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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 294                      **Hearing Date:** June 11, 2019  
**Author:** Rodriguez  
**Version:** May 30, 2019  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Correctional Facilities: Gassing*

### HISTORY

**Source:** Los Angeles County Professional Peace Officers Association

**Prior Legislation:** SB 1419 (Runner), not heard in Senate Public Safety Committee in 2010  
AB 1449 (Florez), Ch. 627, Stats. 2000  
AB 995 (Pacheco), Ch. 591, Stats. 1997  
SB 136 (Costa), Ch. 684, Stats. 1997

**Support:** Association of Deputy District Attorneys; Association of Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California Correctional Peace Officers Association; California Correctional Peace Officer Association Benefit Trust Fund; California Correctional Supervisors Organization; California Narcotic Officers' Association; College and University Police Chiefs Association; Los Angeles County Probation Officers Union AFSCME Local 685; Los Angeles County Sheriff's Department; Riverside Sheriffs' Association; San Bernardino County Sheriff's Department

**Opposition:** None known

**Assembly Floor Vote:** 78 - 0

### PURPOSE

*The purposes of this bill are to: 1) impose a 6-month timeline for local and state correctional facilities to complete investigations of gassing attacks; and 2) require local and state correctional facilities to provide notice to their employees informing them of their rights following a gassing attack, make protective gear available to staff, document gassing attacks, as specified, provide adequate officer training on how to prevent and mitigate the harm from gassing attacks, and replace any article of an officer's uniform that has been soiled in a gassing attack.*

*Existing law* defines "gassing" as intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person's skin or membranes. (Pen. Code, §§ 243.9, subd. (b), 4501.1, subd. (b).)

*Existing law* provides that every person confined in any local detention facility or state prison who commits a battery by gassing upon the person of any peace officer, as defined, or employee of the local detention facility or state prison is guilty of aggravated battery and shall be punished by imprisonment in a county jail, or by imprisonment in the state prison for two, three, or four years. (Pen. Code, §§ 243.9, subd. (a), 4501.1, subd. (a).)

*Existing law* requires the person in charge of the local detention facility to use every available means to immediately investigate all reported or suspected gassing violations, including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. (Pen. Code, § 243.9 subd. (c).)

*This bill* requires the local facility to complete its investigation within six months of the gassing incident.

*Existing law* permits, if there is probable cause to believe that the inmate has committed a battery by gassing, the chief medical officer of the detention facility, when he or she deems it medically necessary to protect the health of an officer or employee who may have been the victim of a gassing, to order the inmate to receive an examination or test for hepatitis or tuberculosis or both on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. Requires the results of any examination or test to be provided to the officer or employee. (Pen. Code, § 243.9, subd. (c).)

*This bill* provides that an officer or employee who is the victim of a reported or suspected gassing has the right to request the inmate be tested for hepatitis, tuberculosis, or both, subject to a finding of medical necessity by the chief medical officer.

*Existing law* requires the person in charge of the local detention facility to refer all reports for which there is probable cause to believe that the inmate has committed a gassing offense to the local district attorney for prosecution. (Pen. Code, § 243.9, subd. (d).)

*This bill* requires the local detention facility to consult with the district attorney's office to determine the type of physical evidence and documentation that is necessary to prosecute a person for committing a gassing.

*This bill* provides that the local detention facility has the discretion to not test the gassing substance for the presence of a bodily fluid if the facility, in consultation with the district attorney's office, determines that testing is unnecessary to obtain sufficient evidence of the gassing.

*This bill* provides that the provisions of this bill pertaining to testing the gassing substance do not preclude the right of an inmate to test the suspected gassing substance for purposes of providing a defense against any charges filed.

*This bill* requires the sheriff of each county or the administrator of each county jail to post a legible notice in an easily visible location to officers and employees of the jail that describes the rights of a victim of a gassing attack.

*This bill* requires the notice to be entitled “Victims’ Right to Aftercare in a Gassing Attack” and state the following:

“If you have direct contact with the bodily fluids of an inmate, you have the right to be informed by supervisory or medical personnel if the inmate has a communicable disease. You have the right to request that the inmate be tested for the human immunodeficiency virus (HIV), hepatitis, and tuberculosis. You have the right to access counseling services at the time of your request for disease testing and when the test results are provided to you. You are entitled to workers’ compensation insurance if you are injured or disabled in the course of employment.”

*This bill* requires the sheriff of each county or the administrator of each county jail to provide a physical notice explaining a victim’s rights to aftercare in a gassing attack to an officer or employee who is a victim of a gassing attack immediately after the incident is reported. Requires this document to contain information substantially similar to the notice above. Requires the notice to be signed by both the sheriff or county jail administrator and the victim and to serve as an acknowledgment of the victim’s rights after a gassing attack.

