

5-06/030.12 - Use of Kinetic Energy Projectiles and Chemical Weapons to Disperse Assemblies, Protests, or Demonstrations

Preamble

The Department respects the rights of people to peaceably assemble. Department members shall not interfere with persons engaged in the lawful exercise of their rights. Department members maintain the affirmative duty to preserve the peace, protect life, and prevent the destruction of property.

Participant behavior during an assembly, protest, or demonstration can vary, with some individuals engaging in lawful, constitutional protected actions, civil disobedience (minor criminal acts), and rioting. All of these behaviors may be present during the same event. Department members shall take measured, objectively necessary, and reasonable actions appropriate to the behavior they are encountering.

This policy was implemented to comply with California Penal Code Section 13652 and provide guidance for the use of Kinetic Energy Projectiles (KEP) and Chemical Agents (CA) to disperse assemblies, protests, and demonstrations.

Penal Code section 13652 ONLY applies to the use of CA and KEP to disperse assemblies, protests, or demonstrations.

This statute/policy does not apply to other patrol incidents where the use of KEP and CA is objectively reasonable and consistent with Department policy. Furthermore, Penal Code section 13652 does not apply within any county detention or jail facility. In addition, the law does not prohibit the use of other less-lethal weapons and force options at protests, assemblies, and gatherings, when their use is objectively reasonable and necessary based on the totality of the circumstances in accordance with the Department's use of force policies and procedures.

Procedure

The following procedures will be followed prior to deploying KEP and CA to disperse protests, assemblies, and gatherings:

â— The use of KEP or CA shall be objectively reasonable to defend against a threat to life or a threat of serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control;

â— Department members have attempted de-escalation techniques or other alternatives to force, when objectively reasonable to do so, and those de-escalation techniques or alternatives to force have failed;

â— Department members have given repeated, audible announcements stating the intent to use KEP and CA 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;

â— Department members have given an objectively reasonable opportunity for persons to disperse

and leave the scene;

â— Department members have made an objectively reasonable effort to identify persons engaged in violent acts and those who are not. Department members may only use force on those persons engaged in violent acts. Department members may not indiscriminately fire KEP or CA into a crowd or group of persons; and

â— Department members must have completed California Commission on Peace Officers Standards and Training (POST) approved training informational video on the proper use of KEP and CA before deploying them.

Department members may only use KEP and CA consistent with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.

Department members shall minimize the possible incidental impact of their use of KEP and CA on bystanders, medical personnel, journalists, or other unintended targets.

Department members must make objectively reasonable efforts to extract individuals in distress and promptly provide or summon medical assistance for the injured once it is safe to do so.

Department members shall use KEP consistent with the Departments use of force policy.

NOTE: Department personnel may observe an objectively dangerous and unlawful situation and are compelled to act immediately without the opportunity to de-escalate, use other alternatives to force, or provide audible announcements allowing for dispersal. In these cases, Department personnel would be operating within the law and Department policy in using KEP or CA to defend themselves or others from immediate life-threatening attack, serious bodily injury, or to mitigate an objectively dangerous and unlawful situation.

Department members may not use KEP or CA solely for a:

- Violation of curfew;
- Verbal threat; or
- Non-compliance with a law enforcement directive.

Only a commanding officer on scene may authorize the use of tear gas to disperse an assembly, protest, or demonstration. A commanding officer shall be defined as a Department member who is the on-scene incident commander, at the rank of Sergeant or above.

Penal Code section 13652.1 requires the Department to publish a report on their internet website regarding KEP and/or CA usage within 60 days of the incident. In accordance with this requirement, supervisors shall document the following information:

- Estimated size of the crowd and the number of Department members or other peace officers involved;

- Amount and types of less-lethal weapons used, including the number of KEP rounds deployed and the quantity of CA dispersed;
- The number of documented injuries caused by the use of KEP and/or CA;
- A description of any efforts to de-escalate a situation and avoid the use of KEP and/or CA; and
- The justification for using KEP and/or CA.

The information shall be forwarded to Sheriff's Information Bureau (SIB) for public dissemination.

Definitions

The following terms are defined by Penal Code Section 13652 and/or Department policy:

Chemical Agents

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 policy, 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; PAVA powder contained in pepper balls (commonly referred to as pepper ball powder), pepper spray, or oleoresin capsicum.

De-escalation

Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat. This allows more time, options, and resources to be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

Kinetic Energy Projectile

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 policy, 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 definition includes, but is not limited to; the following Department-approved devices: 12-Gauge stun bag, 40 mm foam Exact Impact rounds, Stinger Rounds, 37 mm baton rounds, ARWEN rounds, Stingball grenades, and direct-fired pepper balls or FN-303 rounds.

