

January 22, 2021

Law Enforcement's Response to the January 6th Events at the Capitol

On January 6, 2021, security at the Capitol was breached by people who reportedly sought to prevent Congress from certifying the votes of the Electoral College. Some individuals clashed with law enforcement officers and for several hours occupied parts of the Capitol. At the request of District of Columbia Mayor Muriel Bowser and the U.S. Capitol Police, law enforcement agents from the Department of Justice (DOJ), along with law enforcement officers from the U.S. Park Police, the Metropolitan Police Department (MPD), and law enforcement agencies in Maryland and Virginia, assisted with expelling the occupiers and securing the Capitol. In addition to the damage done to the Capitol, pipe bombs were found near the Democratic and Republican National Committees' offices. A car with 11 explosive devices was found near the Capitol. Some reportedly brought firearms and ammunition onto the Capitol grounds. DOJ is jointly investigating criminal cases stemming from the events at the Capitol with MPD and the Capitol Police. (For more information on federal criminal statutes that might be implicated by the unrest at the Capitol, see CRS Legal Sidebar LSB10564.) It has also been reported that DOJ and the Federal Bureau of Investigation (FBI) have established a sedition and conspiracy task force to investigate and pursue charges related to the January 6th events at the Capitol. (For more information on people charged with offenses stemming from these events, see <https://www.justice.gov/opa/investigations-regarding-violence-capitol>.)

This In Focus describes the jurisdiction and investigatory responsibilities of the law enforcement agencies that responded to the Capitol unrest. It also provides an overview of the authority for federal, state, and local governments in the National Capital Region (defined as the District of Columbia; Montgomery, Prince George's, Arlington, Fairfax, Loudon, and Prince William Counties; and Alexandria) to enter into mutual aid agreements with each other.

Law Enforcement Agencies

U.S. Capitol Police

Under 2 U.S.C. § 1961, the Capitol Police are responsible for policing the Capitol building and grounds. Under this authority, the Capitol Police are authorized to make arrests in the Capitol building or on Capitol grounds for "violations of any law of the United States, of the District of Columbia, or of any State." (For more background on the Capitol Police, see CRS Insight IN11570).

Metropolitan Police Department (MPD)

MPD is the primary law enforcement agency in the District of Columbia and it has the jurisdiction to investigate

criminal offenses committed in the district. While MPD officers can make arrests on Capitol grounds, MPD cannot enter the Capitol grounds to make an arrest in response to a complaint, serve a warrant, or patrol the grounds without the consent or request of the Capitol Police (2 U.S.C. § 1961(a)). Per MPD General Order 310.01, investigative responsibilities for crimes committed on the Capitol grounds are the responsibility of the Capitol Police, with the exception of homicide and serious sex offenses, which are jointly investigated by MPD and the Capitol Police.

Federal Bureau of Investigation (FBI)

Under 28 U.S.C. § 533, the FBI is authorized to investigate any federal crime where jurisdiction is not specifically assigned to another department or agency. Two of the FBI's investigatory priorities are terrorism and violent crime. The FBI has taken the lead in identifying suspects wanted for crimes related to the unrest at the Capitol.

U.S. Marshals Service (USMS)

USMS provides security for the judiciary, serves warrants issued by U.S. courts, apprehends fugitives, and transports prisoners (28 U.S.C. § 566). USMS also effectively serves as the sheriff's office for Washington, DC. USMS has been involved in arresting people who are charged with crimes related to the breach of Capitol security.

Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)

Under 28 U.S.C. § 599A(b), ATF is responsible for investigating criminal and regulatory offenses related to federal firearms, explosives, arson, alcohol, and tobacco smuggling laws. ATF can also investigate cases of violent crime and domestic terrorism delegated to it by the Attorney General.

U.S. Park Police (USPP)

Section 102701 of Title 54 of the U.S. Code authorizes the Secretary of the Interior to establish a law enforcement agency to "maintain law and order and protect individuals and property" in the national parks system. In Washington, DC, the USPP primarily provide law enforcement services on the National Mall and the Ellipse. Also, under section 5-206 of the D.C. Code, USPP officers have general policing powers (e.g., the authority to make arrests based on probable cause or serve warrants) "on and within roads, parks, parkways, and other federal reservations" of Washington, DC.

Tactical Capabilities

All three agencies deployed by DOJ in response to the violence at the Capitol (FBI, ATF, and USMS) and the U.S. Park Police maintain tactical teams. There were reports that

the FBI's Special Weapons and Tactics (SWAT) and Hostage Rescue Teams (HRT) and the ATF's Special Response Team (SRT) were deployed to the Capitol. There is no indication that the USMS or the Park Police deployed their tactical teams.

