

AMENDED IN ASSEMBLY APRIL 6, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 830**

**Introduced by Assembly Member Speier**

February 22, 1995

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An act to amend Sections ~~12403, 12403.5, 12403.6 171b, 12403, 12403.5, 12403.7, 12403.8, 12423, 12426, 12450, 12453, and 12458 and 12426~~ of, and to repeal Sections ~~12435 and 12460~~ 12403.6, 12435, and 12460 of, and to repeal Article 5 (commencing with Section 12450) of Chapter 4 of Title 2 of, the Penal Code, relating to tear gas weapons.

LEGISLATIVE COUNSEL'S DIGEST

AB 830, as amended, Speier. Tear gas weapons.

(1) Existing law prohibits the possession of certain weapons, including any tear gas or tear gas weapon, within any state or local public building or at any meeting required by state law to be open to the public.

This bill instead would make this prohibition applicable to any unauthorized tear gas weapon.

(2) Existing law regulates the purchase, possession, transportation, and use of any tear gas or tear gas weapon and makes its provisions applicable to, among others, specified peace officers, licensed private investigators, private patrol operators, employees of specified state agencies, and minors.

This bill would revise and recast these provisions by repealing certain licensing requirements administered by the Department of Justice and other requirements covering

oleoresin capsicum certification and the purchase, possession, or use of tear gas or tear gas weapons in which this active ingredient is used. The department would be authorized to issue a permit for the possession and transportation of tear gas or tear gas weapons that are not intended or certified for personal self-defense purposes, upon proof that good cause exists for the issuance of this permit.

*This bill would also repeal the provision that no tear gas or tear gas weapon shall be possessed, sold, or transported in this state unless the Department of Justice has certified that particular type and brand of tear gas weapon to be acceptable. The bill would make other related, technical and conforming changes.*

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

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

- 1 SECTION 1. *Section 171b of the Penal Code is*
- 2 *amended to read:*
- 3 171b. (a) Any person who brings or possesses within
- 4 any state or local public building or at any meeting
- 5 required to be open to the public pursuant to Chapter 9
- 6 (commencing with Section 54950) of Part 1 of Division 2
- 7 of Title 5 of, or Article 9 (commencing with Section
- 8 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the
- 9 Government Code, any of the following is guilty of a
- 10 public offense punishable by imprisonment in a county
- 11 jail for not more than one year, or in the state prison:
- 12 (1) Any firearm.
- 13 (2) Any deadly weapon described in Section 653k or
- 14 12020.
- 15 (3) Any knife with a blade length in excess of four
- 16 inches, the blade of which is fixed or is capable of being
- 17 fixed in an unguarded position by the use of one or two
- 18 hands.
- 19 (4) Any *unauthorized* tear gas weapon, ~~as defined in~~
- 20 ~~Sections 12401 and 12402.~~
- 21 (5) Any taser or stun gun, as defined in Section 244.5.



1 (6) Any instrument that expels a metallic projectile,  
2 such as a BB or pellet, through the force of air pressure,  
3 CO<sub>2</sub> pressure, or spring action, or any spot marker gun or  
4 paint gun.

5 (b) Subdivision (a) shall not apply to, or affect, any of  
6 the following:

7 (1) A person who possesses weapons in, or transports  
8 weapons into, a court of law to be used as evidence.

9 (2) (A) A duly appointed peace officer as defined in  
10 Chapter 4.5 (commencing with Section 830) of Title 3 of  
11 Part 2, a retired peace officer with authorization to carry  
12 concealed weapons as described in subdivision (a) of  
13 Section 12027, a full-time paid peace officer of another  
14 state or the federal government who is carrying out  
15 official duties while in California, or any person  
16 summoned by any of these officers to assist in making  
17 arrests or preserving the peace while he or she is actually  
18 engaged in assisting the officer.

19 (B) Notwithstanding subparagraph (A), subdivision  
20 (a) shall apply to any person who brings or possesses any  
21 weapon specified therein within any courtroom if he or  
22 she is a party to an action pending before the court.

23 (3) A person holding a valid license to carry the  
24 firearm pursuant to Article 3 (commencing with Section  
25 12050) of Chapter 1 of Title 2 of Part 4.

26 ~~(4) A person holding a valid tear gas weapon card~~  
27 ~~pursuant to Section 12403.7 allowing that person to carry~~  
28 ~~the tear gas or tear gas weapon.~~

29 ~~(5) A person who has permission to possess that~~  
30 ~~weapon granted in writing by a duly authorized official~~  
31 ~~who is in charge of the security of the state or local~~  
32 ~~government building.~~

33 ~~(6)~~

34 (5) A person who lawfully resides in, lawfully owns, or  
35 is in lawful possession of, that building with respect to  
36 those portions of the building that are not owned or leased  
37 by the state or local government.

