

# PROTECTING COMMUNITIES AND POLICE ACT

## Section-by-Section

### **Section 1 – Short Title and Findings**

This section provides a short title and findings for the bill

### **Section 2 – Table of Contents**

### **Section 3 – Findings**

### **Section 4 – Task Force to Assist Federal Officials in Determining Appropriateness of Items for Use by Law Enforcement**

**Task Force.** This section requires the Federal Emergency Management Agency (FEMA), the Defense Logistics Agency (DLA), and the Attorney General to jointly appoint a task force to assist their agencies in determining what equipment is suitable for law enforcement. The task force will include one representative from a law enforcement agency within the Department of Homeland Security; an individual with law enforcement expertise hired by DHS to assist in the review of DHS Homeland Security Grants, as required by this bill; an individual with law enforcement expertise hired by DLA to assist in the review of requests for equipment from the 1033 program, as required by this bill; an individual with law enforcement expertise hired by DOJ to assist in the review of Byrne-JAG grant applications; one representative from each of the Fraternal Order of Police, National Association of Police Organizations, National Tactical Officers Association, the International Association of Bomb Technicians and Investigators, the National Bomb Squad Commanders Advisory Board, the Airborne Law Enforcement Association, the International Association of Chiefs of Police, the National Sheriffs Association, the National Governors Association, and the United States Conference of Mayors; an individual unaffiliated with any of the above organizations who has a PhD or masters degree in criminology and demonstrated expertise in police tactics; and one or more individuals from an organization whose mission is related to the protection of civil rights and liberties.

**Authorization of Funding.** This section authorizes \$1 million for the next fiscal year to enable the task force to carry out its duties.

### **Section 5 – Urban Area Secure Initiative (UASI) Grants and State Homeland Security Program (SHSP) Grants**

**List of Equipment for Law Enforcement.** This section requires the Federal Emergency Management Agency (FEMA), in conjunction with the task force established by section 4, to conduct an immediate assessment of the FEMA Authorized Equipment List and periodically review the list thereafter. Based on such assessment, FEMA will designate and publish a list of items that are specifically eligible law enforcement agencies to purchase or receive using UASI and SHSP grant funds. If FEMA fails to publish the list of eligible equipment within 3 years, it

must report to Congress monthly on its progress and expected date of publication. If FEMA fails to publish a final list within 5 years, it may not distribute grant funding to law enforcement agencies until the final law enforcement list is published.

**Prohibited Items.** This section defines certain items as “prohibited items” which law enforcement agencies may not purchase using grants funds, unless the FEMA Administrator determines that the item will be useful in preventing or mitigating damage resulting from a threat to national security and the law enforcement agency has in place an agreement with the National Guard for the storage of the equipment at a National Guard site.

**Restricted Items.** This section also defines certain items on the Authorized Equipment List as “restricted items”, including tactical law enforcement ballistic protection equipment, camouflage, drones, tactical military vehicles, boats, and planes. In order to purchase or receive a restricted item using grant funding, a law enforcement agency must publish a needs assessment and obtain the approval of the executive of the law enforcement agency’s governing body (i.e., the Governor for state troopers, the mayor for local law enforcement agencies, etc.). There is an exception to the publication requirement for ongoing counterterrorism operations. Grant applications to FEMA to purchase any restricted items must be approved by the Administrator.

