

Moral Aspects Of Using "Tear Gas"

The State of California along with ten other states have instituted laws that govern the sales, possession and use of "tear gas". These laws were mostly written for the non-law enforcement citizens of the applicable state. Law enforcement personnel are kept to a higher standard than most citizens. We must consider the moral aspects of the use of all our weapons. This includes "tear gas". Law enforcement officers should follow the tenants listed below if they wish to avoid direct or indirect liability in the training or use of tear gas.

Responsibilities of the Individual Peace Officer

1. Have a thorough knowledge of tear gas or tear gas weapons and their effects so that they can be prudently utilized by the peace officer.
2. Use only that force which is necessary.
3. Maintain order, but never attempt to punish.
4. Both private and public property must be respected at all times.
5. Every reasonable effort at diffusing a situation should be considered before dispensing chemical agents.
6. Use in a progressive escalation of weaponry.
7. Do not use to quell verbal attacks.
8. Never Use on an already controlled prisoner.
9. Chemical agents are more humane than the revolver, shotgun, or baton, and have been instrumental in saving many lives, both of the suspect being sought and the peace officers.

SUMMARY OF NON-LETHAL CHEMICAL AGENTS					
AGENT	COLOR CODES	TYPE	ODOR	USE / EFFECTS	FIRST AID
CN	Red	Tear	Apple Blossoms	Occasional	Fresh air
CS	Blue	Irritant	Pepper	Most effective/ Most powerful	Fresh air
DM	Green	Sickening	Licorice	Most violent/ Banned by UN	Fresh air/ Water
MACE	None	Tear, Inflammation or Irritant	Petroleum	allergic reaction	Fresh air/ Water
HC/FS	Yellow	Inert	Smoke	Signaling/ Concealment	Oxygen as needed
CR	Violet	Irritant	Pepper	12X more than CS	Fresh air/ No water
OC	any color or shape	Inflammatory	Pepper	Most Used No medical study	Fresh air/ Water/ Ice

State of California Tear Gas Laws

Most laws pertaining to the use of Tear Gas are contained in the California Penal Code. However, The Business and Professions Code and others contain some laws dealing with the sales, storage and transportation of tear gas. This is intended to be a summary of the pertinent laws and should be supplemented with the reading of the actual codes.

Penal Code

12401 PC Tear Gas is defined as all liquid, gaseous or solid substances intended to produce temporary physical; discomfort or permanent injury through being vaporized or otherwise dispersed in the air, but does not apply to, and shall not include any substance registered as an economic poison...provided that such substance is not intended to be used to produce discomfort or injury to human being.

The definition of tear gas can apply to any chemical. Peo V Horner 9 Cal App 3rd 23.

Oil of capsicum device can be considered tear gas, Peo V Autterson, 261 Cal App 2nd 627.

12402 PC Tear gas weapons are defined as:

- a: Any shell, cartridge, or bomb capable of being discharged or exploded, when the discharge or explosive will cause or permit the release or emission of tear gas.
- b: Any revolvers, pistols, fountain pen guns, billies, or other form of device, portable or fixed, intended for the projection or release of tear gas except those regularly manufactured and sold for use with firearm ammunition.

A California appellate court in Cook vs Superior Court of San Diego stated that a mace canister is a tear gas weapon, 4 Cal App 3rd 822.

