

Comparing Police Reform Bills: the Justice in Policing Act and the JUSTICE Act

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On May 25, 2020, George Floyd died in the custody of the Minneapolis police after an officer pressed his knee into Floyd's neck while restraining him. That incident, others like it, and subsequent [nationwide protests](#) have sparked heightened interest in the federal government's ability to prevent and remedy police misconduct, especially the use of excessive force against people of color. The events of May and June 2020 have prompted action by the Executive Branch and legislative proposals in both houses of Congress. On June 16, 2020, President Donald Trump issued an [Executive Order on Safe Policing for Safe Communities](#). On June 8, 2020, Members of the House of Representatives, led by the Congressional Black Caucus, introduced the [George Floyd Justice in Policing Act of 2020](#) (Justice in Policing Act), and on June 17, 2020, Senate Republicans unveiled the [Just and Unifying Solutions To Invigorate Communities Everywhere Act of 2020](#) (JUSTICE Act). A [previous Legal Sidebar](#) briefly summarized the Executive Order and both bills, along with other recent reform proposals. This Legal Sidebar provides a comparison of the Justice in Policing Act and the JUSTICE Act. While this Sidebar does not purport to detail every provision of the two bills exhaustively, it analyzes key similarities and differences that are most relevant when evaluating the two proposals. The Sidebar first outlines subject matters that both bills cover, detailing similarities and differences between each bill on those subjects. It concludes by discussing provisions unique to each bill. This Sidebar was updated on June 25, 2020, and reflects amendments to each bill up to that date.

Subjects Covered by Both Bills

This section outlines subjects addressed by both the Justice in Policing Act and the JUSTICE Act. In addition to addressing some of the same topics, the two bills are broadly similar in that many of their provisions regulating state and local law enforcement would rely on [Congress's power](#) under the [Spending Clause](#) to require states or state and local law enforcement agencies that accept federal funding to implement certain policies as a condition of the grant. The primary sources of federal funding to which the bills would attach conditions are grants under the [Byrne JAG program](#) and the [COPS grant program](#). In general, whenever either bill would impose an obligation on state or local governments who accept federal funds, funding recipients who fail to comply with such obligations would become ineligible for some or all funding from the specified sources. However, various provisions of both bills would directly regulate federal and even state and local law enforcement officers.

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Limitations on chokeholds and other uses of force. Both the Justice in Policing Act and the JUSTICE Act include provisions designed to limit the use of chokeholds by federal, state, and local law enforcement, though the two statutes differ in their breadth and approach.

- [Section 363](#) of the Justice in Policing Act would specifically govern chokeholds or carotid holds, defined as “the application of any pressure to the throat or windpipe, the use of maneuvers that restrict blood or oxygen flow to the brain, or carotid artery restraints that prevent or hinder breathing or reduce intake of air.” That section of the bill would require states or localities that receive certain federal funding to enact laws banning *all* uses of chokeholds and carotid holds by law enforcement officers. As discussed further below, Section 363 would also amend 18 U.S.C. § 242 to criminalize the use of these maneuvers based on race.
- [Section 364](#) of the Justice in Policing Act, entitled the PEACE Act, would prohibit federal law enforcement officers from using chokeholds or carotid holds unless the conditions for deadly force (discussed further below) are met.
- The JUSTICE Act would apply to chokeholds, defined as “a physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation.” [Section 105](#) of the JUSTICE Act would require states and local governments that receive certain federal funding to develop law enforcement agency policies “prohibit[ing] the use of chokeholds except when deadly force is authorized.” That section would also require the Attorney General to develop such a policy at the federal level for federal law enforcement agencies.
- With respect to the use of force more broadly, the PEACE ACT, [Section 364](#) of the Justice in Policing Act, would allow federal law enforcement officers to use:
 - deadly force (defined as “that force which a reasonable person would consider likely to cause death or serious bodily harm,” specifically including chokeholds and carotid holds, the use of a gun, or multiple discharges of a taser) only as a last resort to prevent imminent death or serious bodily injury when there is no substantial risk of injury to a third person and reasonable alternatives to the use of deadly force have been exhausted;
 - “less lethal” force (defined as “any degree of force that is not likely to cause death or serious bodily injury”) only if such force is “necessary and proportional” to effect an arrest supported by probable cause, and reasonable alternatives to the use of less lethal force have been exhausted.
- The PEACE Act would require federal officers to identify themselves and issue certain verbal warnings to a suspect prior to the use of any force, when feasible. Failure to abide by applicable standards concerning the use of force would limit the ability of a federal law enforcement officer charged with murder or manslaughter to argue that a killing was justified. The section also directs the Attorney General to issue guidance and provide training to federal law enforcement officials on use of force more generally. Finally, this section would condition certain federal grants to states, municipalities, and Indian Tribes on recipients’ enacting laws to establish comparable use of force standards.
- The JUSTICE Act does not contain a comparable provision restricting the use of deadly or less-lethal force more broadly but, as discussed below, would [require reporting](#) of incidents involving law enforcement uses of force.

