

January 19, 2023

Dear Attorney General Bonta,

We are writing to follow up on the letter we sent to you on September 19 of last year, regarding implementation of Assembly Bill 481 on militarized equipment used by law enforcement agencies.

We have concerns regarding California law enforcement agencies' compliance with AB 481 on militarized equipment, and request that your office issue guidance on AB 481 implementation. We also request a meeting with you regarding these issues in January.

In addition to the concerns we conveyed in our September 19, 2022 letter, we have identified these issues of compliance with AB 481:

***1. No definition of authorized uses of military equipment in many policies approved by governing bodies in the first year of AB 481 implementation***

AB 481 requires that law enforcement agencies propose – and that governing bodies approve – use policies for each type of military equipment, which must include a description of “purpose and authorized uses”, in addition to “legal and procedural rules for authorized uses”, in order for agencies to acquire or to continue to use military equipment. Such a definition of authorized uses is a core requirement of AB 481, since it defines the line for where communities – as approved by their elected officials in public hearings – find it acceptable to use military equipment, and when such use is not appropriate and potentially harmful.

Yet, our review of military equipment policies of agencies across the state shows widespread omission of this requirement. The most typical omission is to describe the authorized *users* – the *who* – rather than the statutory language of authorized *uses* – the *what* or authorized situations for use. We urge you to issue guidance that makes explicit the requirement to propose authorized *uses* of military equipment in policies that are publicly posted and submitted to governing bodies.

***2. Failure, specifically of CDCR, to disclose quantities of military equipment it possesses.***

Disclosure of the quantity of each type of military equipment owned or to be acquired by any agency is a critical measure of the extent of its militarization, and is thus central to the transparency that AB 481 requires.<sup>1</sup> However, some agencies do not include this information.<sup>2</sup>

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<sup>1</sup> The law defines required use policies as including “A description of each type of military equipment, the quantity sought, its capabilities, expected lifespan, and product descriptions from the manufacturer of the military equipment” (Section 7070(d)(1)) and “The fiscal impact of each type of military equipment, including the initial costs of obtaining the equipment and estimated annual costs of maintaining the equipment.” (Section 7070(d)(3)) “Type” of military equipment is defined as “each item that shares the same manufacturer model number.” (Section 7070(f))

<sup>2</sup> Agencies that did not include quantities of some or all types of military equipment include CDCR, Monterey County Sheriff's Office, Imperial County Sheriff's Office, El Centro PD, Vernon PD. *[note: we may add more examples to this list]*

We are especially concerned that CDCR, the state's largest law enforcement agency, does not disclose the quantities of military equipment and weaponry on its AB 481 web page. CDCR has used chemical agents and impact projectiles hundreds of times per month, according to reports by California's Office of the Inspector General and CDCR disclosures in response to Public Records Act requests. Please include in guidance the requirement of AB 481 to disclose quantities of each type of military equipment possessed or proposed for acquisition by the agency.

***3. Policies noncompliant with state law on use of force with chemical agents and impact projectiles, including for use of indiscriminate multiple-projectile launchers.<sup>3</sup>***

For example, the Los Angeles PD [policy](#) for projectile launchers and foam rubber batons authorizes use for crowd control after an order for dispersal, despite an explicit prohibition on such use in Penal Code Section 13652. The [Chula Vista PD policy](#) explicitly authorizes the deployment of impact projectiles and Pepperballs for crowd control, with no reference to Section 16352's restrictions on such use. Many other agencies have policies authorizing the use of tear gas or impact projectiles that do not reference state law restricting their use for crowd control.

Regarding the three issues our September 19 letter addressed, we add the following:

***4. Failure of some law enforcement agencies to post ANY use policies for military equipment they possess.***

More than seven months after the date set by AB 481 for law enforcement agencies to post proposed use policies, a number of agencies have still failed to do so.<sup>4</sup> Two of these are among the largest law enforcement agencies in the state - California Highway Patrol and Los Angeles Sheriff's Department. We strongly urge you to issue guidance that names these blatant violations of state law and consider measures that create meaningful consequences for sustained noncompliance with AB 481's requirements to post military equipment policies.

***5. Exclusion of assault rifles from the military equipment inventories and use policies of some agencies.***

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<sup>3</sup> AB 48 - different from AB 481 - was signed into law in September 2021 and became Penal Code Section 13652. It prohibits the use of chemical agents and impact projectiles for crowd control except in extreme circumstances and after other measures are taken, detailed in the law.

<sup>4</sup> A partial sampling of agencies that have not posted a Military Equipment Use Policy on their website as of January 16, 2023:

**Police Departments:** Bakersfield, Coachella, Inglewood, Vallejo

**County Sheriff Offices:** Alpine, Del Norte, Humboldt, Los Angeles, Modoc, Plumas, Siskiyou, Tehama, Trinity, Tuolumne. Sheriff's Offices in Riverside and Imperial Counties published policies missing most components of use policies as defined in AB 481.