*This bill* requires the sheriff of each county or the administrator of each county jail to provide on an annual basis a facility-wide email, to the extent a facility-wide email is utilized by the county jail, describing a victim’s rights to aftercare in a gassing attack. Requires the email to contain information substantially similar to the notice described above and also include contact information for aftercare and counseling resources.

*This bill* requires a county jail to make protective gear, including, but not limited to, clothing, goggles, shields, and other protective devices, readily available to staff.

*This bill* requires a county jail to document all of the following:

- The total number of gassing incidents at the county jail and how many were committed by repeat offenders.
- The disposition of each gassing incident, including administrative penalties imposed, number of incidents prosecuted, the results of those prosecutions, and any discipline procedures or penalties imposed.
- A profile of the inmates who committed the gassing incidents, including the number of inmates who have one or more prior serious or violent felony convictions.
- Efforts that the county jail has taken to limit these incidents, including staff training and the use of protective clothing, goggles, shields, or other protective gear.
- The results and costs of medical testing related to gassing incidents.

*This bill* requires a county jail to provide adequate training to officers on how to prevent and mitigate the harm from gassing attacks on a biennial basis. Requires a county jail to provide adequate training to a newly hired officer on how to prevent and mitigate the harm from gassing attacks within three months of the newly hired officer’s employment date.

*This bill* requires a county jail to replace any article of an officer’s uniform that has been soiled in a gassing attack.

*This bill* provides that “gassing” has the same meaning as described in Penal Code section 243.9, subdivision (b), and “officer” means a peace officer, as defined Penal Code section 830 et seq.

*Existing law* requires the warden or other person in charge of the state prison to use every available means to immediately investigate all reported or suspected gassing violations, including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. (Pen. Code, § 4501.1, subd. (c).)

*This bill* requires the state prison to complete its investigation within six months of the incident.

*Existing law* permits, if there is probable cause to believe that the inmate has committed a battery by gassing, the chief medical officer of the state prison, when he or she deems it medically necessary to protect the health of an officer or employee who may have been the victim of a gassing, to order the inmate to receive an examination or test for hepatitis or tuberculosis or both on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. Requires the results of any examination or test to be provided to the officer or employee. (Pen. Code, § 4501.1, subd. (c).)

*This bill* provides that an officer or employee who is the victim of a reported or suspected gassing has the right to request the inmate be tested for hepatitis, tuberculosis, or both, subject to a finding of medical necessity by the chief medical officer.

*Existing law* requires the warden or other person in charge of the state prison to refer all reports for which there is probable cause to believe that the inmate has committed a gassing offense to the local district attorney for prosecution. (Pen. Code, § 4501.1, subd. (d).)

*This bill* requires the state prison to consult with the district attorney's office to determine the type of physical evidence and documentation that is necessary to prosecute a person for committing a gassing.

*This bill* provides that the state prison has the discretion to not test the gassing substance for the presence of a bodily fluid if the facility, in consultation with the district attorney's office, determines that testing is unnecessary to obtain sufficient evidence of the gassing.

*This bill* provides that the provisions of this bill pertaining to testing the gassing substance do not preclude the right of an inmate to test the suspected gassing substance for purposes of providing a defense against any charges filed.

*This bill* requires the warden in charge of a state prison to post a legible notice in an easily visible location to officers and employees of the facility that describes the rights of a victim of a gassing attack.

*This bill* requires the notice to be entitled "Victims' Right to Aftercare in a Gassing Attack" and to state the following:

"If you have direct contact with the bodily fluids of an inmate, you have the right to be informed by supervisory or medical personnel if the inmate has a communicable disease. You have the right to request that the inmate be tested for the human immunodeficiency virus (HIV), hepatitis, and tuberculosis. You have the right to access counseling services at the time of your request for disease testing and when the test results are provided to you. You are entitled to workers' compensation insurance if you are injured or disabled in the course of employment."

*This bill* requires the warden in charge of a state prison to provide a physical notice explaining a victim's rights to aftercare in a gassing attack to an officer or employee who is a victim of a gassing attack immediately after the incident is reported. Requires the document to contain information substantially similar to the notice described above. Requires the notice to be signed by both the warden and the victim and to serve as an acknowledgment of the victim's rights after a gassing attack.

*This bill* requires the warden in charge of a state prison to provide on an annual basis a facility-wide email, to the extent a facility-wide email is utilized by the state prison, describing a victim's rights to aftercare in a gassing attack. Requires the email to contain information substantially similar to the notice described above and also include contact information for aftercare and counseling resources.

*This bill* requires a state prison to make protective gear, including, but not limited to, clothing, goggles, shields, and other protective devices, readily available to staff.

