



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

June 5, 2022

To: Police Accountability Board
From: Katherine J. Lee, Interim Director of Police Accountability
Re: Controlled Equipment – Agenda Item #10.b. on June 8, 2022 agenda

This memo provides background and guidance on the Controlled Equipment item, and elaborates on the Subcommittee's recommendations. The table entitled "Guide to Controlled Equipment Item" on p. 13 of your agenda packet should help you sort out the voluminous amount of material comprising the Police Equipment and Community Safety Ordinance Impact Statements and related Use Policies, the Annual Use Report, and the Military Equipment Policy (Policy 709).

Background

Police Equipment and Community Safety Ordinance Impact Statements and related Use Policies were first considered by you at the March 30, 2022 special meeting. At that time, the Police Department (BPD) stated that those materials were also intended to fulfill the requirements of AB 481. Your assessment of the Impact Statements and Use Policies was communicated to Chief Louis in an April 6, 2022 memo. On April 25, the BPD sent me the Annual Use Report and, on May 4, Capt. Roller sent a memo responding your April 6 memo. Among his responses, he noted that it was an "editing error" to state that the Impact Statements were to meet the mandates of AB 481.

The BPD submitted the Impact Statements and Use Policies, Annual Use Report, and Military Equipment Policy to the Council for its May 10, 2022 meeting¹ and the Council postponed consideration until its June 14 meeting. Since then, the Department has revised the Impact Statements, Policy 303 (Control Devices and Techniques), Policy 428 (First Amendment Assemblies) and the Military Equipment Policy. Some of the changes respond to issues the Board raised in its April 6 memo.

You formed the Controlled Equipment Reporting Subcommittee on May 11, 2022, and Chair Chang appointed Vice-Chair Mizell and Board member Moore to the Subcommittee. The Subcommittee met on May 17, 23, and 31, with BPD personnel present for most or all of every meeting. In addition to the specific recommendations noted below, Subcommittee members wish to convey to the Board that they do not believe they had enough time, capacity, or expertise to thoroughly review the materials to meet the level of scrutiny that the Ordinance suggests is required.

¹ The complete Council item was included in your March 30, 2022 agenda packet.

I. Impact Statements and Use Policies

The critical task on June 8 is for you to make recommendations to the City Council on the Impact Statements and Use Policies. There is some debate as to the actual deadline for Council to take action on these, but arguably they must do so by their June 28 meeting. Because, however, final decisions on the FY 23 & 24 budget must be made on that date, they asked that the item be returned on June 14.

PAB responsibility

You are undertaking the “Review Process for Previously Acquired Equipment” in the Ordinance (Berkeley Municipal Code sec. 2.100.040 (G)). This entails the same consideration of Controlled Equipment Impact Reports and Use Policies as will be required when the BPD seeks to purchase or acquire by other means Controlled Equipment, or to use such equipment in a way not originally authorized. (BMC sec. 2.100.040(A).)

“**Controlled Equipment Impact Statement**” means a publicly released, written document that includes, at a minimum, all of the following:

- (1) Description: A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected lifespan, intended uses and effects, and how it works, including product descriptions from the manufacturer of the Controlled Equipment.
 - (2) Purpose: The specific purpose or purposes that each type of Controlled Equipment is intended to achieve.
 - (3) Fiscal Cost: The fiscal cost of each type of Controlled Equipment, including the initial costs of obtaining the equipment, the costs of each proposed use, the costs of potential adverse impacts, and the annual, ongoing costs of the equipment, including operating, training, transportation, storage, maintenance, and upgrade costs.
 - (4) **Impact: An assessment specifically identifying any potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public.** [emphasis added]
 - (5) Mitigations: Specific, affirmative technical and procedural measures that will be implemented to safeguard the public from such impacts.
 - (6) Alternatives: Alternative method or methods by which the Police Department can accomplish the purposes for which the Controlled Equipment is proposed to be used, and rationale for selection over alternative methods.
 - (7) Third Party Dependence: Whether use or maintenance of the Controlled Equipment will require the engagement of third party service providers.
- (BMC sec. 2.100.020(C).)

And:

Controlled Equipment requires a publicly available **use policy** that identifies the purpose, any prohibited uses, training requirements, and any process required prior to use.

