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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 3131                      **Hearing Date:** June 19, 2018  
**Author:** Gloria  
**Version:** May 29, 2018  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Law Enforcement Agencies: Military Equipment: Funding, Acquisition, and Use*

### HISTORY

**Source:** American Civil Liberties Union of California

**Prior Legislation:** AB 36 (Campos), 2015, vetoed  
SB 242 (Monning), Ch. 79, Stats of 2015

**Support:** Alliance San Diego; American Civil Liberties Union of California; American Friends Service Committee; American Solidarity Movement; Anti-Police Terror Project; Burbank Indivisible Against Hate; California Council of Churches IMPACT; California Immigrant Policy Center; California Immigrant Youth Justice Alliance; California Public Defenders Association; California State Conference of the NAACP; Californians United for a Responsible Budget; Campaign Zero; CD4 Indivisible Network; Change Begins with ME; City of Berkeley; Cloverdale Indivisible; Council on American-Islamic Relations; Courage Campaign; Defending Our Future – Indivisible in CA 52<sup>nd</sup>; Democracy Winters; Fair Chance Project; Faith in the Valley; Friends Committee on Legislation of California; Indivisible – Auburn; Indivisible – Blossom Manor Los Gatos; Indivisible – CA 25<sup>th</sup> District; Indivisible – CA 33<sup>rd</sup> District; Indivisible – CA 39<sup>th</sup> District; Indivisible – CA 43<sup>rd</sup>; Indivisible – CA 49<sup>th</sup> District; Indivisible – CA 50<sup>th</sup> District; Indivisible – Central Contra Costa County; Indivisible – Colusa County; Indivisible – Healdsburg; Indivisible – East Bay; Indivisible – LA Resisters; Indivisible – Marin; Indivisible – Sacramento; Indivisible – San Diego; Indivisible – San Diego Central; Indivisible – Sausalito; Indivisible – Sherman Oaks; Indivisible – State Strong; Indivisible – Ventura; Indivisible – Watu; Lawyers’ Committee for Civil Rights; Legal Services for Prisoners with Children; Lockwood per Sisters; MALDEF; Media Alliance; A New Path; Oakland Privacy; Orange County Congregation Community Organization; Orinda Progressive Action Alliance; PICO California; Public Health Justice Collective; The Resistance – Northridge Indivisible; Root and Rebound; San Diego Indivisible Downtown; San Diego Immigrant Rights Consortium; San Diego Organizing Project; Santa Cruz Indivisible; Southeast Asia Resource Action Center; Together We Will – Los Gatos; Transgender, Gender-variant, Intersex Justice Project; United Farm Workers; Voices for Progress

**Opposition:** Association of Orange County Deputy Sheriffs; California Police Chiefs; California State Sheriffs’ Association; Chief Probation Officers of California; Fraternal Order of Police; Long Beach Police Officers Association; Sacramento

County Deputy Sheriffs' Association; Los Angeles County Professional Peace Officers Association; Peace Officers Research Association of California (PORAC)

Assembly Floor Vote:

41 - 34

### PURPOSE

***The purpose of this bill is to establish requirements that must be met before a law enforcement agency may take a number of specified actions related to the acquisition and use of military equipment.***

*Existing law* allows a local agency to acquire surplus property from the federal government without regard to any law which requires posting of notices or advertising for bids, inviting or receiving of bids, or delivery of purchases before payment, or which prevents the local agency from entering a bid in its behalf at any sale of federal surplus property. (Gov. Code, § 54142.)

*Existing law* authorizes the United States Department of Defense (DOD) to transfer surplus personal property, including arms and ammunition, to federal or state agencies for use in law enforcement activities, subject to specified conditions, at no cost to the acquiring agency. (10 U.S.C. § 2576a.)

*This bill* requires a law enforcement agency to obtain approval of its governing body, by an ordinance adopting a military equipment impact statement (impact statement) and a military equipment use policy (use policy) at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act (Bagley-Keene Act) or the Ralph M. Brown Act (Brown Act) prior to engaging in any of the following:

- 1) Requesting military equipment made available pursuant to Title 10 United States Code Section 2576a (commonly referred to as the 1033 Program);
- 2) Seeking funds for military equipment, including, but not limited to, applying for a grant, soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers;
- 3) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing;
- 4) Collaborating with another law enforcement agency, including commanding, controlling, or otherwise directing that agency or its personnel, in the deployment or other use of military equipment within the territorial jurisdiction of the governing body. This provision shall not apply to aircraft used in a search-and-rescue operation or in the context of a natural disaster;
- 5) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to this chapter; and,
- 6) Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, apply to receive, acquire, use, or collaborate in the use of, military equipment.