No-knock warrants. Both bills seek to address concerns related to the use of no-knock warrants, but the Justice in Policing Act would impose or encourage direct legal limits on the practice, while the JUSTICE Act would instead seek to gather data on the use of no-knock warrants.

- [Section 362](#) of the Justice in Policing Act would ban no-knock warrants in drug cases at the federal level. The section would also condition certain federal funding upon states and localities enacting laws prohibiting the use of no-knock warrants in similar drug cases.
- The JUSTICE Act does not contain a comparable provision banning no-knock warrants but, as discussed below, would [require reporting](#) on their use.

Body cameras. Both bills would seek to increase the use of body-worn cameras by state and local law enforcement officers. The Justice in Policing Act would additionally require the use of body cameras and in-vehicle video recording by federal law enforcement officers.

- [Title III, Subtitle C](#) of the Justice in Policing Act would require certain federal law enforcement officers to wear body cameras and use such cameras in responding to any call for service, or at the initiation of any “law enforcement or investigative stop . . . between a Federal law enforcement officer and a member of the public.” The bill contains certain exceptions, such as when an immediate threat to the officer’s life or safety makes activating the camera impossible or dangerous, or when recording is discontinued at the request of a person seeking to remain anonymous. Agencies would be required to retain camera footage for at least six months and allow inspection by certain interested parties. Officers who fail to comply with the bill’s requirements could be subject to disciplinary proceedings, and lack of footage could result in evidentiary presumptions against the government in civil and criminal cases. This subtitle would also require installation and use of video recording equipment in all federal patrol vehicles.
- [Part II of Subtitle C](#) of the Justice in Policing Act, the Police CAMERA Act of 2020, would provide federal grants to expand the use of body cameras by state, local, and tribal law enforcement officers, subject to certain requirements related to safety, privacy, data retention, and reporting.
- [Title II](#) of the JUSTICE Act would provide grants to state, local, and tribal government agencies to support the use of body-worn cameras by law enforcement officials. Funding recipients would be required to provide “assurances” that they have specified policies and procedures in place, including requiring certain training and imposing discipline on officers who fail to use cameras as required.
- Unlike the Justice in Policing Act, the JUSTICE Act would *not* require the use of body cameras or cameras in patrol vehicles by federal law enforcement officers.

Law enforcement misconduct and disciplinary records. Both bills contain provisions designed to enhance transparency concerning records of misconduct by law enforcement officers.

- [Sections 201 and 202](#) of the Justice in Policing Act would create a National Police Misconduct Registry maintained by the Department of Justice (DOJ). The publicly available registry would contain information including complaints (particularly those involving use of force or racial profiling), discipline records, and termination records for all federal, state, and local law enforcement officers. The bill would require states that receive certain federal funding to report such information on behalf of each law enforcement agency within the state. It would also require funding recipients to demonstrate that “all law enforcement officers of the State or other jurisdiction have completed all State certification requirements.”
- [Title III](#) of the JUSTICE Act would require state and local governments that receive certain federal funding to “maintain a system for sharing disciplinary records of law enforcement officers” that meets certain specifications. The system would be accessible to other law enforcement agencies, and individual officers would have the ability to

access their own records and submit related information. Before hiring any law enforcement officer, covered agencies would be required to search the system and review any records related to that officer.

Anti-lynching provisions. Both bills incorporate substantively identical provisions drawn from the [Justice for Victims of Lynching Act](#).

- [Title IV](#) of the Justice in Policing Act is referred to as both the Justice for Victims of Lynching Act and the Emmett Till Anti-Lynching Act. [Title IV](#) of the JUSTICE Act is entitled the Justice for Victims of Lynching Act.
- Both bills would create a new section of the federal criminal code entitled “Lynching.” The provision in each bill would criminalize conspiring to violate certain federal civil rights or hate crime statutes (18 U.S.C. §§ [245](#), [247](#), or [249](#) or [42 U.S.C. § 3631](#)). Violations would be punishable by a fine and/or up to ten years in prison (or longer if authorized by the underlying statute that the defendant conspired to violate).

Training, best practices, and accreditation. Both bills seek to establish best practices for law enforcement officers and train officers in areas such as use of force and racial bias. Both bills would also create standards to accredit or otherwise identify law enforcement agencies that meet certain standards.