- 12403 PC (Peace Officer Exception)A peace officer as described in the penal code... from purchasing, possessing, transporting, or using any tear gas weapon, if the person has successfully completed a course of instruction approved by POST in the use of tear gas.
- 12403.1 PC (Military, Naval, and federal personnel exception) Military and Naval personnel of this state or of the United States or any federal law enforcement officer from purchasing, possessing, or transporting any tear gas or tear gas weapon for official use in the discharge of his duties.
- 12403.5 PC (Private investigators, private patrol operators exception) Notwithstanding any other provision of law, a person holding a license as a private investigator or private patrol operator (issued under the B&P Code) or uniformed patrolmen employees of private patrol operators (security guards) may purchase, possess, or transport any tear gas weapon, if it is used solely for defensive purposes in the course of the activity for which the license was issued and if such person has satisfactorily completed a course of instruction approved by POST in the use of tear gas.
- 12403.6 PC repealed
- 12403.7 (a) PC (Citizens use of tear gas for self defense) Notwithstanding any other law, any person may purchase, possess, or use tear gas and tear gas weapons for the projection or release of tear gas if the tear gas and tear gas weapons are used solely for self-defense purposes, subject to the following requirements:
- (1) No person convicted of a felony or any crime involving an assault.....,or convicted of the misuse of tear gas under paragraph (8) shall purchase, possess, or use tear gas weapons.
 - (2) No person who is addicted to any narcotic drug shall purchase, possess, or use tear gas weapons.
 - (3) No person shall sell or furnish any tear gas or tear gas weapon to a minor.
 - (4) No person who is a minor shall purchase, possess, or use tear gas or tear gas weapons.
 - (5)(A) No person shall purchase, possess, or use any tear gas weapon that expels a projectile, or that expels the tear gas by any method other than an aerosol spray or that contains more than 2.5 ounces net weight or aerosol spray.
 - (B) Every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall have

a label that states: "WARNING; The use of this substance or device for any purpose other than self defense is a felony under the law. The contents are dangerous-use with care."

(C) After January 1, 1984, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used...have a label that discloses the date on which the useful life of the tear gas weapon expires.

(D) Every tear gas container and tear gas weapon that may be lawfully purchased pursuant to this section shall be accompanied at the time of purchase by printed instructions for use.

(6) Effective March 1, 1994, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section be accompanied by an insert including directions for use, first aid information, safety and storage information, and explanation of the legal ramifications of improper use of the tear gas container or tear gas product.

(7) Any person who uses tear gas or tear gas weapons except in self-defense is guilty of a public offense and is punishable by imprisonment in a state prison for 16 months, or two or three years or in a county jail not to exceed one year or by a fine not to exceed one thousand dollars (\$1,000) or by both such fine and imprisonment, except that if such use is against a peace officer,.....engaged in the performance of his or her official duties and the person committing the offense knows or reasonable should know that the victim is a peace officer, the offense is punishable by imprisonment in a state prison for 16 months or two or three years or by fine of one thousand (\$1,000) dollars or by both the fine and imprisonment.

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

(b)a person may sell or furnish tear gas or tear gas weapon to a minor who has attained the age of 16 years and who is accompanied by a parent or guardian, or who presents a statement of consent by a parent or guardian.

(c) Any civil liability of a minor arising out of his or her use of tear gas or tear gas weapon other than for self-defense is imposed upon the person who signed the statement of consent...who shall be jointly and severally liable with the minor for any damages proximately resulting from the negligent or wrongful act or omission of the minor in the use of the tear gas or a tear gas weapon.

- 12403.9 PC (On-duty Custodial Officers) Custodial officers of any county may carry tear gas weapons pursuant to section 12403 only while on duty. These custodial officers may carry tear gas weapons off duty only in accordance with other laws.
- 12404 PC (Jails) Nothing in this chapter authorizes the possession of tear gas or tear gas weapons in any institution described in Section 4574, or within the grounds belonging or adjacent to any such institution, except where authorized by the person in charge of such institution.
- 12420 PC (Possession) Any person, firm, or corporation who within this state knowingly sells or offers for sale, possesses, or transports any tear gas or tear gas weapon, except as permitted under the provisions of this chapter, is guilty of a public offense and upon conviction thereof shall be punishable by imprisonment in the county jail for not exceeding one year or by a fine not to exceed two thousand dollars (\$2,000), or by both.
- 12421 PC (Markings) Each tear gas weapon sold, transported or possessed under the authority of this chapter shall bear the name of the manufacturer and a serial number applied by him.
- 12422 PC (Destruction of markings) Any person who changes, alters, removes or obliterates the name of the manufacturer, the serial number or any other mark of identification on any tear gas weapon is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the state prison or by a fine of not more than two thousand dollars (\$2,000) or by both.
Possession of any such weapon upon which the same shall have been changed, altered, removed, or obliterated, shall be presumptive evidence that such possessor has changed, altered, removed, or obliterated the same.
- 12423 PC (Permits) The Department of Justice may issue a permit for the possession and transportation of tear gas and tear gas weapons that are not intended or certified for personal self defense purposes, upon proof that good cause exists for the issuance thereof to the applicant for this permit. The permit may also allow the applicant to install, maintain, and operate a protective system involving the use of tear gas or tear gas weapons in any place which is accurately and completely described in the application for the permit.
- 12424 PC (Application) Applications must be in writingfees are collected by the Department of Justice