(BMC sec. 2.100.030)

You are to apply the “Criteria for Police Accountability Board Recommendations” in BMC sec. 2.100.040(C):

- (1) The Police Accountability Board shall recommend approval of a request to fund, acquire, or use Controlled Equipment pursuant to this chapter only if it determines all of the following:

- (a) The Controlled Equipment is needed and there is no practicably available alternative equipment which is not Controlled Equipment that is sufficient for the purposes.
- (b) The proposed Controlled Equipment Use Policy will safeguard the public's welfare, safety, civil rights, and civil liberties.
- (c) The Controlled Equipment will not be used based on race, national origin, religion, sexual orientation, gender, gender identity, political viewpoint, or disability, or disproportionately impact any community or group.

(2) If the submitted Controlled Equipment Impact Report identifies a risk of potential adverse effects on the public's welfare, safety, civil rights, or civil liberties, the Police Accountability Board's recommendation for approval for the funding, acquisition, or use of the Controlled Equipment shall not be deemed an acquiescence to those effects, but instead an acknowledgment of the risk of those effects and the need for the Police Department to take proactive steps to minimize those effects.

Subcommittee Recommendations

1. The Controlled Equipment Subcommittee recommends that you reject the Impact Statements based on the descriptions in category (4), "Impact" [in bold above], because the language for many pieces of equipment fails to adequately describe the full impacts of the equipment's use. BMC Section 2.100.020 (C)(4) requires identification of potential impacts that the use of Controlled Equipment might have on the welfare, safety, civil rights, and civil liberties of the public. While the Subcommittee does not take issue with much of the existing language, it believes more information is needed regarding potential negative effects.

For example, for the Impact of the M4 rifle (p. 7 of Impact Statements, p. 23 of packet), the BPD discusses how the rifle can stop a lethal threat from a greater distance and with more accuracy compared to a pistol, and is intended to increase the safety and welfare of citizens and officers; also, BPD states that abuses of authority or power would result from a violation of policies or law. Missing, however, is any consideration of how mere deployment of the rifle can have a potentially traumatic effect on bystanders.

2. The Subcommittee also recommends that the Impact Statements pertaining to chemical agents and kinetic impact projectiles fully delineate the City's policies on such weapons as well as the restrictions imposed by AB 48. This implicates the Impact Statements for the Penn Arms, Milkor, and FN 303 launchers; and Oleoresin Capsicum Spray (pepper spray), Chlorobenzylidene Malononitrile (CS gas, or tear gas) and OC in canister form.

AB 48 prohibits the use of chemical agents and impact projectiles for crowd control except in under certain conditions and only by peace officers with the requisite training. (Penal Code sec. 13652.) City of Berkeley policy bans the use of tear gas in all circumstances, and bans pepper spray or smoke for crowd control.

An issue that has not been resolved is to what extent the Impact Statements must incorporate the Use Policies, and whether the Use Policies sufficiently include the local and state limitations and prohibitions. BPD points out that applicable Use Policies are incorporated into the Impact Statements by reference in the Appendix. The Subcommittee noted that one of the required elements of the Impact Statements is "A description of each type of Controlled Equipment, the quantity sought, its capabilities, expected life span, **intended uses and effects**, and how it works . . ." (BMC sec. 2.100.020(C)(1) [Emphasis added].) An added complication is that there are policies for specific equipment (such as Policy 303, covering chemical weapons and less-lethal), while other policies such as Policy 300, Use of Force, provide general guidance on use of the equipment and Policy 428, First Amendment Assemblies, contains further guidelines for use in crowd control situations.

II. Annual Use Report

Under BMC section 2.100.050, BPD must submit to the Board an annual report covering the immediately preceding calendar year. The elements are found in BMC section 2.100.050(A)(1). The Board must determine whether each piece of equipment meets the standards for approval in BMC section 2.100.040; essentially, the same standards as for initial approval of equipment. (BMC sec. 2.100.050(B)(1).)

The Subcommittee has no recommendation regarding the Annual Use Report, as it did not have time to review the report. The Subcommittee thought that the full Board might be able to conduct the review, as it is shorter and less complex than the Impact Statements.

