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INFORMATION BULLETIN

Subject:

Guidance for Preparing Assembly Bill 481 "Military **Equipment" Use Policies and Annual Reports**

No. 2024-DLE-13

Date:

10/10/2024

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TO: ALL CALIFORNIA LAW ENFORCEMENT AGENCIES AND STATE AGENCIES WITH LAW ENFORCEMENT **DIVISIONS**

This Information Bulletin provides guidance to California law enforcement agencies (LEAs) and their governing bodies, as well as certain state agencies, regarding their legal obligations under Assembly Bill (AB) 481 (Chapter 406, Statutes of 2021), which took effect in 2022 and is codified at sections 7070 through 7075 of the Government Code. AB 481 requires (1) LEAs and state agencies (as defined in the bill) to prepare and publish "military equipment" use policies, (2) LEAs to prepare and publish annual "military equipment" reports, and (3) governing bodies of LEAs to follow specified procedures related to approval of such use policies and annual reports. This Bulletin should serve as a resource for California LEAs and state agencies to ensure that their "military equipment" use policies and annual reports comply with state law.

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I. **Overview of AB 481**

"Law enforcement agencies" and "state agencies" are defined differently in AB 481 (see Part II below) and are subject to different requirements under AB 481. (Gov. Code, § 7070, subd. (b), (e).) For instance, although LEAs and state agencies alike must prepare "military equipment" use policies, only LEAs are required to prepare annual reports and obtain approval of their "military equipment" use policies from their governing bodies.

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- Government Code Sections 7070 through 7073 have specific requirements related to the content that must be included in "military equipment" use policies and annual reports, and processes that must be followed when preparing such policies and annual reports.
- Government Code Section 7070 (definitions) applies to <u>both LEAs and state agencies</u>; sections 7071 (LEA use policy) and 7072 (LEA annual report) apply <u>only to LEAs</u>; and section 7073 (state agency use policy) applies <u>only to state agencies</u>.
- LEAs and state agencies shall make their "military equipment" use policies (and in the case of LEAs, annual reports) publicly available on their websites consistent with the timelines set forth in sections 7071(b), 7071(d)(2), 7072(a), and 7073(c)(1).
- "Military equipment" is a specially defined term in the statute. It is not limited to equipment that is acquired from the military or that is similar to equipment that the military uses or possesses. Rather, section 7070(c) defines "military equipment" to include equipment that falls under any of the fifteen categories listed in that subsection, as described in more detail below.
- Some agencies refer to "military equipment" as "AB 481 equipment" or "Government Code section 7070(c) equipment."
- Agencies that use, possess, plan to acquire, receive, or collaborate with another agency in the
 deployment or use of "military equipment" as defined under section 7070(c) shall report that
 equipment in their "military equipment" use policies. (See Gov. Code, §§ 7071, subd. (a)(1);
 7073, subd. (a).)

II. AB 481's Definitions

Law Enforcement Agency

"Law enforcement agency" means any of the following:

- 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 California Community Colleges.
- A sheriff's department.
- A district attorney's office.
- A county probation department.

(Gov. Code, § 7070, subd. (b)(1)-(4).)

State Agency

"State agency" means the law enforcement division of every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution. (Gov. Code, § 7070, subd. (e).) Specifically, the following agencies are excluded from this definition: the Workers' Compensation Appeals Board, the Board of Equalization, the California Lottery, the State Bar of

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California, and the Commission on Judicial Performance.

Governing Body

"Governing body" means the elected body that oversees an LEA or, if there is no elected body that directly oversees the LEA, the appointed body that oversees an LEA. In the case of an LEA of a county, including a sheriff's department or a district attorney's office, "governing body" means the board of supervisors of the county. (Gov. Code, § 7070, subd. (a).)

