
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 66 **Hearing Date:** August 7, 2020
Author: Gonzalez
Version: July 21, 2020
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Police: Use of Force*

HISTORY

Source: Author

Prior Legislation: AB 392 (Weber), Ch. 170, Stats. of 2019
SB 230 (Caballero), Ch. 285, Stats. of 2019
SB 1347 (Leno), 2009, failed passage on the Senate floor
AB 2973 (Soto), Ch. 556, Stats. of 2008
AB 1237, (Leno), 2005, failed passage on the Asm. floor

Support: AAUW – San Jose; Alliance San Diego; Asian Americans Advancing Justice - California; Asian Law Alliance; Brady California United Against Gun Violence; California Academy of Family Physicians; California Attorneys for Criminal Justice; California Civil Liberties Advocacy; California Immigrant Policy Center; California Labor Federation; California Nurses Association; California Psychological Association; California Public Defenders Association; California Teachers Association; Californiahealth+ Advocates; Californians for Safety and Justice; Consumer Attorneys of California; Disability Rights California; InnerCity Struggle; National Association of Social Workers – California; Planned Parenthood Affiliates of California; Showing Up for Racial Justice (SURJ) – Sacramento; Silicon Valley Leadership Group; UDW/AFSCME Local 930

Opposition: California Association of Highway Patrolmen; California State Sheriffs' Association; California Statewide Law Enforcement Association; Los Angeles County Sheriff's Department; Peace Officers Research Association of California (PORAC); Riverside Sheriffs' Association

Assembly Floor Vote: Not relevant

PURPOSE

The purpose of this legislation is to limit the use of kinetic energy projectiles and chemical agents to disperse lawful assemblies, enforce curfews, in response to verbal threats, or to enforce mere non-compliance with law enforcement directives.

Existing law 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).)

Existing law defines “less lethal ammunition” as any ammunition that:

- 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
- 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).)

This bill 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.

This bill 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, items commonly referred to as pepper balls, pepper spray or oleoresin capsicum, and CN tear gas or CS gas.

This bill bans the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse an assembly, protest, demonstration, or gathering unless all of the following conditions are met:

- It is objectively reasonable to defend against injury to any individual, including peace officers;
- Where objectively reasonable, de-escalation techniques and other alternatives to force have been attempted, and have failed;
- Peace officers have made objectively reasonable attempts to audibly and repeatedly announce the intent to use kinetic energy projectiles or chemical agents;
- The crowd is given an objectively reasonable opportunity and ability to leave the scene;
- Peace officers have made objectively reasonable efforts to first identify individuals engaged in violent acts and those who are not, and only target kinetic energy projectiles or chemical agents towards those individuals engaged in violent acts against any other individual;
- Peace officers consider the increased risk of hitting an unintended target due to unexpected movement of members of the crowd;
- Peace officers have made objectively reasonable efforts to extract individuals in distress;
- The kinetic energy projectiles or chemical agents are used only with the frequency, intensity, and in the manner that is objectively reasonable and proportional;
- Peace officers promptly provide or procure medical assistance for injured persons;
- Peace officers are trained on the proper use of those weapons by the Commission on Peace Officer Standards and Training; and

- Peace officers only aim at or below an individual's navel or belt line first, not at an individual's head or neck, or at individuals running away.

This bill bans the use of kinetic energy projectiles or chemical agents by any law enforcement agency solely due to a violation of an imposed curfew, verbal threat, or mere noncompliance with a law enforcement directive.

This bill specifies that despite the exceptions for the use of chemical agents, "chloroacetophenone tear gas" commonly known as CN tear gas, or 2-chlorobenzalmalononitrile gas, commonly known as CS gas, shall not be used by any law enforcement agency.

This bill provides that kinetic energy projectiles or chemical agents shall only be deployed and used by officers trained on the proper use of those weapons by the Commission on Peace Officer Standards and Training (POST).

