

## Military Equipment Use Policy

### 408.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the San Bernardino County District Attorney's office Bureau of Investigation's acquisition, funding, use and reporting of "military equipment," as that term is defined in Government Code § 7070. This policy is intended to fulfill the obligations set forth in Assembly Bill 481 and Government Code § 7070, § 7071 and § 7072. These obligations include, but are not limited to, seeking approval on specific items the State of California and/or the Bureau of Investigation's governing authority deems to be military equipment and fulfilling all requirements related to complaints, annual reporting, cataloguing, and recording of complaints regarding military equipment utilized by the Bureau of Investigation's employees.

The Bureau of Investigation understands that there are legally enforceable safeguards including transparency, oversight and accountability in place to protect the public's welfare, safety, civil rights and civil liberties that require careful consideration before items deemed military equipment are to be funded, acquired or used.

#### 408.1.1 DEFINITIONS

Definitions related to this policy include (Government Code § 7070):

**Governing body** – The elected or appointed body that oversees the Bureau of Investigation.

**Military equipment** – Includes but is not limited to the following:

- Unmanned, remotely piloted, powered aerial or ground vehicles.
- Mine-resistant ambush-protected (MRAP) vehicles or armored personnel carriers.
- High mobility multipurpose wheeled vehicles (HMMWV), two-and-one-half-ton trucks, five-ton trucks, or wheeled vehicles that have a breaching or entry apparatus attached.
- Tracked armored vehicles that provide ballistic protection to their occupants.
- Command and control vehicles that are either built or modified to facilitate the operational control and direction of public safety units.
- Weaponized aircraft, vessels, or vehicles of any kind.
- Battering rams, slugs, and breaching apparatuses that are explosive in nature. This does not include a handheld, one-person ram.
- Firearms and ammunition of .50 caliber or greater, excluding standard-issue shotguns and standard-issue shotgun ammunition.
- Specialized firearms and ammunition of less than .50 caliber, including firearms and accessories identified as assault weapons in Penal Code § 30510 and Penal Code § 30515, with the exception of standard-issue firearms.
- Any firearm or firearm accessory that is designed to launch explosive projectiles.
- Noise-flash diversionary devices and explosive breaching tools.

## *Military Equipment Use Policy*

---

- Munitions containing tear gas or OC, excluding standard, service-issued handheld pepper spray.
- TASER® Shockwave, microwave weapons, water cannons, and long-range acoustic devices (LRADs).
- Kinetic energy weapons and munitions.
- Any other equipment as determined by a governing body or a state agency to require additional oversight.

### **408.2 POLICY**

It is the policy of the San Bernardino County District Attorney's Bureau of Investigation that members of this Bureau of Investigation comply with the provisions of Government Code § 7070, § 7071 and § 7072 with respect to military equipment.

### **408.3 MILITARY EQUIPMENT COORDINATOR**

The Chief Investigator or authorized designee shall be assigned to act as the military equipment coordinator. The responsibilities of the military equipment coordinator include but are not limited to:

- (a) Acting as liaison to the governing body for matters related to the requirements of this policy.
- (b) Identifying Bureau of Investigation equipment that qualifies as military equipment in the current possession of the Bureau of Investigation, or the equipment the Bureau of Investigation intends to acquire that requires approval by the governing body.
- (c) Conducting an inventory of all military equipment at least annually.
- (d) Collaborating with any allied agency that may use military equipment within the jurisdiction of San Bernardino County District Attorney's Bureau of Investigation (Government Code § 7071).
- (e) Preparing for, scheduling, and coordinating the annual community engagement meeting to include:
  1. Publicizing the details of the meeting.
  2. Preparing for public questions regarding the Bureau of Investigation's funding, acquisition, and use of equipment.
- (f) Preparing the annual military equipment report for submission to the Chief Investigator and ensuring that the report is made available on the Bureau of Investigation website (Government Code § 7072).
- (g) Establishing the procedure for a person to register a complaint or concern, or how that person may submit a question about the use of a type of military equipment, and how the Bureau of Investigation will respond in a timely manner.

