



Congress and Police Reform: Recent Proposals

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In May and June 2020, [protests erupted nationwide](#) after the publication of video footage of a Minneapolis police officer pressing his knee into the neck of George Floyd, causing his death. That incident and [others like it](#) sparked [heightened interest](#) in Congress's ability to implement reforms of state and local law enforcement. More recently, the January 2023 death of [Tyre Nichols](#) after a beating by Memphis police officers prompted [renewed calls](#) for [law enforcement reform](#). [A companion to this Legal Sidebar](#) provides an overview of existing federal authorities intended to prevent and redress constitutional violations by state and local public safety officials. This Sidebar presents selected recent proposals related to federal regulation of federal, state, and local law enforcement, including an overview of two comprehensive law enforcement reform bills from the 117th Congress, the [George Floyd Justice in Policing Act of 2021](#) and the [Just and Unifying Solutions To Invigorate Communities Everywhere Act of 2021](#) (JUSTICE Act).

Proposals for Law Enforcement Reform in Congress

Before the high-profile events of May and June 2020, commentators and legislators had suggested various avenues for congressional reform and oversight of federal, state, and local law enforcement. Events since May 2020 have prompted additional proposals, including bills that would target specific issues and comprehensive proposals that would alter federal regulation of law enforcement on many fronts.

Qualified Immunity

One topic that has generated significant debate in recent years is the doctrine of [qualified immunity](#), which limits the liability of federal law enforcement officers in suits under [Bivens v. Six Unknown Federal Narcotics Agents](#) and state and local law enforcement officers in suits under [42 U.S.C. § 1983](#) (Section 1983). A May 2020 report by Reuters found that “since 2005, the [federal appellate] courts have shown an [increasing tendency to grant immunity](#) in excessive force cases.” Critics of qualified immunity assert that the flexibility the Supreme Court provided to courts in [Pearson v. Callahan](#) improperly hinders Section 1983 claims. That decision allows courts in some cases to consider only whether a defendant violated clearly established law, without reaching the question of whether the defendant violated the plaintiff's rights. Critics therefore assert that not only is it [difficult for plaintiffs to overcome a claim of qualified immunity](#), but such cases will also not clearly establish law that could govern future Section 1983 cases. Some commentators assert that the current doctrine of qualified immunity [fails to protect law enforcement](#)

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officers from suit. Others [defend the doctrine](#) or [favor limited judicial reforms](#), seeking to preserve police officers' ability to make split-second decisions about the use of force, for example, while requiring courts to take seriously the constitutional questions that plaintiffs raise.

Qualified immunity arises from the Supreme Court's interpretation of Section 1983. Thus, either the Court or Congress could modify the doctrine, and some legal scholars have called on [both branches](#) to address the issue. The Court has considered [multiple petitions for certiorari](#) raising challenges to qualified immunity, and [Justice Thomas](#) and [Justice Sotomayor](#) have both expressed concerns about the doctrine.

On the legislative side, the [Ending Qualified Immunity Act](#), introduced in June 2020 and [reintroduced](#) during the [117th Congress](#), would have "remove[d] the defense of qualified immunity." Another proposal from the 116th Congress that sought to remove barriers to Section 1983 liability was the [Reforming Qualified Immunity Act](#), which would have changed the burden of proof in Section 1983 cases in plaintiffs' favor and would have made it easier to establish liability against municipalities and local governments. A proposal from the 117th Congress entitled the [Constitutional Accountability Act](#) would have rendered federal, state, and local governments civilly liable for constitutional violations by law enforcement officers in their employment, "without regard to whether such employee or contractor would be immune from liability, and without regard to whether the employee or contractor was acting pursuant to a policy or custom" of the employer. The [Accountability for Federal Law Enforcement Act](#) would have imposed similar liability on the federal government only.

In contrast to proposals that would limit qualified immunity, other recent legislation sought to maintain or expand the doctrine. The [Qualified Immunity Act of 2021](#) would have amended Section 1983 "to codify the defense of qualified immunity." The [Local Law Enforcement Protection Act of 2021](#) would have required states that receive certain federal funds to have in place laws that "provide robust qualified immunity to law enforcement officers."

