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AB-48 Law enforcement: use of force. (2021-2022)

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Assembly Bill No. 48

CHAPTER 404

An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 48, Lorena Gonzalez. Law enforcement: use of force.

(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 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 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, or to bring an objectively dangerous and unlawful situation safely and effectively under control. 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 county jail or state prison facility.

This bill would also require each law enforcement agency, within a specified timeframe, to post on their internet website a summary, as described, of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. The bill would require the Department of Justice to provide a compiled list of links to these reports on its internet website.

(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. 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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) 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:

- (1) The gender, race, and age of each individual who was shot, injured, or killed.
- (2) The date, time, and location of the incident.
- (3) Whether the civilian was armed, and, if so, the type of weapon.
- (4) The type of force used against the officer, the civilian, or both, including the types of weapons used.
- (5) The number of officers involved in the incident.
- (6) The number of civilians involved in the incident.
- (7) 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.

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

(d) For purposes of this section, "serious bodily injury" means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

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

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

(b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including

any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

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

(2) Repeated, audible announcements are made announcing 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 delivered in multiple languages, if appropriate.

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

(4) 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.

(5) 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.

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

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

(8) 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.

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

(10) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency 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.

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

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

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

(1) "Kinetic energy projectiles" means 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.

(2) "Chemical agents" means any chemical that 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.

(e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. Section 13652.1 is added to the Penal Code, to read:

13652.1. (a) Each law enforcement agency shall, within 60 days of each incident, publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control. However, an agency may extend that period for another 30 days if they demonstrate just cause, but in no case longer than 90 days from the time of the incident.

(b) For each incident reported under subdivision (a), the summary shall be limited to that information known to the agency at the time of the report and shall include only the following:

- (1) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.
- (2) The type of kinetic energy projectile or chemical agent deployed.
- (3) The number of rounds or quantity of chemical agent dispersed, as applicable.
- (4) The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.
- (5) The justification for using the kinetic energy projectile or chemical agent, including any deescalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.

(c) The Department of Justice shall post on its internet website a compiled list linking each law enforcement agency's reports posted pursuant to subdivision (a).

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