### **408.4 CATALOGING OF MILITARY EQUIPMENT**

The Bureau of Investigation shall catalog all military equipment it maintains in accordance with the following requirements:

## *Military Equipment Use Policy*

---

- (a) A description of the equipment.
- (b) The capabilities and purpose of the equipment.
- (c) The expected lifespan of the equipment.
- (d) The initial and ongoing fiscal impact of the equipment.
- (e) The quantity of the equipment.

### **408.5 MILITARY EQUIPMENT INVENTORY**

The following constitutes a list of qualifying equipment for the Bureau of Investigation pursuant to Government Code § 7070:

#### **"Assault Weapons" as defined under Penal Code § 30510 & Penal Code § 30515:**

Colt AR-15 and Colt M-4 5.56 caliber semi-automatic rifles. These firearms are standard-issue to investigators as part of their safety equipment.

H&K Mp5 9mm semi-automatic and full-automatic submachine guns. These firearms are intended to be deployed under limited circumstances by trained Special Response Team (SRT) members only.

#### **Less-lethal 40mm projectile launcher:**

Def Tec 40mm projectile launcher. This device is used with less-lethal rubber projectiles. It is intended to be deployed under limited circumstances by trained SRT members only.

#### **Large Oleoresin Capsicum spray canisters:**

Galls Mk-9 Stream 10% Oleoresin Capsicum Spray 13 oz. canisters. These are intended to be deployed under limited circumstances by trained SRT members only.

#### **Command and Control Vehicle modified to facilitate the operational control and direction of public safety units:**

A 24-foot towable office trailer equipped with a generator, office seating and an 800 MHz communications radio. This trailer is designated as a secondary Headquarters/Command Post for the Office of the District Attorney in case the 303 West Third Street building or other main District Attorney facility is damaged in an earthquake, fire or other incident.

#### **12 gauge stun bag launchers:**

Remington 870 pump-action less lethal "stun-bag" shotguns. These firearms are easily identifiable by a brightly-colored synthetic stock and are intended to fire less-lethal shot-filled bags in limited situations.

### **408.6 MAINTENANCE AND TESTING OF MILITARY EQUIPMENT**

When the stock of prior military equipment has reached significantly low levels, has been exhausted, has reached the end of its viable life cycle or has been rendered unusable due to wear,

## *Military Equipment Use Policy*

---

damage, accident, etc., the Bureau maintains the authority to order replacement items to maintain essential availability for the Bureau operational needs.

Advancements in technology, tactics and operational effectiveness may necessitate the expansion or complete replacement of certain items of military equipment in the Bureau's current inventory. On occasion the Bureau may purchase or receive certain items of military equipment on loan or on a trial basis from military equipment manufacturers or vendors to conduct assessments involving the practicality of use, effectiveness, cost and/or training value of these items. This process is commonly referred to as "testing & evaluation."

All military equipment acquired for testing & evaluation shall be procured per the guidelines set forth by Government Code § 7071 and the San Bernardino County Board of Supervisors and shall utilize the guidelines set forth in the San Bernardino County Policy Manual, Section 11 - Procurement and Contracting

Military equipment that is in the possession of the Bureau and is in the testing & evaluation phase by Bureau employees shall not be deployed or used operationally unless exigent or emergency conditions exist and permission to utilize this equipment has been given by the Chief Investigator or authorized designee. No items of military equipment that is possessed by the Bureau and is in the testing & evaluation phase may be loaned or given to allied law enforcement agencies unless exigent or emergency conditions exist and permission has been granted by the Chief Investigator or authorized designee of the Bureau, and permission is granted by the head of the allied law enforcement agency requesting the item(s).

Military equipment items that have been tested & evaluated and are recommended for adoption by the Bureau must receive prior approval from the Board of Supervisors and the Chief Investigator or authorized designee before being purchased as permanent Bureau inventory. All Bureau purchases of military equipment shall comply with San Bernardino County Policy Manual Section 11 - Procurement and Contracting. Prior to the issuance, deployment or use of newly approved items of military equipment, all Bureau employees receiving or using such items military equipment shall be trained in its proper use pursuant to applicable Federal and State law, POST mandate, County ordinance, manufacturer's specification and/or Bureau of Investigation policy, (Government code § 7071)

### **408.7 APPROVAL FOR ACQUISITION OF MILITARY EQUIPMENT**

The Chief Investigator or the authorized designee shall obtain approval from the governing body by way of an ordinance adopting the military equipment policy. As part of the approval process, the Chief Investigator or the authorized designee shall ensure the proposed military equipment policy is submitted to the governing body and is available on the Bureau of Investigation website at least 30 days prior to any public hearing concerning the military equipment at issue. The military equipment policy must be approved by the governing body prior to engaging in any of the following.

