

Summary: S. ___ : Just and Unifying Solutions to Invigorate Communities Everywhere (JUSTICE) Act (116th Congress, 2020)

Sponsors: Sen. Tim Scott (R-SC)

The Leadership Conference's Position on Justice in Policing Act: The Leadership Conference has consistently made clear that bold, comprehensive police reform is necessary in this moment. This bill fails to deliver that. It does nothing to adequately address systemic racism, nor does it provide for the meaningful accountability reflected in the framework The Leadership Conference sent to Congress. While we appreciate Senator Scott's efforts, we must continue to push for strong prohibitions on racial profiling, chokeholds, and no-knock warrants, increased federal standards for use of force, and reforms that will make concrete improvements to our ability to hold law enforcement officers accountable.

What the Bill Will Do:

1. **Create Weak Reporting Requirements for Uses of Force.** The Justice Act incentivizes state, local, and tribal - but not federal - law enforcement agencies to provide annual reports on use of force events that involve fatalities, serious bodily injuries, or discharge of firearms to the FBI's National Use of Force Data Collection. It conditions Byrne JAG grants on such reporting, and requires only that the FBI make this data public on an annual basis. The data reported must comply with Privacy Act requirements. (§§101, 104).
2. **Incentivize Reporting on the Use of No-Knock Warrants.** The bill conditions Byrne JAG grant funds on state and local governments' submission of annual reports – subject to Privacy Act requirements - about their use of no-knock warrants relating only to closed investigations. It requires the Attorney General to publish an annual report on no-knocks carried out by federal, state, and local agencies that must include the reason for the warrant, demographic data on the persons found, and local crime rate data. The provision does not ban the use of no-knock warrants in any circumstances, nor does it address the issue of equally dangerous quick-knock raids. (§§102, 104).
3. **Incentivize Limiting the Use of Chokeholds.** Unlike the Justice in Policing Act and The Leadership Conference framework, the Justice Act does not ban chokeholds or other carotid restraints. Instead, it merely conditions COPS and Byrne JAG eligibility on state and local law enforcement agencies having policies that only permit chokeholds in cases where deadly force is authorized. (§105).
4. **Provides Federal Funds for Adoption of Body Camera Technology.** The bill authorizes \$100 million in funding to state, local, and tribal agencies over the next five years for the purchase of body cameras and training to support their use. It does not include any restrictions on the use of facial recognition or biometric technology, nor does it have strong requirements for public viewing and disclosure of recorded footage. (§§201-202).

5. **Provides Limited Access to Disciplinary Records.** Under this legislation, state and local agencies would be required to retain and share only certain disciplinary records that have resulted in adverse actions or criminal charges after adjudication by a court or government agency. Federal agencies are not subject to the requirements of this provision, and there is no national repository for the retained data. All federal, state, and local LEAs must review such records in full before making hiring decisions, but there will be no public access to this data. (§301).
6. **Commissions Studies on Social Conditions, Criminal Justice System, Use of Force Review Boards, Mental Health, & Grant Accountability.** Within the United States Commission on Civil Rights, the bill would establish a commission on the Social Status of Black Men and Boys to study the conditions including homicide, arrest, and incarceration rates; poverty; drug abuse; and wealth, education, and health disparities. (§§501-508). It would also establish a commission on the criminal justice system, tasked with providing the President and Congress with recommendations for federal reforms. (§§701-709). In addition to these commissions, the Justice Act would mandate studies be conducted on state and local use of force review boards (§901), officer-involved responses to mental health (§903), and methods for improving accountability of federal grantees (§904).
7. **Authorizes Grants for Training on Use of Force, Duty to Intervene, Diversity in Recruiting.** Under the Justice Act, LEAs would be able to use COPS grants to fund training on alternatives to use of force, de-escalation, and officer-based responses to behavioral crises, and the Attorney General would be required to certify public and private entities offering such training. (§601). Agencies with “substantially different racial and ethnic demographic makeups” from the communities they serve could also use COPS funds to increase diversity by hiring recruiters. (§801). Finally, a new grant program would be authorized to train officers on the duty to intervene. (§602).
8. **Reauthorizes Byrne JAG and COPS Programs for 5 Years.** Rather than making investments in programs to reduce the footprint of law enforcement in society, the bill would reauthorize the COPS program and the Byrne JAG program for five years at annual amounts of \$400 million and \$800 million, respectively. (§802).
9. **Prohibits Sexual Acts by Individuals Acting Under Color of Law.** The Justice Act clarifies that it is a crime under federal law for a law enforcement officer to engage in a sexual act with an arrested or detained individual, and incentivizes similar provisions at the state level by tying adoption to additional grant funds.