**State agencies:** California Highway Patrol, California Office of Emergency Services. State agencies had a later deadline to publish their military equipment policies than city and county agencies, but were required to do so by October 28, 2022.

As we noted in September, Section 7070(c) of the legislation defines military equipment subject to the law's requirements as including:

(10) Specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code, with the exception of standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of a law enforcement agency or a state agency.

Despite the explicit inclusion in the legislation of assault weapons, some agencies have interpreted the exception clause to apply to assault weapons that may be considered "standard issue service weapons" (a phrase that is not defined in the statute). These agencies include police departments in San Francisco, Pasadena and Palo Alto, and sheriff's offices in Kings, Imperial, Madera and Sonoma counties. Some agencies, such as Capitola Police Department, stated that assault rifles are standard issue but were nonetheless included in military equipment policy, while others, such as in Santa Cruz and Emeryville, added use policies for their assault rifles after community members called for inclusion.

We reiterate our request that you issue guidance to law enforcement agencies, clarifying the intent of AB 481 to create transparency and policies for the deployment and use of assault weapons that are approved by governing bodies.

#### ***6. Importance of preparing clear and complete annual reports on the use of military equipment.***

Section 7072 requires that each law enforcement agency publish an annual report summarizing how each type of military equipment approved for use was used in the preceding year, and hold a public meeting to discuss such reports. Agencies should be documenting their use of approved equipment throughout the year. Many will begin preparing reports in the first months of 2023 for policies that were approved in April and May 2022. It is important to note that Section 7072, and AB 481 as a whole, refer to reporting on *use* of equipment - which means every time it is deployed, not only the times when deployment included a *use of force*, for which agencies already have documentation processes.

We ask that you encourage law enforcement agencies to produce detailed reports on the deployment of military equipment approved for use, which includes all deployments, and establish agency documentation procedures to facilitate such reports.

In summary, we request:

- A meeting with you and your staff at your earliest convenience to discuss these issues and actions to take in response.
- That you prioritize the timely development of guidance to California law enforcement agencies that addresses the issues we have raised and that strengthens compliance with state law and the implementation of policies and practices that fulfill AB 481's promise to "ensure the full protection of the public's welfare, safety, civil rights, and civil liberties."

Sincerely,

67 Sueños

Alameda County Families Advocating for the Seriously Mentally Ill (FASMI)

Alliance San Diego

American Civil Liberties Union of Southern California

American Civil Liberties Union (ACLU) California Action

American Friends Service Committee

Amnesty International Sacramento Group

Ashby Village Elder Action

Asian Americans Advancing Justice-Asian Law Caucus

Asian Pacific Environmental Network

BAY Peace

Bend the Arc: Jewish Action California

Berkeley Citizens Action

Berkeley Copwatch

Berkeley Friends Meeting

California Coalition for Women Prisoners

California Families United For4 Justice Network (CFUF4J)

Californians United for a Responsible Budget (CURB)

Campaign Nonviolence East Bay

Coalition for Police Accountability

Coalition on Homelessness, San Francisco

CODEPINK San Francisco Bay Area

Communities United for Restorative Youth Justice (CURYJ)

Concerned Community for Justice (CC4J), Chico, CA

Council on American-Islamic Relations, California Chapter

Culver City Action Network

Decarcerate Sacramento

Drug Policy Alliance

East Bay for Everyone

Ella Baker Center for Human Rights

Faith in Action East Bay

Friends Committee on Legislation of California

Global Exchange

Human Impact Partners

Indivisible SF

Initiate Justice

Interfaith Coalition for Justice in our Jails

Interfaith Movement for Human Integrity

Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Livermore Indivisible

Love Not Blood Campaign

Mill Valley Force for Racial Equity & Empowerment

National Lawyers Guild Bay Area

Oakland Privacy  
Oakland Rising  
Pacifica Peace People  
Pacifica Social Justice  
Palo Alto Friends Meeting  
Public Health Justice Collective  
Racial Justice Allies of Sonoma County  
Racism and Criminal Justice Reform Group  
Restore Oakland  
Secure Justice  
San Francisco Gray Panthers  
San Francisco Public Defender's Office  
Siegel, Yee, Brunner & Mehta  
South Bay People Power  
University Lutheran Chapel of Berkeley  
Wellstone Democratic Renewal Club  
Women's International League for Peace and Freedom, San Francisco and East Bay Branches  
Youth Alive!

Addenda:

- [September 19 letter regarding AB 481 to AG Bonta from 39 organizations](#)
- September 29 email with examples of policies with shortcomings that we have seen, as well as examples of better policies excerpts.

September 29 email to Cal DOJ with examples of worse and better policy provisions:

## Worse policy excerpts

The following are examples of worse policy excerpts we have seen. While we point out a few specific agencies' policy excerpts as examples, we have seen similar issues across many agencies' policies.