The Council is being asked to approve the Annual Use Report on June 14. However, as the requisite 60 days for PAB's review will not expire until June 25, if you do not have time to review and approve this report on June 8, you should request that the Council postpone its consideration until after you have completed your assessment at the June 22 meeting. The City Attorney recommended that the Board be given its opportunity to review before Council considers the Annual Use Report.²

III. Military Equipment Policy (Policy 709)

BPD prepared the Military Equipment Policy to meet the mandates of AB 481. The reporting requirements are similar, but not identical to, the Controlled Equipment Ordinance requirements, and the equipment subject to AB 481 is likewise very similar, but not identical, to that covered by the Ordinance.

There is no requirement that the Board review Policy 709. It seems logical for the Board to do so, however, as Policy 709 contains many of the same elements of the Impact Statements and Use Policies. That said, the Subcommittee did not have time to perform this review, and recommends that the Board refer Policy 709 to a subcommittee (possibly the Lexipol Subcommittee) with a request that it focus first on the rifle policies. Mr. John Lindsay-Poland suggested additions to Policy 349 (Tactical Rifle Operator Program) and Policy 354 (Precision Rifle) that would describe prohibited uses.

If the Board proceeds with a review of Policy 709, it should ask the Council to postpone its consideration on June 14. The Council has 180 days from submission of the proposed policy to approve it. (Gov't Code sec. 7071(a)(2).)

Additional Recommendation

As a final recommendation, the Subcommittee voted to recommend that members of the Police Accountability Board, Berkeley Police Department, and City Attorney's Office meet to discuss the discrepancies in interpreting the requirements of the Ordinance, with the goal of streamlining the process going forward for future reviews.

² May 13, 2022 email from City Attorney Farimah Brown to Vice-Mayor Kate Harrison and others (found in May 31, 2022 agenda packet, p. 39).

Guide to Controlled Equipment Item (page numbers reference June 8, 2022 agenda packet)

DOCUMENT FOR REVIEW	APPLICABLE LAW	PAB ROLE	TIMING	RECOMMENDED ACTION
<p>Impact Statements and Use Policies begin p. 15 p. 79</p>	<p>Police Equipment and Community Safety Ordinance (BMC Ch. 2.100) ("Ordinance"). p. 183</p>	<p>Recommend that Council adopt, modify, or reject the proposed Impact Statements and Use Policies. May approve only if certain criteria met.</p>	<p>Subject to debate. Ordinance says within 90 days of BPD's submission to PAB (sent Feb. 24), but BPD sent to Council before PAB sent recommendation.</p>	<p>- Act on June 8 for submittal to Council for its June 14 meeting. - Reject Impact Statements, as language for many pieces of equipment fails to describe full impacts of the equipment's use. (More details in memo TBD.) - See * below.</p>
<p>Annual Use Report p. 135</p>	<p>Ordinance. p. 183</p>	<p>Determine if each piece of equipment complies with the standards for initial approval.</p>	<p>PAB must agendize by June 25 (60 days from April 26 submission to PAB).</p>	<p>- Act at June 8 or June 22 meeting, and then submit to Council. - (If no action on June 8, ask Council to not act on June 14 and wait for PAB to submit its recommendation.) - Subcommittee proposed full PAB review.</p>
<p>Military Equipment Policy 709 p. 151</p>	<p>AB 481 - adds Gov't Code sections 7070 to 7075, requiring approval of "military equipment" by adopting a military equipment use policy. p. 191</p>	<p>No formal role, but given the similarity of the Ordinance and AB 481, makes sense for PAB to review.</p>	<p>No deadline for PAB. BPD to commence governing body approval process by May 1, 2022, and Council must approve in 180 days.</p>	<p>- Refer Policy 709 to a subcommittee, possibly Lexipol, with request to review the rifle policies first.</p>
<p>(Not for review, but restrictions should be reflected in policies above)</p>	<p>AB 48 - adds Penal Code section 13652, banning use of less-lethal weapons and chemical agents for crowd control except by officers with certain training and in specific circumstances. p.201</p>	<p>No formal role. PAB should, however, ensure that BPD policies conform to state law.</p>	<p>Tied to above.</p>	<p>- * Ensure that Impact Statements pertaining to less-lethals and chemical agents fully delineate the City's policies and AB 48.</p>

To: Berkeley Police Accountability Board

From: John Lindsay-Poland, American Friends Service Committee

June 7, 2022

Re: Controlled Equipment Ordinance Impact Statements – Item 10.b.

