

CALIFORNIA CODES

PENAL CODE

SECTION 12401-12404

12401. "Tear gas" as used in this chapter shall apply to and include 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 as provided in Chapter 2 (commencing with Section 12751) of Division 7 of the Agricultural **Code** provided that such substance is not intended to be used to produce discomfort or injury to human beings.

12402. The term "tear gas weapon" as used in this chapter shall apply to and include:

(a) Any shell, cartridge, or bomb capable of being discharged or exploded, when the discharge or explosion will cause or permit the release or emission of tear gases.

(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.

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

12403.1. Nothing in this chapter shall prohibit any member of the military and naval forces 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. Notwithstanding any other provision of law, a person holding a license as a private investigator or private patrol operator issued pursuant to Chapter 11 (commencing with Section 7500), Division 3 of the Business and Professions **Code**, or uniformed patrolmen employees of a private patrol operator, 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 the person has satisfactorily completed a course of instruction approved by the Department of Consumer Affairs in the use of tear gas.

12403.7. 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:

(a) No person convicted of a felony or any crime involving an assault under the laws of the United States, the State of California, or any other state, government, or country or convicted of misuse of tear gas under subdivision (g) shall purchase, possess, or use tear gas or tear gas weapons.

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

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

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

(e) (1) 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 of aerosol spray.

(2) 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 crime under the law. The contents are dangerous--use with care."

(3) After January 1, 1984, 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 discloses the date on which the useful life of the tear gas weapon expires.

(4) 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.

(f) Effective March 1, 1994, every tear gas container and tear gas weapon that may be lawfully purchased, possessed, and used pursuant to this section shall 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.

(g) 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 the fine and imprisonment, except that, if the use is against a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, engaged in the performance of his or her official duties and the person committing the offense knows or reasonably 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 a fine of one thousand dollars (\$1,000), or by both the fine and imprisonment.

12403.8. (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) Notwithstanding paragraph (3) of subdivision (a) of Section

12403.7, a person may sell or furnish tear gas or a 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 signed by the minor's parent or guardian.

(c) Any civil liability of a minor arising out of his or her use of tear gas or a tear gas weapon other than for self-defense is imposed upon the person, parent, or guardian who signed the statement of consent specified in subdivision (b) 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. 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 while off duty only in accordance with all other laws.

12404. 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.