*This bill* requires, no later than May 1, 2019, a law enforcement agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2019, to commence a governing body approval process in accordance with the requirements of this bill. If the governing body does not approve the continuing use of military equipment, including by adoption of an impact statement and use policy submitted pursuant to 3), below, within 180 days of submission of the proposed impact statement and use policy to the governing body, the law enforcement agency must cease its use of the military equipment until it receives the approval of the governing body in accordance with the requirements of this bill.

*This bill* requires a law enforcement agency, in seeking the approval of the governing body pursuant to 1), above, to submit a proposed impact statement and use policy to the governing body and make those documents available on the law enforcement agency's Internet Web site (website) at least 30 days prior to any public hearing concerning the military equipment at issue.

*This bill* requires the governing body to consider a proposed impact statement as an agenda item for an open session of a regular meeting and provide for public comment in accordance with the Bagley-Keene Act or the Brown Act, as applicable.

*This bill* requires the governing body to only approve a request to fund, acquire, or use military equipment pursuant to this bill if it determines all of the following:

- 1) The military equipment is needed despite available alternatives;
- 2) The proposed impact statement and use policy will safeguard the public's welfare, safety, civil rights, and civil liberties;
- 3) The use of military equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group; and,
- 4) The use of military equipment is the most cost-effective option among all available alternatives.

*This bill* requires, in order to facilitate public participation, any proposed or final impact statement and use policy to be made publicly available on the website of the relevant law enforcement agency for as long as the military equipment is available for use.

*This bill* provides that, if the impact statement identifies a risk of potential adverse impacts on the public's welfare, safety, civil rights, or civil liberties, the approval for the funding, acquisition, or use of military equipment by the governing body pursuant to this bill shall not be deemed an acquiescence to those impacts, but instead an acknowledgment of the risk of those impacts and the need to avoid them proactively.

*This bill* prohibits the funding, acquisition, or use of military equipment by a law enforcement agency without the express approval of the governing body, including adoption of an impact statement and use policy submitted to the governing body pursuant to the requirements of this bill.

*This bill* requires the governing body to review any ordinance that it has adopted pursuant to this bill approving the funding, acquisition, or use of military equipment at least annually and,

subject to 10), below, vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Act or the Brown Act, as applicable.

*This bill* requires the governing body to determine, based on the annual military equipment report (annual report) submitted pursuant to 11), below, whether each piece of military equipment identified in that report has complied with the standards for approval set forth in 5), above. If the governing body determines that a piece of military equipment identified in that annual report has not complied with these standards for approval, the governing body shall either disapprove a renewal of the authorization for that piece of military equipment or require modifications to the use policy in a manner that will resolve the lack of compliance.

*This bill* requires a law enforcement agency that receives approval for the funding, acquisition, or use of military equipment pursuant to the requirements of this bill to submit to the governing body an annual report for each piece 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. The law enforcement agency shall also make each annual report publicly available on its website for as long as the military equipment is available for use.

*This bill* requires the annual report mandated by this bill to include the following information for the immediately preceding calendar year for each piece of military equipment:

- 1) A summary of how the military equipment was used;
- 2) If applicable, a breakdown of where the military equipment was used geographically by individual census tract, as defined in the relevant year by the United States Census Bureau. For each census tract, the law enforcement agency shall report the number of days the military equipment was used and what percentage of those daily reported uses were authorized by warrant and by non-warrant forms of court authorization;
- 3) A summary of any complaints or concerns received concerning the military equipment;
- 4) The results of any internal audits, any information about violations of the military equipment use policy, and any actions taken in response;
- 5) An analysis of any discriminatory, disparate, any other adverse impacts that the use of military equipment may have had on the public's safety, welfare, civil rights, and civil liberties and on any community or group, including, but not limited to, those protected by the First, Fourth, and 14th Amendments to the United States Constitution; and,
- 6) The total annual cost for each piece of military equipment, including acquisition, personnel, training, transportation, maintenance, storage, upgrade, and other ongoing costs, and from what source funds will be provided for the military equipment in the calendar year following submission of the annual military equipment report.