Military Equipment

As noted above, the phrase "military equipment" is a specially defined term of art under AB 481. Under Section 7070(c), the term "military equipment" includes <u>all</u> of the following categories of equipment:

- unmanned, remotely piloted, powered aerial or ground vehicles (Gov. Code, § 7070, subd. (c)(1));
- 2. mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers (not including police versions of standard consumer vehicles) (Gov. Code, § 7070, subd. (c)(2));
- 3. high mobility multipurpose wheeled vehicles (HMMWV), commonly referred to as Humvees, two and one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached (not including unarmored all-terrain vehicles (ATVs) and motorized dirt bikes) (Gov. Code, § 7070, subd. (c)(3));
- 4. tracked armored vehicles that provide ballistic protection to their occupants and utilize a tracked system instead of wheels for forward motion (Gov. Code, § 7070, subd. (c)(4));
- 5. command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units (Gov. Code, § 7070, subd. (c)(5);
- weaponized aircraft, vessels, or vehicles of any kind (Gov. Code, § 7070, subd. (c)(6));
- 7. battering rams, slugs, and breaching apparatuses that are explosive in nature (not including items designed to remove a lock, such as bolt cutters, or a handheld ram designed to be operated by one person) (Gov. Code, § 7070, subd. (c)(7));
- 8. firearms of .50 caliber or greater (not including standard issue shotguns) (Gov. Code, § 7070, subd. (c)(8));
- 9. ammunition of .50 caliber or greater (not including standard issue shotgun ammunition) (Gov. Code, § 7070, subd. (c)(9));
- 10. specialized firearms and ammunition of less than .50 caliber, including assault weapons as defined in Sections 30510 and 30515 of the Penal Code (not including standard issue service weapons and ammunition of less than .50 caliber that are issued to officers, agents, or employees of an LEA or a state agency) (Gov. Code, § 7070, subd. (c)(10));
- 11. any firearm or firearm accessory that is designed to launch explosive projectiles (Gov. Code, § 7070, subd. (c)(11));
- 12. "flashbang" grenades and explosive breaching tools, "tear gas," and "pepper balls," excluding standard, service-issued handheld pepper spray (Gov. Code, § 7070, subd. (c)(12));
- 13. taser shockwave, microwave weapons, water cannons, and the Long Range Acoustic Device

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(LRAD) (Gov. Code, § 7070, subd. (c)(13));

- 14. the following projectile launch platforms and their associated munitions: 40mm projectile launchers, "bean bag," rubber bullet, and specialty impact munition (SIM) weapons (Gov. Code, § 7070, subd. (c)(14)); and
- 15. any other equipment as determined by a governing body or a state agency to require additional oversight. (Gov. Code, § 7070, subd. (c)(15).)

Notwithstanding paragraphs (1) through (15), "military equipment" does not include general equipment not designated as prohibited or controlled by the federal Defense Logistics Agency. (Gov. Code, § 7070, subd. (c)(16).)

III. Requirements That Apply to Both LEAs and State Agencies

LEAs and state agencies are each required to draft and post on the agency's internet website a "military equipment use policy," which is a written document governing the use of "military equipment" as defined in AB 481 (Gov. Code § 7070, subd. (d)); Gov. Code §§ 7071, subd. (b), (d)(2); 7072, subd. (a); 7073, subd. (c)(1).)

The "military equipment" use policy of LEAs and state agencies <u>shall</u> address, <u>at a minimum</u>, <u>all</u> of the following:

- 1. a description of each type¹ of "military equipment;"
- 2. the quantity of "military equipment" sought;
- the capabilities of each type of "military equipment;"
- 4. the expected lifespan of the "military equipment;"
- 5. product descriptions from the manufacturer of the "military equipment;"
- 6. the purposes <u>and</u> authorized uses for which the LEA or the state agency proposes to use each type of "military equipment;"
- 7. the fiscal impact of each type of "military equipment," including:
 - a. the initial costs of obtaining the "military equipment," and
 - b. estimated annual costs of maintaining the "military equipment;"
- 8. the legal and procedural rules that govern each authorized use;
- 9. the training, including any course required by the Commission on Peace Officer Standards and Training, that must be completed <u>before</u> any officer, agent, or employee of the LEA or the state 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;

¹ Under Gov. Code, § 7070, subd. (f), references to "type" of military equipment means each item that shares the same manufacturer model number.