Criminal Liability

While changes to the doctrine of qualified immunity could alter *civil* liability for law enforcement officers, other recent proposals aimed to expand [criminal liability for civil rights violations](#) by officers under [18 U.S.C. § 241](#) (Section 241) and [18 U.S.C. § 242](#) (Section 242). For example, the [Eric Garner Excessive Use of Force Prevention Act of 2021](#) would have amended Section 242 to provide explicitly that "the application of any pressure to the throat or windpipe which may prevent or hinder breathing or reduce intake of air is a punishment" that may not be imposed on a racially disparate basis. The [Police Accountability Act of 2020](#), introduced during the 116th Congress, would have provided a federal criminal penalty for assault or homicide committed by certain state or local law enforcement officers. Some commentators also advocate [removing the specific intent requirement](#) for Sections 241 and 242 that the Supreme Court announced in [Screws v. United States](#) and [United States v. Guest](#).

Limitations on Transfer of Military-Grade Equipment

Under a federal program known as the [1033 Program](#), the federal government transfers certain excess military equipment to state and local law enforcement agencies. Some commentators contend that this equipment [contributes to militarization](#) of police forces without increasing public safety and [increases the risk of incidents of excessive force](#). The 1033 Program is [authorized by statute](#), so Congress has the power to alter or discontinue the program. In 2021, Congress enacted the [William M. \(Mac\) Thornberry National Defense Authorization Act for Fiscal Year 2021](#) which, among other things, prohibited transfer through the 1033 Program of bayonets, grenades, weaponized tracked combat vehicles, and weaponized drones. In February 2022, some Members of Congress [urged President Biden](#) to limit the program further. President Biden's [May 2022 executive order](#) related to law enforcement reform directed relevant federal agencies to limit certain transfers under the 1033 Program to the extent authorized by law. One proposal

introduced in the 116th and 117th Congresses, the [Stop Militarizing Law Enforcement Act](#), would have imposed statutory limitations and reporting requirements on the 1033 Program.

Grants and Conditions on Federal Funds

Numerous recent proposals would have invoked the [Spending Clause](#) in an effort to regulate state and local law enforcement activities. Some proposals would have funded voluntary state and local measures, such as [use-of-force and bias awareness training](#) or [body cameras](#). Other proposals would have required states to enact certain policies in exchange for federal grants. For instance, the [Police Training and Independent Review Act of 2021](#) would have funded training on cultural diversity and de-escalation tactics while requiring participating states to “enact laws requiring the independent investigation and prosecution of the use of deadly force by law enforcement officers.” The [Preventing Tragedies Between Police and Communities Act of 2021](#) would have obliged recipients of funds under the [Edward Byrne Memorial Justice Assistance Grant \(Byrne JAG\) Program](#) to mandate training on ways to reduce the use of force. The [Police Exercising Absolute Care With Everyone Act of 2022](#) (PEACE Act) would have required Byrne JAG grantees to enact laws limiting the use of lethal and less-than-lethal force by law enforcement. The [Next Step Act of 2019](#) would have, among other things, directed Byrne JAG grant recipients to submit reports to the Attorney General on officers’ use of force.

Comprehensive Reform Efforts

On June 8, 2020, Members of the 116th Congress, led by the Congressional Black Caucus, presented the Justice in Policing Act of 2020. Later renamed the [George Floyd Justice in Policing Act](#), the bill passed the House in 2020 and 2021. On June 17, 2020, Senate Republicans unveiled the [JUSTICE Act of 2020](#). Both proposals sought to reform multiple facets of federal, state, and local law enforcement, and each of them included some proposals discussed above that had also been introduced separately. An [earlier Legal Sidebar](#) compared 2020 versions of the two proposals in detail. Both bills were reintroduced with limited changes in 2021 during the 117th Congress. This section summarizes key provisions of the two 2021 bills.