- 12424.5 PC (Single application)A single permit issued under this section shall allow for the possession, operation, and maintenance of tear gas at each office or branch named in the application, including location changes.
- 12425 PC (Inspection) Every person, firm or corporation whom a permit is issued shall either carry the permit upon his person or keep it in the place described in the permit. The permit shall be open to inspection by any peace officer or other person designated by the authority issuing the permit.
- 12426 PC (Revocation) Permits....may be revoked... when it appears that the need for the possession.....has ceased, or that the holder of the permit has engaged in an unlawful business or occupation or has wrongfully made use of the tear gas or tear gas weapons...
- 12435 PC (Licenses to sell) repealed
- 12450 PC through 12458 PC (Certification) repealed
- 12460 PC repealed
- 12600 PC A person who is a peace officer as defined in Chapter 4.5(commencing with section 830) of title 3 of Part 2 may if authorized by and under such terms and conditions as are specified by his or her employing agency purchase, possess, or transport any less lethal weapon or ammunition therefor, for official use in the discharge of his or her duties.
- 12601(a)PC "Less Lethal Weapon" shall apply to and include any device which is designed to or which has been converted to expel or propel less lethal ammunition by any action mechanism or process for the purposes 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. It is not necessary that any weapon leave any lasting or permanent incapacitation, discomfort, pain, or other injury or disability in order to qualify as less lethal weapon.
- (b) Less lethal weapon includes the frame or receiver of any weapon described in subdivision (a), but shall not include any of the following unless such part or weapon has been converted as described in subdivision (a):
- (1) Pistol, revolver or firearm...
 - (2) Machine gun...
 - (3) Rifle or shotgun..that cannot be concealed...
 - (4) Pistol, rifle or shotgun with barrel length less than 18"...

(5)...Manufactured toy gun not capable of inflicting any impairment...

(6) A destructive device...

(7) A tear gas weapon defined in Section 12402.

(8) A bow or crossbow...

(9) ...Slingshot.

(10) A device designed for firing of stud cartridges, explosive rivets, or similar industrial ammunition.

(11) A device designed for signaling, illumination, or safety.

(c) "Less lethal ammunition" means any ammunition designed to be used in any less lethal weapon or any other kind of weapon, but not limited to firearm, pistols, revolvers...and spring, compressed air and compressed gas weapons and (2) when used in such less lethal 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.

13514 PC (Training) The commission shall prepare a course of instruction for the training of peace officers in the use of tear gas. Such course of instruction may be given, upon approval by the commission, by any agency or institution engaged in the training or instruction of peace officers.

171b PC (a) Any person who brings or possess within any state or local public building or at any meeting required to be open to the public pursuant to...Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail..., or in state prison:

(1) Any firearm

(2) Any deadly weapon described in Section 653K or 12020

(3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(4) Any unauthorized tear gas weapon.

(5) Any taser or stun gun, as defined in section 244.5.

(6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO₂ pressure, or spring action, or any spot marker gun or paintgun.

