

Summary: H.R. 7120: Justice in Policing Act (116th Congress, 2020)

Sponsors: Representatives Karen Bass (D-CA) and Jerrold Nadler (D-NY); Senators Cory Booker (D-NJ) and Kamala Harris (D-CA)

The Leadership Conference's Position on Justice in Policing Act: The Leadership Conference supports Congress taking the first step – and an important step – toward police accountability by introducing the Justice in Policing Act. We believe this bill reflects many of the proposals outlined in our police accountability framework. It addresses the need to redefine police misconduct, establish a national use of force standard, strengthen DOJ's ability to prosecute misconduct by law enforcement officers, and end insidious practices like racial profiling. The coalition continues to work with Congress to improve the statutory language in an effort to ensure robust and strong measures of police accountability.

What the Bill Will Do: The bill would provide a first step toward the comprehensive accountability measures that we believe are necessary to fully address systemic constitutional violations by law enforcement officers.

Reforms that Reflect Our Priorities:

1. **Creation of a National Use of Force Standard.** The bill will change the use of force standard for federal officers from reasonableness to unless necessary, as a last resort, to prevent serious death or bodily injury, and reasonable alternatives such as de-escalation have been exhausted. Under this standard, use of less lethal force must also be proportional, and in the case of deadly force, deemed to not create a substantial risk of injury to a third person. Additionally, federal officers will be required to identify themselves as federal officers and give a verbal warning of their intent to use force. The justification defense will also be limited in cases where an officer's gross negligence leading up to and at the time of force creates a need for such force. Finally, the bill conditions Byrne JAG grants to states unless a state enacts a use of force law consistent with the standards in this section. (§334).
2. **Banning Chokeholds.** Chokeholds and carotid holds will be banned at the federal level and states' continued eligibility for Byrne or COPS grants conditioned on adoption of comparable bans. The use of a chokehold will also be deemed a federal civil rights violation (§363).
3. **Banning Profiling.** The bill prohibits racial, religious, and discriminatory profiling by federal law enforcement agencies and mandates training on bias and racial profiling issues. It conditions federal funding for state and local agencies on adoption of profiling bans and training programs, and directs that existing federal funds be used for the establishment of best practices in this area. The bill also requires the Attorney General to report on efforts to combat profiling and the efficacy of those practices (§§311-312; §341; §361).

4. **Establishment of a Police Misconduct Registry.** A national registry of all federal, state, and local law enforcement officials will be created, containing information on misconduct complaints, discipline and termination records, and records of certification. Law enforcement agencies will be required to submit the requisite data on use of force and racial profiling to the Attorney General and must attest that all officers are certified in their state in order to remain eligible for Byrne grant funds (§§201-202). This registry must be fully and publicly accessible to the public.
5. **Making it Easier to Prosecute Law Enforcement Officers for Misconduct.** The bill will lower the mens rea standard in 18 U.S.C. § 242 from “willful” to “knowingly or with reckless disregard.” It will also broaden the language of the federal civil rights statute by including in its definition of a “death resulting” from an officer’s actions any act that was a “substantial factor contributing to death.” (§101).
6. **Prohibiting No-Knock Warrants for Drug Offenses.** No-knock warrants will be prohibited for drug cases and COPS grant funding will be contingent upon states having equivalent prohibitions. (§362).
7. **End Qualified Immunity.** The bill ends qualified immunity for local law enforcement officers but does not eliminate the doctrine entirely. This provision, as currently drafted, remains problematic for organizations in our coalition because it would codify a judicially invented doctrine that does not exist in the statute and allows other local officials as well as all state and federal officials, acting under the color of law, to deprive people of their civil rights without accountability. (§102).
8. **End the Transfer of Certain Military Equipment.** The bill limits the transfer of certain military equipment – such as controlled firearms, grenades (including stun and flash-bang), explosives, armored or weaponized drones, certain military-style vehicles, and controlled aircraft – to state and local law enforcement agencies under the 1033 program. It does not end the 1033 program, however, as it allows for waivers for transfers for disaster relief or other purposes where states demonstrate that life and public safety are demonstrated to be at risk. (§365).