*This bill* requires a law enforcement agency, within 30 days of submitting and publicly releasing an annual report pursuant to this bill, to 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 report and the law enforcement agency's funding, acquisition, or use of military equipment.

*This bill* requires the Attorney General (AG) to do the following:

- 1) By January 31, 2019, develop a list of military equipment that warrants public input pursuant to this bill. The list shall include, at a minimum, the military equipment expressly listed in 16)(c), below;
- 2) Post this list on his or her website and update it at least annually; and,
- 3) Make available on the AG's website a form by which members of the public may submit suggestions for equipment to be included as military equipment on the list.

*This bill* allows any person to enforce this bill by bringing a civil action seeking injunctive relief, declaratory relief, a writ of mandate, or other relief in a court of competent jurisdiction. In any action brought, the court shall award costs and reasonable attorneys' fees to a prevailing plaintiff.

*This bill* provides the following definitions:

- 1) "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;
- 2) "Law enforcement agency" means any of the following:
  - a) A police department, including the police department of a transit agency, school district, or any campus of the University of California, the California State University, or the California Community Colleges;
  - b) A sheriff's department;
  - c) A district attorney's office;
  - d) A county probation department;
  - e) The Department of the California Highway Patrol;
  - f) The Department of Justice; or,
  - g) Any other state or local agency authorized to conduct criminal investigations or prosecutions;
- 3) "Military equipment" means equipment that is militaristic in nature and includes, but is not limited to, all of the following:
  - a) Powered aircraft with a crew aboard, such as an airplane, that use a fixed wing for lift;
  - b) Powered aircraft with a crew aboard that use a rotary wing for lift, such as a helicopter;
  - c) Unmanned, remotely piloted, powered aerial vehicles;

- d) Wheeled armored vehicles that are either built or modified to provide ballistic protection to their occupants, including a mine-resistant ambush protected (MRAP) vehicle or an armored personnel carrier;
- e) Wheeled tactical vehicles that are either built to operate both onroad and offroad in supporting military operations, such as a high mobility multipurpose wheeled vehicle (HMMWV), commonly referred to as a Humvee, a two and one-half-ton truck, **or** a five-ton truck, or built with a breaching or entry apparatus attached;
- f) Tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion;
- g) Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units;
- h) Weaponized aircraft, vessels, or vehicles of any kind;
- i) Breaching apparatus designed to provide rapid entry into a building or through a secured doorway, including equipment that is mechanical, such as a battering ram, ballistic, such as a slug, or that is explosive in nature;
- j) Firearms of .50 caliber or greater;
- k) Ammunition of .50 caliber or greater;
- l) Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Section 30515 of the Penal Code, with the exception of other service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency;
- m) Any firearm or firearm accessory, excluding the service weapons described in xii), above, that is designed to launch small projectiles, including, but not limited to, a grenade launcher or a riot gun used to disperse chemical agents;
- n) Any large knife designed to be attached to the muzzle of a rifle, shotgun, or long gun for purposes of hand-to-hand combat;
- o) Explosives and pyrotechnics, including grenades referred to as flashbang grenades and explosive breaching tools;
- p) Riot batons, riot helmets, and riot shields, but excluding service-issued telescopic or fixed-length straight batons;
- q) Sonic weapons, including the Long Range Acoustic Device sound cannon;
- r) Camouflage uniforms, other than uniforms with woodland or desert patterns or solid color uniforms; and,
- s) Any other equipment as determined by the AG pursuant to 14), above;

