
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1486 **Hearing Date:** June 20, 2023
Author: Jones-Sawyer
Version: June 8, 2023
Urgency: No **Fiscal:** No
Consultant: AB

Subject: *Law enforcement and state agencies: military equipment: funding, acquisition, and use*

HISTORY

Source: American Friends Service Committee

Prior Legislation: AB 481 (Chiu, Ch. 406, Stats. of 2021)
AB 3131 (Gloria, 2018), vetoed by the Governor
AB 36 (Campos, 2015), vetoed by the Governor

Support: ACLU California Action; Amnesty International Sacramento Group; BAY-Peace; California Coalition for Women Prisoners; Californians United for a Responsible Budget; Communities United for Restorative Youth Justice; Concerned Community for Justice; East Bay Women for Peace San Francisco Bay Area; Ella Baker Center for Human Rights; Fresno Barrio Unidos; Friends Committee on Legislation of California; Indivisible San Francisco; Initiate Justice; Livermore Indivisible; Mill Valley Force for Racial Equity and Empowerment; Monterey Peace and Justice Center; Oakland Privacy; Racial Justice Action Team of the Berkeley Society of Friends; Racism and Criminal Justice Reform Group; Reimagine Richmond; San Francisco Public Defender; Secure Justice; Showing Up for Racial Justice Santa Cruz County; South Bay People Power; Transform Alameda; Women’s International League for Peace & Freedom, San Francisco Branch; 1 Individual

Opposition: California State Sheriffs’ Association; Peace Officers Research Association of California

Assembly Floor Vote: 45 - 18

PURPOSE

The purpose of this bill is to clarify that an assault weapon is not a “standard issue service weapon,” for the purpose of local acquisitions of military equipment, and to clarify that any vote by a local governing body to approve funding, acquisition, or use of military equipment must occur at least 30 days after the law enforcement agency requesting the equipment has held a community engagement meeting pursuant to existing law.

Existing law sets forth the following definitions related to regulation of local law enforcement's funding, acquisition and use of military equipment:

- “Governing body” means the elected body that oversees a law enforcement agency or, if there is no elected body that directly oversees the law enforcement agency, the appointed body that oversees a law enforcement agency. In the case of a law enforcement agency of a county, including a sheriff’s department or a district attorney’s office, “governing body” means the board of supervisors of the county.
- “Law enforcement agency” means a police department, including the police department of a transit agency, school district, or any college campus, a sheriff’s department, a district attorney’s office, or a county probation department.
- “Military equipment” encompasses a wide variety of vehicles, firearms, ammunition and other equipment, as well as any equipment as determined by a governing body or state agency to require additional oversight, but does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency.
- “Military equipment use policy” means a publicly released, written document governing the use of military equipment by a law enforcement agency or state agency that addresses specified topics. (Gov. Code, §7070, subs. (a) – (d).)

Existing law requires a law enforcement agency to obtain approval of the governing body, as defined, by an ordinance adopting a military equipment use policy at a regular meeting of the governing body before, among other things, requesting, acquiring or seeking funds for military equipment, and other specified actions relating to military equipment. (Gov. Code, § 7071, subd. (a).)

Existing law requires a law enforcement agency to submit a proposed military equipment use policy to the governing body and make those documents available on the law enforcement agency’s internet website at least 30 days prior to any public hearing concerning the military equipment at issue. (Gov. Code, § 7071, subd. (b).)

Existing law provides that the governing body shall consider a proposed military equipment use policy as an agenda item for an open session of a regular meeting and provide for public comment in accordance with existing open meeting requirements. (Gov. Code, § 7071, subd. (c).)

Existing law provides that the governing body shall only approve a military equipment use policy if it determines all of the following:

- The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of officer and civilian safety.
- The proposed military equipment use policy will safeguard the public’s welfare, safety, civil rights, and civil liberties.
- If purchasing the equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety.

- Prior military equipment use complied with the military equipment use policy that was in effect at the time, or if prior uses did not comply with the accompanying military equipment use policy, corrective action has been taken to remedy nonconforming uses and ensure future compliance. (Gov. Code, § 7071, subd. (d)(1).)

Existing law, requires, in order to facilitate public participation, any proposed or final military equipment use policy to be made publicly available on the internet website of the relevant law enforcement agency for as long as the military equipment is available for use. (Gov. Code, § 7071, subd. (d)(2).)