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10. the mechanisms to ensure compliance with the "military equipment" use policy, including:

- a. which independent persons or entities have oversight authority, and, if applicable,
- b. what legally enforceable sanctions are put in place for violations of the policy.

(Gov. Code, § 7070, subd. (d)(1)-(6).)

LEAs and state agencies may choose how to format and organize this information in their "military equipment" use policies. While there are multiple ways to convey the information in a manner that is easy for the public to read and understand, the following chart is one example of how to report items 1 through 9 above for each type of "military equipment" in the policy. Item 10 (mechanisms to ensure compliance) would appear in a separate, stand-alone section of the policy.

Military Equipment: [insert relevant Government Code 7070(c) subsection (e.g., Gov. Code § 7070(c)(1):

Description: [Insert equipment make/model information.]

Manufacturer Product Description: [Copy and paste the manufacturer's description of the equipment being reported in this chart.]

Equipment Capabilities: [Insert description of what the equipment can do. If the manufacturer product description entry already addresses this, one option is to say, "see manufacturer product description above."]

Expected Lifespan:

Quantity Sought:

Purposes and Authorized Uses:

Fiscal Impact: [Insert both (1) cost of procuring and (2) estimated annual cost of maintaining equipment.]

Legal and Procedural Rules Governing Use of Equipment:

Required Training Before Using Equipment: [Insert description of training or citations to policies that describe required training before using this type of equipment. Also insert citation to or description of the relevant course required by the Commission on Peace Officer Standards and Training, if any.]

IV. Additional Requirements that Apply to LEAs Only

In addition to the requirements in <u>Section III</u>, the following requirements apply to LEAs only, and not to state agencies:

(A) Additional Information That LEAs Must Include in their "Military Equipment" Use Policies

In addition to items 1 through 10 set forth in <u>Section III</u> above, "military equipment" use policies prepared by <u>LEAs</u> (but not state agencies) <u>shall</u> also include:

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- 11. 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
- 12. how the LEA will ensure that each complaint, concern, or question receives a response in a timely manner.

(Gov. Code, § 7070, subd. (d)(7).)

LEAs' obligations under AB 481 extend beyond the preparation of an initial "military equipment" use policy. For example, as discussed in <u>Subsection (C)</u> below, LEAs must prepare an annual report in addition to their initial "military equipment" use policy. (Gov. Code § 7072.) And as discussed in <u>Section V</u> below, governing bodies must approve LEAs' initial "military equipment" use policy by ordinance (Gov. Code, § 7071(a)-(d)), and then renew the policy annually (Gov. Code, § 7071, subd. (e)(1)). Whether the policy is renewed depends at least in part on the governing body's determination of whether the LEA's annual report complies with the ordinance and "military equipment" use policy. (Gov. Code, § 7071, subd. (e)(2).) The governing body may either approve renewal, disapprove renewal, or require modifications to resolve any lack of compliance.

(B) The LEA's Governing Body Must Approve the LEA's "Military Equipment" Use Policy

An LEA <u>shall</u> obtain approval of its "military equipment" use policy by its governing body by an ordinance adopted 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. Approval of the governing body must be obtained <u>prior to</u> engaging in <u>any</u> of the following:

- requesting military equipment made available pursuant to Section 2576a of Title 10 of the United States Code;
- seeking funds for "military equipment," including, but not limited to:
 - o applying for a grant, or
 - soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers;
- acquiring "military equipment" either permanently or temporarily, <u>including</u> by borrowing or leasing;
- collaborating with another LEA in the deployment or other use of "military equipment" within the territorial jurisdiction of the governing body;
- using <u>any</u> new or existing "military equipment" for a purpose, in a manner, or by a person not previously approved by the governing body pursuant to AB 481;
- soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to:
 - o seek funds for, or
 - o apply to receive, acquire, use, or collaborate in the use of "military equipment;"
- acquiring "military equipment" through any means not provided by Section 7071(a)(1).

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(Gov. Code, § 7071, subd. (a)(1)(A)-(G).)