- The FBI's Washington, DC, field office maintains a SWAT team. According to the FBI, the SWAT team can "storm barricaded buildings and vehicles; breach locks and other structures; arrest armed and dangerous criminals; rescue hostages; [and] patrol areas and provide security." In addition, the FBI's HRT, which is based at the FBI Academy in Quantico, VA, is the "U.S. government's non-Department of Defense full-time counterterrorist tactical team." HRT conducts missions involving hostage rescue, barricaded subjects, undercover operations, high-risk arrests, and surveillance operations.
- ATF maintains five SRTs, one of which is based in Sterling, VA. SRTs are tactical teams that can rapidly respond to high-risk law enforcement operations. Their work includes serving search and arrest warrants, high-risk criminal investigations, undercover operations, surveillance operations, and protective service operations.

For more information, see the Government Accountability Office's report on federal tactical teams (GAO-20-710).

Mutual Aid Agreements

As a matter of regular practice, law enforcement officers cannot operate outside of their territorial jurisdiction. However, there are legal mechanisms, such as cooperative or mutual aid agreements, whereby law enforcement officers in one jurisdiction are authorized to enforce laws or provide assistance in another jurisdiction. Law enforcement agencies have to be given authority under state law to enter into these agreements.

National Capital Region Mutual Aid

Section 7302 of the Intelligence Reform and Terrorism Protection Act of 2004 (P.L. 108-458, 42 U.S.C. § 5196 note) authorizes representatives of the federal government; the mayor of Washington, DC; the governors of Maryland and Virginia; and the chief executive officers of a locality in the National Capital Region to enter into, request, or provide assistance through a mutual aid agreement for, among other things, law enforcement services in support of an emergency or public service event.

Federal, state, and local law enforcement agencies have entered into mutual aid agreements under Section 7302 by being signatories to the Metropolitan Washington Council of Government's National Capital Region Mutual Aid Agreement. Under the agreement, for the purposes of requesting aid, an emergency can be declared by the President or an authorized representative of the federal government, and a state of emergency can be declared by the governors of Maryland or Virginia or the mayor of the District of Columbia. Emergencies can be declared due to, among other things, war, internal disorder, acts of terrorism,

or other natural or human-made disasters. When emergencies are declared, a party to the agreement notifies other parties of the need for assistance, which is to be provided pursuant to procedures specified in operational plans agreed to by the parties. Aid under the agreement can also be requested for public service events, which are events that might not rise to the level of an emergency, but which might still require inter-jurisdictional assistance. Unlike emergencies, the activities or situations contributing to a public service event are often known in advance.

Twenty jurisdictions in Maryland, Virginia, and the District of Columbia have signed the National Capital Region Mutual Aid Agreement.

Maryland, Virginia, and District of Columbia Authorities

The authorization under P.L. 108-458 encourages Maryland and Virginia to facilitate the ability of localities to enter into interstate mutual aid agreements in the National Capital Region. Maryland is the only state with a statute to specifically facilitate mutual aid agreements under P.L. 108-458, though both Virginia and Washington, DC, have authorities that could allow law enforcement agencies to enter into mutual aid agreements, such as the National Capital Region Mutual Aid Agreement.

Section 14-8A-02 of the Maryland Code, Public Safety Article, authorizes the state, the governing body of a county or municipal corporation, or any other governmental agency within the National Capital Region to enter into reciprocal agreements with a federal agency, Virginia, the District of Columbia, or a county or municipal corporation, within or outside the state, and "establish, train, and implement plans to request or provide mutual aid through the use of its officers, employees, and agents, together with all necessary equipment, in accordance with § 7302 of the Intelligence Reform and Terrorism Prevention Act of 2004."

Section 2-209.01 of the D.C. Code authorizes the mayor to enter into reciprocal agreements with any county, municipality, or agency of Maryland or Virginia to "establish and carry into effect a plan to provide mutual aid, through the furnishing of policemen and other agents and employees, together with all necessary equipment."

Section 15.2-1727 of the Code of Virginia authorizes localities to enter into reciprocal agreements with localities outside of Virginia, including the District of Columbia, to "establish and carry into effect a plan to provide mutual aid through the furnishing of its police and other employees and agents, together with all necessary equipment, in the event of such need or emergency." Section 15.2-1724 authorizes police officers to be sent to "any point within or without the Commonwealth" to respond to an emergency resulting from "the existence of a state of war, internal disorder, or fire, flood, epidemic or other public disaster."

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