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The Interim Director's June 5 memo is a very useful guide to the decisions before about the Controlled Equipment Impact Statement. The below offer further input on these decisions.

1. Use of CS gas and OC canisters (tear gas)

Since Berkeley has banned the use of tear gas, it only makes sense that BPD make a plan to dispose of it, rather than a policy for when to use it.

- Reference: Impact Statement in June 8 packet, pp 25-32; 60
- The proposed Impact Statement would authorize the use of CS gas and OC canisters (p. 30) for "crowd control" and "crowd dispersal".
- The proposed Impact Statement refers to Policy 303 ("Control Devices and Techniques"). Policy 303 explicitly authorized CS gas for "crowd control" and "crowd dispersal" (at 303.6), but recently has been amended to remove this reference. However, the revised 303.6 policy does authorize use of OC spray and Pepper Projectile Systems (which contain chemical agents) for some circumstances, without reference to state law or Berkeley guidelines.
- Neither the Impact Statement nor Policy 303 references the language of AB 48 ([Penal Code § 13652](#)) nor the local Berkeley prohibition on the use of tear gas.
- Policy 300 on Use of Force includes the language of Berkeley's prohibition on the use of "tear gas" by BPD or any "outside department or agency called to respond to mutual aid in Berkeley", enacted in June 2020 by the City Council. (see p. 5 of June 9, 2020 Council minutes) Yet neither the Impact Statement nor Policy 303 reference Berkeley's tear gas ban.

Berkeley's prohibition on the use of tear gas and other chemical agents is a City Council action of June 9, 2020, which reads in the City Council minutes as follows:

Action: M/S/Carried (Davila/Harrison) to establish an official City of Berkeley policy 1) prohibiting the use of tear gas by the Berkeley Police Department, or any outside department or agency called to respond to mutual aid in Berkeley, and 2) prohibiting the use of pepper spray or smoke for crowd control by the Berkeley Police

Department, or any outside department or agency called to respond to mutual aid in Berkeley, during the COVID-19 pandemic, until such time that the City Council removes this prohibition. Vote: All Ayes.

<https://records.cityofberkeley.info/PublicAccess/paFiles/cqFiles/index.html> enter: 6/09/2020
CLK: Minutes; City Council; SPECIAL

According to BPD's military equipment use report, within the last year the Department honored the tear gas ban and did not deploy either OC canisters or CS gas at all.

Proposal on Tear Gas

Impact statement, p. 29: Replace the section on "Use" for CS gas and OC canisters ((1)E), with the statement:

"Tear gas, including CS gas and OC canisters, is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will phase out its possession of CS gas and OC canisters within three months."

2. Use of Impact projectiles and launchers

Proposed and current policy is not in conformance with a new state law governing use of these weapons, AB 48. It should be amended to explicitly state when they are not to be used.

- Penn Arms 40mm Single Launcher (Impact Statement, pp. 8-14, 60)
- Milkor LTL Multi-Launcher (Impact statement, pp. 14-19, 60)
- FN 303 Launcher and FN Pava Impact Projectile (Impact Statement, pp. 19-25, 60)

References: AB 48 ([Penal Code § 13652](#))

AB 48 significant limits the legal authorized use of kinetic impact projectiles – "sponge rounds", "baton rounds", and other "less lethal" impact rounds – for crowd control. Use is only permitted "to defend against a threat to life or serious bodily injury" and only after officers have attempted objectively reasonable de-escalation techniques, given multiple audible warnings of use, given opportunity for dispersal. Officers may not fire indiscriminately into a crowd but must distinguish between those using violence and those who are not. The statute also states that law enforcement shall not use these weapons solely to enforce a directive or curfew or in response to a verbal threat; that prohibition arguably applies regardless of whether there is a crowd.

The Impact Statement's appendix lists links to Lexipol policies for these types of equipment, specifically Policies 300 (Use of Force) and 303 (Control Devices and Techniques). The appendix does not link to Policy 428 (First Amendment Assemblies), but it should for these three types of equipment.