An LEA seeking to continue the use of <u>any</u> "military equipment" that was acquired <u>prior</u> to January 1, 2022, was required to commence a governing body approval process in accordance with Section 7071 no later than May 1, 2022. (Gov. Code, § 7071, subd. (a)(2).)

The LEA <u>shall cease</u> its use of "military equipment" if the governing body does not approve the continuing use of "military equipment" within 180 days of submission of the proposed "military equipment" use policy to the governing body. (Gov. Code, § 7071, subd. (a)(2).)

The LEA may resume its use of the "military equipment" once it receives the approval of the governing body in accordance with Section 7071. (Gov. Code, § 7071, subd. (a)(2).)

In seeking the approval of the governing body pursuant to Section 7071(a), an LEA shall:

- submit a proposed "military equipment" use policy to the governing body, and
- make those documents available on the LEA's internet website <u>at least 30 days prior to any public hearing</u> concerning the "military equipment" at issue.

(Gov. Code, § 7071, subd. (b).)

Final, approved "military equipment" use policies shall be made publicly available on the LEA's internet website for as long as the "military equipment" is available for use. (Gov. Code, § 7071, subd. (d)(2).)

(C) <u>LEAs Must Prepare and Publish Annual "Military Equipment" Reports</u>

LEAs must also prepare an annual report, in addition to their "military equipment" use policy as described in <u>Section III</u> above. This requirement does not apply to "state agencies" as defined in AB 481. As with the "military equipment" use policies, under Section 7070(f), references to "type" of military equipment means each item that shares the same manufacturer model number.

Specifically, an LEA that receives its governing body's approval for a "military equipment" use policy pursuant to Section 7071 shall submit to the governing body an annual "military equipment" report:

- within one year of approval of the policy, and
- annually thereafter for as long as the "military equipment" is available for use.

(Gov. Code, § 7072, subd. (a).)

The LEA <u>shall</u> also make each annual "military equipment" report required by Section 7072 publicly available on its internet website <u>for as long as</u> the "military equipment" is available for use. (Gov. Code, subd. § 7072(a).)

The annual military equipment report shall, at a minimum, include the following information for the

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immediately preceding calendar year for each type² of "military equipment":

- a summary of:
 - o how the "military equipment" was used, and
 - the purpose of its use;
- a summary of any complaints or concerns received concerning the military equipment;
- the results of any:
 - o internal audits,
 - o information about violations of the "military equipment" use policy, and
 - actions taken in response;
- the total annual cost for each type of military equipment, including:
 - o acquisition,
 - o personnel,
 - o training,
 - o transportation,
 - o maintenance,
 - o storage,
 - o upgrade, and
 - other ongoing costs;
- the source funds that will be provided for the "military equipment" in the calendar year following submission of the annual "military equipment" report;
- the quantity possessed for each type of military equipment; and
- the quantity sought for each type of "military equipment" in the next year (if any).

(Gov. Code, § 7072, subd. (a)(1)-(6).)

Within 30 days of submitting and publicly releasing an annual "military equipment" report pursuant to Section 7072, the LEA <u>shall</u> hold <u>at least</u> one well-publicized and conveniently located community engagement meeting. (Gov. Code, § 7072, subd. (b).)

At the community engagement meeting, the general public may discuss and ask questions regarding the annual "military equipment report" and the LEA's funding, acquisition, or use of military equipment. (Gov. Code, § 7072, subd. (b).)

² See footnote 1 for definition of "Type."

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V. Requirements that Apply to Governing Bodies of LEAs

The governing body overseeing the LEA 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 the Bagley-Keene Open Meeting Act or the Ralph M. Brown Act, as applicable.

(Gov. Code, § 7071, subd. (c).)

The governing body <u>shall only</u> approve an LEA's "military equipment" use policy pursuant to Section 7071 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 "military equipment," the "military equipment" is reasonably cost effective compared to available alternatives that can achieve the same objective of officer and civilian safety; and
- 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)(A)-(D).)

To facilitate public participation, any proposed or final "military equipment" use policy <u>shall</u> be made publicly available on the internet website of the relevant LEA <u>for as long as</u> the "military equipment" is available for use. (Gov. Code, § 7071, subd. (d)(2).)

