
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1406 **Hearing Date:** May 31, 2022
Author: Lackey
Version: January 27, 2022
Urgency: No **Fiscal:** Yes
Consultant: AB

Subject: *Law enforcement agency policies: carrying of equipment*

HISTORY

Source: Author

Prior Legislation: AB 490 (Gipson), Ch. 407, Stats. of 2021
AB 481 (Chiu), Ch. 406, Stats. of 2021
AB 48 (Gonzalez), Ch. 404, Stats. of 2021
AB 1196 (Gipson), Ch. 324, Stats. of 2020
AB 392 (Weber), Ch. 170, Stats. of 2019
SB 230 (Caballero), Ch. 285, Stats. of 2019
SB 1347 (Leno, 2010), died on Senate Floor

Support: Peace Officers Research Association of California (PORAC)

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to require peace officers to holster an electroshock device, such as a taser or stun gun, on the side of the body opposite to the side that the officer's primary firearm is holstered.

Existing law contains the following legislative findings and declarations:

- That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.
- That it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.
- That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious

consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

- That the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force. (Pen. Code §835a(a).)

Existing law defines “stun gun” as any item used or intended to be used as either an offensive or defensive weapon that is capable of temporarily immobilizing a person by the infliction of an electrical charge. (Pen. Code §§ 244.5 (a), 17230.)

Existing law allows a person who is a peace officer or a custodial officer, as defined, if authorized by and under the terms and conditions as are specified by the person’s employing agency, to purchase, possess, or transport any less lethal weapon or ammunition for any less lethal weapon, for official use in the discharge of the person’s duties. (Pen. Code § 19400.)

Existing law defines “less lethal weapon” as any device that is designed to or that has been converted to expel or propel less lethal ammunition by any action, mechanism, or process for the purpose of incapacitating, immobilizing, or stunning a human being through the infliction of any less than lethal impairment of physical condition, function, or senses, including physical pain or discomfort. (Pen. Code § 16780(a).)

Existing law provides that any peace officer who has reasonable cause to believe that the 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(b).)

Existing law establishes the criteria for when a peace officer is justified in using deadly force upon another person. (Pen. Code §835a(c).)

Existing law defines “deadly force” as any use of force that creates a substantial risk of causing death or serious bodily injury. Deadly force includes, but is not limited to, the discharge of a firearm. (Govt. Code §7286(a)(1); Pen. Code §835a(e)(1).)

Existing law requires each law enforcement agency to maintain a policy that provides a minimum standard on the use of force, which must include, among other things, all of the following:

- A requirement that officers utilize de-escalation techniques, crisis intervention tactics, and other alternatives to force when feasible.
- A requirement that an officer may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.
- Clear and specific guidelines regarding situations in which officers may or may not draw a firearm or point a firearm at a person.
- A requirement that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm.
- Comprehensive and specific guidelines regarding approved methods and devices available for the application of force.
- Comprehensive and specific guidelines for the application of deadly force.

- A requirement that officers promptly provide, if properly trained, or otherwise promptly procure medical assistance for persons injured in a use of force incident, when reasonable and safe to do so.
- Training standards and requirements relating to demonstrated knowledge and understanding of the law enforcement agency's use of force policy by officers, investigators, and supervisors. (Govt. Code §7286(b).)

Existing law requires the Commission on Peace Officers Standards and Training (POST) to implement a course or courses of instruction for the regular and periodic training of law enforcement officers in the use of force and shall also develop uniform, minimum guidelines for adoption and promulgation by California law enforcement agencies for use of force. The guidelines and course of instruction shall stress that the use of force by law enforcement personnel is of important concern to the community and law enforcement and that law enforcement should safeguard life, dignity, and liberty of all persons, without prejudice to anyone. These guidelines shall be a resource for each agency executive to use in the creation of the use of force policy that the agency is required to adopt and promulgate pursuant to Section 7286 of the Government Code, and that reflects the needs of the agency, the jurisdiction it serves, and the law. The course or courses of the regular basic course for law enforcement officers and the guidelines shall include, among other things, all of the following:

- Legal standards for use of force.
- Duty to intercede.
- The use of objectively reasonable force.
- Use of force review and analysis.
- Guidelines for the use of deadly force.
- De-escalation and interpersonal communication training, including tactical methods that use time, distance, cover, and concealment, to avoid escalating situations that lead to violence.
- Use of force scenario training including simulations of low frequency, high-risk situations and calls for service, shoot-or-don't-shoot situations, and real-time force option decision-making.
- Alternatives to the use of deadly force and physical force, so that de-escalation tactics and less lethal alternatives are, where reasonably feasible, part of the decision-making process leading up to the consideration of deadly force. (Pen. Code §13519.10)

Existing law provides that a law enforcement agency shall not authorize the use of a carotid restraint, as defined, by any peace officer employed by that agency. (Govt. Code §7286.5(a).)