As with chemical agents, although the proposed Impact Statement and Policy 303 don't directly reference crowd control as an authorized use, neither do they incorporate the language of AB 48 or its limitations on the use of less lethal impact munitions. Policy 428 (section 428.4) incorporates some but not all of the same requirements for use of less lethal munitions as AB 48, such as not using force against persons unable to leave the scene, and using force only to address the actions of specific persons. However, it does not incorporate AB 48's other significant limitations on use, and does not use AB 48's specific language. Otherwise, Policy 428 refers officers to Policy 300.

Policy 300, in turn, doesn't reference these types of equipment directly, except to refer (in 300.3.7) to Policy 303. In other words, Policy 303 is the principal policy guide for use of these types of equipment.

Proposal on impact projectiles

The Impact Statement should incorporate the language of Penal Code § 13652, by referencing that language directly. These changes should also be incorporated into Policy 303.

Impact statement: In the impact statement for each of the three types of impact projectile equipment:

Penn Arms 40mm launcher, p. 9

Milkor LTL Multi-Launcher, p. 14

FN 303 Launcher and FN Pava Impact Projectile, p. 19

In the sections on "Use", replace the text or add the following (edited from the statute to remove reference to chemical agents, already governed by Berkeley's prohibition):

Kinetic energy projectiles agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

1. De-escalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
2. Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
3. Persons are given an objectively reasonable opportunity to disperse and leave the scene.
4. An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
5. Kinetic energy projectiles are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
6. Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles on bystanders, medical personnel, journalists, or other unintended targets.

7. An objectively reasonable effort has been made to extract individuals in distress.
8. Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
9. Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
10. Kinetic energy projectiles shall not be used by any law enforcement agency solely due to any of the following:
 - a. A violation of an imposed curfew.
 - b. A verbal threat.
 - c. Noncompliance with a law enforcement directive.

3. Use of assault rifles (patrol and sniper rifles)

The display of assault rifles often has a chilling and fear-inducing effect on community members. In addition, wounds from assault rifle fire frequently have more devastating medical impacts than wounds from handguns. That is why authorized uses and impacts – including from deployments or displays – of rifles should clearly and carefully defined.

References:

Colt M4 (patrol rifle): Impact statement, pp. 3-8

Remington 700 (sniper rifle): Impact statement, pp. 32-35

Current policy for deployment of assault rifles is contained in Policies 349 (patrol rifles) and 354 (sniper rifles), as well as in Policy 300 on Use of Force.

Existing and proposed BPD policies for *deploying* assault rifles are general and as a whole, have much more specificity and clarity on the authorization to *fire* the weapon than for authorization to *deploy* or *display* the weapon. Guidelines for *firing* the weapon are extensively detailed in Policy 300. However, Berkeley's controlled equipment ordinance requires policies for *use* of equipment more broadly than for *use of force*. In addition, Policy 300 makes no distinction at all between rifles and other firearms, in deployment, in pointing the weapon, or in firing it.

Policies 349 and 354 focus most attention on selection of rifle operators and the rifles themselves. Both policies state that that assault and sniper rifles are to "exercise expeditious control over critical incidents or potentially violent situations." (Section 349.2, Policy Manual p. 235; Section 354.2, Policy Manual p. 245) The guidance on authorized use is: "In light of known or potential risks, a [TRO][Precision Rifle Operator] should deploy the firearm which best meets the needs of the police response, and in which he/she has the greatest accuracy and operational confidence." (Section 349.6, Policy Manual p. 236; Section 354.4, Policy Manual p. 246). Both policies state that the rifles "are not intended to be deployed during 'routine' calls for service."

We propose that this policy describe prohibited uses that are not appropriate, as well as considerations to take into account for pre-planned operations (typically by the SRT). For this, there is useful language in the Oakland PD patrol rifle policy and armored vehicles policy.

Proposed language on uses of patrol rifles:

In Impact statement, p. 7 (M4 patrol rifle) and p. 35 (Remington 700 sniper rifle):

- Add the following to the “Impact” sections:

Display of patrol rifles and sniper rifles may result in fear or intimidation of witnesses, especially minors or persons in crisis. In addition, bullets from an assault rifle leave the barrel at three times the velocity that handgun bullets leave the barrel, and if they hit a person often create much larger entry and exit wounds and destroy more body tissue. Because assault rifles are capable of rapid fire, persons hit by assault rifle fire often have more such wounds.