The governing body of the LEA shall:

- review any ordinance that it has adopted under Section 7071 approving the funding, acquisition, or use of "military equipment" at least annually; and,
- subject to Section 7071(e)(2), vote on whether to renew the ordinance at a regular meeting held pursuant to the Bagley-Keene Open Meeting Act or the Ralph M. Brown Act, as applicable.

(Gov. Code, § 7071, subd. (e)(1).)

The governing body of the LEA <u>shall</u> determine, based on the annual "military equipment" report submitted pursuant to Section 7072, whether each type of "military equipment" identified in that report has complied with the standards for approval set forth in Section 7072(d). (Gov. Code, § 7072, subd. (e)(2).)

If the governing body of the LEA determines that a type of "military equipment" identified in that

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annual "military equipment" report has not complied with the standards for approval set forth in Section 7072(d), the governing body shall either:

- disapprove a renewal of the authorization for that type of "military equipment," or
- require modifications to the "military equipment" use policy in a manner that will resolve the lack of compliance.

(Gov. Code, § 7072, subd. (e)(2).)

Notwithstanding Sections 7072(a) through (e), inclusive, if a city contracts with another entity for law enforcement services, the city <u>shall</u> have the authority to adopt a "military equipment" use policy based on local community needs. (Gov. Code, § 7072, subd. (f).)

VI. Requirements that Apply to State Agencies Only

AB 481 requires state agencies to prepare "military equipment" use policies only, not annual reports. (See <u>Section III</u> above for "military equipment" use policy requirements.) Government Code Sections 7071 (LEA use policy) and 7072 (LEA annual report) do not apply to state agencies. Instead, state agencies must follow Sections 7070 (definitions) and 7073 (state agency use policy).

A state agency shall create a "military equipment" use policy prior to engaging in any of the following:

- Requesting "military equipment" made available pursuant to Section 2576a of Title 10 of the United States Code.
- Seeking funds for "military equipment," including, but not limited to:
 - o applying for a grant.
 - soliciting or accepting private, local, state, or federal funds, in-kind donations, or other donations or transfers.
 - Acquiring "military equipment" <u>either</u> permanently or temporarily, <u>including</u> by borrowing or leasing.
 - Collaborating with an LEA or another state agency in the deployment or other use of "military equipment" within the territorial jurisdiction of the governing body.
 - 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.
 - Soliciting or responding to a proposal for, or entering into an agreement with, any other person or entity to seek funds for, or to apply to receive, acquire, use, or collaborate in the use of, "military equipment."
 - o Acquiring "military equipment" through <u>any</u> means not provided by this subdivision.

(Gov. Code, § 7073, subd. (a)(1)-(7).)

A state agency seeking to continue the use of any military equipment that was acquired prior to January 1, 2022 was required to create a "military equipment" use policy by May 1, 2022. (Gov. Code, § 7073, subd. (b).)

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A state agency that is required to create a "military equipment" use policy under section 7073 <u>shall</u> do <u>both</u> of the following <u>within 180 days of completing the policy</u>:

- Publish the "military equipment" use policy on the agency's internet website, and
- Provide a copy of the "military equipment" use policy to the Governor or the Governor's designee.

(Gov. Code, § 7073, subd. (c)(1)-(2).)

State agencies are encouraged to regularly review and update their "military equipment" use policies to ensure that they are current and accurate.

VII. AB 481 Supersedes Any Inconsistent City or County Provisions

The Legislature has found and declared that ensuring adequate oversight of the acquisition and use of "military equipment" is a matter of statewide concern rather than a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, AB 481 applies to all cities, including charter cities, and shall supersede any inconsistent provisions in the charter of any city, county, or city and county. (Gov. Code, § 7074.)

VIII. Additional Resources

The text of AB 481 (Gov. Code, §§ 7070-7075) is available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481 and https://leginfo.legislature.ca.gov/faces/codes displayText.xhtml?lawCode=GOV&division=7.&title=1.&part=&chapter=12.8.&article=.