
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 481 **Hearing Date:** June 29, 2021
Author: Chiu
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Urgency: No **Fiscal:** Yes
Consultant: GC

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

HISTORY

Source: Women's Policy Institute of the Women's Foundation California

Prior Legislation: AB 3131 (Gloria), 2018, vetoed
AB 36 (Campos), 2015, vetoed
SB 242 (Monning), Ch. 79, Stats. of 2015

Support: ACLU California Action; Alliance for Boys and Men of Color; Alliance San Diego; American Civil Liberties Union of California; American Friends Service Committee; Anti-recidivism Coalition; Asian Solidarity Collective; Bay Rising; Bend the Arc: Jewish Action; Buen Vecino; California Faculty Association; California Federation of Teachers Afl-cio; California Latinas for Reproductive Justice; California League of United Latin American Citizens; California Public Defenders Association (CPDA); Californians for Safety and Justice; Center for Community Action & Environmental Justice; Center for Empowering Refugees and Immigrants; Change Begins With Me Indivisible Group; Clergy and Laity United for Economic Justice; Communities United for Restorative Youth Justice (CURYJ); Community Legal Services in East Palo Alto; Council on American-Islamic Relations, California; Courage California; Del Cerro for Black Lives Matter; Democratic Club of Vista; Disability Rights California; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities (EPIC); Essie Justice Group; Fair Chance Project; Fresno Barrios Unidos; Friends Committee on Legislation of California; Immigrant Legal Resource Center; Initiate Justice; John Burton Advocates for Youth; Legal Services for Prisoners With Children; March for Our Lives California; Mid-city Community Advocacy Network; Mission Impact Philanthropy; Orange County Equality Coalition; Parenting for Liberation; Pillars of The Community; Public Health Advocates; Re:store Justice; RiseUp; Root & Rebound; San Francisco Public Defender; Secure Justice; Showing Up for Racial Justice (SURJ) San Diego; Showing Up for Racial Justice North County; Secure Justice; Social Workers for Equity & Leadership; South Bay People Power; Southeast Asia Resource Action Center; Starting Over INC.; Stop Coalition; Team Justice; The W. Haywood Burns Institute; The Women's Foundation of California; Think Dignity; Translatin@ Coalition; We the People - San Diego; Young Women's Freedom Center; Youth Alive!

Opposition: California Narcotic Officers' Association; California State Sheriffs' Association; California Statewide Law Enforcement Association; Los Angeles County Sheriff's Department; Los Angeles Professional Peace Officers Association; Peace Officers Research Association of California (PORAC)

Assembly Floor Vote: 50 - 22

PURPOSE

The purpose of this bill is to require law enforcement to follow specified procedures prior to the acquisition or use of surplus federal military equipment, including obtaining approval from a local governing body.

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 defines “governing body” as the elected or 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.

This bill specifies that “law enforcement agencies” are sheriff’s departments, police departments, district attorney’s offices, probation departments, the CHP, the California DOJ, and any other state or local agency authorized to conduct criminal investigations or prosecutions.

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

- 1) Requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code.
- 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 in the deployment or other use of military equipment within the territorial jurisdiction of the governing body.
- 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.

- 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.
- 7) Acquiring military equipment through any means not provided by this paragraph.

This bill defines “military equipment” as weapons, arms, military supplies, and equipment that readily may be used for military purposes, including, but not limited to, radar systems or military-grade transport vehicles.

This bill requires that no later than May 1, 2022 agencies seeking to continue using military equipment they acquired prior to January 1, 2022 must seek governing body approval. If the governing body does not grant approval in the manner specified, the agency must cease all use of the equipment until it receives approval.

This bill requires agencies submit a proposed military equipment use policy to their governing body and make the documents available online to the public at least 30-days prior to any public hearing concerning the military equipment at issue.

This bill specifies that a “military equipment use policy” is a publicly released, legally enforceable written document governing the use of military equipment by law enforcement agencies that addresses, at minimum, the following:

- 1) 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.
- 2) The purposes and reasons for which the law enforcement agency proposes to use each type of military equipment.
- 3) The fiscal impact of each piece of military equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.
- 4) 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.
- 5) 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.
- 6) The mechanisms to ensure compliance with the military equipment 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.
- 7) 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 specifies that the governing body must consider the military equipment use policy as a regular agenda item in an open session and may only approve the policy if it determines all of the following:

- 1) The military equipment is necessary because there are no available alternatives.
- 2) The proposed military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- 3) If purchasing the equipment, the use of military equipment is the most cost-effective option among all available alternatives.
- 4) Prior military equipment use complied with the accompanying military equipment use policy.

This bill additionally requires the local governing body also review the following:

- 1) 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 may be implemented to safeguard the public from potential adverse impacts.
- 2) Any 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 if the military equipment is to be purchased, and the potential impacts of alternative method or methods on the welfare, safety, civil rights, and civil liberties of the public.

This bill requires the publication of any proposed or final military equipment use policy be made available publically online for as long as the equipment is available for use.

This bill requires the governing body to review any ordinance pursuant to this bill annually.

This bill defines "disparate impact" as a discriminatory outcome that adversely impacts a marginalized group, including, but not limited to, those protected under the First, Fourth, and Fourteenth Amendments to the United States Constitution or Title VII of the Civil Rights Act of 1964.