Existing law provides that the governing body shall review any ordinance that it has adopted approving the funding, acquisition, or use of military equipment at least annually and vote on whether to renew the ordinance at a regular meeting. (Gov. Code, § 7071, subd. (e).)

Existing law provides that a law enforcement agency that receives approval for a military equipment use policy shall submit to the governing body an annual military equipment report for each type of military equipment approved by the governing body within one year of approval, and annually thereafter for as long as the military equipment is available for use. (Gov. Code, § 7072, subd. (a).)

Existing law provides that, within 30 days of submitting and publicly releasing an annual military equipment report, the law enforcement agency shall hold at least one well-publicized and conveniently located community engagement meeting, at which the general public may discuss and ask questions regarding the annual military equipment report and the law enforcement agency's funding, acquisition, or use of military equipment. (Gov. Code, § 7072, subd. (a).)

Existing law defines "assault weapon" as specified semiautomatic rifles, pistols, centerfire firearms, and shotguns. (Pen. Code, §§ 30510 & 30515.)

This bill clarifies that assault weapons, as defined under existing law, do not constitute "standard issue service weapons," and thus fall under the definition of "military equipment" for the purpose of the provisions set forth above.

This bill provides that the vote to renew any previously adopted ordinance regarding the funding, acquisition or use of military equipment shall be held no less than 30 days after the community engagement meeting required under existing law.

This bill specifies that that in addition to considering the annual military equipment report in determining whether each type of military equipment identified in that report has complied with specified standards for approval, the governing body shall also consider any input received at the community engagement meeting required under existing law.

This bill replaces certain devices referred to in existing law by a specific trade name with a general description of those devices.

COMMENTS

1. Need for This Bill

According to the Author:

It is incredibly important that our laws fulfill their designated purpose. In 2021, the legislature passed AB 481 (Chiu) as a response to increased police brutality and militarized policing. AB 1486 closes loopholes in existing law by ensuring that law enforcement agencies who acquire surplus military equipment follow reporting procedures and include all equipment specified in AB 481. Given the serious harm that has already been caused through the use of assault weapons, long range acoustic devices, and other military equipment, it is imperative that the legislature fortify the existing law. In doing so, this bill will preserve the original intent of AB 481: to establish oversight and transparency in the acquisition of surplus military equipment.

2. Law Enforcement Use of Surplus Military Equipment

The National Defense Authorization Act authorizes the Secretary of Defense to transfer excess property that it determines suitable for use in law enforcement activities to federal, state, and local law enforcement jurisdictions. Officially, this program is dubbed the Law Enforcement Support Program but is more commonly known by its former name, the 1033 Program. The Defense Logistics Agency (DLA) Law Enforcement Support Office is assigned to determine whether property is suitable for use by these agencies. The DLA defines law enforcement activities as those performed by government agencies whose primary function is the enforcement of applicable federal, state, and local laws and whose compensated law enforcement officers have powers of arrest and apprehension.¹ The law enforcement agencies must be authorized and certified annually to participate. Since the program's inception in 1990, the total value of the military equipment transferred to local law enforcement agencies is \$7.6 billion.²

The Governor's Office of Emergency Services implements the 1033 Program in California and conducts management and oversight of the program through the California Public Safety Procurement Program.³ The Office of Emergency Services also provides support and technical assistance to law enforcement agencies participating (or interested in participating) in the program. As of September 2020, California's law enforcement agencies have procured more military surplus equipment through the 1033 program than any other state, with a total of \$153.1 million in equipment acquired.⁴

3. Executive Order 13688 and Subsequent Legislative Efforts

On January 16, 2015, President Obama issued Executive Order (EO) 13688.⁵ EO 13688 established the federal interagency Law Enforcement Equipment Working Group (LEEWG) to

¹ [1033 Program FAQs \(dla.mil\)](#)

² *Ibid.*

³ [LESO Program | California Governor's Office of Emergency Services](#)

⁴ "California Leads All States In Taking Advantage of Military Surplus War Gear Under Program 1033." *Forbes*. 20 September 2020. [California Leads All States In Taking Advantage Of Military Surplus War-Gear Under Program 1033 \(forbes.com\)](#)

⁵The text of the EO can be found here: <https://www.gpo.gov/fdsys/pkg/DCPD-201500033/pdf/DCPD-201500033.pdf>

develop recommendations to improve federal support for the appropriate use, acquisition and transfer of controlled equipment by state, local and tribal LEAs. The LEEWG consulted with stakeholders from law enforcement, civil liberties, social justice, local government and other fields to review and provide recommendations on an array of topics, and identified items that had a significant impact on community trust, including “controlled equipment,” which law enforcement agencies may only acquire if they provide specific information, certifications and assurances, and “prohibited equipment,” which law enforcement agencies may not purchase.⁶ LEEWG additionally recommended that law enforcement agencies that wished to acquire items on the controlled equipment list should be required adopt strict use protocols, training procedures and policing standards prior to receiving the equipment.