- 4) "Military equipment impact statement" means a publicly released, legally enforceable written document that includes, at a minimum, all of the following:
  - a) A description of each piece of military equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the military equipment;
  - b) The purposes and reasons for which the law enforcement agency proposes to use each piece of military equipment;
  - c) The fiscal impact of each piece of military equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs;
  - d) An assessment specifically identifying any potential impacts that the use of military equipment might have on the welfare, safety, civil rights, and civil liberties of the public, and what specific affirmative measures will be implemented to safeguard the public from potential adverse impacts; and,
  - e) Alternative method or methods by which the law enforcement agency can accomplish the purposes for which the military equipment is proposed to be used, the annual costs of alternative method or methods, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public;
- 5) "Military equipment use policy" means a publicly released, legally enforceable written document governing the use of military equipment by a law enforcement agency that addresses, at a minimum, all of the following:
  - a) The specific purpose or purposes that each piece of military equipment is intended to achieve;
  - b) The specific capabilities and authorized uses of military equipment, the legal and procedural rules that govern each authorized use, and the potential uses of the military equipment that are prohibited;
  - c) The course of training that must be completed before any officer, agent, or employee of the law enforcement agency is allowed to use each specific type of military equipment to ensure the full protection of the public's welfare, safety, civil rights, and civil liberties and full adherence to the military equipment use policy;
  - d) The mechanisms to ensure compliance with the use policy, including which independent persons or entities have oversight authority, and what legally enforceable sanctions are put in place for violations of the policy; and,
  - e) The procedures by which members of the public may register complaints or concerns or submit questions about the use of each specific type of military equipment, and how the law enforcement agency will ensure that each complaint, concern, or question receives a response in a timely manner.

*This bill* expresses a number of findings and declarations regarding the adverse impacts that the acquisition of military equipment and its deployment in our communities can create on the public's safety and welfare, and the public's right to know about and participate in any government agency's decision to fund, acquire, or use such equipment.

*This bill* finds and declares that this bill addresses a matter of statewide concern rather than a municipal affair as that term is used in the California Constitution Article XI Section 5. Therefore, this chapter applies to all cities, including charter cities and shall supersede any inconsistent provisions in the charter of any city, county, or city and county.

*This bill* finds and declares that this bill furthers, within the meaning of the California Constitution Article 1, Section 3(b), paragraph (7), the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies, and declares, pursuant to the California Constitution Article 1, Section 3(b), paragraph (7), the Legislature makes the following findings: Requiring local agencies to hold public meetings prior to the acquisition of military equipment further exposes that activity to public scrutiny and enhances public access to information concerning the conduct of the people's business.

*This bill* provides that no reimbursement is required by this bill because the only costs that may be incurred by a local agency or school district under this bill would result from a legislative mandate that is within the scope of the California Constitution Article 1, Section 3(b), paragraph (7).

## COMMENTS

### 1. Need for This Bill

President Obama recognized the need to improve Federal support for the appropriate use, acquisition, and transfer of controlled equipment by law enforcement agencies. Under his Executive Order #13688, stakeholders convened and developed a number of recommendations to, among other things, harmonize federal acquisition processes. Yet, last August under the current federal administration, Executive Order #13688 was rescinded along with any semblance of oversight of the 1033 Program.

AB 3131 is necessary because the lack of a public forum to discuss the acquisition of military equipment jeopardizes the relationship police have with the community which can be undermined when law enforcement is seen as an occupying force rather than a public safety service.

### 2. 1033 Program Authorized Transfer of Military Equipment to Law Enforcement

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. This is referred to as 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. The law enforcement agencies must be authorized and certified annually to participate.

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. The Office of Emergency Services also provides support and technical assistance to law enforcement agencies participating (or interested in participating) in the program.

### **3. Military Equipment Provided to Local Law Enforcement Agencies from 2006 to 2015**

Openthebooks.com conducted research about the distribution of military hardware to local law enforcement agencies around the country between 2006-2015. The results of the research is reflected in a report entitled "The Militarization of Local Police Departments."<sup>1</sup>

The report stated that \$2.2 billion worth of military gear including helicopters and airplanes, armored trucks and cars, tens of thousands of M16/M14 rifles, thousands of bayonets, mine detectors, and many other types of weaponry was distributed to local law enforcement agencies across the country, between 2006-2015.