This bill directs that if a federal law enforcement agency is operating in the jurisdiction of any city, that city shall request that federal law enforcement agency refrain from the use of kinetic energy projectiles or chemical agents to disperse a lawful assembly, protest, demonstration, or gathering to engage in conduct protected by the First Amendment to the United States and California Constitution.

This bill clarifies that nothing in this section prevents a law enforcement agency from adopting more stringent policies.

This bill requires that beginning January 1, 2023, law enforcement agencies shall begin to report to the Department of Justice incidents of use of less-lethal weapons, as specified.

This bill states that it is the intent of the Legislature that peace officers shall be accountable at all times to uphold their oath, and are held to the highest standards of conduct, pursuant to California Constitution Article XX, Sec. III and existing law, to support and defend the Constitutions of the United States of America and of the State of California, including the rights of the people to safely and freely speak and assemble.

This bill finds and declares the following:

- Beginning the week of May 25, 2020, there have been numerous reports of peaceful protestors, along with countless other bystanders and reporters, maimed by rubber bullets and other projectiles by law enforcement.
- Kinetic energy projectiles, such as rubber or plastic bullets, beanbag rounds, and foam rounds, and chemical agents, including pepper balls, pepper spray, and tear gas, have been increasingly used as crowd control weapons or less lethal weapons to respond to protests and are designed to incapacitate individuals by inflicting pain or sublethal injury.
- A 2017 British Medical Journal study found that 3% of people hit by rubber bullets died of their injuries and 15% were permanently injured.
- Researchers and medical professionals have called for an end of the use of rubber bullets on peaceful protestors because of their potential to cause serious injury, disability, or death.

- The 1925 Geneva Protocol categorized tear gas as a chemical warfare agent and banned its use in war. The Chemical Weapons Convention outlawed the use of tear gas in 1997, but still made it legal for law enforcement to use.
- Health experts have warned that the use of tear gas could help with the spread of COVID-19 because it irritates the lungs and makes persons cough.
- While most police departments have their own policies on their use of force and less lethal weapons, there are no statewide or national standards.
- It is the intent of this act to establish clear minimum standards for policies and reporting procedures regarding California law enforcement agencies' use of less lethal kinetic energy projectiles and chemical agents.

COMMENTS

1. Need for This Bill

According to the author:

Kinetic energy projectiles or kinetic impact projectiles (KIPs), along with chemical agents such as pepper spray and tear gas, are used by law enforcement for crowd control during protests as “less lethal” weapons compared to live bullets. They include rubber bullets, beanbag, and foam rounds. Rubber bullets are rubber on the outside, but often contain a metal center. While the U.S. stopped using rubber bullets for crowd control after a fatality in 1971, they were reintroduced in the early 1980s.

The use of these weapons can cause serious injury and long-term health impacts when used by law enforcement. When fired at a closer range, as seen in many of the recent protests, rubber bullets can penetrate the skin, break bones, fracture the skull, explode the eyeball, cause traumatic brain injuries, serious abdominal injury, internal bleeding and spleen, bowel, and major blood vessel injuries. At longer distances, they can unintentionally injure bystanders and non-violent demonstrators. A 2017 British Medical Journal study found that 3% of people hit by rubber bullets died of their injuries, and 15% were permanently disabled. Over 85% of all eye injuries resulted in permanent blindness and 91.5% of head and neck, eye, nervous, cardiovascular, pulmonary, and thoracic and urogenital injuries were severe.

In recent weeks, there have been numerous reports of peaceful protestors, bystanders, health care professionals, and reporters seriously injured by KIPs fired by law enforcement and chemical agents used against protestors. In La Mesa, CA, a grandmother was hospitalized in an intensive care unit after being hit between the eyes with a beanbag round. A San Jose community activist was hit in the groin by a rubber bullet and doctors are unsure if he will ever be able to have children. A photojournalist was shot in the eye by what she believed to be a rubber bullet while covering an anti-police brutality protest in Minneapolis, and was left permanently blind in the left eye.