Source: <https://abc11.com/texas-school-shooting-ualde-tx-victims-assault-rifle/11898038/>

- Add the following to the “Uses” sections:

“Commanders shall only authorize the deployment of patrol rifles or sniper rifles when the specific capabilities of the rifles are necessary to bring an incident to a safe conclusion. Any authorized departure of a rifle from its place of storage, excluding movement of the rifles at the start or end of a shift, shall be considered a deployment.

All uses that are not authorized by this policy are prohibited. For purposes of clarity, the following are specifically noted as prohibited uses:

- Recruitment, public relations, or promotional activities
- Crowd control
- Display during routine patrol operations

Pre-planned deployments of patrol rifles and sniper rifles

Commanders shall determine whether to deploy patrol rifles based on credible intelligence, and consider the following variables when determining whether to deploy patrol rifle and sniper rifles:

- Whether the use of an alternative operation location would diminish the need to use a patrol rifle or sniper rifle.
- Whether the subject is beyond the effective range of Departmental pistols or shotguns.
- Whether the subject is known to wear or is suspected of wearing body armor.
- Potential presence of minors, elderly, medically compromised, people with physical, mental or intellectual disabilities, people with limited English proficiency, or other vulnerable people. (Note: This variable should be given special consideration due to the potential for trauma.)

- **Potential presence of uninvolved persons. (Note: This variable should be given special consideration due to the potential for trauma.)**
- **Potential traumatic effect of the presence of assault rifles on neighbors and other bystanders.**
- **Lack of knowledge on relevant characteristics of the operation location and persons present.**
- **Reliability of intelligence source for information on the operation location and persons present.**
- **For night-time operations, potential effects on sleeping or just-awakened persons.**
- **Whether the subject is known to possess or is suspected of possessing a deadly weapon or firearm (including caliber and type)**
- **Potential skills of persons present to use firearms or other weapons, including experience in law enforcement, military, or other armed groups.**
- **Whether the targeted person(s) have a history (within a time period relevant to the suspected crime) involving the criminal use of firearms or other weapons.”**

4. .50 Caliber Barrett rifle

(pp. 54-57 of Impact Statement): Barrett .50 caliber rifles are very large sniper rifles that typically require a tripod or other mounting device. BPD acquired this weapon from the US Department of Justice 15 years ago, and BPD recognizes that it is “infrequently” used. Existing policy 354.4 states that the Barrett rifle “shall only be used for disabling a motor vehicle in extreme circumstances (i.e. confronting an armored vehicle or vehicle intentionally targeting a crowd, this is the only tool in BPD’s possession to potentially disable an engine block), unless exigent circumstances exist.”

Many other departments of BPD’s size and larger do not have this weapon. In May, Supervisor Nate Miley spoke out against the Alameda County Sheriff’s Office possession of this type of weapon. The Berkeley use report says this weapon was not deployed at all in the last year. The staff time required to train on this weapon is not a good use of City resources. BPD should get rid of this weapon from its inventory, as it is not appropriate for civilian law enforcement.

Proposal on .50 caliber Barrett rifle

Impact statement, Barrett rifle, p. 55: Replace the section on “Use” ((1)E), with the statement:

“The Barrett rifle is not authorized for use by the Berkeley Police Department or by any outside department or agency called to respond to mutual aid in Berkeley. Berkeley Police Department will dispose of its Barrett rifle within three months.”

Berkeleyside

CRIME & SAFETY

It took 9 days to arrest suspect in mass shooting plot at Berkeley High. Police explain why

A BHS student who amassed parts to build explosives and assault rifles got them legally, police say, and was not ready to carry out an attack.

By Ally Markovich, June 2, 2022, 7:56 p.m.



A sign posted on a Berkeley High classroom window reads, "Teachers against gun violence." Credit: Ximena Natera

Editor's note: This story was updated on Friday, June 3, to note that the 16-year-old boy accused of planning a mass shooting and bombing at Berkeley High has been charged with three felonies. He's been charged with solicitation of murder, making criminal threats and possessing materials for the purpose of making a destructive device, according to the East Bay Times.