In California, Openbooks.com found that 18,794 Department of Defense transactions transferring weaponry including nearly 7,500 trades involving M16/M14 rifles. The police for the University of California at Berkeley accepted the delivery of 14 M16/M14 rifles. 1,105 M16/M14 rifles (5.56mm and 7.62mm) and two Mine-Resistant Vehicles acquired by the Los Angeles County Sheriff. (*Id.*)

According to the Openbooks.com report, California ranked 3rd, after Florida and Texas, in the total value of DOD surplus gear that it received. (*Id.*) The total value of military equipment received by California in the 2006 - 2015 time period was estimated to be in excess of \$160 million. (*Id.*)

### **4. Executive Order 13688**

On January 16, 2015, President Obama issued Executive Order (EO) 13688.<sup>2</sup> EO 13688 established the federal interagency Law Enforcement Equipment Working Group (LEEWG) to 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 about the following topics:

- 1) How to harmonize program requirements for "consistent and transparent policies."
- 2) Relevant training needed to operate certain types of equipment or vehicles.

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<sup>1</sup> ([https://www.openthebooks.com/assets/1/7/OTB\\_SnapshotReport\\_MilitarizationPoliceDepts.pdf](https://www.openthebooks.com/assets/1/7/OTB_SnapshotReport_MilitarizationPoliceDepts.pdf).) The report was published in May, 2016. (*Id.*)

<sup>2</sup> (<https://www.gpo.gov/fdsys/pkg/DCPD-201500033/pdf/DCPD-201500033.pdf>.)

- 3) Policies to ensure LEAs “address appropriate use and employment of controlled equipment” and adopt policies protecting civil rights and civil liberties.

Operating under EO 13688, the LEEWG identified items that had significant impact on community trust. Two separate lists were established: the Prohibited Equipment List and the Controlled Equipment List. Each list was reviewed periodically. Items on the prohibited equipment list could not be purchased using federal funding streams or acquired via property transfer from federal agencies. Those items included tracked armored vehicles, weaponized aircraft, and grenade launchers.

The purpose of the Controlled Items List was not to preclude law enforcement agencies from purchasing items, but rather to encourage them to carefully consider the appropriateness of acquiring such equipment. Items on the Controlled Equipment List could be purchased with, or acquired from federal sources if the agency meets certain reporting and training requirements and other policies. Items on the Controlled Equipment List included wheeled armored vehicles, breaching apparatus, and riot gear.

In sum, prohibited equipment was unable to be acquired by local law enforcement agencies under EO 13688, and procedures were established for the acquisition and use of items on the Controlled Equipment List. After review of the EO, the LEEWG issued recommendations to law enforcements groups that acquired equipment on the Controlled Equipment List.<sup>3</sup> Those recommendations included the following requirements:

- 4) Law Enforcement Agencies (LEA) were to adopt:
  - a) General Policing Standards – includes policies on (a) Community Policing, (b) Constitutional Policing, and (c) Community Input and Impact Considerations;
  - b) Specific Controlled Equipment Standards – includes policies specifically related to (a) Appropriate Use of Controlled Equipment; (b) Supervision of Use; (c) Effectiveness Evaluation; (d) Auditing and Accountability; and (e) Transparency and Notice Considerations.
  - c) Record-Keeping Requirement – Upon request, LEAs must provide a copy of the General Policing Standards and Specific Controlled Equipment Standards, and any related policies and protocols, to the Federal agency that supplied the equipment/funds.
- 5) LEAs were to adopt training procedures:
  - a) Required Annual Training on Protocols – On an annual basis, all LEA personnel who may use or authorize use of controlled equipment must be trained on the LEA’s General Policing Standards and Specific Controlled Equipment Standards.
  - b) Required Operational and Technical Training – LEA personnel who use controlled equipment must be properly trained on, and have achieved technical proficiency in, the operation or utilization of the controlled equipment at issue.

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<sup>3</sup> ([https://www.bja.gov/publications/LEEWG\\_Report\\_Final.pdf](https://www.bja.gov/publications/LEEWG_Report_Final.pdf).)

- c) Scenario-Based Training – To the extent possible, LEA trainings related to controlled equipment should include scenario-based training that combines constitutional and community policing principles with equipment-specific training. LEA personnel authorizing or directing the use of controlled equipment should have enhanced scenario-based training to examine, deliberate, and review the circumstances in which controlled equipment should or should not be used.
- d) Record-Keeping Requirement – LEAs must retain comprehensive training records, either in the personnel file of the officer who was trained or by the LEA’s training division or equivalent entity, for a period of at least three (3) years, and must provide a copy of these records, upon request, to the Federal agency that supplied the equipment/funds. (*Id.* at pp. 38-39.)