**Needs Justification Statement.** The needs assessment must include: (i) The type and number of items expected to be purchased; (ii) The number of sworn, full-time law enforcement officers of the law enforcement agency; (iii) The number, if any, of items similar to the restricted item that the law enforcement agency has in good working condition; (iv) The number and type of items, if any, that the law enforcement agency has that were obtained from DOD under the 1033 program or from a DOJ Byrne JAG grant in the past 5 years; (v) The use of force policy of the law enforcement agency; (vi) Whether the law enforcement agency intends for a SWAT team to use the restricted item, and, if so, the deployment policies of the law enforcement agency for SWAT teams; (vii) Whether the law enforcement agency has or plans to adopt a memorandum of understanding or other joint use agreement for the shared use of the restricted item with any other law enforcement agency; (viii) The capability gap to be filled by the restricted item, and a description of the proposed use of the restricted item by the law enforcement agency; (ix) Whether a consent decree is in effect between the United States and the law enforcement agency relating to civil rights abuses or excessive use of force; (x) Whether the law enforcement agency is currently under investigation, or has been under investigation during the preceding 10 years, by the Department of Justice, an inspector general, or any equivalent State or local entity for civil rights abuses or excessive use of force; (xi) Whether the head of the law enforcement agency has ever been found guilty for civil rights abuses or excessive use of force, if such information is publicly available; (xii) Whether the law enforcement agency requested funding first from its State or local political entity, and if so and was denied, the reason for denial; (xiii) Certification that any restricted item or item on the law enforcement equipment list purchased using funding under this section for use by a SWAT team has not and will not be used by a SWAT team engaging in routine patrol-related incidents, non-tactical incidents, and non-tactical assignments.

**Restrictions on Small Agencies.** This section limits law enforcement agencies with fewer than 10 sworn full-time law enforcement officers to one tactical military vehicle purchased with funding under these grant programs unless the agency has in place a joint-use agreement with another agency and serves as the procuring agency under the agreement.

**Restrictions on Small SWAT teams.** This section also prohibits the use of grant funds to purchase restricted items for use by SWAT teams composed of fewer than 17 law enforcement officers or by SWAT teams from one or more law enforcement agencies if, in total, those law enforcement agencies have fewer than 35 sworn law enforcement officers.

**Prohibition on Transportation Costs.** This section also prohibits the use of funds to transport equipment obtained from the DOD 1033 program.

**Agencies Under Consent Decrees.** This section also prohibits law enforcement agencies that are under consent decrees with DOJ for civil rights abuses or excessive use of force from obtaining grant funding to buy restricted items or obtaining restricted items purchased with grant funding without the consent of the Department of Justice.

**SWAT Team Training Records.** This section requires the publication of some SWAT team training information, including the title and subject of training courses taken by SWAT teams.

**Trainer Certification Program and Annual Training Requirements.** Beginning 3 years after enactment, no state or any jurisdiction therein may receive funding for law enforcement to purchase restricted items unless the state establishes a certification program for law enforcement trainers and establishes minimum annual training requirements for officers and police chiefs, including training on civil rights, the use of restricted items, SWAT team deployment training for management, and sensitivity training such as training on ethnic and racial bias, cultural diversity, and police interaction with the disabled, mentally ill, and new immigrants. Training requirements may only be met by training conducted by an instructor certified by the state or DHS's Federal Law Enforcement Training Center (FLETC)

**Reports.** This section also requires FEMA to publish and submit to Congress and the Attorney General an annual report on the purchase by law enforcement agencies of restricted items purchased using grant funding and the purchase and use of tactical military vehicles. Grant recipients are required to submit a report to FEMA annually the type of items purchased, the need justification for each item, and a description of the use, if any, of the items.

**SWAT Deployment Records.** This section requires law enforcement agencies that use covered funds to purchase a tactical military vehicle by a SWAT team to maintain a record of all SWAT deployments.

**Whistleblower Protections and Independent Review.** This section also requires states to establish whistleblower protections and public complaint hotlines for the misuse of any equipment purchased with the grant funding. Law enforcement agencies are also required to establish relationships with independent entities to review the use of equipment. Such entities may only make nonbinding recommendations to law enforcement agencies unless otherwise authorized by state, county or local law or by agreement between the law enforcement agency's governing body and the relevant unions.

**Suspension and Termination.** This section also establishes suspension and termination procedures for law enforcement agencies that lose or have stolen restricted items or knowingly and intentionally falsify any information relating to the purchase or receipt of a restricted item.