*This bill* requires a state prison to document all of the following:

- The total number of gassing incidents at the state prison and how many were committed by repeat offenders.
- The disposition of each gassing incident, including administrative penalties imposed, number of incidents prosecuted, the results of those prosecutions, and any discipline procedures or penalties imposed.
- A profile of the inmates who committed the gassing incidents, including the number of inmates who have one or more prior serious or violent felony convictions.
- Efforts that the state prison has taken to limit these incidents, including staff training and the use of protective clothing, goggles, shields, or other protective gear.
- The results and costs of medical testing related to gassing incidents.

*This bill* requires a state prison to provide adequate training to officers on how to prevent and mitigate the harm from gassing attacks on a biennial basis. Requires a state prison to provide adequate training to a newly hired officer on how to prevent and mitigate the harm from gassing attacks within three months of the newly hired officer's employment date.

*This bill* requires a state prison to replace any article of an officer's uniform that has been soiled in a gassing attack.

*This bill* provides that "gassing" has the same meaning as described in Penal Code section 4501.1, subdivision (b), and "officer" means a peace officer, as defined in Penal Code section 830 et seq.

*Existing law* requires a law enforcement employee who believes that he or she came into contact with bodily fluids of an inmate of a correctional institution to report the incident to the State Department of Public Health, by completing the specified form. Provides that the law enforcement employee may request a test for HIV or hepatitis B or C of the inmate. (Pen. Code, § 7510, subd. (a).)

*This bill* specifies that a nonsworn employee of a correctional institution is a law enforcement employee.

*Existing law* requires the report to be submitted by the end of the law enforcement employee's shift during which the incident occurred, or if not practicable, as soon as possible, but no longer than two days after the incident, except that the chief medical officer may waive this filing period requirement if he or she finds that good cause exists. Requires the report to include names of witnesses to the incident, names of persons involved in the incident, and if feasible, any written statements from these parties. Requires the law enforcement employee to assist in the investigation of the incident, as requested by the chief medical officer. (Pen. Code, § 7510, subd. (b).)

*Existing law* requires the chief medical officer to decide whether or not to require HIV or hepatitis B or C testing of the inmate within 24 hours of receipt of the report regardless of whether the report filed by the law enforcement employee contains a request for testing. (Pen. Code, § 7511, subd. (a).)

*Existing law* requires any peace officer, firefighter, custodial officer, as defined, a custody assistant, as defined, a nonsworn uniformed employee of a law enforcement agency whose job entails the care or control of inmates in a detention facility, a nonsworn employee of a law enforcement agency whose job description entails the collection of fingerprints, or emergency medical personnel who, while acting within the scope of his or her duties, is exposed to an arrestee's blood or bodily fluids, as defined, to do the following:

- Prior to filing a petition with the court, a licensed health care provider is required to notify the arrestee of the bloodborne pathogen exposure and make a good faith effort to obtain the voluntary informed consent of the arrestee or the arrestee's authorized legal representative to perform a test for HIV, hepatitis B, and hepatitis C. Requires the voluntary informed consent to be in writing. Provides that once consent is given in writing, the arrestee is required to provide three specimens of blood for testing as provided in this chapter.
- If voluntary informed consent is not given in writing, the affected individual may petition, ex parte, the court for an order requiring testing, as provided. Requires the petition to include a written certification by a health care professional that an exposure, including the nature and extent of the exposure, has occurred. (Health & Saf. Code, § 121060.)

*Existing law* defines "bloodborne pathogen exposure" as a percutaneous injury, including, but not limited to, a needle stick or cut with a sharp object, or the contact of nonintact skin or mucous membranes with any of the bodily fluids identified in subdivision (b), in accordance with the most current bloodborne pathogen exposure definition established by the federal Centers for Disease Control and Prevention. (Health & Saf. Code, § 121060.1, subd. (a).)

*Existing law* provides that "bodily fluids" means any of the following: blood, tissue, mucous containing visible blood, semen, and vaginal secretions. (Health & Saf. Code, § 121060.1, subd. (b).)

## COMMENTS

### 1. Need for This Bill

According to the author:

According to a 2018 State Auditor report on Correction Officer Health and Safety, correctional facilities throughout the State were found to inadequately and inconsistently document incidents of “gassing attacks”, where an inmate throws a bodily fluid at a staff member, which might also contain a communicable disease. Investigations of multiple attacks were also found to be done in an untimely manner. These shortcomings consequently results in fewer successful prosecutions of inmates who commit gassing attacks, meaning that these attacks often go unpunished, and fails to deter future attacks. Further, the report revealed the correctional facilities did not adequately inform victims immediately following the gassing attacks of available aftercare services, such as medical and counseling services, nor advised victims about their right to request the inmate be tested for communicable diseases.