Berkeley was shaken this week by news that a 16-year-old boy had been arrested on suspicion of planning a mass shooting and bombing at Berkeley High School and recruiting other students to join him.

With the community on high alert after recent mass shootings in Uvalde, Texas, and Buffalo, New York, some parents and teachers said they felt unsafe with school being open the following day. Many community members also called for increased security at Saturday's high school graduation, even as officials have offered reassurances that there is no continuing threat.

In an announcement Wednesday, police said they had seized "parts to explosives and assault rifles, several knives, and electronic items that could be used to create additional weapons" from the student's Berkeley home May 22. Eight days later, the student turned himself in, following what BPD called an "arrangement" his attorney had made with police.

In the wake of Wednesday's announcement, many people asked for additional details about the police investigation. Some addressed the Berkeley School Board during its meeting Wednesday night, and others posted inquiries to Berkeleyside on social media and in the comments section.

On Thursday, officials were able to answer some questions. The answers to others remain unknown.

Police believe the teen was planning the attack for "sometime next year," though they worried the recent mass shootings could spur him to act sooner.

Police have not yet shared specifics regarding what type of weapon parts the student is alleged to have acquired, citing the ongoing investigation. But a department spokesperson told Berkeleyside the teenager had acquired them legally and did not have all the parts needed to operate the rifles and explosives.

"Nothing was assembled," said Officer Jessica Perry. "It was just pieces."

According to Perry, the student had also tried to buy a gun at school and had been searching the dark web, a part of the internet that cannot be accessed via search engines and where it can be difficult to track a person's browsing history.

BPD declined to answer questions about whether the items officers seized had been purchased online, how the teen had allegedly obtained them and where the teen was from the time his home was searched until his arrest.

9 days from tip to arrest

The police investigation began May 21, when someone called BPD with an alarming tip: A Berkeley High student was recruiting other students to participate in a school shooting involving explosives. Officers immediately began trying to determine whether the information was credible.

The next day, police searched the boy's home and seized the weapon parts. During the operation, police had Berkeley's Mobile Crisis Team evaluate the teen.

Police: The timeline

May 21 — BPD gets tip via phone

May 22 — Student's house searched, weapon parts seized by patrol officers

May 23 — BPD's Youth Services Unit begins investigation

May 26 — BPD secures arrest warrant, student isn't home

May 30 — Student turns himself in

But he was not arrested until Monday, when he turned himself in. Following Wednesday's announcement, many people have clamored to understand the delay.

Police told Berkeleyside on Thursday that at the time of the May 22 search they did not have enough information to make an arrest.

After the search, which was conducted by patrol team officers over the

weekend, investigators with the Youth Services Unit picked up the case. (Investigators at BPD typically are not on duty over the weekend.)

On May 23, Youth Services detectives began speaking to witnesses, reviewing evidence and conferring with other law enforcement agencies, including the California Highway Patrol.

During that time, police, the Berkeley Unified School District, the family of the teen and his attorney worked together to ensure that the student would be supervised

and that he would not go to the school in the days that followed, according to BPD.

"There's this impression that we left the student out there to do whatever he wanted," said Officer Byron White, BPD spokesperson. "That's not the case."

On Thursday, May 26, investigators secured a warrant from an Alameda County judge to arrest the teen.

Police went to the student's home that day to arrest him, but he wasn't there, Perry said. Detectives were able to make contact with the boy's attorney to ensure there was a plan for his arrest, Perry said.

The teen didn't turn himself in for four days after the warrant had been issued for his arrest.

Both BPD and BUSD have declined to answer questions about where the student was between the time of the May 22 search and the May 30 arrest.

"The family, for the most part, was cooperative," White said.

Police advised BUSD that the teenager did not pose an ongoing threat because officers had confiscated the dangerous weapon parts. This past week, Berkeley Unified kept schools open, telling only a few administrators about the investigation.

According to BPD, no other students were determined to have posed a threat to campus, and no other arrests have been made in connection with the case.

The teenager was taken to Juvenile Hall in San Leandro, where he remains in custody. He was charged with three felonies during a Thursday afternoon hearing in juvenile court and will next appear in court on Monday, according to Assistant District Attorney Matthew Golde. The East Bay Times reported that the teen was charged with solicitation of murder, making criminal threats and possessing materials for the purpose of making a destructive device.