In addition to policy and training implementation, the LEEWG recommended strict procedures for acquisition, sale/transfer, and oversight of compliance in implementation. (*Id.* at pp. 40-42.)

## 5. 2015 Veto Message from the Governor

Following the issuance of EO 13688 in 2015, the California Legislature passed AB 36 (Campos). AB 36 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 of the local agency approves the acquisition at a regular meeting held pursuant to the Ralph M. Brown Act (Brown Act).

However the bill was vetoed by the Governor. In his veto message, the Governor stated:

This bill requires a local agency governing body to hold a public meeting prior to the acquisition of certain surplus military equipment.

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, as discussed below, EO 13688 was rescinded.

## 6. Repeal of Executive Order 13688

On August 28, 2017, President Trump signed Executive Order 13809. The new executive order rescinded an EO 13688 as well as the recommendations of the LEEWG. United States Attorney General Sessions explained that “Those restrictions went too far, we will not put superficial concerns above public safety.” Attorney General Sessions further stated that the president was doing “all he can to restore law and order and support our police across America.”

<https://www.nytimes.com/2017/08/28/us/politics/trump-police-military-surplus->

[equipment.html](#).)

This bill would not reintroduce all of the protocols imposed by EO 13688. Instead it seems to take something of a middle ground between the relatively strict regulation under the Obama administration and the relatively relaxed regulation currently in place. For example, this bill does not contain any prohibited equipment, opting instead to consider all military equipment as “controlled.” The procedures and protocols this bill would establish are aimed at fostering more transparency, awareness, and involvement of local communities – not just law enforcement – in the acquisition and use of surplus military gear. Without EO 13688 in place, part of the Governor’s prior veto message may no longer be applicable to legislation such as this.

## **7. Argument in Support**

According to the Friends Committee on Legislation:

Local communities are increasingly being policed by law enforcement agencies armed with military weapons and tactics employed by the military during combat operations. Military equipment is obtained through the Pentagon’s 1033 program, with preference given for fighting the failed War on Drugs, or directly from private companies through federal grants, and may include armored tanks, grenade launchers and assault weapons.

Following the tragic events in Ferguson, Missouri in 2014, the Obama administration sharply curtailed the transfer of surplus weapons to local law enforcement agencies. Regretfully, this action was reversed last year by the Trump administration.

The traditional police mission of to serve and protect is quite different than that of military combat operations. The acquisition of this equipment, along with the training and tactics employed to utilize this equipment, undermines community policing by transforming our neighborhoods into war zones, especially in communities of color. When the police are seen by community residents as an occupying force, then public trust is eroded and relationships become further polarized to the detriment of public safety. This transformation is taking place rapidly under the radar without public input or oversight.

Healthy communities are built from the ground up with active citizen participation. AB 3131 simply requires that local law enforcement agencies obtain approval from their governing bodies prior to receiving or deploying military equipment. Doing so will create transparency and provide for meaningful, informed public input. This in turn makes citizens into stakeholders rather than bystanders, which promotes community and cooperation instead of polarization.

## 8. Argument in Opposition

According to the California State Sheriffs' Association:

As a practical matter, the acquisition of military surplus property often requires bidders to respond quickly without the opportunity to obtain approval by a legislative body for each purchase. Even if the bill only applies to the first time an agency seeks to acquire certain equipment, AB 3131 would severely disadvantage California agencies in its attempted participation. Additionally, the type of property contemplated by this bill is exceedingly vast and includes items commonly used by law enforcement including helicopters and fixed-wing aircraft. Also, the bill's language is vague at best as it attempts to exclude the acquisition of any firearm or firearm accessory that is designed to launch small, explosive projectiles – a definition that arguably includes all firearms.

However, even if this measure were amended to address its deficiencies in terms of what equipment is included, we would remain opposed. AB 3131 interferes with the ability of independently elected constitutional officers to acquire equipment at a cost savings for deployment for law enforcement purposes. Duly elected sheriffs are certainly capable of responding to concerns by their constituents when it comes to the purchasing and deployment of appropriate equipment should they arise.

-- END --