- (a) Requesting military equipment made available pursuant to 10 USC § 2576a.

## *Military Equipment Use Policy*

---

- (b) 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.
- (c) Acquiring military equipment either permanently or temporarily, including by borrowing or leasing.
- (d) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the jurisdiction of this Bureau of Investigation.
- (e) Using any new or existing military equipment for a purpose, in a manner, or by a person not previously approved by the governing body.
- (f) 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.
- (g) Acquiring military equipment through any means not provided above. (Government Code § 7071)

### **408.7.1 APPROVAL CRITERIA**

When requesting approval for the acquisition of military equipment, the Chief Investigator or authorized designee should establish:

- (a) The military equipment is necessary because there is no reasonable alternative that can achieve the same objective of civilian and investigator safety.
- (b) The proposed military equipment and the military equipment use policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- (c) If purchasing the military equipment, the equipment is reasonably cost effective compared to available alternatives that can achieve the same objectives of civilian and investigator safety.
- (d) Prior military 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. (Government Code § 7071)

### **408.8 COORDINATION WITH OTHER JURISDICTIONS**

Military equipment from another jurisdiction should not be used by any employee of the Bureau of Investigation unless the military equipment is approved for use in accordance with this policy.

### **408.9 ANNUAL MILITARY EQUIPMENT REPORT**

Upon approval of a military equipment policy, the Chief Investigator or the authorized designee should submit a military equipment report to the San Bernardino County Board of Supervisors (BOS) for each type of military equipment approved within one year of approval, and annually thereafter for as long as the military equipment is available for use (Government Code § 7072).

The Chief Investigator or the authorized designee should also make each annual military equipment report publicly available on the Bureau of Investigation website for as long as the

# San Bernardino County District Attorney's Bureau of Investigation

SBCDA Bureau of Investigation Policy Manual

## *Military Equipment Use Policy*

---

military equipment is available for use. The report shall include the following information pursuant to Government Code § 7072:

- (a) The quantity, type, lifespan and authorized use of the military equipment in the Bureau of Investigation's inventory.
- (b) A description of the equipment's capabilities.
- (c) An explanation of how the military equipment was used the previous year.
- (d) Any complaints or concerns the Bureau of Investigation received concerning the military equipment and a description of any findings and/or the actions taken in response.
- (e) The total annual cost of the military equipment including acquisition, storage, maintenance, transportation, training, upgrade and other ongoing costs.
- (f) The quantity and type of additional military equipment the Bureau of Investigation seeks to acquire in the following calendar year.

An explanation of the source of funding for any additional military equipment the Bureau of Investigation seeks to acquire in the following calendar yearAs to its then-current inventory and any sought-after acquisitions, the Bureau of Investigation will describe how the military equipment is:

- (a) Necessary, because no reasonable alternatives to the equipment are available to achieve the same level of investigator and civilian safety; and
- (b) Reasonably cost-effective when compared to available alternatives that can achieve the same level of Investigator and civilian safety.

The use of any military equipment by a Bureau employee in a use-of-force incident shall be documented in a Bureau report pursuant to Bureau of Investigation Policy 300 - Use of Force, and shall be included in the annual military equipment report to the BOS.

### **408.10 MILITARY EQUIPMENT USE**

The Bureau of Investigation's use of military equipment will comply with the "authorized use" descriptions provided with all military equipment listed in the Bureau's annual military equipment report. The use will also comply with all applicable laws; e.g. *Graham v. Connor* (1989) 490 U.S. 386 and Penal Code § 835a and Vehicle Code § 21000 et seq. and all applicable Bureau of Investigation policies including, but not limited to:

300 - Use of Force

300.2.1 - Fair and Unbiased Use of Force

300.2.2 - Duty to Report Use of Excessive Force

300.3.1 - Use of Force to Effect Arrest

300.3.2 - Factors Used to Determine Reasonable Force

300.3.3 - Failure to Intercede

# San Bernardino County District Attorney's Bureau of Investigation

## SBCDA Bureau of Investigation Policy Manual

### *Military Equipment Use Policy*

---

300.4 - Deadly Force

300.4.1 - Shooting at Moving Vehicles

300.4.2 - Display of Firearms

300.5.3 - Reporting Use of Military Equipment

300.3.7 - Alternative Tactics - De Escalation

300.8 - De Escalation/Vulnerable Persons Training

302 - Control Devices

302.3 - Issuing, Carrying and Using Control Devices

302.6 - Oleoresin Capsicum Spray Guidelines

302.6.2 - Treatment for Oleoresin Capsicum Spray Exposure

302.5 - Kinetic Energy Projectile Guidelines

302.9.1 - Deployment and Use of Kinetic Energy Projectiles

302.10 - Training for Control Devices

302.11 - Reporting the use of Control Devices or Techniques

306 - Firearms

306.3.3 - Patrol Rifles

306.6 - Firearms Training and Qualification

306.6.1 - Non Certification or non Qualification

306.7.1 - Destruction of Animals

311 - Standards of Conduct

323.2 - Special Response Team Policy

323.6 - Special Response Team Training and Equipment

Bureau employees with control of military equipment have completed or will complete appropriate internal and/or external training in the equipments safe and proper use that is:

- (a) Dictated by the above and similar Bureau policies.
- (b) Consistent with Bureau Policy 200 - Training.
- (c) Provided or authorized by the Commission on Peace Officer Standards and Training (POST) such as; Chemical Agents for Peace Officers; Civil Disobedience; Federal (FEMA) Training Requirements, HSPD-5; Incident Command System (ICS); Law Enforcement Response to Terrorism; Long/Short Barreled Rifles; National Incident Management System (NIMS); Perishable Skills/Communication (Including Tactical Firearms, Driver Training/Awareness, Arrest & Control, Strategic Communications and Use of Force); Racial and Cultural Diversity Training; Racial Profiling; Standardized

# San Bernardino County District Attorney's Bureau of Investigation

SBCDA Bureau of Investigation Policy Manual

## *Military Equipment Use Policy*

---

Emergency Management System (Disaster Response) as described at <https://post.ca.gov/Peace-Officer-Training>. (Government Code § 7070)

### **408.11 COMPLIANCE**

The Bureau of Investigation will ensure employees comply with this policy.

The Commander of the Special Response Team or authorized designee will conduct an annual audit of all military equipment owned by the Bureau of Investigation. The Chief Investigator will be notified of all policy violations and, if the Chief Investigator deems it warranted, the violation(s) will be routed to the proper supervisor(s) for investigation.

All Bureau investigators issued Colt semi automatic 5.56 caliber rifles or SRT members deploying H&K Mp5 9mm submachine guns will be trained and certified in their use pursuant to California POST Regulation § 1081 and California Penal Code § 33220(b). All Bureau Investigators shall complete a course of instruction on chemical agents prior to deploying Oleoresin Capsicum spray pursuant to Penal Code § 22820.

All instances of confirmed non-compliance will be reported to the Board of Supervisors via the annual military equipment report to the BOS. (Government Code § 7070 and 7072)

### **408.12 PUBLIC CONCERNS**

Any member of the public may register a question, concern or complaint regarding the Bureau of Investigation's military equipment by contacting the Bureau of Investigation via e-mail at **Investigations@SBCDA.org**, or by writing to:

San Bernardino County District Attorney

Attention: Bureau of Investigation

303 West Third Street, Sixth Floor

San Bernardino, California 92415

A response to the question or concern shall be completed by the Bureau of Investigation in a timely manner. Complaints about the Bureau of Investigation's military equipment, or Bureau personnel using it, may be referred for further investigation by the Chief Investigator or authorized designee. (Government Code § 7070)

### **408.13 COMMUNITY ENGAGEMENT**

Within 30 days of submitting and publicly releasing the annual report, the Bureau of Investigation shall hold at least one well-publicized and conveniently located community engagement meeting, at which the Bureau of Investigation should discuss the Bureau of Investigation's military equipment report and respond to public questions regarding the funding, acquisition, or use of military equipment pursuant to Government Code § 7070 and § 7072.