38 ~~(7)~~

39 (6) A person licensed or registered in accordance  
40 with, and acting within the course and scope of, Chapter



1 11.5 (commencing with Section 7512) or Chapter 11.6  
 2 (commencing with Section 7590) of Division 3 of the  
 3 Business and Professions Code who has been hired by the  
 4 owner or manager of the building if the person has  
 5 permission pursuant to paragraph (5).

6 (c) As used in this section, “state or local public  
 7 building” means a building that meets all of the following  
 8 criteria:

9 (1) It is a building or part of a building owned or leased  
 10 by the state or local government, if state or local public  
 11 employees are regularly present for the purposes of  
 12 performing their official duties. A state or local public  
 13 building includes, but is not limited to, a building that  
 14 contains a courtroom.

15 (2) It is not a building or facility, or a part thereof, that  
 16 is referred to in Section 171c, 171d, 626.9, 626.95, or 626.10  
 17 of this code, or in Section 18544 of the Elections Code.

18 (3) It is a building not regularly used, and not intended  
 19 to be used, by state or local employees as a place of  
 20 residence.

21 *SEC. 2.* Section 12403 of the Penal Code is amended  
 22 to read:

23 12403. Nothing in this chapter shall prohibit any  
 24 person who is a peace officer, as defined in Chapter 4.5  
 25 (commencing with Section 830) of Title 3 of Part 2, from  
 26 purchasing, possessing, transporting, or using any tear gas  
 27 or tear gas weapon *if the person has satisfactorily*  
 28 *completed a course of instruction approved by the*  
 29 *Commission on Peace Officer Standards and Training in*  
 30 *the use of tear gas.*

31 ~~SEC. 2.—~~

32 *SEC. 3.* Section 12403.5 of the Penal Code is amended  
 33 to read:

34 12403.5. Notwithstanding any other provision of law,  
 35 a person holding a license as a private investigator or  
 36 private patrol operator issued pursuant to Chapter 11  
 37 (commencing with Section 7500), Division 3 of the  
 38 Business and Professions Code, or uniformed patrolmen  
 39 employees of a private patrol operator, may purchase,  
 40 possess, or transport any tear gas weapon, if it is used



1 solely for defensive purposes in the course of the activity  
2 for which the license was issued *and if the person has*  
3 *satisfactorily completed a course of instruction approved*  
4 *by the Commission on Peace Officer Standards and*  
5 *Training in the use of tear gas.*

6 ~~SEC. 3. Section 12403.6 of the Penal Code is amended~~  
7 ~~to read:~~

8 ~~12403.6. Provisions within this chapter shall not be~~  
9 ~~construed to prohibit any Department of Justice or~~  
10 ~~California Environmental Protection Agency employee,~~  
11 ~~while acting within the scope of his duties, from~~  
12 ~~possessing any tear gas or tear gas weapon for the~~  
13 ~~purposes of examination, testing, or court appearance or~~  
14 ~~any other official activity undertaken pursuant to the~~  
15 ~~provisions of this chapter.~~

16 ~~SEC. 4.—~~

17 ~~SEC. 4. Section 12403.6 of the Penal Code is repealed.~~

18 ~~12403.6. Provisions within this chapter shall not be~~  
19 ~~construed to prohibit any Department of Justice or~~  
20 ~~Department of Health employee, while acting within the~~  
21 ~~scope of his duties, from possessing any tear gas or tear gas~~  
22 ~~weapon for the purposes of examination, testing, or court~~  
23 ~~appearance or any other official activity undertaken~~  
24 ~~pursuant to the provisions of this chapter.~~

25 ~~SEC. 5. Section 12403.7 of the Penal Code is amended~~  
26 ~~to read:~~

27 ~~12403.7. (a) Notwithstanding any other law, any~~  
28 ~~person may purchase, possess, or use tear gas and tear gas~~  
29 ~~weapons for the projection or release of tear gas if the tear~~  
30 ~~gas and tear gas weapons are approved by the~~  
31 ~~Department of Justice and are used solely for self-defense~~  
32 ~~purposes, subject to the following requirements:~~

33 ~~(1) No person convicted of a felony or any crime~~  
34 ~~involving an assault under the laws of the United States,~~  
35 ~~of the State of California, or any other state, government,~~  
36 ~~or country or convicted of misuse of tear gas under~~  
37 ~~paragraph (8) shall purchase, possess, or use tear gas or~~  
38 ~~tear gas weapons.~~



1 (2) No person who is addicted to any narcotic drug  
2 shall purchase, possess, or use tear gas or tear gas  
3 weapons.