### 2. Gassing

Gassing was established as a form of aggravated battery in 1997 when AB 995 (Pacheco), Chapter 591, Statutes of 1997, was enacted. AB 995 included a sunset provision that was eliminated by AB 1449 (Florez), Chapter 627, Statutes of 2000. Gassing is a specific form of a battery committed by an inmate on a peace officer or employee of a correctional facility in which the inmate “intentionally plac[es] or throw[s], or caus[es] to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person's skin or membranes.” The penalty for gassing is two, three, or four years in prison or up to one year in county jail.

Current law requires the person in charge of a state or local correctional facility to immediately investigate all reported or suspected gassing incidents, and to use forensically acceptable means of preserving and testing a suspected gassing substance. Existing law permits the victim of a gassing attack to request that the inmate be tested for specified communicable diseases. However, the chief medical officer of the correctional facility makes the determination about whether testing an inmate is appropriate, and may require testing of the inmate in the absence of a request for testing.

### 3. State Auditor’s Report

At the request of the Joint Legislative Audit Committee, the State Auditor completed an audit of three correctional facilities—CDCR’s California Institute for Men, Los Angeles County’s Men’s Central Jail, and Alameda County’s Santa Rita Jail—to evaluate the health and safety of staff who were subject to gassing attacks. The State Auditor’s report was published in September 2018. (State Auditor, *Correctional Officer Health and Safety: Some State and County Correctional Facilities Could Better Protect Their Officers From the Health Risks of Certain Inmate Attacks*, Report 2018-106 <<http://auditor.ca.gov/pdfs/reports/2018-106.pdf>>) The report included the following findings:

- The correctional facilities did not consistently investigate gassing attacks in a thorough and timely manner, leading to relatively few prosecutions and convictions in those cases.
- The correctional facilities do not have adequate procedures to ensure that they provide care to victims of gassing attacks, including informing victims about the availability of medical testing for communicable diseases, worker's compensation benefits, or counseling services.
- The correctional facilities have not established adequate internal processes to prevent and respond to gassing attacks, including appropriately disciplining inmates who commit these attacks, training officers on how to prevent and mitigate attacks, and tracking gassing attacks.

(*Id.* at pp. 1-2.)

The report made the following recommendations to assist the correctional facilities in addressing gassing incidents and related officer health and safety issues:

- Revise policies to document that it notifies victims of counseling services available following a gassing attack, as well as their right to request that the inmate be tested for a communicable disease.
- Develop goals for how long investigations should take and consistently collect physical evidence of the crime.
- Impose internal discipline to deter inmates from committing future gassing attacks.
- Provide training that is specific to preventing and responding to gassing attacks.
- Consistently track all gassing attacks to use as a tool to identify best practices for preventing future gassing attacks.
- Refer all gassing attacks to the district attorney when probable cause exists.

(*Id.* at pp. 3-4.)

#### **4. Effect of This Bill**

This bill is intended to address several of the issues raised by the State Auditor's report. Specifically, this bill requires a correctional facility to complete an investigation of a gassing incident within six months of the incident. It also mandates that correctional facilities provide notice to their employees of their rights if they are the victim of a gassing attack by posting the following notice in an easily visible location:

If you have direct contact with the bodily fluids of an inmate, you have the right to be informed by supervisory or medical personnel if the inmate has a communicable disease. You have the right to request that the inmate be tested for communicable disease. You have the right to access counseling services at the

time of your request for disease testing and when the test results are provided to you. You are entitled to workers' compensation insurance if you are injured or disabled in the course of employment.

In addition, this bill requires that correctional facilities provide a physical notice explaining a victim's rights to aftercare to a victim of an actual gassing attack, as well as an annual facility-wide email describing a victim's rights following a gassing incident.

This bill requires a correctional facility to provide protective gear, including, but not limited to, clothing, goggles, shields, and other protective devices. This bill also requires that a correctional facility replace any article of an officer's uniform that has been soiled in a gassing attack.

This bill requires state and local correctional facilities to document all of the following:

- The total number of gassing incidents at the state prison and how many were committed by repeat offenders.
- The disposition of each gassing incident, including administrative penalties imposed, number of incidents prosecuted, the results of those prosecutions, and any discipline procedures or penalties imposed.
- A profile of the inmates who committed the gassing incidents, including the number of inmates who have one or more prior serious or violent felony convictions.
- Efforts that the state prison has taken to limit these incidents, including staff training and the use of protective clothing, goggles, shields, or other protective gear.
- The results and costs of medical testing related to gassing incidents.

Finally, this bill requires state and local correctional facilities to provide adequate training to officers on how to prevent and mitigate the harm from gassing attacks on a biennial basis, and requires newly hired officers to receive this training within three months from their start date.

-- END --