Existing law provides that a law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia. (Govt. Code §7286.5(b).)

Existing law prohibits the use of kinetic energy projectiles and chemical agents, as defined, to disperse any assembly, protest or demonstration, and requires each law enforcement agency, within 60 days of each incident, to publish a summary on its internet website of all instances in which a peace officer employed by that agency used a kinetic energy projectile or chemical agent for crowd control. (Pen. Code §§13652, 31652.1).

This bill provides that any law enforcement agency that authorizes peace officers to carry an electroshock device shall prohibit that device from being holstered or otherwise carried on the

same lateral side of the officer's body as the officer's primary firearm is holstered or otherwise carried.

This bill defines an "electroshock device" as a taser, stun gun, or similar weapon that is designed to temporarily incapacitate a person through the controlled delivery of an electric shock, and is designed to be held in a manner similar to a pistol and operated using a finger trigger.

This bill defines "law enforcement agency" as any agency or department of the state, or any political subdivision thereof, that employs any peace officer, as specified.

COMMENTS

1. Need for This Bill

According to the Author:

Under current law, law enforcement officers are not required to have their firearm and stun gun/taser on separate areas of their person. This has led to unnecessary catastrophes when firearms have been accidentally discharged in place of a stun gun. In order to minimize casualties, this law would require law enforcement officers to carry their taser on the opposite side of their firearm in order to prevent future fatal accidents.

2. Use of Tasers by Law Enforcement and Weapon Confusion

A taser, short for Tom A. Swift Electric Rifle, is a handheld device that incapacitates a person by transmitting a 50,000 volt electric shock via two small darts connected to the device by thin wires.¹ Developed in the mid-1970's, the taser was not introduced to law enforcement until the 1990s, but by 2011, more than 15,000 law enforcement agencies in the United States used tasers as an alternative to deadly force.² The nation's top taser manufacturer for law enforcement, Axon Enterprise, designed the modern taser to be shaped and to function like a standard handgun because "it is easy for law enforcement officers to use during stressful situations since their firearms training familiarizes them with the muscle movements required for its operation."³

Although taser and standard-issue police firearms (such as those produced by Glock Inc.) share a basic shape and some functionality, there are significant differences. According to a recent examination by the New York Times comparing the taser to standard firearms carried by officers of the Brooklyn Center, Minnesota Police Department:

Tasers are often produced in bright colors, or with neon accents, to distinguish them from pistols. The Brooklyn Center Police Department manual cites the Glock 17, 19 and 26 as standard-issue for the department. All three pistol models weigh significantly more than a typical Taser. Glocks also have a trigger safety that can be

¹ Tom Swift is a fictional character from a series of early 20th Century children's books who invented various gadgets. This book series was a favorite of the taser's inventor, Jack Cover.

² <https://www.britannica.com/topic/TASER>

³ "United States Securities and Exchange Commission Registration Statement for TASER International, Inc." Filed May 4, 2001.

<https://www.sec.gov/Archives/edgar/data/1069183/000095015301500433/p64567a4sb-2a.htm>

felt when touching the trigger. Tasers do not. Grips on Tasers are typically different from those of firearms, as well, though they may feel similar because both are usually made of a similar type of polymer.⁴

The act of mistaking a firearm for a taser is known as “weapon confusion,” which, according to experts, is a well-known phenomenon in policing. Weapons confusion can occur for a variety of reasons, including how an officer was trained, how their equipment is situated on their duty belt, and the pressure they feel during dangerous and chaotic situations.⁵ Though instances of weapon confusion are uncommon – a New York Times investigation identified 15 weapon confusion incidents over the past 20 years – they can have deadly consequences.⁶ For instance, in Oakland, California in 2009, Bay Area Rapid Transit (BART) police officer Johannes Mehserle shot and killed 22-year old Oscar Grant at the Fruitvale BART station. During his criminal trial, Mehserle’s expert witnesses testified that it was possible that he mistook his firearm for his taser. More recently, in April 2021, Brooklyn Center, Minnesota police officer Kim Potter fatally shot Daunte Wright after initiating a traffic stop. During that encounter, Potter and fellow officers struggled with Wright as he attempted to resist being restrained. When Wright attempted to flee in his vehicle, Potter drew her firearm, yelled, “Taser! Taser! Taser!” and discharged a round, ultimately killing Wright.⁷

