

Schatz-Murkowski-Harris-Paul NDAA Amendment #2252

1033 Reform and Oversight

Militarized law enforcement increases the prevalence of police violence without making communities safer. This amendment would restrict the transfer of the most militaristic equipment to law enforcement—including bayonets, grenades, asphyxiating gases, and high-caliber munitions—without prohibiting other equipment needed to assist law enforcement with carrying out their mission to protect and serve.

Background on the 1033 Program

The surplus military equipment transfer program—known as the “1033 program”—was established in the fiscal year (FY) 1997 National Defense Authorization Act (NDAA). Since its inception, the U.S. military has transferred weapons of war—including rifles, armored vehicles, and aircraft—to law enforcement agencies that are responsible for keeping peace in our communities.¹ The program gained notoriety and scrutiny after the police deployed military-style equipment in Ferguson, Missouri, in 2014, starting an effort to reform the program.² However, since Ferguson, law enforcement agencies across the country have continued to receive equipment including “494 mine-resistant vehicles, at least 800 pieces of body armor, more than 6,500 rifles, and at least 76 aircraft.”³

Negative Effects of 1033 on Policing

The 1033 program has resulted in an increasingly militarized law enforcement, which has led to more prevalent police violence. According to a *Research and Politics* study, there is “a positive and statistically significant relationship between 1033 transfers and fatalities from officer-involved shootings across all models.”⁴ Indeed, militarized law enforcement does not create safer communities. A 2018 study found that “militarized policing fails to enhance officer safety or reduce local crime,” suggesting that “the often-cited trade-off between public safety and civil liberties is a false choice.”⁵ The militarization of law enforcement creates a culture and a mindset contrary to the mission of the police—to protect and serve. Militarization blurs the purpose of law enforcement with the purpose of the military—to fight foreign adversaries.⁶ A 2018 policy study by R Street notes that another reason for an increase in violence by a militarized law enforcement is that when law enforcement has access to military equipment, they are more likely to use it, rather than other more appropriate and traditional law enforcement tools.⁷ In other words, “military gear often takes the place of more appropriate tools for policing and undermines the job of an officer.”⁸

Police are Still Able to Purchase Needed Equipment

Even with these reforms to the 1033 program, law enforcement agencies would still be able to use their budgets to purchase militarized equipment from the Department of Defense (DoD), manufacturers, and commercial vendors. State and local law enforcement agencies would still be able to purchase at fair market value equipment from DoD for law enforcement, firefighting, homeland security, and emergency management purposes (under 10 U.S.C. 2576). Permissible equipment for purchase includes certain firearms and ammunition of .30 caliber or less, gas masks, and personal protective equipment. Federal law enforcement agencies would still be able to procure militarized equipment through their normal budget and appropriations process. When law enforcement agencies purchase their equipment through their normal budget processes, they provide budget justifications for these purchases that inherently provide greater oversight and accountability mechanisms with governing bodies and the public.

Amendment Summary

This NDAA amendment to reform the 1033 program would demilitarize law enforcement by limiting certain types of military equipment from being transferred and restoring previously established accountability and transparency measures. Specifically, it would:

- Limit the transfer of specific military equipment under the 1033 program, including:
 - Armor-piercing firearms and ammunition, bayonets, grenade launchers, grenades, and explosives;
 - Tracked combat vehicles;
 - Weaponized drones;
 - Tear gas; and
 - Items in the Federal Supply Class of banned items.
- Prohibit the use of transferred equipment against First Amendment-protected activities, such as the right peaceably to assemble and to petition the government for redress of grievances.
- Require recipients of equipment to certify that the equipment is not surplus to their needs, and require the return of surplus equipment.
- Increase transparency and accountability for equipment transfers, including:
 - Accounting for all transferred property;
 - Creating and maintaining a regularly updated website that displays all the property transferred under the 1033 program and which law enforcement agencies have received the property; and
 - Requiring compliance with the requirements of this amendment.
- Reestablish the Interagency Law Enforcement Working Group for military equipment transfers.

¹ Brian Barrett, “The Pentagon’s Hand-Me-Downs Helped Militarize Police. Here’s How,” *Wired*, 2 June 2020, <https://www.wired.com/story/pentagon-hand-me-downs-militarize-police-1033-program/>.

² Taylor Wofford, “How America’s Police Became an Army: The 1033 Program,” *Newsweek*, 13 Aug. 2014, <https://www.newsweek.com/how-americas-police-became-army-1033-program-264537>.

³ John Templeton, “Police Departments Have Received Hundreds Of Millions Of Dollars In Military Equipment Since Ferguson,” *Buzzfeed News*, 4 June 2020, <https://www.buzzfeednews.com/article/johntemplon/police-departments-military-gear-1033-program>.

⁴ Casey Delehanty, Jack Mewhirter, Ryan Welch, Jason Wilks, “Militarization and police violence: The case of the 1033 program,” *Research and Politics*, April-June 2017, <https://journals.sagepub.com/doi/pdf/10.1177/2053168017712885>.

⁵ Jonathan Mummolo, “Militarization fails to enhance police safety or reduce crime but may harm police reputation,” *PNAS*, 11 Sept. 2018, <https://www.pnas.org/content/pnas/115/37/9181.full.pdf>.

⁶ Arthur Rizer, Emily Mooney, “The Evolution of Modern Use-of-Force Policies and the Need for Professionalism in Policing,” *Federalist Society Review*, 21 May 2020, <https://fedsoc.org/commentary/publications/the-evolution-of-modern-use-of-force-policies-and-the-need-for-professionalism-in-policing>.

⁷ Arthur Rizer, “Equip Police More Like Batman and Less Like G.I. Joe,” *R Street*, March 2018, <https://www.rstreet.org/wp-content/uploads/2018/04/Corrected-137-1.pdf>.

⁸ *Ibid.*

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S.Amdt.2252 has been endorsed by:

- National Urban League
- NAACP
- The Law Enforcement Action Partnership (LEAP)
- Association of Prosecuting Attorneys
- R Street
- FreedomWorks
- Campaign for Liberty
- #cut50
- VoteVets
- Concerned Veterans for America
- Veterans for American Ideal
- American Bar Association (ABA)
- Fight for the Future
- Third Way
- Project On Government Oversight (POGO)
- Open The Government
- Common Cause
- National Education Association (NEA)
- Sierra Club
- Demand Progress
- Human Rights First
- National Coalition Against Domestic Violence
- National Immigrant Justice Center
- Oxfam America
- Center for Law & Social Policy (CLASP)
- Coalition on Human Needs
- League of United Latin American Citizens (LULAC)
- OCA – Asian Pacific American Advocates
- Anti-Defamation League (ADL)
- Legal Action Center
- National Partnership for Women & Families
- National Center for Transgender Equality
- Just Detention International (JDI)
- Friends Committee on National Legislation (FCNL)
- NETWORK Lobby for Catholic Social Justice
- National Alliance of Faith and Justice (NAFJ)
- United Church of Christ, Justice and Witness Ministries
- National Advocacy of the Sisters of the Good Shepherd
- Unitarian Universalist Service Committee
- Unitarian Universalists for Social Justice
- T’ruah: The Rabbinic Call for Human Rights
- Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
- Muslim Public Affairs Council
- Church World Service