Tear gas is also still allowed to be used by law enforcement, despite having serious health impacts. In 1925, the Geneva Protocol categorized tear gas as a

chemical warfare agent and banned its use in war shortly after World War I; and in 1997, the Chemical Weapon Convention outlawed the use of riot control agents such as tear gas in warfare, but still allowed the law enforcement to use it. A 2014 study from the U.S. Army found that recruits who were exposed to tear gas as part of a training exercise were more likely to get sick with respiratory illnesses like the common cold and flu. At least 98 law enforcement agencies across the country, including 11 in California, used some form of tear gas against civilians protesting police brutality and racism. There have also been reports of injuries from tear gas canisters fired by police, including a 21 year old who lost an eye after being hit by a tear gas canister.

Medical professionals have called for an end to the use of rubber bullets and tear gas on peaceful protestors due to their potential to cause serious injury, disability, or death. It is clear that these “less lethal” weapons are inappropriate for crowd control as Californians are exercising their rights to assemble and peacefully protest.

While most police departments have their own policies on their use of force of less lethal devices, there are no statewide or national standards. In order to increase the safety of Californians exercising their right to assemble and protest, Assembly Bill 66 would prohibit the use of kinetic energy projectiles and chemical agents by law enforcement on peaceful protestors or to facilitate curfews. It would also prohibit the use of tear gas by police, set clear minimum standards for use of these “less lethal” weapons by law enforcement, and require data on the use of and any resulting injuries from these weapons.

2. Less Lethal Weapons and Law Enforcement

Policymakers must consider when officers may utilize weapons that can be very dangerous to the public, but are not as lethal as the usage of fully armed firearms. Having alternatives such as electronic stun weapons, batons, shields, chemicals, and kinetic energy projectiles can limit incidents when firearms are used in a manner which could result in death or serious bodily injury more frequently.

This bill seeks to limit the usage of less-lethal weapons by law enforcement agencies. The bill specifies that kinetic energy projectiles and chemical agents shall not be used to disperse an assembly, protest, demonstration, or gathering absent first engaging in a series of actions. The requirements to engage in the usage of kinetic energy weapons or chemical agents are outlined here. In order to use the weapons, all of these categories must be satisfied:

- 1) It is objectively reasonable to defend against injury to any individual, including peace officers;
- 2) Where objectively reasonable, de-escalation techniques and other alternatives to force have been attempted, and have failed;
- 3) Peace officers have made objectively reasonable attempts to audibly and repeatedly announce the intent to use kinetic energy projectiles or chemical agents;
- 4) The crowd is given an objectively reasonable opportunity and ability to leave the scene;
- 5) Peace officers have made objectively reasonable efforts to first identify individuals engaged in violent acts and those who are not, and only target kinetic energy projectiles

or chemical agents towards those individuals engaged in violent acts against any other individual,

- 6) Peace officers consider the increased risk of hitting an unintended target due to unexpected movement of members of the crowd;
- 7) Peace officers have made objectively reasonable efforts to extract individuals in distress;
- 8) The kinetic energy projectiles or chemical agents are used only with the frequency, intensity, and in the manner that is objectively reasonable and proportional;
- 9) Peace officers promptly provide or procure medical assistance for injured persons;
- 10) Peace officers are trained on the proper use of those weapons by the Commission on Peace Officer Standards and Training (POST); and
- 11) Peace officers only aim at or below an individual's navel or belt line first, not at an individual's head or neck, or at individuals running away.

These categories factor in the safety of officers, the public, and persons who may be in distress at the time the weapons are deployed. Additionally, as in much legislation advanced in recent years, these provisions require officers to factor in the reasonability of the usage of the weapons, as well as require notice be given when possible and that de-escalation techniques are employed. Finally, the requirements mandate that the weapons are used in a safer manner, and should not be deployed at persons who are running away from officers.

The language provides that less-lethal force may be used when "objectively reasonable to defend against injury to any individual" but not in defense of property. Presumably, the intent of this is to limit the usage of these methods to the prevention of physical harm to persons. However, this language would prevent the usage of less-lethal methods to prevent the harm to property.