The school district has said it is conducting its own investigation into the situation to determine whether there should be disciplinary action.

How BUSD prepares for active intruders

Superintendent Brent Stephens said the incident was an example of an effective intervention that stopped a potential mass shooting from progressing further.

“Informants came, police took quick action,” Stephens said. “What appears to have been a potential plan to inflict harm here on the campus has been averted.”

Still, in the wake of another national reckoning over mass shootings, Berkeley Unified has faced heightened scrutiny of its emergency preparedness. This threat — in addition to an incident on Friday when a 17-year-old boy was shot in the arm at Civic Center Park, just outside of the high school, and a campus-wide lockdown at UC Berkeley in April after a student threatened to shoot staff members — only added to the community’s concern.

Stephens sent a letter to the community Thursday detailing the safety measures it will take for this weekend’s graduation, as well as some of the school district’s plans in case of an active shooter emergency.

There will be 12 police officers and other BHS security officers at the graduation ceremony, he said, the same police presence that’s been planned for months.

In general, the district said it conducts active intruder drills and uses ALICE protocols to prepare students and staff for moments of crisis.

During a Nov. 3 active intruder drill that Stephens details in the letter, students and staff watched a video of what to do in case of a shooting and then practiced locking the classroom door, creating a barricade, covering the windows, and hiding away from windows and doors.

In 2018, after a shooting left 17 dead at a high school in Parkland, Florida, Berkeley Unified began installing Columbine locks, which can secure doors from the inside, in all classrooms.

BUSD also initiated a host of other school safety upgrades, including making school perimeters more secure, adding alarm and public address systems and installing security cameras, security lighting and

window coverings. Stephens said these upgrades have been completed.

School security upgrades can help keep students safe in the event of an emergency, but the most important thing a school district can do to prevent mass shootings is develop a threat assessment system, according to 2020 and 2018 reports by the FBI and Department of Homeland Security. The system is geared toward identifying warning signs of violent behavior and intervening early, before an individual gets their hands on a weapon.

To be effective, schools need systematic ways of finding and collecting information about threats of violence, according to a report by the nonprofit Everytown for Gun Safety. This can include an anonymous tip line or social media monitoring software, and students should be trained to look out for and report warning signs.

A risk assessment team should be able to determine if a student has access to guns. Counselors also play a key role, providing information — they may be the first to see warning signs — and intervention.

At Berkeley High, there is a crisis response team and a safety multi-disciplinary team made up of police officers, counselors and school leaders that would kick into action in the case of a crisis.

The team’s responsibilities are outlined in the school’s 2021-22 Safety Plan and include a plan for caring for students after an emergency. There’s no section in the plan on identifying the warning signs of violence and intervening.

Stephens said it was “standard practice” for school psychologists to perform risk assessments for students and that the district can compel students who exhibit warning signs to participate in one.

Since January, BUSD has been working with Rockeye Consulting — a firm that offers a range of services from COVID testing to emergency response training — to identify safety vulnerabilities on campus and update its safety plans. The firm will also conduct emergency response training for staff.

During a budget discussion Wednesday night, Stephens also recommended that the district hire a full-time safety coordinator next school year.

Berkeleyside also reviewed BPD's policy for active shooters and interviewed Officer Brian Hartley, the force's firearms instructor, about BPD's protocols in the case of an active shooter.

If someone is harming others, according to BPD policy, the first officers at the scene "shall take immediate action, if reasonably possible, while requesting additional assistance." Officers are urged to use their judgment if there is imminent danger but no physical violence to decide whether to intervene immediately or wait for other officers to arrive.

Other officers would include the BPD's Special Response Team — their version of a SWAT team.

In the case of an active shooter, Hartley said police would only wait for other officers "if this individual has

maybe barricaded the doors with something that would require special tools to open, or something unusual like that." In other words, only in rare cases would BPD officers not try to stop an active shooter immediately.

Hartley said it had been four years since police received specific active shooter training or conducted drills in the community, though he said many of the skills they do train for transfer to emergency situations like these.

Emilie Raguso, senior editor of news, contributed to this report.

Ally Markovich covers education for Berkeleyside.

Email: ally@berkeleyside.org. Twitter: [allymarkovich](https://twitter.com/allymarkovich).