3. California Law Enforcement Agency Taser Policies and Effect of This Bill

Tasers are generally worn or carried by police officers in one of three configurations. A “strong-side” configuration has the taser placed on the same side of the officer’s body as the officer’s handgun (their dominant side), and would be drawn with the officer’s dominant hand. A “weak-side” configuration has the taser placed on the opposite side of the officer’s body as the handgun (their non-dominant side) and drawn by the officer’s non-dominant hand. A “cross-draw” configuration has the taser placed on the non-dominant side of the body, but with the handle facing the dominant side so the officer can reach across their body and draw the taser with their dominant hand. A fourth and far less common configuration has the taser placed in a separate hip or chest holster, either below or above the duty belt, respectively.

Existing California law does not include any requirement that a taser be holstered according to one of the configurations described above. It is common, however, for law enforcement agencies to issue their own policies regarding taser placement, and many such policies require officers to carry their tasers on their non-dominant side, either in a “weak-side” or “cross draw” configuration. For instance, the Santa Rosa Police Department Policy Manual states that, “The Taser shall not be carried on the same side as the duty weapon. All Tasers shall be clearly and distinctly marked to distinguish them

⁴ “How Could an Officer Mistake a Gun for a Taser?” *New York Times*. 13 April 2021.

<https://www.nytimes.com/interactive/2021/04/13/us/daunte-wright-taser-gun.html>

⁵ “Explainer: How does someone confuse a gun for a Taser?” *ABC News*. 22 December 2021.

<https://abcnews.go.com/US/wireStory/explainer-confuse-gun-taser-81894695>

⁶ “At Least 15 Officers mistook Guns for Tasers. Three Were Convicted.” *New York Times*. 14 April 2021.

[How the Courts Have Handled Accidental Discharge Cases - The New York Times \(nytimes.com\)](https://www.nytimes.com/2021/04/14/us/police/taser-gun-confusion.html)

⁷ “What to Know About Kimberly Potter’s Conviction for the Death of Daunte Wright.” *New York Times*. 30 November 2021. [Kimberly Potter’s Trial for the Death of Daunte Wright: What We Know - The New York Times \(nytimes.com\)](https://www.nytimes.com/2021/11/30/us/police/potter-conviction-wright.html)

from the duty weapon.”⁸ Similarly, a directive issued by the Los Angeles Police Department requires officers to carry tasers “in a department-approved holster on the support side of the duty belt in either a cross draw or support side draw position.”⁹ At least 5 other taser policies identified by committee staff included language requiring officers to carry tasers on their non-dominant side. Committee staff was unable to identify any agency policy that permits officers to utilize a “strong-side” carry configuration.

This bill requires any law enforcement agency in California that authorizes peace officers to carry a taser or other electroshock device to prohibit that device from being carried on the same lateral side of the officer’s body as the officer’s primary firearm. Consequently, this bill prohibits California peace officers from utilizing “strong-side” taser configurations. Presumably, this includes the less common chest and hip holstering configurations described above where the chest or hip holster is located on the same lateral side of the body as the primary firearm.

4. Argument in Support

PORAC supports this bill stating:

We are pleased to inform you of our support for AB 1406 relating to law enforcement agency policies: carrying of equipment.

Current law requires law enforcement agencies to maintain a policy on the use of force and places certain restrictions on the use of force by law enforcement agencies, including prohibiting the use of a choke hold or carotid restraint. This bill would require a law enforcement agency that authorizes peace officers to carry an electroshock device, such as a taser or stun gun that is held and operated in a manner similar to a pistol, to require that device to be holstered or otherwise carried on the lateral side of the body opposite to the side that that officer’s primary firearm is holstered.

-- END --

⁸ “Santa Rosa Police Department Policy Manual.” P.67.

<https://srcity.org/DocumentCenter/View/35348/Policy-Manual-32422-SRPD>

⁹ “Use of Force – Tactics Directive: Electronic Control Device Taser.” Directive No. 4.5. July 2018. PP.6-7.
<https://lapdonlinestrgeacc.blob.core.usgovcloudapi.net/lapdonlinemedia/2021/05/Less-Lethal-Devices.pdf>