**Law Enforcement Expertise.** FEMA is required to hire individuals with law enforcement expertise, giving preference to individuals with law enforcement managerial experience, to assist in the assessment of grant applications.

## **Section 6 – Modification of Authority to Transfer Department of Defense Property for Law Enforcement Activities**

**Federal Agency Priority.** This section prioritizes transfers of DOD eligible defense items to other federal agencies ahead of state and local law enforcement agencies.

**Task Force and Eligible Defense Items.** This section requires DLA, in conjunction with the task force established by section 4, to create a list of “eligible defense items” that it determines are suitable for law enforcement use. The list of eligible defense items will be based on the United States Munitions List (22 CFR Part 121) or Commerce Control List (15 CFR Part 774), and include only items that can be readily put to civilian use by law enforcement agencies. The list will be made publicly available.

**Law Enforcement Expertise.** DLA will establish positions for persons with law enforcement expertise to assist in the creation of the list of eligible items and reviewing all requests for equipment.

**Prohibited Items.** Mine Resistant Ambush Protected (MRAP) vehicles, armored and/or weaponized drones, aircraft that are combat configured or have no established commercial flight application, camouflage (unless the law enforcement agency can demonstrate a geographic/environmental need), bayonets, military-grade tasers, and any other item that cannot otherwise be purchased by State and local law enforcement agencies in the private sector shall not be included on the list of eligible defense items.

**Director-Level Approval.** If the task force determines that weapons over .50 caliber, grenades, flash bang grenades, grenade launchers and tactical military vehicles are eligible defense items, law enforcement requests for such items will require approval from the Director of DLA, and such authority cannot be delegated.

**Tactical Vehicles for Small Agencies.** This section also limits the transfer of tactical vehicles to one for law enforcement agencies with 10 or fewer sworn officers unless the agency has in place a joint-use agreement with another agency and serves as the procuring agency under the agreement.

**Eligibility of Small SWAT teams.** This section also prohibits the transfer of eligible defense items to SWAT teams composed of fewer than 17 sworn full-time law enforcement officers. In addition, the bill prohibits the use of transferred items by SWAT teams from enforcement agencies have fewer than 35 sworn law enforcement officers, or composed of officers from multiple agencies that, collectively, have fewer than 35 sworn officers.

**Law Enforcement Agencies Under Consent Decrees.** A law enforcement agency under a consent decree or investigation by the Department of Justice (DOJ), relating to civil

rights abuses or excessive use of force may not obtain any weapon or tactical military vehicle without the consent of the Department of Justice.

**Transfers to School Districts.** Transfers of eligible defense items to local school districts are prohibited with certain limited exceptions.

**Timely Use of Equipment.** This section removes the current requirement that agencies use any equipment obtained under the program within one year.

**Threats to National Security.** This section allows law enforcement agencies to obtain prohibited items when there is an actionable threat to national security. Law enforcement agencies must either arrange for storage of the prohibited item at a National Guard site or return the item to DLA upon cessation of the threat.

**Application for Equipment.** In order to obtain an eligible defense item, a law enforcement agency must obtain approval to submit the request from the executive of the law enforcement agency's state or local governing body and then submit an application to a State Coordinator and publish its application, which must include a needs justification statement.

**Needs Justification Statement.** Law enforcement agencies submitting a request for an eligible defense item must submit certain information with its request to inform State Coordinators and DLA in assessing the need for the requested equipment, including:

(i) The type and number of items expected to be purchased; (ii) The number of sworn, full-time law enforcement officers of the law enforcement agency; (iii) The number, if any, of items similar to the restricted item that the law enforcement agency has in good working condition; (iv) The number and type of items, if any, that the law enforcement agency has that were obtained from DOD under the 1033 program or from a DOJ Byrne JAG grant in the past 5 years; (v) The use of force policy of the law enforcement agency; (vi) Whether the law enforcement agency intends for a SWAT team to use the restricted item, and, if so, the deployment policies of the law enforcement agency for SWAT teams; (vii) Whether the law enforcement agency has or plans to adopt a memorandum of understanding or other joint use agreement for the shared use of the restricted item with any other law enforcement agency; (viii) The capability gap to be filled by the restricted item, and a description of the proposed use of the restricted item by the law enforcement agency; (ix) Whether a consent decree is in effect between the United States and the law enforcement agency relating to civil rights abuses or excessive use of force; (x) Whether the law enforcement agency is currently under investigation, or has been under investigation during the preceding 10 years, by the Department of Justice, an inspector general, or any equivalent State or local entity for civil rights abuses or excessive use of force; (xi) Whether the head of the law enforcement agency has ever been found guilty for civil rights abuses or excessive use of force, if such information is publicly available; (xii) Whether the law enforcement agency requested funding first from its State or local political entity, and if so and was denied, the reason for denial; (xiii) Certification that any restricted item or item on the law enforcement equipment list purchased using funding under this section for use by a SWAT team has not and will not be used by a SWAT team engaging in routine patrol-related incidents, non-tactical incidents, and non-tactical assignments.

**State Coordinator and DLA Review.** A State Coordinator will review the request, accept or deny it based on the information provided by the law enforcement agency, and transmit the request to DLA. DLA will review all requests accepted by a State Coordinator and accept or deny it based on the information provided.

**SWAT Team Records.** Law enforcement agencies that receive eligible defense items for use by SWAT teams must also maintain and make publicly available SWAT team training records. Personally identifiable information and details on SWAT training courses can be redacted from published versions.

**Video Recording and Storage.** This section also requires law enforcement agencies that receive video recording devices or related equipment to implement and make available to the public policies on the use of such equipment, including storage and retention policies. The policies must include a requirement to maintain any video recording that includes the use of force for a period not shorter than the statute of limitation in the State concerned for actions for civil rights violations under section 1979 of the Revised Statutes (42 U.S.C.1983).

**Police Instructor Certification and Annual Training.** This section also requires states to establish a program to certify police instructors and minimum annual training requirements for officers, SWAT teams, police chiefs, and State Coordinators, including training on civil rights, the use of restricted items, SWAT team deployment training for management, and sensitivity training such as training on ethnic and racial bias, cultural diversity, and police interaction with the disabled, mentally ill, and new immigrants. Training requirements may only be met by training conducted by an instructor certified by the state or DHS's Federal Law Enforcement Training Center (FLETC). States have 3 years to comply.

**Whistleblower Protections and Independent Reviews.** This section also requires states to establish whistleblower protections and public complaint hotlines for the misuse of any equipment purchased with the grant funding. Law enforcement agencies are also required to establish relationships with independent entities to review the use of equipment. Such entities may only make nonbinding recommendations to law enforcement agencies unless otherwise authorized by state, county or local law or by agreement between the law enforcement agency's governing body and the relevant unions.

**Approval of Transfers.** This section also requires approval of DLA for any transfers of eligible defense items between law enforcement agencies.

**Suspension and Termination.** This section also establishes suspension and termination requirements for lost, stolen or misappropriated items or for intentionally falsifying any information provided to DLA.

**Reporting Requirements.** This section also contains reporting requirements for state and local law enforcement agencies that receive eligible defense items to ensure that such items are properly accounted for and utilized. DOD must also issue an annual report on the number and type of eligible defense items transferred, a list of items that were in new or like-new condition at the time of transfer and the number of similar items purchased by DOD the year before, and a list of the requests for transfer that were denied and the reasons for denial.

**Limitation of Applicability.** This section also clarifies that it, and any regulations promulgated thereunder, only affect transfers of DOD eligible defense items. This section does not affect transfers of DOD excess equipment to state and local agencies other than law enforcement agencies, and law enforcement agencies will continue to get priority over other state and local agencies for excess equipment that are not an eligible defense items.