4 (3) No person shall sell or furnish any tear gas or tear  
5 gas weapon to a minor.

6 (4) No person who is a minor shall purchase, possess,  
7 or use tear gas or tear gas weapons.

8 (5) (A) No person shall purchase, possess, or use any  
9 tear gas weapon that expels a projectile, or that expels the  
10 tear gas by any method other than an aerosol spray, or  
11 ~~that is of a type, or size of container, other than authorized~~  
12 ~~by regulation of the Department of Justice.~~

13 ~~(B) The department, with the cooperation of the~~  
14 ~~Environmental Protection Agency's Office of~~  
15 ~~Environmental Health Hazard Assessment, hereinafter~~  
16 ~~referred to as "Cal-EPA," shall develop standards~~  
17 ~~regarding the type of tear gas and tear gas weapons that~~  
18 ~~may lawfully be purchased, possessed, and used pursuant~~  
19 ~~to this section and that contains more than 2.5 ounces net~~  
20 ~~weight of aerosol spray.~~

21 *(B) Every tear gas container and tear gas weapon that*  
22 *may be lawfully purchased, possessed, and used pursuant*  
23 *to this section shall have a label that states: "WARNING:*  
24 *The use of this substance or device for any purpose other*  
25 *than self-defense is a felony crime under the law. The*  
26 *contents are dangerous—use with care."*

27 ~~(D)~~

28 (C) After January 1, 1984, every tear gas container and  
29 tear gas weapon that may be lawfully purchased,  
30 possessed, and used pursuant to this section shall have a  
31 label that discloses the date on which the useful life of the  
32 tear gas weapon expires.

33 (6) Effective March 1, 1994, every tear gas container  
34 and tear gas weapon that may be lawfully purchased,  
35 possessed, and used pursuant to this section be  
36 accompanied by an insert including directions for use,  
37 first aid information, safety and storage information, and  
38 explanation of the legal ramifications of improper use of  
39 the tear gas container or tear gas product. ~~The~~  
40 ~~Department of Justice may issue informational guidelines~~



1 ~~that shall be used as a minimum standard for compliance~~  
2 ~~with this insert requirement.~~

3 (7) Any person who uses tear gas or tear gas weapons  
4 except in self-defense is guilty of a public offense and is  
5 punishable by imprisonment in a state prison for 16  
6 months, or two or three years or in a county jail not to  
7 exceed one year or by a fine not to exceed one thousand  
8 dollars (\$1,000), or by both the fine and imprisonment,  
9 except that if the use is against a peace officer, as defined  
10 in Chapter 4.5 (commencing with Section 830) of Title 3  
11 of Part 2, engaged in the performance of his or her official  
12 duties and the person committing the offense knows or  
13 reasonably should know that the victim is a peace officer,  
14 the offense is punishable by imprisonment in a state  
15 prison for 16 months or two or three years or by a fine of  
16 one thousand dollars (\$1,000), or by both the fine and  
17 imprisonment.

18 ~~SEC. 5.—~~

19 *SEC. 6.* Section 12403.8 of the Penal Code is amended  
20 to read:

21 12403.8. (a) Notwithstanding paragraph (4) of  
22 subdivision (a) of Section 12403.7, a minor who has  
23 attained the age of 16 years may purchase and possess tear  
24 gas or tear gas weapons pursuant to this chapter if he or  
25 she is accompanied by a parent or guardian, or has the  
26 written consent of his or her parent or guardian.

27 (b) Notwithstanding paragraph (3) of subdivision (a)  
28 of Section 12403.7, a person may sell or furnish tear gas or  
29 a tear gas weapon to a minor who has attained the age of  
30 16 years and who is accompanied by a parent or guardian,  
31 or who presents a statement of consent signed by the  
32 minor's parent or guardian.

33 (c) Any civil liability of a minor arising out of his or her  
34 use of tear gas or a tear gas weapon other than for  
35 self-defense is imposed upon the person, parent, or  
36 guardian who signed the statement of consent specified  
37 in subdivision (b) who shall be jointly and severally liable  
38 with the minor for any damages proximately resulting  
39 from the negligent or wrongful act or omission of the  
40 minor in the use of the tear gas or a tear gas weapon.



