



# The Washington Report

**The Newsletter of the National Association of Police Organizations**  
*Representing America's Finest*

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July 2, 2020

## House and Senate Vote on Police Reform Bills

On June 24, Democrats in the Senate blocked the motion to proceed on Senator Tim Scott's (R-SC) police reform legislation, the Just and Unifying Solutions To Invigorate Communities Everywhere (JUSTICE) Act (S. 3985), essentially filibustering the bill. It is unclear what the next steps are in Senate regarding police reform. Democrats do not feel the JUSTICE Act goes far enough and want Republicans to negotiate a bipartisan solution for the Senate to vote on. Majority Leader McConnell reserved the right to call up the bill for a vote at any point if progress is made on an agreement. The Senate adjourns for a two week recess on July 3.

NAPO worked closely with Senator Scott and Senate Judiciary Committee staff on this legislation and they have largely taken into account our concerns around ensuring officer due process, protecting qualified immunity for officers, supporting the [National Consensus Policy on Use of Force](#) which NAPO helped author, and guarding officer privacy and confidentiality rights.

The JUSTICE Act would:

- Expand on the FBI's Use of Force reporting and require new reporting on "no knock" warrants for closed cases that takes into consideration the crime data within the reporting jurisdiction.
- Expand upon the Department of Justice (DOJ) grant program to provide funding for departments to establish body worn camera programs, including the purchasing of cameras and data retention systems.
- Ensure law enforcement agencies maintain and appropriately share disciplinary records for officer hiring consideration. The disciplinary records to be kept are only those which have been substantiated and adjudicated by a government agency using due process considerations or a court and has resulted in criminal charges or adverse action by the law enforcement agency.
- Direct the DOJ to develop and provide training on de-escalation, implementation, and fulfilment of duty to intervene policies, in consultation with law enforcement labor organizations and other stakeholders.
- Establish the National Criminal Justice Commission to undertake a comprehensive review of the criminal justice system, any such Commission to include actual rank-and-file representation.
- Expand the COPS Hiring Grant to allow funds to be used for departments to hire officers that match the racial and ethnic makeup of their jurisdiction. We understand the goal here but have very strong concerns about how this section of the bill is written.
- Mandate the consensus development of best practices for policing tactics, employment processes including protecting officer due process, community transparency and administration. Studies on

community Use of Force review boards, law enforcement officer engagement on issues related to mental health, homelessness, and addiction; proposals on improving accountability for DOJ grants.

While the JUSTICE Act would provide additional grant funding to help states, localities and law enforcement agencies comply with the above provisions, it would also significantly penalize their Byrne Justice Assistance Grant (Byrne JAG) program and Community Oriented Policing Services (COPS) funding if they do not comply within a certain timeframe. NAPO opposes the use of these vital grant programs as sticks to force compliance.

NAPO appreciates the willingness of Senator Scott to work with us and consider our views on police reform, which is significantly more than what we got from the House Democrats, who completely shut rank-and-file officers out of the process in developing the Justice in Policing Act. We will continue to work with Senator Scott, the Senate Judiciary Committee and any other Senator and Member of Congress who wish to work with us in good faith to address our very serious concerns about how the current police reform proposals would affect the safety and working conditions of officers.

The House passed the George Floyd Justice in Policing Act (H.R. 7120) on June 25 by a vote of 236-181, with only three Republicans joining Democrats in voting for the bill. NAPO sent [a letter](#) to all Members of Congress voicing our strong opposition to the bill. It is not expected that the Senate will move on the House-passed bill and the President has issued a statement saying he will veto it.

## **Senate Judiciary Approves Bill Targeting Online Child Exploitation**

The Senate Judiciary Committee amended and approved the Eliminating Abusive and Rampant Neglect of Interactive Technologies (EARN IT) Act of 2020, S. 3398, on July 2. NAPO supports this legislation, introduced by Senate Judiciary Committee Chairman Lindsey Graham (R-SC) and Senator Richard Blumenthal (D-CT), which would create the National Commission on Online Child Sexual Exploitation Prevention to standardize enforcement of online child sexual exploitation laws and help prevent and reduce child exploitation.

Since its inception in 1998, the National Center for Missing and Exploited Children's (NCMEC) CyberTipline has received more than 64.5 million reports of suspected child sexual exploitation. In 2019 alone, the CyberTipLine received 16.9 million reports of apparent child sexual abuse images, suspected "sextortion", child sex trafficking and child sexual molestation. Unfortunately, Section 230 of the Communications Decency Act (CDA) inadvertently gives broad criminal immunity to websites and ESPs that enable sex trafficking. This significantly hampers law enforcement's ability to enforce state trafficking laws against such websites.

The EARN IT Act addresses this issue by amending Section 230 to allow companies to be held civilly and criminally liable at the state and federal levels for known violations related to child sexual abuse material. It establishes a National Commission on Online Child Sexual Exploitation Prevention to recommend best practices related to preventing, reducing and responding to online child sexual exploitation. This legislation holds companies accountable for the content on their websites and creates consistency that bolsters the enforcement of laws against child sexual abuse materials.

While the EARN IT Act does not address the issue of encryption, which is a significant impediment to law enforcement's fight against online child sexual exploitation, it is an important step forward to protecting

our nation's children online. NAPO looks forward to working with Chairman Graham and Senator Blumenthal to pass this important legislation and ensure law enforcement is given every tool available to deter and address online child sexual exploitation.

## **NAPO Fights Restrictions to 1033 Program**

NAPO is actively opposing an amendment to the National Defense Authorization Act (NDAA) for Fiscal 2021, offered by Senator Brian Schatz (D-HI), Amendment #2252, that would restrict state and local law enforcement's access to surplus military equipment through the Department of Defense and other federal grant programs.