Proportional

In the context of a use of force, given the totality of the circumstances, there is a balance between the threat posed, the seriousness of the crime as reasonably perceived by the Department member, and the amount of the force used. Proportional force does not require Department members to use the same type or amount of force as the suspect. The more immediate and severe the threat perceived by the Department member, the

more likely a greater level of force used may be considered proportional, objectively reasonable, and necessary to counter it.

Additional Definitions

The following terms are currently undefined legislative terms whose exact meaning has yet to be determined or interpreted by the California Legislature or Courts. Based on past civil disorder incidents and legal references, the following definitions shall be used to interpret this policy.

Objectively Dangerous and/or Unlawful Situations

Those situations when based on the totality of the circumstances present, an objectively dangerous or unlawful situation, which absent law enforcement intervention, will continue to place individuals in peril and/or allow an unlawful riotous crowd to continue to commit violations of the law.

Under this definition, the following could be considered objectively dangerous and/or unlawful situations:

- Act(s) of felony vandalism that will likely lead to further felonious acts;
- Looting;
- Willfully overrunning and obstructing roadways with active vehicular traffic endangering life;
- Arson;
- Rioting;
- Illegally taking or attempting to take a prisoner from a peace officer;
- Individuals in distress, injured, trapped, or encircled in a violent crowd;
- Carjacking or violent attacks on motorists during civil disorder;
- Individuals engaged in violent acts;
- Use of biological, chemical agents, substances, or explosives that could inflict serious bodily injury to a peace officer or citizen; or
- Potential immediate takeover by an unlawful crowd of critical facilities that may overwhelm existing resources or impact public safety.

◦ *Note* - The preceding is not an all-inclusive list.

De-escalation techniques

Techniques used to de-escalate a situation. These may include but are not limited to:

- Dialogue;
- Negotiations;
- Informational flyers;
- Announcements;
- Audible warnings;
- Electronic sign boards;
- Conversations with protesters requesting lawful compliance and cooperation; or
- Other alternatives to force.

Other alternatives to force

Techniques whose primary goal is not de-escalation, however, when used for de-escalation purposes, may fall into this category. This can include but are not limited to:

- An overwhelming law enforcement presence;
- Barricades; or
- Deployment of specialized personnel and equipment.

Objectively reasonable

The determination that the necessity for using force and the level of force used is based upon the officer's evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

Frequency/Intensity

The number and types of munitions employed at an Objectively Dangerous and Unlawful Situation and/or the rate of fire of said munitions employed over a specific period of time to quell violence or disperse an unlawful assembly without those munitions employed being deemed as unnecessary or excessive.

Solely due to a violation of an imposed curfew

A curfew violation alone is insufficient to justify the use of KEP and CA. This does not exclude the use of other interventions or arrests for violations of the law.

Solely due to non-compliance with a law enforcement directive

Absent any criminal activity or objectively dangerous situations, KEP and CA are not authorized when law enforcement officers unsuccessfully attempt to direct an assembly, protest, or demonstration.

In addition, defiance of a lawful dispersal order alone is insufficient to justify the use of KEP and CA. This does not exclude the use of other interventions or arresting suspects for violations of the law.

Dispersal Order

Unlawful assembly Dispersal order

"I am (name _____), a deputy sheriff for the Los Angeles County Sheriff's Department. I hereby declare this to be an unlawful assembly and in the name of the People of the State of California, order all those assembled at _____ to immediately disperse, which means to break up this assembly and leave the area. If you do not do so, you may be arrested.

REQUIRED WHEN Kinetic Energy Projectiles AND/ OR CHEMICAL AGENTS ARE TO BE DEPLOYED (FOR OBJECTIVELY DANGEROUS AND UNLAWFUL SITUATIONS)

"You may also be subject to other police actions including the use of kinetic energy projectiles and chemical agents, which include: _____ (insert here type to be used e.g., rubber bullets, plastic bullets, beanbag rounds, foam tipped plastic rounds, tear gas, CN, CS, pepper balls, pepper spray, or OC) Use of these devices could result in serious injury."

Penal Code section 409 prohibits remaining present at an unlawful assembly, which means that you must leave the area I just described. If you remain in the area just described, you will be in violation of Penal Code section 409. The following routes of dispersal are available _____. You have ____ minutes to disperse. It is currently _____ am/pm and you have ____ minutes to disperse."