- [Subtitle B of Title I](#) of the Justice in Policing Act, the Law Enforcement Trust and Integrity Act of 2020, would require the Attorney General to develop uniform standards for accreditation of law enforcement agencies with respect to, among other areas, use of force procedures, stop and search procedures, training, and early warning systems. This subtitle would direct the Attorney General to make policies to encourage law enforcement agencies to pursue accreditation. It would also authorize grants to community-based organizations to study and implement effective standards and programs for law enforcement agencies.
- [Section 361](#) of the Justice in Policing Act would mandate training for federal law enforcement officers on racial profiling, implicit bias, and the duty to intervene when another officer is using excessive force. This section would also mandate that certain federal grant recipients require state and local law enforcement officers within their jurisdictions to complete such training.
- [Title VI](#) of the JUSTICE Act would direct the Attorney General to develop training on alternatives to use of force, tactics for de-escalation, responding to behavioral health crises, and duty to intervene when another officer uses excessive force. This title would require the Attorney General to publish information about state and local law enforcement agencies that employ officers who have completed such training.
- [Subtitle B of Title VIII](#) of the JUSTICE Act would provide authorization and funding for the Director of the National Museum of African American History and Culture to develop and disseminate an educational curriculum for law enforcement personnel or candidates on the history of racism in the United States.

Reporting on use of force and other matters. Multiple provisions of both bills would facilitate federal data collection and oversight related to police reform.

- [Section 117](#) of the Justice in Policing Act would establish a DOJ Task Force on Law Enforcement Oversight to coordinate the detection and referral of complaints regarding incidents of alleged law enforcement misconduct.
- [Section 118](#) of the Justice in Policing Act would require federal law enforcement agencies, and state, local, and tribal law enforcement agencies that receive certain federal

funding, to report on various practices including stops, searches, and uses of deadly force. Data on each covered practice would be broken down based on the race, ethnicity, age, and gender of the officers and members of the public involved in each incident.

- [Title II, Subtitle B](#) of the Justice in Policing Act, the PRIDE Act, would require recipients of certain federal funding to report to the Attorney General information about a broad range of incidents related to the use of force by and against law enforcement officers, including shootings, deaths in custody, and “any incident involving the death or arrest of a law enforcement officer.” The reports would include various demographic information of the members of the public involved in such incidents. This subtitle would explicitly require reporting of incidents involving school resource officers. The bill would direct the Attorney General to issue a public report containing data collected under this section.
- [Section 101](#) of the JUSTICE Act, the George Floyd and Walter Scott Notification Act, would require recipients of certain federal funding to report to the federal government information related to law enforcement uses of force involving death, serious injury, or use of a firearm; shootings of officers by civilians; and other incidents leading to the death or serious injury of an officer.
- [Section 102](#) of the JUSTICE Act, the Breonna Taylor Notification Act, would require federal funding recipients to report to the federal government information related to law enforcement uses of no-knock warrants. This section would also direct the Attorney General to publish an annual report on the use of no-knock warrants in closed investigations by federal, state, and local law enforcement agencies.

Law enforcement demographics. Both bills contain provisions designed to promote hiring of law enforcement officers who live in or demographically represent the communities they serve.

- [Section 366](#) of the Justice in Policing Act would, among other things, authorize the use of certain federal funds to recruit law enforcement officers who live in or are willing to relocate to communities “where there are poor or fragmented relationships between police and residents of the community, or where there are high incidents of crime.”
- [Section 801](#) of the JUSTICE Act would authorize the use of certain federal grant funding “for a law enforcement agency that has a substantially different racial and ethnic demographic makeup than the community served by the agency, to hire recruiters and enroll law enforcement officer candidates in law enforcement academies to become career law enforcement officers who have racial and ethnic demographic characteristics similar to the community.”

Provisions Unique to the Justice in Policing Act

Criminal liability for civil rights violations. As discussed in more detail in this [Sidebar](#), a provision of the federal criminal code, [18 U.S.C. § 242](#) (Section 242), makes it a crime for a government actor such as a law enforcement officer to willfully deprive a person of rights under the Constitution or federal law, or to impose different punishments based on a person’s race.

- [Section 101](#) of the Justice in Policing Act would amend Section 242 to change the mental state required for conviction from “willfully” to the less stringent “knowingly or recklessly.” This section would also remove the possibility of a death sentence for violating Section 242.
- [Section 363](#) of the Act would amend Section 242 to provide that “the application of any pressure to the throat or windpipe, use of maneuvers that restrict blood or oxygen flow to

the brain, or carotid artery restraints which prevent or hinder breathing or reduce intake of air” is a punishment that may not be imposed based on race.

Qualified immunity. As discussed in this [Sidebar](#), the judicially created doctrine of qualified immunity provides that government officials performing discretionary functions generally may not be sued for such actions unless they violate “clearly established” law.