## **Section 7 – Edward Byrne Memorial Justice Assistance (Byrne JAG) Grants**

**Lists of Prohibited Items and Special Justice Items.** This section requires DOJ, in conjunction with the task force established in Section 4, to create a list of “prohibited items” that may not be purchased by a law enforcement agency using Byrne JAG grant funds and a list of “special justice items” – defined as items not generally issued to a law enforcement patrol officer but that are suitable for certain uses by law enforcement agencies. Such lists shall be made publicly available. Weapons over .50 caliber, tactical military vehicles, tactical military equipment, camouflage, ballistic protection equipment other than bulletproof vests, grenades, flash bang grenades, grenade launchers and grenade launcher attachments must be on either the list of “special justice items” or the list of “prohibited items”.

**National Security Exception.** DOJ may approve grants for use to purchase prohibited items if the Attorney General determines that the prohibited item will be useful in preventing or mitigating damage resulting from a threat to national security and the law enforcement agency has an agreement with the National Guard to store the item at a National Guard site.

**Needs Assessments and Publication.** This section requires a law enforcement agency to publish its grant request, including a statement justifying the need for the equipment to be purchased, and obtain approval from a local governing body before submitting a grant request for funding to purchase a special justice item. The needs justification statement, which must also be submitted with the grant applications, includes, (i) The number of sworn, full-time law enforcement officers of the law enforcement agency; (ii) The number of similar items that the law enforcement agency has in good working condition; (iii) The number and type of items that the law enforcement agency has that were acquired from other federal programs in the last 5 years; (iv) The use of force policy of the law enforcement agency; (v) Whether the law enforcement agency intends to have a SWAT team use the special justice item and, if so, the deployment policies of the law enforcement agency for SWAT teams; (vi) Whether the law enforcement agency has or plans to adopt a memorandum of understanding or other joint use agreement for the shared use of the special justice item with any other law enforcement agency; (vii) The capability gap to be filled by the special justice item, and a description of the proposed use of the special justice item by the law enforcement agency; (viii) Whether a consent decree is in effect between the United States and the law enforcement agency relating to civil rights abuses or excessive use of force; (ix) Whether the law enforcement agency is currently under investigation, or has been under investigation during the preceding 10 years, by the Department of Justice, an inspector general, or any equivalent State or local entity for civil rights abuses or excessive use of force; (x) Whether the head of the law enforcement agency has ever been found guilty of civil rights abuses or excessive use of force, if such information is publicly available; (xi) A certification that the law enforcement agency requested funds from a regional, State, or local political entity to purchase the special justice item and the request was denied, and a statement of the reason or reasons for such denial; (xii) Certification that any restricted item or

item on the law enforcement equipment list purchased using funding under this section for use by a SWAT team has not and will not be used by a SWAT team engaging in routine patrol-related incidents, non-tactical incidents, and non-tactical assignments.

**Tactical Vehicles for Small Agencies.** This section also limits law enforcement agencies with fewer than 10 sworn full-time law enforcement officers to one tactical military vehicle purchased with funding from this grant program.

**Limitations on Small Agency SWAT Teams.** This section also prohibits the use of grant funds to purchase special justice items for use by SWAT teams composed of fewer than 17 officers, or composed of officers from one or more law enforcement agencies if, in total, those law enforcement agencies have fewer than 35 sworn law enforcement officers.

**Local Education Agencies.** This section also prohibits grants to local school districts for the purchase of tactical military vehicles with certain limited exceptions. Law enforcement agencies under consent decrees are prohibited from using funds to purchase any weapon or tactical military vehicle.

**Prohibition on Camouflage.** In addition, funds may not be used to purchase camouflage for SWAT teams unless there is a clear geographic or environmental need for the camouflage. This section also requires grant recipients that use funding to purchase special justice items for use by SWAT teams to record all SWAT deployments and develop policies to maintain such recordings.