George Floyd Justice in Policing Act of 2021

The [Justice in Policing Act](#) as passed by the House in the 117th Congress included the following provisions:

- [Section 101](#) of the bill would have amended Section 242 to change the mental state required for conviction from “willfully” to “knowingly or recklessly.” It would also have removed the possibility of a death sentence for violating Section 242.
- [Section 102](#) would have limited qualified immunity for state and local law enforcement officers in suits under Section 1983 and for federal law enforcement officers “in any action under any source of law,” providing that it is not a defense to liability if an officer believed in good faith that his or her conduct was lawful or that the rights the officer allegedly infringed were not clearly established.
- [Sections 103 and 104](#) sought to enhance investigations into incidents involving law enforcement uses of force or a pattern or practice of law enforcement misconduct by, among things, granting subpoena power to the Department of Justice (DOJ) under 34 U.S.C. § 12601 and authorizing state attorneys general to bring suit based on violations of that provision.
- Multiple provisions of the Act sought to facilitate federal data collection related to police reform. For instance, [Section 118](#) and [Title II, Subtitle B](#), of the Act would have required

federal funding recipients to report incidents involving uses of force by law enforcement, and [Section 201](#) would have created a federal law enforcement misconduct registry.

- [Section 362](#) would have banned no-knock warrants in drug cases at the federal level. The section would also have conditioned certain federal funding upon states and localities prohibiting the use of no-knock warrants in similar drug cases.
- [Section 363](#) would have required states and municipalities that receive certain federal funding to enact laws banning the use of chokeholds by law enforcement officers.
- [Section 364](#), the PEACE Act, would have allowed federal law enforcement officers to use deadly force only as a last resort to prevent imminent death or serious bodily injury when certain conditions are met and imposed limits on the use of “less lethal” force. This provision would also have conditioned federal grants on state and local law enforcement agencies’ establishing the same use-of-force standard.
- [Section 365](#), the Stop Militarizing Law Enforcement Act, would have limited the transfer of certain military-grade equipment to state and local law enforcement.
- [Title III, Subtitle A](#) of the Act sought to prevent and remedy racial profiling by law enforcement, including by authorizing civil suits by DOJ and affected individuals. The title would have established various programs and policies to help eliminate racial profiling, such as by funding training programs for state and local police.
- [Title III, Subtitle C](#) would have required certain federal law enforcement officers to use body cameras and funded expanded use of body cameras by state and local officers.
- [Title VI](#), the Closing the Law Enforcement Consent Loophole Act of 2021, would have imposed criminal liability when a person “acting under color of law, knowingly engages in a sexual act” with a person in federal custody and would have authorized grants to states, municipalities, and Indian tribes that enact similar laws.

JUSTICE Act of 2021

The version of the JUSTICE Act [introduced in the House in the 117th Congress](#) included the following provisions:

- [Section 101](#) of the bill, the George Floyd and Walter Scott Notification Act, and [Section 102](#), the Breonna Taylor Notification Act, would respectively have required recipients of certain federal funding to report to the federal government information related to incidents involving law enforcement uses of force and no-knock warrants.
 - [Section 105](#) would have required recipients of certain federal funding to develop law enforcement agency policies “prohibit[ing] the use of chokeholds except when deadly force is authorized.” This section would also have required the Attorney General to develop such a policy at the federal level.
 - [Section 106](#) would have created a new criminal offense of “knowingly and willfully falsify[ing] a report ... in furtherance of the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States where death or serious bodily injury ... occurs.” The penalty for violating this provision would have been a fine and/or imprisonment for up to 20 years.
 - [Title II](#) of the bill would have provided grants to covered government agencies to support the use of body-worn cameras by law enforcement officers.
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- **Title III** would have required law enforcement agencies that receive certain federal funding to retain various disciplinary records and to search the records of prior employers before hiring a law enforcement officer.
- **Title IV**, the Justice for Victims of Lynching Act, would have created a new criminal prohibition on lynching, defined as conspiracy to violate certain federal hate crime laws.
- **Title V** would have directed the Attorney General to develop training on alternatives to use of force, de-escalation tactics, responding to behavioral health crises, and duty to intervene when another officer uses excessive force.
- **Titles VI and VIII** would have established a temporary National Criminal Justice Commission and required the commission to create best practices and conduct certain studies related to law enforcement oversight.
- **Title VII** would have provided for development of an educational curriculum for law enforcement personnel or candidates on the history of racism in the United States.
- **Title IX**, the Closing the Law Enforcement Consent Loophole Act, would have imposed criminal liability for sexual acts with persons in federal custody as discussed above.

Author Information

Joanna R. Lampe
Legislative Attorney

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