Additional Provisions:

1. **Accreditation of Law Enforcement Agencies.** The Attorney General will be required to analyze existing accreditation standards for all levels of law enforcement nationwide. Following review, the Attorney General will recommend the adoption of additional standards, including those relating to intervention programs, use of force procedures, and data collection and transparency. The bill requires that agencies use existing federal funds to maintain accreditation. (§113).
2. **Creating a Duty to Intervene.** The bill creates a duty for federal law enforcement officers to intervene in instances where they witness a fellow officer using excessive force. (§361).

3. **Strengthening and Expanding Pattern or Practice Investigations.** DOJ's Civil Rights Division will be granted subpoena power in federal pattern or practice investigations and state Attorneys General will have the authority to pursue state-level pattern or practice investigations in light of the current administration's abdication of its responsibilities in this area. The bill establishes a grant program authorizing \$100 million per year for fiscal years 2020 to 2022 to conduct state level investigations. (§103).
4. **Additional Funding for Civil Rights Enforcement & Conflict Resolution.** The bill authorizes \$25 million in additional funding to DOJ's Civil Rights Division for the enforcement of civil rights statutes and managing compliance with consent decrees. It also provides an additional \$3.3 million to DOJ's Community Relations Office for conflict resolution activities. (§116).
5. **Creating Additional Accountability Measures for Investigations.** The bill also includes provisions to improve the promptness, thoroughness, and objectivity of investigations into police misconduct, including:
 - Authorizing a grant program for state Attorneys General to create independent investigations processes for use of force and other misconduct incidents (§104); no restrictions on how investigations are conducted or who they have MOUs with
 - Requiring the Attorney General to conduct a study on barriers to full and timely investigations under current practices (§115); and
 - Establishing a National Task Force on Law Enforcement Oversight comprised of individuals from various offices at DOJ. The Task Force will consult with professional law enforcement associations, labor organizations, and community-based organizations on strategies for detecting and referring police misconduct complaints (§117).
 - **Data Collection on Use of Force.** The bill includes a requirement for states to report use of force incidents to DOJ, including the reason force was used and the national origin, sex, race, ethnicity, disability, English language proficiency, and housing status of individuals upon whom it was used. Technical assistance grants are established to assist agencies with fewer than 100 employees with compliance. (§§224-227). It also requires the Attorney General to collect data on traffic stops, searches, and uses of deadly force by federal, state, and local law enforcement agencies, and to disaggregate that data by race, ethnicity, and gender. (§118).

We have concerns around the amount, scope, and necessity of the new funding streams created in this bill and would in fact prefer that many of these practices are encouraged through existing grant funding to states.

6. **Body Camera Requirements & Standards.** Federal uniformed police officers will be required to wear body cameras and have dashboard cameras be operational on marked vehicles. When entering a private residence without a warrant or interacting with

apparent crime victims, officers shall ask if the individual wishes the recording be discontinued, and any individual who is the subject of video footage will have the opportunity to review such footage. State and local law enforcement agencies will be required to devote existing federal funds to pursuing the use of body cameras and the Government Accountability Office will be commissioned to conduct a study on federal officer training, vehicle pursuits, and use of force. The use of facial recognition technology is prohibited under this bill. (§§372-377; §382).

7. **Grants to Create Local Commissions and Task Forces on Policing Innovation.** The bill provides for grants to community-based organizations for the purpose of creating task forces similar to the 21st Century Policing Task Force on the local level in communities. The task forces will develop best practice and programs to improve community relations and accountability. **We believe this provision should be stricken.** (§366).
8. **Emmett Till Antilynching Act.** The inclusion of this act into the larger bill creates a new civil rights violation for lynching by making it a federal crime to conspire to violate existing hate crimes laws. (§403).