3. Ban on Chloroacetophenone

This bill limits the usage of chemical agents by law enforcement, but the bill bans completely the usage of phenacyl chloride, or "chloroacetophenone" which is commonly referred to as "tear gas." Due to the level of toxicity, phenacyl chloride has been replaced with the less toxic "CS gas" or chlorobenzaknonitrile as a riot control agent. Exposure to CS gas still causes a burning sensation and tearing of the eyes and a burning sensation to the nose, mouth and throat. Law enforcement and paramilitary forces also have the alternative of pepper spray which is also less toxic and dangerous than phenacyl chloride as the latter can result in corneal epithelial damage, chemosis, pulmonary injury, asphyxia, and death.

4. Argument in Support

According to Disability Rights California:

While most police departments have their own policies on their use of force of these "less lethal" weapons, there are no statewide or national standards. Over the past several weeks, we have seen numerous reports of peaceful protestors, bystanders, and reporters seriously injured by projectiles fired by law enforcement and chemical agents used against protestors.

The use of these "less-lethal" weapons can cause serious injury and long-term health impacts when used improperly by law enforcement. When fired at a closer range, as seen in many of the recent protests, rubber bullets can

penetrate the skin, break bones, fracture the skull, explode the eyeball, cause traumatic brain injuries, serious abdominal injury, internal bleeding and spleen, bowel, and major blood vessel injuries. At longer distances, they can unintentionally injure bystanders and non-violent demonstrators instead. “Less lethal” does not mean not lethal. In fact, a 2017 British Medical Journal study found that 3% of people hit by rubber bullets died of their injuries, and 15% were permanently disabled.

San Jose Mayor, city council and police chief are working to move forward with a ban on the use of rubber bullets by police officers in their city’s police department. San Jose is one of the largest cities in the state and has taken a step forward to making sure that those who are peacefully exercising their First Amendment rights are safe.

Chemical agents also have significant health impacts. Tear gas irritates cells, but also activates pain receptors, which leads to intense burning pain in the eyes, throat, lungs, skin and mucous membranes. In addition, a 2014 study from the U.S. Army found that recruits who were exposed to tear gas as part of a training exercise were more likely to get sick with respiratory illnesses like the common cold and flu. People with certain disabilities can react differently to the chemicals from tear gas exposure. The damage to people with disabilities can even be life threatening.

People with disabilities are especially at risk for severe injury from “less-lethal” force. People with multiple chemical sensitivity, sensory disabilities, and mental health disabilities, in particular can have devastating reactions to being tear gassed or hit with rubber bullets. California needs to be a leader and protect people by eliminating the use of rubber bullets, tear gas and other “non-lethal” force by law enforcement. This would help protect people with disabilities in California who could be severely harmed when this type of force is used.

5. Argument in Opposition

According to the Los Angeles County Sheriff’s Department:

The legislative intent language is problematic and presumes law enforcement officers do not support citizen constitutional rights to “safely and freely assemble,” which is not correct. During unlawful protests, law enforcement officers are presented with are presented with circumstances dangerous to themselves and the community at large. Prohibiting the use of tear gas, which is used to clear areas from those who are actively committing crime, increases the possibility of physical force between officers and those criminal refusing to disperse. The effective use of tear gas in riotous situations can prevent the escalation of physical force used by and against law enforcement, which will result in a safer environment for everyone involved.

Currently, LASD does not allow kinetic energy projectiles to be used on persons who are only in violation of a curfew, making verbal threats, or those who do not comply with law enforcement directives. Persons who do not comply with

law enforcement directives, presuming the officer has legal standing, are always subject to arrest, and that arrest must be made pursuant to California law (AB 392), which was just codified less than one-year-ago.

Finally, a blanket prohibition on law enforcement's use of tear gas is problematic in instances where there are armed barricaded subjects, who in many cases are wanted for serious violent felonies. Taking this tool away from law enforcement's special weapons teams would be harmful and almost certainly injurious to those officers charged with dangerous operational duties.

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