

April 11, 2022

To: City Council Members in California
County Supervisors in California
City Attorneys and County Counsels in California

We write as community, civil rights and service organizations in California to urge you to fully implement California's new state law on military equipment used by law enforcement in the state. AB 481 addresses police use of tank-like armored vehicles, assault rifles, tear gas, rubber bullets, drones, and other equipment frequently experienced as *military* by community members.

We are concerned that dozens of use policies and ordinances proposed so far under the legislation are incomplete and fall far short of the transparency needed for civilian decisions about the large range and volume of military equipment used by police and sheriff departments across the state.¹ We urge you to ensure that military equipment policies meet the standards set by AB 481 and do not undermine the transparency and oversight by elected officials that are a central goal of AB 481.² Specifically, we make the following recommendations:

Law enforcement must not force “emergency” ordinances on governing bodies, which have 180 days to act on proposed use policies. AB 481 requires law enforcement agencies to submit policies for military equipment by May 1, 2022, but permits governing bodies 180 days after submission to deliberate and decide on the policies; after 180 days, law enforcement would not be able to use the equipment (*if* governing bodies reject the policies or take no action). Some departments, however, have misled governing bodies and pushed through emergency measures.

Proposed policies must be publicly posted for at least 30 days before a public hearing, to allow the public and elected officials to review what are often technical and lengthy documents. This window for action by elected officials between 30 days and 180 days after publication offers ample time for communities and governing bodies to recommend changes and to schedule a hearing on revised policies.

Proposed policies frequently don't define *authorized uses* as required by AB 481 for several types of equipment. Many proposed policies state that equipment may be authorized for situations that “include but are not limited to” a listing of situations. The phrase “not limited to” makes the list of authorized uses meaningless, since it suggests that authorized uses are limitless. The vagueness of these statements will make it difficult if not impossible to determine whether a particular use of the equipment complies with the policies.

Policies complying with AB 481 should describe uses that are ***not authorized***. For example, if use of drones for criminal investigations is not authorized without a warrant; if use of rubber bullets and chemical agents is not authorized when young children, elderly or other vulnerable persons are present, or for crowd control, without a serious threat to life or bodily harm; if use of the armored vehicle for arresting a suspect is not authorized without consideration of alternatives. Most proposed policies to date fail to set such limits on authorized use.

Military equipment policies must incorporate new state limitations, contained in AB 48, on the use of chemical agents such as tear gas and rubber bullets – considered military

equipment under AB 481 - for crowd control. AB 48 prohibits the use of chemical agents, such as tear gas, and kinetic impact rounds in crowd control situations, except “if the use is objectively reasonable to defend against a threat to life or serious bodily injury,” which is a high standard.³ Yet dozens of policies reviewed for this letter did not effectively incorporate these limitations into their proposed military equipment policies.

Assault rifles are not “standard issue service weapons” and require use policies. Assault rifles owned by law enforcement agencies, such as AR15 rifles, are expressly included in AB 481, as weapons defined in the state assault weapons ban legislation. AB 481 only excepts weapons covered by the assault weapon ban that are “standard issue service weapons.” (Section 7070 (c)10) Some agencies claim that their assault rifles are “standard issue service weapons,” and therefore exempt from AB 481. Yet these agencies’ existing policy manuals reinforce categorizing assault rifles as non-standard-issue. Accepting assault rifles as “standard issue” firearms that are not subject to AB 481’s transparency and oversight provisions would reinforce militarization of policing across the state.

Military equipment policies should clearly define procedures for documenting the use of military equipment – not only uses of force - to meet AB 481’s report requirements. AB 481 requires law enforcement agencies that receive approval for use of military equipment to publish an annual report on “how equipment was used and the purpose of its use,” summaries of complaints and audits, and the quantity of any military equipment the agency intends to acquire. (Section 7072) Yet many agencies do not document the use of military equipment, do not do so separately from non-military equipment, or document *only uses of force*. Making militarization of policing transparent requires reporting on deployments visible to the community, not just when a weapon was fired. Policies should clearly state to whom deployments will be reported and how records will be kept.