Problematic Pieces:

1. **Authorizes an additional \$7.6 Billion in Funding to Law Enforcement Agencies Over the Next Five Years.** Contrary to calls from The Leadership Conference, other advocates, and the public, this bill would increase funding to law enforcement agencies

by creating new grant programs and reauthorizing problematic existing programs. It makes no effort to reallocate police funding to other areas, like education, and it continues to provide funding for law enforcement-involved responses to situations like mental health crises where other non-legal interventions would be more appropriate.

2. **Does Not Ban Chokeholds and Similar Maneuvers.** The Justice Act does little to end the use of chokeholds, carotid holds, or other similarly deadly maneuvers. Unlike the Justice in Policing Act, it does not ban their use, but rather recognizes their dangers by allowing them in situations where deadly force is authorized.
3. **Does Not Prohibit No-Knock or Quick-Knock Warrants.** The bill also does not sufficiently address the dangers created by no-knock warrants. Its reporting requirements are not comprehensive, and impose no requirement that federal, state, or local agencies end the practice of no-knock warrants in any cases, including drug cases. Further, the bill does not address the issues of quick-knock warrants, which are just as deadly, nor does it tie even its weak provisions to COPS funding.
4. **Does Not Provide for a Robust and Accessible Misconduct Registry.** While the bill includes provisions requiring state and local law enforcement agencies to share and review officers' disciplinary records, these provisions do nothing to actually prevent the continued employment of problematic officers. There is no requirement that LEAs actually take disciplinary records into consideration in their hiring criteria, records are not available to the public, and only records of disciplinary actions that have been adjudicated by a government agency or court and have resulted in an adverse action against the officer are to be included. This is a far stretch from the misconduct registry described in The Leadership Conference framework. (§301).
5. **Does Not Ban the Use of Facial Recognition Technology on Body Cameras.** The Justice Act provides funding for the adoption of body cameras and their use, but it lacks any prohibition on the use of facial recognition or other biometric technology. A definition of what constitutes facial recognition is necessary, as is a prohibition on its use. (§§201-202).
6. **Justice for Victims of Lynching Act.** The Justice for Victims of Lynching Act already passed the Senate and its inclusion here makes it a target that will harm its chances of becoming law. It should be removed so that it can be passed on its own.

Missing Provisions:

1. **Does Not End Qualified Immunity.** The Leadership Conference has pushed to end qualified immunity across the board in order to hold officers involved in misconduct accountable. The Justice Act does not include any provisions to curtail or eliminate qualified immunity, and therefore continues to allow law enforcement and other state and local officials to deprive people of their civil rights with impunity.

2. **Does Not Establish a National Use of Force Standard.** The bill does little to address systemic uses of excessive force. It does not create a national use of force standard, nor does it include any requirements for officers to give warning of their intent to use force, limit the use of the justification defense, or condition any federal funds on the existence of a use of force standard.
3. **Does Not Address Barriers to Prosecuting Law Enforcement Officers for Misconduct.** The bill does nothing to remove the barriers that dissuade prosecutors from bringing cases against officers under 18 U.S.C. § 242. Currently, the “willful” mens rea standard required by the statute makes it difficult to prosecute cases of misconduct, especially where officers’ conduct in the time leading up to the death was a substantial factor.
4. **Does Not End the Transfer of Military Equipment to State and Local LEAs.** This bill does nothing to end the militarization of law enforcement agencies. Its failure to end the 1033 program means that it will allow a continued transfer of military equipment that has been shown to increase the number of police killings in communities.
5. **Does Not Include a Private Right of Action.** The bill does not provide a private right of action for individuals or communities to initiate pattern or practice investigations of police departments that systematically violate the constitutional rights of the individuals they exist to protect.
6. **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.
7. **Does Not Address Need for a *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 and federal laws against federal officers so that federal, state, and local officers are all equally accountable. Instead, it is silent on that issue.
8. **Does Not Prohibit Racial Profiling.** Nowhere in the bill is racial profiling addressed, let alone explicitly prohibited. Data collection and misconduct registry provisions should

include information on racial profiling, and eligibility for federal funds should be tied to the adoption of prohibitions.

- 9. Does Not Expand Authorities to Conduct Pattern or Practice Investigations.** The bill does nothing to expand or strengthen pattern or practice investigations through either DOJ, States Attorneys General, or independent investigatory offices. These investigations play a critical role in addressing systemic policing issues, and should not be ignored in reform efforts.

In Sum:

- This bill is a woefully inadequate attempt to create meaningful reform. It does not address systemic racism or racial profiling, create effective data sharing and accountability measures, or make it easier to prosecute misconduct cases. Moreover, it does not reflect the priorities we outlined for Congress as critical steps for its legislative efforts.
- The Justice Act fails to deliver the transformative change our nation needs right now, and we will continue to press for a fundamental shift in our approach to public safety that ultimately ensures we invest in, rather than over-police, Black and other marginalized communities.