Following the issuance of EO 13688 in 2015, the California Legislature passed AB 36 (Campos), which would have prohibited local agencies, except local law enforcement agencies that are directly under the control of an elected officer, from applying to receive specified surplus military equipment from the federal government, unless the legislative body overseeing the local agency approved the acquisition. That measure was vetoed by Governor Brown, who, in his veto message, wrote:

Transparency is important between law enforcement and the communities they serve, but it must be tempered by security considerations before revealing law enforcement equipment shortages in a public hearing. This bill fails to strike the proper balance. Moreover, the bill is unnecessary, as President Obama's Executive Order 13688 will implement a similar requirement for governing bodies to grant approval of surplus military equipment.

However, on August 28, 2017, President Trump signed Executive Order 13809, which rescinded EO 13688 as well as the recommendations of the LEEWG. According to President Trump’s then-Attorney General Jeff Sessions, “Those restrictions went too far; we will not put superficial concerns above public safety.”⁷ Following the rescission of EO 13688, the Legislature once again attempted to put restrictions on the local acquisition of military equipment, putting AB 3131 (Gloria, 2018) on Governor Brown’s desk. The Governor once again vetoed the measure, writing:

The list of equipment contemplated by this bill is overbroad-broader than that covered by now-repealed Executive Order 13688 which was the basis for AB 36 (Campos) in 2015, which I also vetoed. The current list not only includes items that are clearly "militaristic in style," but many that are commonly used by law enforcement and do not merit additional barriers to their acquisition. In my view this bill creates an unnecessary bureaucratic hurdle without commensurate public benefit, and I cannot sign it.

4. AB 481 (Chiu) and Effect of This Bill

In 2021, the Legislature passed AB 481 (Chiu), which was signed by Governor Newsom and established several new requirements related to the funding, acquisition and use of military

⁶ “Recommendations Pursuant to Executive Order 13688: Federal Support for Local Law Enforcement Equipment Acquisition.” [Recommendations Pursuant to EXECUTIVE ORDER 13688 \(ojp.gov\)](https://www.ojp.gov/eeo/13688)

⁷ “Trump Reverses Restrictions on Military Hardware for Police.” *New York Times*. 28 August 2017. <https://www.nytimes.com/2017/08/28/us/politics/trump-police-military-surplus-equipment.html>

equipment by local law enforcement agencies. Specifically, existing law established by AB 481 requires a law enforcement agency to obtain approval from the governing body that oversees it before acquiring or using military equipment, which is defined via generalized categories rather than an exhaustive list of specific pieces of equipment.⁸ Further, the governing body is required to review any ordinance approving the funding, acquisition or use of military equipment at least annually, and vote on whether to renew that ordinance at a regular meeting.⁹ Military equipment includes, among other things, robots and drones, battering rams, command and control vehicles, tracked armored vehicles that provide ballistic protection to their occupants, and firearms and firearm accessories that can launch explosive projectiles.¹⁰

The existing definition of “military equipment” also includes specialized firearms and ammunition of less than .50 caliber, including assault rifles, but exempts standard issue service weapons and ammunition. That provision does not define “standard issue service weapon,” and as a result, argues the Author, law enforcement could presumably circumvent AB 481’s prior approval requirement by issuing assault weapons to all officers. This bill forecloses this unintended consequence by defining “standard issue service weapon” as a firearm, other than an assault weapon, that is of the type normally issued to, carried, or transported by a peace officer in the course of routine patrol activities.