Adequate enforcement of military equipment policies requires ordinances with a private right of action. AB 481 relies heavily on the vigilance of elected officials to ensure that military equipment policies conform to AB 481 and that agencies comply with the policies as adopted. If agencies violate AB 481 or the adopted policies, community members have little recourse. For these reasons, the ordinance adopted by a governing body that approves a military equipment policy should include a private right of action to ensure compliance.⁴

We urge you to fully comply with AB 481’s provisions for transparency and community-input on military equipment used by law enforcement, and to reject proposed use policies that do not comply with this legislation, increase risks of harm, or fail to guarantee civil liberties. We hope you will listen to concerns about militarized policing from members of your community, and we stand ready to work with you to ensure full compliance with AB 481.

Sincerely,

Alameda County Families Advocating for the Seriously Mentally Ill (FASMI)
All of Us or None
Alliance San Diego
Alternatives to Policing

American Civil Liberties Union Foundation of Northern California
American Civil Liberties Union of Southern California
American Civil Liberties Union, Santa Cruz chapter
American Friends Service Committee
Amnesty International Sacramento Group
Bend the Arc: Jewish Action California
Berkeley Friends Meeting/Racial Justice Action Team
California Coalition for Women Prisoners
Campaign Nonviolence East Bay
Coalition on Homelessness
CODEPINK San Francisco Bay Area
Concerned Citizens for Justice
Council on American-Islamic Relations, California chapter
Creating Freedom Movements
Culver City Action Network
Decarcerate Sacramento
Drug Policy Alliance
East Bay Depot for Creative Reuse
East Bay for Everyone
East Point Peace Academy
Ella Baker Center for Human Rights
Essie Justice Group
Fair Chance Project
Families United to End LWOP
Faith in Action East Bay
Families United4Justice
Friends Committee on Legislation of California
GLIDE
Global Exchange
HomeRise
Human Impact Partners
Immigrant Legal Resource Center
Indivisible East Bay
Initiate Justice
Interfaith Coalition for Justice in our Jails
Interfaith Movement for Human Integrity
Jewish Voice for Peace Bay Area
Justice Reinvestment Coalition
Justice Team of the First Unitarian Church of Oakland
Lead to Life
Legal Services for Prisoners with Children
Livermore Indivisible
Living Stones Christian Church East Bay
Media Alliance
National Lawyers Guild Bay Area
Neighbors for Racial Justice

A New PATH (Parents for Addiction Treatment & Healing)
Oakland Privacy
Oscar Grant Committee against Police Brutality and State Repression
Pacifica Peace People
Pacifica Social Justice
Plymouth Church ("The Jazz and Justice Church")
Public Health Justice Collective
Racial Justice Allies of Sonoma County
Restorative Justice for Oakland Youth (RJOY)
Restore Oakland
San Francisco Public Defender's Office
Secure Justice
Showing Up for Racial Justice - Marin County
Showing Up for Racial Justice (SURJ) Bay Area
Urban Peace Movement
Wellstone Democratic Renewal Club
Women's International League for Peace and Freedom (East Bay & San Francisco)

¹ Agencies whose policies were reviewed include: Albany PD; Atherton PD; Banning PD; Berkeley PD; Brisbane PD; Capitola PD; Chico PD; Concord PD; Culver City PD; Dos Palos PD; Emeryville PD; Livermore PD; Los Gatos PD; National City PD; Oceanside PD; Oxnard PD; Pacifica PD; Placer County Sheriff's Office; Riverside County DA and Sheriff's Office; Rocklin PD; Roseville PD; Sacramento PD; Sacramento County Sheriff's Office; San Bernardino County Sheriff's Office; San Diego PD; Santa Clara PD; Santa Cruz County Sheriff's Office; Santa Cruz PD; Scotts Valley PD; Watsonville PD; Yuba City PD.

² Assembly Bill 481, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481. All section numbers in text refer to this legislation. See Cal. Gov. Code, Chapter 12.8, Sections 7070-7075.

³ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB48

⁴ For a model, see the provision for a private right of action in Oakland's military equipment ordinance, Oakland Municipal Code [Section 9.65.040](#), "Enforcement."