injury that involves a substantial risk of death,
20 unconsciousness, protracted and obvious disfigurement, or
21 protracted loss or impairment of the function of a bodily member
22 or organ.

23 SEC. 2. Section 13652 is added to the Penal Code, to read:

24 13652. (a) Except as otherwise provided in subdivision-(e),
25 (b), kinetic energy projectiles and chemical agents shall not be
26 used by any law enforcement agency to disperse any assembly,
27 protest, or demonstration.

28 ~~(b) Chloroacetophenone tear gas, commonly known as CN tear~~
29 ~~gas, or 2-chlorobenzalmalononitrile gas, commonly known as CS~~
30 ~~gas, shall not be used by any law enforcement agency to disperse~~
31 ~~any assembly, protest, demonstration.~~

32 (e)

33 (b) Kinetic energy projectiles and chemical agents shall only
34 be deployed by a peace officer that has received training on their
35 proper use by the Commission on Peace Officer Standards and
36 Training for crowd control if the use is objectively reasonable to
37 defend against a threat to life or serious bodily injury to any
38 individual, including any peace officer, and only in accordance
39 with all of the following requirements:

1 (1) Deescalation techniques or other alternatives to force have
2 been attempted, when objectively reasonable, and have failed.

3 (2) Repeated, audible announcements are made announcing the
4 intent to use kinetic energy projectiles and chemical agents and
5 the type to be used. The announcements shall be made from various
6 locations, if necessary, and delivered in multiple languages, if
7 appropriate.

8 (3) Persons are given an objectively reasonable opportunity to
9 disperse and leave the scene.

10 (4) An objectively reasonable effort has been made to identify
11 persons engaged in violent acts and those who are not, and kinetic
12 energy projectiles or chemical agents are targeted toward those
13 individuals engaged in violent acts. Projectiles shall not be aimed
14 indiscriminately into a crowd or group of persons.

15 (5) Kinetic energy projectiles and chemical agents are used only
16 with the frequency, intensity, and in a manner that is proportional
17 to the threat and objectively reasonable.

18 (6) Officers shall minimize the possible incidental impact of
19 their use of kinetic energy projectiles and chemical agents on
20 bystanders, medical personnel, journalists, or other unintended
21 targets.

22 (7) An objectively reasonable effort has been made to extract
23 individuals in distress.

24 (8) Medical assistance is promptly procured or provided for
25 injured persons.

26 (9) Kinetic energy projectiles shall not be aimed at the head,
27 ~~neck~~ neck, or any other vital organs.

28 (10) Kinetic energy projectiles or chemical agents shall not be
29 used by any law enforcement agency solely due to any of the
30 following:

31 (A) A violation of an imposed curfew.

32 (B) A verbal threat.

33 (C) Noncompliance with a law enforcement directive.

34 (11) *If the chemical agent to be deployed is tear gas, only a*
35 *commanding officer at the scene of the assembly, protest, or*
36 *demonstration may authorize the use of tear gas.*

37 ~~(d)~~

38 (c) This section does not prevent a law enforcement agency
39 from adopting more stringent policies.

40 ~~(e)~~

1 (d) For the purposes of this section, the following terms have
2 the following meanings:

3 (1) “Kinetic energy projectiles” means any type of device
4 designed as less lethal, to be launched from any device as a
5 projectile that may cause bodily injury through the transfer of
6 kinetic energy and blunt force trauma. For purposes of this section,
7 the term includes, but is not limited to, items commonly referred
8 to as rubber bullets, plastic bullets, beanbag rounds, and foam
9 tipped plastic rounds.

10 (2) “Chemical agents” means any chemical which can rapidly
11 produce sensory irritation or disabling physical effects in humans,
12 which disappear within a short time following termination of
13 exposure. For purposes of this section, the term includes, but is
14 not limited to, *chloroacetophenone tear gas, commonly known as*
15 *CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known*
16 *as CS gas; and items commonly referred to as pepper balls, pepper*
17 *spray spray, or oleoresin capsicum.*

18 (f)

19 (e) This section does not apply within any correctional facility
20 of the Department of Corrections and Rehabilitation.

21 SEC. 3. If the Commission on State Mandates determines that
22 this act contains costs mandated by the state, reimbursement to
23 local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.