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

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

(2) ...a peace officer..., a retired peace officer..., a full time paid peace officer of another state or federal...carrying out official duties, or any

person summoned by one of these officers to assist in making an arrest or preserving the peace while actually engaged in assisting the officer.

(B)subdivision (a) shall apply to any person....if he or she is a party to an action pending before the court.

(3) A person with a valid license to carry a firearm.

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

(5) A person that... owns or resides in portion of building not leased ...by the state or local government.

(6) ...A security guard hired by the building who is acting within the course and scope of employment...

375 PC

(Offensive substances) (a) It shall be unlawful to throw, drop, pour deposit, release, discharge or expose, or attempt to throw, drop, pour, deposit, release, discharge or expose in, upon or about any theater, restaurant, place of business, place of amusement or any place of public assemblage, any liquid, gaseous or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive to any of the senses.

(b) It shall be unlawful to manufacture or prepare, or to possess any liquid, gaseous, or solid substance or matter of any kind which is injurious to person or property, or is nauseous, sickening, irritating or offensive to any of the senses with intent to throw, drop, pour, deposit, release, discharge or expose the same in, upon or about theater, restaurant, place of business, place of amusement or any place of public assemblage.

(c) Any person violating any of the provisions hereof shall be punished by imprisonment in the county jail for not less than three months and not more than one year, or by a fine of not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000), or by both such fine and imprisonment.

(d) Any person who, in violating any of the provisions of subdivision (a), willfully employs or uses any liquid, gaseous or solid substance which may produce serious illness or permanent injury through being vaporized or otherwise dispersed in the air who, in violating any of the provisions of the subdivision (a), willfully employs or uses any tear gas, mustard gas or any of the combinations or compounds thereof, or willfully employs or uses acid or explosives, shall be guilty of a felony and shall be punished by imprisonment in the state prison.

4502 PC

(Possession of weapons) Every person confined in a state prison or who, while

being conveyed to or from any state prison or while at any prison road camp, prison forestry camp, or other prison camps.....possesses or carries on his person or has under his custody or control any instrument or weapon of the kind commonly known as a blackjackor any tear gas or tear gas weapon , is guilty of a felony.....

- 4574 PC (In prisons) (a) Except when authorized by law, or when authorized by the person in charge of the prison or other institution referred to in this section or by an officer of the institution empowered by the person in charge of the institution to give such authorization, any person who knowingly brings or sends into, or knowingly assists in bringing into, or sending into, any state prison or prison road camp or prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state prison are located under the custody of prison officials, officers or employees, or any jail or any county road camp possesses therein any firearm, deadly weapon, explosive, tear gas or tear gas weapon, is guilty of a felony.....
- (b)any person who knowingly brings or sends into such places any tear gas or tear gas weapons which results in the release of such tear gas or tear gas weapon is guilty of a felony.....
- (c)any person who knowingly sends or brings into such places any tear gas or tear gas weapons is guilty of a misdemeanor.....
- 12301 PC (a) The term "destructive device," as used in this chapter, shall include any of the following weapons:
- (1) Any projectile containing any explosive or incendiary material or any other chemical substance, including but limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in a shotgun.
 - (2) Any bomb, grenade, explosive missile, or similar device or any launching device therefor.
 - (3) Any weapon of a caliber greater than .60 caliber which fires fixed ammunition, or any ammunition therefor, other than a shotgun, shotgun ammunition or an antique cannon...
 - (4) Any rocket, rocket propelled projectile, or similar device of a diameter greater than 0.60 inch, or any launching device therefor, and any rocket, rocket propelled projectile, or similar device containing any explosive or incendiary material or any other chemical agent, other than propellant for such device, except such devices as are designed primarily for emergency or distress signaling purposes.
 - (5) Any breakable container which contains a flammable liquid with a flash point of 150 degrees Fahrenheit or less and has a wick or similar

device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(b) The term explosive...shall mean any explosive defined in section 12000 of the Health and Safety Code.