This bill specifies annual reporting requirements and details what must be reported (including detailed information on the uses of the equipment, where it was used, summaries of complaints, internal audits, demographics of the people impacted, and costs).

COMMENTS

1. Need for This Bill

According to the author:

Under existing law, local law enforcement agencies may purchase surplus military equipment from private companies or the federal government. The purchases are typically made at discounted rates using federal grants, and can range from Mine Resistant Ambush Protected vehicles (MRAPs) to riot helmets. While the acquisition of military equipment by local law enforcement has become more common in recent years, the public have rarely been aware of these purchases which are frequently made in violation of public disclosure laws, and without clear purpose in protecting the community they serve. This military equipment was turned against peaceful protestors throughout California over the last year, with the decisions to implement this sensitive gear left to officers on the scene with no uniform protocol or training process. The ease and lack of

transparency with which law enforcement may acquire and use equipment in our communities that our troops abroad treat with utmost caution is cause for concern, and cause for action.

This bill will regulate the use of military equipment by local law enforcement by requiring agencies to obtain approval from their local governing body prior to applying for and using such equipment. Law enforcement agencies will be required to provide a public impact statement that outlines the intended use and cost of such equipment as well as annually report how military equipment was used. Any disparate impacts to marginalized communities must be noted as part of this evaluation.

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."¹

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.*)

¹ (https://www.openthebooks.com/assets/1/7/OTB_SnapshotReport_MilitarizationPoliceDepts.pdf.) The report was published in May, 2016. (*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) 13688.² 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.
- 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.³ 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

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

³ (https://www.bja.gov/publications/LEEWG_Report_Final.pdf.)

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.
 - 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.”⁴

7. 2018 Veto Message from the Governor

AB 3131 (Gloria) was introduced following the repeal of Executive Order 13688. AB 3131 was a substantially similar bill to this measure and was vetoed by then Governor Jerry Brown with the following message:

This bill establishes 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.

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.

This bill has removed the specified list of weapons in favor of more generalized categories.

8. Argument in Support

According to the Asian Solidarity Collective:

Regulating police acquisition of military equipment is critical because the militarization of police departments leads to increased civilian deaths, and militarized policing teams are more often deployed in communities of color. In addition, police militarization fails to keep officers safe or prevent violence or harm in communities. When police forces are militarized, they are seen as an occupying force rather than a public safety service.

⁴ (<https://www.nytimes.com/2017/08/28/us/politics/trump-police-military-surplus-equipment.html>.)

State and local law enforcement agencies in California may acquire military equipment from two sources: the Federal government and private companies. Through the 1033 Program, the US Department of Defense allows direct transfer of surplus U.S. military equipment to police departments, free of charge. Over 8,000 Federal and state law enforcement agencies from all 50 states and the U.S. territories currently participate in the program.

Police agencies may also purchase military equipment from private companies using the Federal discount via the 1122 program, or using Federal dollars through grant programs such as the State Homeland Security Program and the Urban Areas Security Initiative.

In recent decades, as the acquisition of military equipment has become more common, local government officials and the public have little to no information about such acquisitions. For example, in 2014, the LA Unified School District received sixty-one M16 assault rifles, three M79 grenade launchers, and one mine-resistant ambush protected (MRAP) vehicle through the 1033 Program. San Diego local agencies have spent over \$200 million on tactical equipment in violation of public disclosure laws. San Diego County agencies have also purchased at least ten armored vehicles since 2003 using Federal grant funding, without public disclosure. Over \$11 million worth of military equipment is currently in the hands of local police forces across the Bay Area, including Armored Rescue Vehicles (ARV's) acquired by the Petaluma Police Department and MRAPs by the Antioch police, which require regular maintenance fees which cost the city thousands of dollars.

Recent events have raised questions about when and how police choose to deploy military equipment. In 2020, peaceful protests in California and across the country were met with increasingly militarized responses by local law enforcement. This past year, law enforcement in Walnut Creek and Orange used military vehicles including Lenco Bear Cats to disperse peaceful protestors. The decision of how and when to deploy the vehicles was left to the individual officers at the scene, with no uniform protocol. In Sacramento last summer, police donned riot helmets and aimed assault rifles from armored vehicles at peaceful demonstrators to clear an assembled crowd.

This legislation is necessary to begin the process of holding law enforcement agencies accountable through increased oversight and transparency of military equipment acquisition.

9. 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 engage a legislative body regarding each purchase. Even if the bill only applies to the first time an agency seeks to acquire certain equipment, AB 481 would still severely disadvantage California agencies in their attempted participation. Additionally, the definition of "military equipment" in this bill, which includes "military supplies and equipment

that readily may be used for military purposes,” remains exceedingly vast and almost assuredly includes items commonly used by law enforcement beyond vehicles and firearms.

However, even if this measure lacked the identified deficiencies in terms of what equipment is included, we would remain opposed. AB 481 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 the concerns of their constituents when it comes to the purchasing and deployment of appropriate equipment should they arise.

In 2018, Governor Brown vetoed AB 3131, a similar bill that did not go so far as to require governing body approval for the acquisition of military equipment. In his veto message, he stated “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.”

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