Existing law also requires a law enforcement agency that has obtained military equipment pursuant to the AB 481 process to prepare and submit an annual report to their governing body regarding the use of that equipment, and to hold a community engagement meeting regarding that report. However, AB 481 does not expressly link the timing of the community engagement meeting to the governing body’s vote on renewal of the military equipment ordinance pursuant to Government Code §7071(e). According to the Author, as a result, “some jurisdictions are holding their community engagement meeting on the annual report *after* the governing body’s decision to renew or suspend the military equipment ordinance [and] essentially blocks the ability of the public to have input in the decision making process.” This bill specifies that a vote of the governing body on the renewal of the military equipment ordinance to be held no less than 30 days after the community engagement meeting, and provides that the governing body shall consider input from the community engagement meeting in renewing authorization to fund, acquire and use military equipment via ordinance.

As mentioned above, law enforcement agencies are required to receive approval by a governing body prior to acquiring, funding or using military equipment. This is achieved via the adoption of a “military equipment use policy” by the governing body, which is defined as “a publicly released, written document governing the use of military equipment by a law enforcement agency or state agency,” that addresses, among other things, “the purposes and authorized uses for which the law enforcement agency or the state agency proposes to use each type of military equipment.” This bill clarifies that for the purposes of military equipment use policies, “authorized uses” means “situations in which each type of equipment is authorized for display, discharge or deployment under the policy.” This clarification is intended to ensure that the use policies ratified by governing bodies are sufficiently specific as to the contexts in which these weapons are used.

⁸ Government Code §7071(a)

⁹ Government Code §7071(e)

¹⁰ See Government Code §7070(c)

Finally, this bill corrects a drafting error in AB 481 that referred to certain devices that fall under the definition of “military equipment” by their trade name rather than a general description of those devices.

5. Argument in Support

According to Amnesty International:

In 2021, the legislature passed AB 481 (Chiu) as a response to increased police militarization and brutality. That legislation’s intent was to increase public access to information about the military equipment California’s law enforcement agencies (LEAs) hold and acquire, whether through the National Defense Authorization Act’s 1033 Program or from other sources. It established procedures for LEAs to follow, including a written military equipment use policy to be submitted to for approval by local governing bodies prior to acquisition and use of military equipment.

Under AB 481, local governing bodies have the authority to determine if the military equipment included in each policy meet specified standards. They are required to review the use policy annually. AB 481 also requires LEAs to produce annual reports on their use of military equipment and then convene a well-publicized community engagement meeting to hear community members’ questions and concerns.

AB 1486 clarifies that “authorized uses” for equipment in policies submitted by LEAs in accordance with AB 481 are those situations in which the equipment is authorized for deployment, display or discharge, not the *users* authorized to use the equipment. It also clarifies the original intention of AB 481 that annual decisions by governing bodies on military equipment policies shall occur *after* the community engagement meetings held by LEAs about the reports required by AB 481 on the agency’s use of military equipment. This will ensure that community input informs the deliberations of local legislators on military equipment policies.

The items classified as military equipment under AB 481 vary widely, ranging from armored vehicles to “flashbang” grenades. Specialized firearms and assault weapons are included but there is an exception for “standard issue service weapons.” Unfortunately, there is no definition for “standard issue service weapon”. This lack of clarity creates an opportunity for LEAs to acquire and use weapons intended to be covered by AB 481 without reporting them.

Given the serious harm that has already been caused through the use of military equipment, it is imperative that the legislature clarify what kinds of weapons can be considered standard issue and put in the hands of every law enforcement officer without the transparency provided by AB 481. By clarifying the need to include assault weapons in LEA policies and reports, this bill will close a loophole and ensure that LEAs remain compliant, accountable and transparent when acquiring or using military equipment.

This year and last, members of Amnesty International’s Sacramento group have attended meetings at which our city and county governments have tried to address the requirements of AB 481. We have been frustrated by officials’ reluctance to require the openness and specificity that AB 481 envisioned. Our LEAs submitted use

policies that read like advertisements for the equipment covered. The policies imposed no limits of any kind on how the equipment could be deployed and operated, and the majority of officeholders declined to require them. We see a great need for the legislature to provide additional detail regarding the responsibilities of LEAs and local governing bodies under AB 481.

6. Argument in Opposition

According to the Peace Officers Research Association of California:

Often times law enforcement officers are outmatched on the street when it comes to facing firearms in the hands of criminals they are approaching. Peace officers are highly trained in the use of various types of assault rifles and often need these firearms to save lives, including their own. To require approval by a local elected body prior to a department being able to purchase and use these weapons is not only an undo burden but extremely dangerous to an officer and the citizens they are sworn to protect, should the city or county refuses to approve the purchase.

-- END --