NAPO spoke with staff of Senate leadership and sent [a letter](#) to every member of the Senate advising them of our strong opposition to any attempt to amend NDAA to limit our access to this life saving equipment. The Senate is scheduled to bring the amendment up for unanimous consent when it returns from a two week recess on July 20. To pass via unanimous consent, 60 senators must vote for the amendment.

After years of fighting restrictions to state and local law enforcement's ability to obtain surplus military equipment, we won back access to this lifesaving gear with President Trump's Executive Order on August 28, 2017. That executive order repealed the Obama executive order that severely limited law enforcement's access to surplus military equipment. NAPO is not about to see limitations placed once again on this defensive, protective equipment.

Programs like the Department of Defense's (DOD) 1033 program and grant programs at the Departments of Justice and Homeland Security have been vital resources in allowing state and local law enforcement to acquire items used in search and rescue operations, disaster response, and active shooter situations that they otherwise would not be able to afford. This equipment has not led to the "militarization" of police, but rather has proven to be essential in protecting communities against violent criminals with increasing access to sophisticated weaponry, IEDs, body armor and sometimes even armored vehicles.

Furthermore, Senator Schatz's amendment would allow limitations on purely defensive equipment, such as head, face and body protection equipment. NAPO strongly believes that creating limitations on such gear will further endanger the lives of law enforcement officers, who have increasingly become targets of revenge and ambush attacks. According to a recent Community Oriented Policing Services (COPS) Office report, in 2019, 32 law enforcement officers were shot and 11 died as a result of being ambushed. Another 84 officers were shot and 14 died in situations where the offender acted without warning in a premeditated/calculated manner taking an officer by surprise.

Restricting access to this equipment will endanger the lives of police officers and communities across the nation. NAPO will work diligently over the recess to ensure that Senator Schatz's amendment does not get the 60 votes necessary to pass.

The House began consideration of its version of the NDAA with the Armed Services Committee marking up the bill on July 1.

# NAPO Endorses Lawful Access to Encrypted Data Act

NAPO has pledged our support for the Lawful Access to Encrypted Data Act (S. 4051), introduced by Senate Judiciary Committee Chairman Lindsey Graham (R-SC) and Senators Tom Cotton (R-AR) and Marsha Blackburn (R-TN), which would bolster national security and end the use of warrant-proof encryption that shields criminal activity from law enforcement. Attorney General William Barr issued a rare statement of support for the legislation.

Digital evidence is a part of nearly every crime scene today and law enforcement is increasingly facing real and growing challenges in obtaining electronic evidence when we obtain the required legal process. The current lack of standards governing service providers' responsiveness to warrants and other legal process issued by law enforcement is routinely resulting in delays in the investigative process. This significantly hampers law enforcement's ability to keep our communities safe, prosecute criminals and protect victims.

The Lawful Access to Encrypted Data Act will ensure that when law enforcement is investigating such heinous crimes as kidnapping, homicide, child pornography or human trafficking, service providers must decrypt or decode the lawfully requested information or at least provide technical assistance to obtain that information for the investigation. Service providers and device manufacturers will no longer be able to evade the law and law enforcement will be given the evidence necessary to bring justice for our communities.

NAPO looks forward to working with Chairman Graham and Senators Cotton and Blackburn to move this important legislation forward.

## NAPO in the News

NAPO's Executive Director Bill Johnson was quoted in a June 21, 2020 *Washington Times* article entitled, "[Tear gas ban will force police to use more physical tactics to disperse crowds, professionals warn](#)". After weeks of protests and riots in the wake of George Floyd's killing, law enforcement's use of tear gas and pepper spray to disperse unruly crowds has come under fire. Several proposals banning law enforcement's use of such chemical agents have been introduced in Congress and some state and local governments are considering prohibiting them.

In response to these moves, Johnson said that "police would be forced to choose between being overrun or exerting force, potentially deadly force. 'It puts them in a no-win situation,' he said, adding that chemical irritants are 'a good option for an officer to have at their disposal.'

"'If the police don't have the ability to disperse an illegal assembly, like a riot, then you've got shops broken into, burned or looted, which I think is a far greater evil to the community than the admitted discomfort of tear gas,' he said."

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Johnson was interviewed for a June 23, 2020 *New York Times* article entitled, "[Qualified Immunity Protection for Police Emerges as Flash Point Amid Protests](#)". In the article, the author questions the necessity for officers to have qualified immunity and opines that it stands in the way of justice for victims of police violence.

“Johnson... said critics of qualified immunity were seizing on the moment to attack a doctrine that had little to do with the widely condemned deaths of Mr. Floyd and Rayshard Brooks, who was shot to death this month by the police in a Wendy’s parking lot in Atlanta, and unfairly targeting the police.

The doctrine does not apply in criminal cases like those pending against the officers involved in the death of Mr. Floyd. Derek Chauvin, a Minneapolis police officer, was recorded on video pinning Mr. Floyd to the ground for nearly nine minutes as Mr. Floyd protested that he could not breathe. Mr. Chauvin was charged with second-degree murder, and the other three officers involved were charged with aiding and abetting in Mr. Floyd’s death. None has entered a plea in court.

‘The proponents looking at qualified immunity are kind of cynically taking advantage of a horrific situation to change the law in a different area that does not apply to that area at all,’ Mr. Johnson said.”

NAPO strongly opposes the elimination of qualified immunity for officers or any efforts to lessen that protection for the men and women who put their lives on the line every day to protect our communities. As the debate on police reform moves forward, we will be keeping a close eye on this issue and will exert every effort to protect qualified immunity for officers.

NAPO will continue to ensure our members’ voices are heard loud and clear on the Hill, with the Administration, and in the media.

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