**Attorney General Approval for Certain Items.** If weapons over .50 caliber, grenades, flash bang grenades, grenade launchers or grenade launcher attachments, or tactical military vehicles are on the list of special justice items, grants seeking to purchase those items must be approved by the Attorney General, with no delegation authority.

**Law Enforcement Agencies Under Consent Decrees.** A law enforcement agency under a consent decree or under investigation by DOJ relating to civil rights abuses or excessive use of force may not use covered funds to purchase any weapon or tactical military vehicle without the consent of the Department of Justice. For law enforcement agencies under a consent decree, DOJ will prioritize grant requests related to community policing efforts.

**SWAT Team Training Records.** This section requires law enforcement agencies that purchase equipment for SWAT teams to publish training records of the SWAT team, including course outlines of such training.

**Certification of Law Enforcement Trainers and Minimal Annual Training Requirements.** This section also requires each state to establish programs to certify law enforcement instructors and publish a list of certified trainers. Beginning 3 years after enactment, no state or any jurisdiction therein may receive funding unless the state establishes minimum annual training requirements for officers and police chiefs, including civil rights training, training for police chiefs on drafting use of force, SWAT team policies and the deployment of SWAT teams, crowd control tactics, and sensitivity training such as training on ethnic and racial bias, cultural diversity, and police interaction with the disabled, mentally ill, and new immigrants

**Best Practices.** This section requires DOJ to publish, periodically update, and distribute best practices for training law enforcement officers in the use of force, deployment of SWAT teams, and community-oriented police efforts.

**Reporting Requirements.** This section also imposes additional reporting requirements for law enforcement agencies that receive grants, including a record of all SWAT team deployments and the quantity and type of equipment purchased using grant funding.

**DOJ Reports.** DOJ must publish annual reports on the quantity and type of special justice items purchased and an appendix listing each law enforcement agency that used grant funding to purchase special justice items. DOJ must also publish data on crime rates over time for each jurisdiction in which a law enforcement agency received grant funding.

**Whistleblower Protections and Independent Reviews.** This section also requires states to establish whistleblower protections and public complaint hotlines for the misuse of any equipment purchased with the grant funding. Law enforcement agencies are also required to establish relationships with independent entities to review the use of equipment. Such entities may only make nonbinding recommendations to law enforcement agencies unless otherwise authorized by state, county or local law or by agreement between the law enforcement agency's governing body and the relevant unions.

**Suspension and Termination.** This section also establishes suspension and termination policies for the Byrne JAG program.

**Law Enforcement Expertise.** This section also requires DOJ to establish positions for someone with law enforcement expertise to assist in the development of the list of special justice items and the prohibited items list and assess the needs justification statements from grantees.

**Video Recording Policies.** This section requires law enforcement agencies that use funds to purchase or maintain body cameras to have policies on the use of the cameras and the storage of video footage. This section also requires DOJ to publish and distribute best practices for training law enforcement officers, training and deployment of SWAT teams, and community-oriented policing. Grant funds may not be distributed until DOJ publishes these best practices.

**Funding for Body Cameras.** This section also requires that, after the state allocations are calculated, 2.5% of Byrne JAG funds allocated to each state and 2.5% of funding allocated to a state's local law enforcement agencies be set aside for the purchase of body cameras, dashboard cameras, gun cameras, and related costs.

## **Section 8 – Department of Justice Reports on SWAT Teams**

This section requires DOJ to collect data on the use and deployment of SWAT teams.

## **Section 9 – Department of Homeland Security Certification of Instructors in Training on the Use of Force and Eligible Defense and Special Justice Items**

This section requires the Department of Homeland Security, through the Federal Law Enforcement Training Center (FLETC) to conduct programs to certify instructors that will be eligible conduct training courses for State and local law enforcement agencies.