- [Section 102](#) of the Justice in Policing Act would limit qualified immunity for state and local law enforcement officers in suits under [42 U.S.C. § 1983](#), and for federal law enforcement officers “in any action under any source of law,” providing that it is not a defense to liability if a defendant believed in good faith that his or her conduct was lawful or that the rights the defendant allegedly infringed were not clearly established.

Civil rights investigations. As discussed in this [Sidebar](#), DOJ has the authority under [34 U.S.C. § 12601](#) (Section 12601) to investigate any “pattern or practice” of constitutional violations by law enforcement agencies and sue to remedy such violations.

- [Section 103](#) of the Justice in Policing Act would seek to enhance federal investigations into patterns or practices of law enforcement misconduct by granting subpoena power to DOJ under Section 12601 and authorizing state attorneys general to bring suit based on violations of that provision. This section would also provide federal grant funding to enhance state and local investigations into potential patterns and practices of constitutional violations.

Use of force investigations. States and state and local law enforcement agencies may also investigate potential law enforcement misconduct. However, some commentators [worry](#) that close relationships between law enforcement officers and prosecutors may hinder investigations and prosecutions of law enforcement misconduct.

- [Section 104](#) of the Justice in Policing Act would provide federal grant funding to enhance independent investigations into uses of deadly force by state, local, and tribal law enforcement officers.

Racial profiling. [Title III, Subtitle A](#) of the Justice in Policing Act, the End Racial and Religious Profiling Act, would seek to prevent and remedy racial profiling by law enforcement.

- [Part I](#) of this subtitle would prohibit racial profiling by federal, state, local, and tribal law enforcement. The bill would define racial profiling as “a law enforcement agent or agency relying, to any degree, on actual or perceived race, ethnicity, national origin, religion, gender, gender identity, or sexual orientation” in deciding the scope and substance of law enforcement activities. To enforce this prohibition, the act would authorize civil suits for declaratory or injunctive relief by the DOJ or affected individuals. It would suffice to show a violation of the bill if “spontaneous investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact” on a covered group.
- [Part II](#) would require federal law enforcement agencies to establish policies to help eliminate racial profiling.
- The remainder of Title III, Subtitle A would provide funding for training of state and local police and data collection related to racial profiling, and require the Attorney General to make annual reports to Congress on racial profiling by law enforcement agencies.

Restrictions on transfer of military equipment. Under a federal program known as the [1033 Program](#), the federal government transfers excess military equipment to state and local law enforcement agencies.

- [Section 365](#) of the Justice in Policing Act, the Stop Militarizing Law Enforcement Act, would limit the transfer of certain military-grade equipment (primarily weapons and vehicles designed for combat) to state and local law enforcement.

Provisions Unique to the JUSTICE Act

New criminal offenses. The JUSTICE Act would create two new criminal offenses related to law enforcement oversight and reform.

- [Section 106](#) of the JUSTICE Act would create a new criminal offense of “knowingly and willfully falsify[ing] a report . . . in furtherance of the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States where death or serious bodily injury . . . occurs.” The penalty for violating this provision would be a fine and/or imprisonment for up to twenty years.
- [Title X](#) of the JUSTICE Act would impose criminal liability when a person “acting under color of law, knowingly engages in a sexual act” with a person in federal custody. Violation of this provision would be punishable by a fine and/or up to fifteen years in prison. It would also authorize grants to states, municipalities, and Indian Tribes that enact similar laws.

Exploratory commissions. The JUSTICE Act would create two commissions to investigate issues and propose reforms in areas related to law enforcement oversight.

- [Title V](#) would create a Commission on the Social Status of Black Men and Boys to “conduct a systematic study of the conditions affecting Black men and boys, including homicide rates, arrest and incarceration rates, poverty, violence, fatherhood, mentorship, drug abuse, death rates, disparate income and wealth levels, school performance in all grade levels including postsecondary education and college, and health issues.” Composed of 19 members, including Members of Congress and individuals appointed by Congress, the President, and certain executive branch officials, the Commission would document trends in these areas and propose measures to address any issues it recorded.
- [Title VII](#) would establish a temporary National Criminal Justice Commission to “undertake a comprehensive review of the criminal justice system,” disseminate findings, and propose reforms. The President and the leader of the Senate would each appoint a co-chair of the 14-person Commission, and each co-chair would appoint six additional members, in consultation with certain Members of Congress.
- [Title IX](#) would direct the National Criminal Justice Commission to develop best practices related to law enforcement oversight. It would also direct the Commission to conduct studies on state and local use of force review boards; officer training on issues related to mental health, homelessness, and addiction; and improving accountability for DOJ grants.

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