### Defining authorized users instead of authorized *use*

- [Alameda CSO](#) authorizes drones “[In any] official law enforcement mission or event approved by the Sheriff, or the Sheriff’s Designee” (pg 4). This makes any self-authorized use permissible, effectively defining *user* instead of *use*.
- [Alameda CSO](#) authorizes chemical agents (e.g. tear gas) by user: “Agency members are authorized to use them during the performance of their duties to protect life and property” (pg 19).

### Combining “Purpose” and “Authorized Use” into one item and including only Purpose

- [LAPD](#) lists only a brief purpose with no authorized use for all of its inventory (pp. 29-50)
  - Side note on LAPD policy: The LAPD policy is not posted on its department website, as required by AB 481. The only version of its policy available is not accessible and cannot be read by screen readers.
- [SFPD](#) (proposed policy not yet approved by Board of Supervisors) lists purpose but does not list authorized use.
  - The proposed policy refers to other Department documents for legal and procedural rules.
  - If authorized use is described in these documents, there is no governing body oversight over changing those documents.
  - Some of the policies referenced, such as the Tactical Unit Orders, are not available on the SFPD website.

This conflation of *purpose* and *authorized use* is very concerning because it can be a challenge for members of the public or even governing bodies to understand how weapons may be authorized for use in a manner inconsistent with the stated purpose. For example, [Oakland PD's proposed policy around robots](#) describes the purpose as gaining perspective, locating persons, or entering confined spaces. However, in verbal discussions with the Department, it came to light that the Department recognized the potential for using robots for lethal intent, and had created a policy that did not explicitly address that potential.

The more we analyze policies and speak with activists, elected officials, and departments, the more we understand the need for authorized use to be separate from

purpose, and the need to describe not just the *circumstances* in which a weapon may be used, but *how* the weapon may or may not be used.

### **Broadly defining authorized use to be limitless or near-limitless**

Examples of language:

- [Alameda County](#) Sheriff's Office authorizes flashbangs in "[any] situation where their use would enhance deputy safety" (pg 20)
- [Alameda County](#) Sheriff's Office also authorizes assault rifle deployments in "high-risk situations [which may] include, but are not limited to..." (pg 15). If a weapon is authorized for situations that are not included in a list, this makes any possible situation authorized.

### **No independent oversight body identified**

Example policies with no independent oversight body identified:

- [SFPD](#)
- [Emeryville PD](#)
- [Chula Vista PD](#)
- [La Mesa PD](#)

### **Classifying assault rifles (commonly referred to as "patrol" or "sniper" rifles) as standard issue and therefore exempt from AB481**

Please let us know if providing links to policies that exclude patrol assault rifles would be helpful. These agencies include police departments in San Francisco, Pasadena, Palo Alto, [Santa Rosa PD](#), and sheriff's offices in Kings, Imperial, Madera and Sonoma counties.

## **Better policy excerpts**

We cannot recommend any policy as a model policy, but have noticed different policy subsections as better implemented than others. These are described here.

### **More explicit delineation of what is authorized or prohibited:**

[Berkeley Police Accountability Board recommended](#) the following language be included in the use policy: "Uses of military equipment for purposes, in a manner, or by a person not authorized in this policy are prohibited." (Note: this recommendation is not reflected in the [BPD posted policy](#))

### **Explicitly spell out authorized and prohibited uses:**

An example of a policy that clearly spells out authorized and prohibited uses is [Oakland Police Department's Armored Vehicles Policy](#). While some elements of this policy are particular to armored vehicles, most of the elements would be appropriate for a use policy for any military equipment.

(Note: Oakland PD's military equipment use policy is not yet approved by its governing body.)

The OPD policy clearly defines “deployment” in a way that should be used for every type of equipment, “Any authorized departure from an armored vehicle’s place of storage shall be considered a deployment.”

The OPD policy acknowledges the risks of using this type of equipment in the community, and how those risks are taken into consideration in deployment decisions:

*The Department recognizes that the deployment or appearance of certain armored vehicles may escalate tension, provoke fear, prevent clear communication, or increase distrust. The Department therefore restricts deployment of armored vehicles to those situations where the benefits of deployment outweigh the potential detrimental effects.*

The policy then goes on to list specific authorized uses and also prohibited uses, and lists considerations for pre-planned use. These considerations are advisable for the use of any military equipment, and should be included (with slight wording modifications) in the authorized use for all equipment covered under this law.

### **Private Right of Action**

[Oakland's Controlled Equipment Use Policy](#) includes a provision for a Private Right of Action, allowing anyone harmed by non-compliance with the policy to initiate a civil action for injunctive relief and damages. This provides an extra safeguard that the policy will be adhered to and that community members' rights and safety will be protected.