12302 PC Nothing in this chapter shall prohibit the sale to, purchase by, possession of, or use of destructive devices by:

(a) Any peace officer listed in section 830.1 or 830.2, or any peace officer in the Department of Justice authorized by the Attorney General, while on duty and acting within the scope and course of his employment.

(b) Any member of the Army, Navy, Air Force or Marine Corps of the United States, or the National Guard, while on duty and acting within the scope and course of his employment.

Nothing in this chapter shall prohibit the sale to, purchase by, possession by, or use by any person who is regularly employed and paid officer, employee or member of a fire department...

12303 PC Any person firm or corporation who, within this state, possesses any destructive device, other than fixed ammunition of a caliber greater than .60 caliber, except as provided by this chapter, is guilty of a public offense and upon conviction thereof shall be punished by imprisonment in the county jail...or in state prison, or by a fine not to exceed...(\$10,000) or by both...

12303.1 PC Every person who willfully does any of the following is guilty of a felony....

(a) Carries any explosive or destructive device on any vessel, aircraft, car, or other vehicle that transports passengers for hire.

(b) Places or carries any explosive or destructive device, while on board any such vessel, aircraft, car or other vehicle, in any hand baggage, roll, or other container.

(c) Places any explosive or destructive device in any baggage which is later checked with any common carrier.

Business and Professions Code

7547.10 B&P (Required training) Every licensee, qualified manager, or a registered uniformed security guard, who in the course of his or her employment carries tear gas or any other nonlethal chemical agent, shall complete the required course pursuant to section 12403.5 of the Penal Code.

7547.11 B&P (Duty of licensee) A licensee shall not permit any employee to carry tear

gas or any other nonlethal chemical agent prior to ascertaining that the employee is proficient in the use of the tear gas or other nonlethal chemical agent. Evidence of proficiency shall include a certificate from a training facility approved by the Department of Justice or by POST that the person is proficient in the use of tear gas or any other nonlethal chemical agent.

7548 B&P (Assessment of fine) The director may assess fines....fines shall be independent of any other action by the bureauwhich may result in violation of this article:

(a) No licensee, qualified manager, or registered uniformed security guard shall carry any inoperable, replica or other simulated firearm.

(b) No licensee qualified manager, or registered uniformed security guard shall use a firearm in violation of the law.....

(c).....

(d) No licensee, qualified manager, or registered uniformed security guard shall carry or use tear gas or any other nonlethal chemical agent in the performance of his or her duties unless he or she has in his or her possession proof of completion of a course in the carrying and use of tear gas or any other nonlethal chemical agent.

(e).....

17533.9 B&P (Advertisements) It shall be unlawful for any person, firm, corporation or association, in any newspaper, magazine, circular, form letter, or open publication, published, distributed, or circulated in this state, or on any billboard, card, label, or other advertising medium, or by means of any other advertising device, to advertise the sale of tear gas, tear gas devices, tear gas weapons as defined in Sections 12401 and 12402 of the Penal Code, unless there be conspicuously displayed or stated in connection with the name and description of such tear gas, tear gas weapon, or devices, a direct and unequivocal statement which will clearly indicate that possession or transportation of tear gas, tear gas weapon or devices is prohibited by law unless specifically exempted or permitted pursuant to the authority contained in.....Penal Code.

Food and Agriculture Code

12753 F&A (Definition of Economic Poison)"Economic Poison" includes any of the following: (a)any spray adjuvant... (b) any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing destroying, repelling, or mitigating any pest, which may infest

or be detrimental to vegetation, man, animal or households, or be present in any agriculture or nonagriculture environment whatsoever.