Problematic Pieces:

1. **Does Not End Qualified Immunity.** The Leadership Conference has pushed for language ending qualified immunity across the board rather than for just law enforcement officials. We would also like to see the inclusion of a retroactivity provision. The current bill text would, in effect, codify the judge-made qualified immunity doctrine despite pending Supreme Court litigation in which coalition members are arguing that the judicially created doctrine should be wholly eliminated. Furthermore, it takes the stance that Congress approves of certain groups to be held accountable for depriving people of their civil rights, but not others. This is not how the Constitution is meant to work.
2. **Does Not Prevent Quick-Knock Raids for Drug Cases.** While the bill takes a good first step in prohibiting the use of no-knock warrants in drug cases, its provisions do not go far enough. Quick-knock raids are just as deadly and must also be prohibited for drug cases. Further, these prohibitions should be tied to Byrne JAG, in addition to COPS, funding.
3. **Does Not End the Transfer of Military Equipment to State and Local LEA's.** While the bill takes a good first step in limiting the transfer of certain military equipment through the 1033 program, the bill does not eliminate the program entirely. The increased transfer of equipment through the 1033 program has been shown to increase the number of police killings in communities and must be eliminated.
4. **Does Not Eliminate School-Based Law Enforcement.** Provisions in the bill allowing for grant funds to develop uniform standards on school safety raise coalition concerns about reinforcing the role law enforcement in schools through the use of school resource officers, however changes made in the manager's amendment reflect the need to

eliminate school based arrests and use positive behavioral interventions and supports. The coalition has previously taken the position in its *Civil Rights Principles for Safe, Healthy, and Inclusive School Climates* that school-based law enforcement should be eliminated. (§114).

5. **Need to Strengthen Misconduct Registry:** The bill currently contains language that would restrict public disclosure in accordance with the Privacy Act. This language must be removed and use of force reporting must be changed to cover federal officers. A provision must also be included to require DOJ to issue regulations consistent with §§201-202 of this Title.
6. **Emmett Till Antilynching Act.** The Emmett Till Antilynching Act already passed the House, and its inclusion here makes it a target and will harm its chances of becoming law. It should be removed so it can be passed on its own. While we know it was not the intent of the drafters nor any organizations that supported the legislation when it passed the House, the bill includes language that should be amended to make clear that the death penalty is not implicated by a violation of this section.

Missing Provisions:

1. **Does Not Address Grand Jury Reform or Cooling-Off Periods:** Bills on both of these issues have been proposed this Congress, which, if adopted, would provide additional layers of accountability and transparency for law enforcement officers — especially those involved in deadly shootings or lethal use of force. The Grand Jury Reform Act would condition receipt of Byrne grants on states' compliance with requirements following incidents where a police officer's use of lethal force results in death. The Cooling-Off Period Elimination Act would make state and local law enforcement agencies ineligible for federal funding if they have a cooling off period. Neither of these reforms are included in this legislation, however.
2. **Bivens Fix:** The bill does not provide a statutory cause of action for constitutional violations by federal officers. There is no statute allowing individuals to sue federal officers who violate their constitutional rights. The Supreme Court's Bivens doctrine initially allowed individuals to bring some claims, but in recent years, the Court has all but eliminated the doctrine. The bill should address that gap, creating a cause of action to enforce the Constitution against federal officers so that federal, state, and local officers are all equally accountable. Instead, the bill simply removes qualified immunity for federal law enforcement officers in the context the Court currently recognizes.
3. **Racial Profiling Prohibition Enforcement:** The bill lacks strong enforcement mechanisms for the prohibitions on profiling and should make data collection and publication more robust. The legal justifications for investigatory activities should be included in reported data and reporting timelines should be specified, limits on the publication of data should be removed, and the demonstration project should be eliminated. Additionally, prevailing parties language should be included for enforcement of the prohibition, federal officers should be required to inform individuals of their rights

before a search, and an enforcement mechanism for federal law enforcement agencies should be included.

In Sum:

- The bill includes a number of provisions directly responsive to the priorities we outlined for Congress as it worked to introduce and pass meaningful police reform. The current language establishes a national standard for use of force, prohibits chokeholds, bars racial profiling, and makes changes to allow prosecutors to more successfully hold law enforcement officers accountable for deprivations of civil rights and civil liberties. It also creates a set of data collection and sharing measures that will increase the transparency and accountability of police departments.
- While the bill is not perfect, these steps and others represent an important first step toward comprehensive policing reform. As has been recognized throughout this process, more action will be necessary, but it is imperative that Congress begin addressing these pressing issues as it has done here.
- As this legislation advances toward passage, we will continue to press for provisions expanding the prohibition on no-knock warrants, eliminating qualified immunity, and ensuring that individuals and communities are able to effectively demand accountability from federal, state, and local law enforcement agencies.