1 ~~SEC. 6.—~~

2 *SEC. 7.* Section 12423 of the Penal Code is amended  
3 to read:

4 12423. The Department of Justice may issue a permit  
5 for the possession and transportation of tear gas or tear gas  
6 weapons that are not intended or certified for personal  
7 self-defense purposes, upon proof that good cause exists  
8 for the issuance thereof to the applicant for this permit.  
9 The permit may also allow the applicant to install,  
10 maintain, and operate a protective system involving the  
11 use of tear gas or tear gas weapons in any place which is  
12 accurately and completely described in the application  
13 for the permit.

14 ~~SEC. 7.—~~

15 *SEC. 8.* Section 12426 of the Penal Code is amended  
16 to read:

17 12426. Permits issued in accordance with this article  
18 may be revoked or suspended by the issuing authority at  
19 any time when it appears that the need for the possession  
20 or transportation of the tear gas or tear gas weapons or  
21 protective system involving the use thereof, has ceased,  
22 or that the holder of the permit has engaged in an  
23 unlawful business or occupation or has wrongfully made  
24 use of the tear gas or tear gas weapons or the permit  
25 issued.

26 ~~SEC. 8.—~~

27 *SEC. 9.* Section 12435 of the Penal Code is repealed.

28 ~~SEC. 9.~~ ~~Section 12450 of the Penal Code is amended~~  
29 ~~to read:~~

30 ~~12450. Except as otherwise authorized by this~~  
31 ~~chapter, no tear gas or tear gas weapon shall be possessed,~~  
32 ~~sold, or transported in this state after January 1, 1971,~~  
33 ~~unless, pursuant to this article, the Department of Justice~~  
34 ~~has certified that particular type and brand of tear gas or~~  
35 ~~tear gas weapon to be acceptable.~~

36 ~~SEC. 10.~~ ~~Section 12453 of the Penal Code is amended~~  
37 ~~to read:~~

38 ~~12453. Any application submitted pursuant to Section~~  
39 ~~12452 shall contain all of the following:~~



1 ~~(a) Full reports of any investigation conducted by any~~  
2 ~~public or private agency for the purpose of determining~~  
3 ~~whether the tear gas or tear gas weapon is acceptable.~~

4 ~~(b) A full statement of the composition of each~~  
5 ~~component of the tear gas or tear gas weapon.~~

6 ~~(c) A full statement of the methods used in, and the~~  
7 ~~facilities and controls used for, the manufacture,~~  
8 ~~processing and packing of the tear gas or tear gas weapon.~~

9 ~~(d) Any samples of tear gas or tear gas weapon and its~~  
10 ~~components that the department may require.~~

11 ~~(e) Specimens of the labeling, instructions, and~~  
12 ~~advertisements used or proposed to be used for the tear~~  
13 ~~gas or tear gas weapon.~~

14 ~~SEC. 11. Section 12458 of the Penal Code is amended~~  
15 ~~to read:~~

16 ~~12458. Prior to certification of any tear gas or tear gas~~  
17 ~~weapon, the department shall request from Cal-EPA a~~  
18 ~~report on each type and brand of tear gas or the contents~~  
19 ~~of each type and brand of tear gas weapon submitted to~~  
20 ~~it by the department. At the Attorney General's~~  
21 ~~discretion, Cal-EPA shall prepare and transmit the report~~  
22 ~~to the department, and shall also submit supplemental~~  
23 ~~reports whenever the facts warrant that action. All the~~  
24 ~~reports shall be for the purpose of aiding the department~~  
25 ~~in determining whether the type and brand of tear gas or~~  
26 ~~the contents of the dispensed material of the particular~~  
27 ~~type and brand of tear gas weapon are harmful, toxic, or~~  
28 ~~present any health hazards to human beings, and shall be~~  
29 ~~based on any one or more of the following:~~

30 ~~(a) Investigations conducted by the facilities of~~  
31 ~~Cal-EPA.~~

32 ~~(b) Investigations conducted by independent~~  
33 ~~laboratories.~~

34 ~~(c) Any other investigations approved by Cal-EPA.~~

35 ~~The applicant shall reimburse Cal-EPA and the~~  
36 ~~Department of Justice for any actual expenses incurred~~  
37 ~~by the departments in connection with the reports.~~

38 ~~SEC. 12.—~~

39 ~~SEC. 10. Article 5 (commencing with Section 12450)~~  
40 ~~of Chapter 4 of Title 2 of the Penal Code is repealed.~~



1    *SEC. 11.* Section 12460 of the Penal Code is repealed.

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