- 12881 F&A (Misbranded) An economic poison is misbranded in any of the following cases: (a) The package or label bears any false or misleading statement, design or device regarding such article or any ingredient or substance which is contained in it. (b) the package or label is falsely branded as to the place of manufacture or production of the economic poison. (c) it is an imitation of, or offered for sale under the name of, another article. (d) It mislabeled or branded so as to deceive or mislead the purchaser.
- 12961 F&A (Seizure) The director may seize and quarantine any economic poison which is adulterated, or misbranded, or detrimental to agriculture or to the public health, or which is otherwise not in conformity with any provisions of this chapter.
- 12991 F&A (Unlawful acts) It is unlawful for any person, by himself, or through another, in connection with any substances or mixture of substances included within the scope of this chapter, to do any of the following: (a) Make any material or substantial misrepresentation. (b) Make any false promises of a character likely to influence, induce, or deceive. (c) Engage in illegitimate business or dishonest dealing. (d) Cause to be published or distrusted any false or misleading literature, or cause to be displayed any false or misleading advertisement. (e) For any person to use store, transport, handle, or dispose of any economic poison, or any container which holds or has held such economic poison, except in compliance with the rules and regulations of the director.
- 12992 F&A (Defense) It is unlawful for any person to sell any adulterated or misbranded economic poison. In any prosecution of any agent or dealer under this section it is a complete defense to prove that the adulterated or misbranded economic poison which is the basis of the prosecution was guaranteed by the party from whom the agent or dealer purchased it to be not adulterated or misbranded.
- 12995 F&A (Possession) ...It is unlawful for any person , by himself or through another, to possess or use any economic poison which is not registered....
- 12996 F&A (Penalty) (a) Any person who violates any provision of this division relating to pesticides, or any regulation issued pursuant to a provision of this division relating to pesticides, is guilty of a misdemeanor.....

Education Code

- 49330 EdC (Injurious object) As used in this article "injurious object" shall mean those objects specified in Sections 653k, 12001, 12020, 12401 and 12402 of the Penal Code, and objects capable of inflicting substantial bodily damage, not necessary for the academic purposes of the pupil.
- As used in this section, "academic purposes" means any school sponsored activity or class of instruction scheduled during the school day.
- "Injurious object" does not include any personal possessions or items of apparel which a school age child may be reasonable expected either to have in his or her possession or wear.
- 49331 EdC (Removal from possession of pupil by designated employee) Any certificated employee of any school district who is designated by the governing board for such purposes may take from the personal possession of any pupil upon school premises or while under the authority of school personnel any injurious object in the possession of the pupil.
- 49332 EdC (Notification of Parent..) The parent or guardian of a pupil from whom an injurious object has been taken pursuant to this section may be notified by school personnel of the taking...
- 49333 EdC (Return of object) Notwithstanding section 49332 a pupil who brings an injurious object to school and who presents the object to a certificated or classified employee, may have the object returned to him or her at the conclusion of the school day, provided such injurious object may be lawfully possessed off school grounds.

Welfare and Institutions Code

- 871.5 W&I (Prohibition against bringing or sending specified contraband into institution or camp) (a) Except as authorized by law, or when authorized by the person in charge of any county juvenile hall, home ranch, camp or forestry camp, or by an officer of any such county juvenile hall, home ranch, camp or forestry camp empowered by the person in charge to give such an authorization, any person who knowingly brings or sends into, or who knowingly assists in bringing into, or sending into any county juvenile hall, home ranch, camp or forestry camp or any person while confined in such an institution possesses therein, any controlled substance..., any firearm, weapon, or explosive of any kind, or *any tear gas or tear gas weapon*, shall be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison.
- (b) Except as otherwise authorized in the manner provided in subdivision (a), any person who knowingly uses *tear gas or uses a tear gas weapon* in an institution or camp specified in subdivision (a) is guilty of a felony.
- © A sign shall be posted at the entrance of each county juvenile hall, home ranch, camp or forestry camp specifying the conduct prohibited by this section and the penalties therefor.
- (d) ... (e) This section shall not be construed to preclude or in any way limit the applicability of any other law proscribing a course of conduct also proscribed by this section.