

Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies

Background

How are local law enforcement agencies getting all this military equipment?

There are three primary federal programs that directly equip or provide funding to equip local law enforcement agencies. The Departments of Defense (DOD), Homeland Security (DHS) and Justice (DOJ) each manage one of the programs.

The DOD 1033 program, managed by the Defense Logistics Agency (DLA), transfers military equipment that DOD has identified as no longer necessary to state and local law enforcement agencies. Law enforcement agencies can receive anything from office supplies, to military-grade rifles and heavy armored vehicles through the 1033 program. Law enforcement agencies under this program receive priority over federal agencies in receiving excess DOD property.

The Homeland Security Grant Program, managed by the Federal Emergency Management Agency (FEMA) within DHS, provides grants to state and local law governments to enhance core capabilities across five areas: prevention, protection, mitigation, response, and recovery. Every state receives a minimum allotment of funding based on a formula that looks at the risk of terrorist threat, vulnerability, and potential consequences of an attack. Additional funding is also available to border states and a select number of urban areas each year. State and local governments use the money for a variety of purposes, and can generally buy anything listed on the DHS authorized equipment list. This includes military-type equipment along with computers, office supplies, etc.

DOJ's Edward Byrne Memorial Justice Assistance Grant (Byrne-JAG) grant program provides funding to local law enforcement pursuant to a statutory formula based on a state's population and violent crime rate. The funding serves as an additional revenue source for local law enforcement with few strings attached. State and local law enforcement can use the grant money to pay for overtime, hire additional personnel, and purchase office supplies, police equipment, weaponry, and some vehicles.

Some local law enforcement agencies also acquire military-grade equipment using their own budgets.

How much stuff are we talking about?

In 2013, the 1033 program transferred \$449 million in military property to the states. It has transferred over \$5.1 billion in military property since its current inception in 1997.

DHS distributed over \$968 million to states and local governments in 2013 through the three Homeland Security Program grants. Almost \$355 million went to states through the State Homeland Security Grants. Another \$559 million went to 25 cities across the country through the Urban Area Security Initiative. Finally, FEMA gave \$55 million in grants to 19 border states plus Puerto Rico.

Funding for the Byrne-JAG program has averaged \$443 million annually every year since 2005, when the program began. In FY 2014, Congress appropriated \$376 million for the program.

What kind of oversight is there for all this money?

Oversight for these programs is generally limited. For the 1033 program, DLA receives a request through a state coordinator that does not include any information about what needs the equipment will meet or which local law enforcement agencies will receive the equipment. Any assessment of the needs and capabilities of the local recipients of the equipment is conducted at the state level. The State Coordinators are also expected to maintain property accountability records and to investigate any alleged misuse of property. DLA conducts a biennial inventory review of each state to ensure that controlled equipment is clearly logged with serial numbers. However, this review does not look at whether there is a need for the equipment or whether it is being used properly.

DHS Homeland Security Grant Program grants are formula based, so DHS has broad parameters for how the money should be spent, it has little control over grant spending once the money is disbursed. Details on the amount of equipment state and local governments purchase with the funding is generally not required. DHS also tells grantees how much funding it is eligible to receive annually, and then asks grantees to submit applications for the funding, leaving state and local governments to self-assess their needs. DHS does not independently evaluate the grantees own needs-assessments either in the application evaluation stage or during the post-award reviews. Post-award reviews done by DHS focus on ensuring that grant recipients spend all their money, and that the money is spent within programmatic guidelines, not an evaluation of the appropriateness of the spending.

DOJ's oversight of the use of Byrne-JAG grant funding is also limited. DOJ limits reporting for grantees to broad categories. Based on current reporting requirements DOJ is unable to determine the quantity of any equipment purchased by a given grant. In addition, DOJ relies on self-reporting by the states for its information, and is limited in the number of audits it can conduct. It does conduct annual screenings for compliance with the terms of the grant, but additional review beyond these screenings are limited. Only a small number of grantees are identified for additional annual monitoring, and an even smaller number for site visits by DOJ personnel. In addition, DOJ only directly monitors its grantees and does not provide any oversight or visits of subgrantees. Because these grants are determined by statutory formula, DOJ must give away the money. If an application is vague or problematic, DOJ will work with the grantee to clarify it and improve the narrative, then provide the funding.

So what's happening to all this equipment?

The agencies don't really know. There are no national guidelines on when to deploy specialized equipment. We know that it is present in police departments around the country, and it sometimes gets used such as when deploying SWAT teams or as seen pictured during the riots and protests in Ferguson. But we can't say for sure where any given piece of equipment came from or how different departments are using it because this information is not tracked by the agencies that provide the equipment or the funding for the equipment.

Why is this a problem?

Much of the equipment provided, especially military-grade weaponry and heavy vehicles, is used in the military only after significant training. This includes both training in the operation of the equipment and training for commanders in when to properly deploy it. There are no such safeguards when local law enforcement receives this equipment. Many of them are likely following best practices in how and when to use the equipment, but many are not. When we don't know what local police departments have, how they're using it, or if they know how to use it properly, it opens up the possibility of misuse or abuse of this equipment.

Why don't the Federal Agencies require more specific information before they hand out military equipment and billions of dollars in funds?

Good question. DOD views its 1033 program primarily as a way to dispose of equipment that DOD no longer needs, and any benefit to law enforcement agencies as secondary to that so oversight of how the equipment is used after DOD "disposes" of it is not something DOD concerns itself with beyond simply tracking the equipment to make sure it is not disappearing. Furthermore, DOD argues that the military is not the best entity to provide guidelines to law enforcement on how the equipment should be used as military and law enforcement uses are by nature different.

In the case of DHS and DOJ grants, the grants are formula grants, which means the amount to be given to grantees is calculated based on a formula that incorporates risk, but does not take into account need. DHS and DOJ are required to provide the minimum amount of funding that the formulas dictate and therefore, the primary focus of those programs is how to give the money away and not oversight of how the money is being spent.