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Policing Reform Legislation: Conditions on Funding and New Authorizations

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SUMMARY

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Policing Reform Legislation: Conditions on Funding and New Authorizations

The death of George Floyd in Minneapolis, MN, while he was in the custody of law enforcement, combined with several other recent high-profile deaths of African Americans at the hands of the police, have generated congressional interest in legislation to reform state and local policing practices, and to require law enforcement agencies to collect more data on law enforcement actions and activities and share these data with the public.

Two pieces of legislation—the George Floyd Justice in Policing Act of 2020 (H.R. 7120), and the Just and Unifying Solutions to Invigorate Communities Everywhere Act of 2020 (JUSTICE Act; S. 3985)—were introduced in June 2020. Both bills are omnibus measures that would address a variety of policing reform topics and approaches. These include attempting to reform state and local policing practices through two means: placing conditions on existing Department of Justice (DOJ) grant programs, such as the Edward Byrne Memorial Justice Assistance Grant (JAG) or Community Oriented Policing Services (COPS) programs; and authorizing new grant programs.

Some examples of conditions H.R. 7120 and S. 3985 would place on existing DOJ grant programs include the following:

- H.R. 7120 would authorize grants to states and tribal governments to assist with implementing statutes that provide for the independent investigation or prosecution of law enforcement officers who allegedly use deadly force. The bill would authorize $750 million each fiscal year from FY2020 to FY2022.
- H.R. 7120 would prohibit federal law enforcement officers from seeking a no-knock warrant in drug cases. State and local governments would not be eligible for COPS funding unless they have a law that similarly prohibits the use of no-knock warrants in drug cases.
- S. 3985 would require state and local governments to submit data to the Federal Bureau of Investigation's (FBI's) Use of Force Data Collection program. State and local governments that do not submit data to the FBI would be subject to a 20% penalty on their JAG allocation for the first year of noncompliance and up to a 25% penalty for each subsequent year of noncompliance.
- S. 3985 would establish incentives for state and local law enforcement agencies to limit the use of chokeholds. State and local governments would be ineligible for JAG or COPS funding unless they have a policy that prohibits the use of chokeholds by state and local law enforcement officers, respectively, except when deadly force is authorized.

Some examples of new grant programs that would be authorized by H.R. 7120 and S. 3985 include the following:

- H.R. 7120 would authorize grants to states and tribal governments to assist with implementing statutes that provide for the independent prosecution of law enforcement officers who use deadly force. The bill would authorize $750 million each fiscal year from FY2020 to FY2022.
- H.R. 7120 would authorize grants to states to conduct pattern and practice investigations. The bill would authorize $100 million each fiscal year from FY2020 to FY2022.
- S. 3985 would authorize DOJ to make grants to assist state and local governments with collecting data on use of force and no-knock warrants. The bill would also appropriate $112 million for these grants, to remain available until expended.
- S. 3985 would require DOJ to make grants to states for the purpose of providing training to law enforcement officers on alternatives to use of force, on de-escalation tactics, or on techniques and strategies for responding to a behavioral health crisis. The bill would appropriate $50 million each fiscal year for these grants, to remain available until expended, from FY2021 to FY2025.

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The death of George Floyd in Minneapolis, MN, while in the custody of law enforcement, along with several other high-profile deaths of African Americans at the hands of the police (including Eric Garner in Staten Island, NY; Philando Castile in Falcon Heights, MN; and Breonna Taylor in Louisville, KY), have served as the catalyst for protests against police violence in cities across the country. These deaths and the resulting protests have spurred interest in policing reform legislation in Congress.

On June 8, 2020, Representative Karen Bass introduced the George Floyd Justice in Policing Act of 2020 (H.R. 7120). Ten days later, Senator Tim Scott introduced the Just and Unifying Solutions to Invigorate Communities Everywhere Act of 2020 (JUSTICE Act; S. 3985). Both pieces of legislation are omnibus measures that would address a variety of policing reform topics, such as requiring law enforcement agencies to submit data to the federal government on the use of force or no-knock warrants; increasing the use of body-worn camera (BWCs); providing for the external, independent prosecution of law enforcement officers' use of deadly force; banning chokeholds; and providing implicit-bias and de-escalation training to law enforcement officers. Both pieces of legislation would use Congress's power of the purse to reform state and local policing practices through two means: (1) placing conditions on existing Department of Justice (DOJ) grant programs, such as the Edward Byrne Memorial Justice Assistance Grant (JAG) or Community Oriented Policing Services (COPS) programs, to incentivize state and local governments to adopt certain policing reforms; and (2) authorizing new programs to assist state, local, and tribal governments with adopting such reforms.

This report provides an overview of the new conditions that would be placed on existing grant programs and the authorizations for new grant programs contained in both pieces of legislation. The report does not discuss provisions of either bill that do not establish new requirements for state and local governments or authorize new funding (e.g., proposals to make lynching a federal crime or to make the use of chokeholds a federal civil rights violation).

Do the New Requirements and Grants in H.R. 7120 and S. 3985 Apply to Indian Tribes?

In general, it appears that the requirements and grant programs under H.R. 7120 would apply to Indian tribes. In some cases, tribal governments are specifically identified in the text of the bill. In other cases, requirements or grant programs apply to "units of local government," and in the bill this term has the same meaning as it does in 34 U.S.C. Section 10251, which includes Indian tribes with law enforcement responsibilities. It is not always clear if the requirements that would be established by S. 3985 would apply to Indian tribes. For example, Section 105(b) of S. 3985 would amend the authorization for the Community Oriented Policing Services (COPS) program to make state and units of local government ineligible for funding under the program unless they have a policy that bans the use of chokeholds. Under the COPS authorization (34 U.S.C. §10381(a)), units of local government and tribal governments are identified as separate entities for the purposes of eligibility for grants. Section 105(b) would also make states and units of local government ineligible for funding under the Edward Byrne Memorial Justice Assistance Grant (JAG) program unless they have the same prohibition in place. Under 34 U.S.C. Section 10251(a)(3), the definition of a "unit of local government" includes "an Indian Tribe that performs law enforcement functions, as determined by the Secretary of the Interior," so in this case the condition appears to apply to Indian tribes.

To avoid speculating about congressional intent, in **Table 1** and **Table 2** of this report identification of entities as being either subject to a requirement or eligible for a grant program is based on the language used in that specific section. Therefore, tribal governments are only identified when they are specifically mentioned in the bill language.

Conditions on Department of Justice Grant Programs in H.R. 7120 and S. 3985

Both H.R. 7120 and S. 3985 would attach new requirements and conditions to funding under the JAG or COPS programs to provide an incentive for state and local law enforcement agencies to submit data on policing actions and activities and to adopt reforms to their policing practices.[1] The proposed conditions generally take two forms: making state and local governments ineligible for funding under these programs unless they submit required data or adopt a particular reform, or authorizing DOJ to reduce funding under these programs if state and local governments do not comply. **Table 1** provides an overview of these conditions.

Table 1. Proposed Requirements and Conditions on DOJ Grant Programs in H.R. 7120 and S. 3985

Proposed Requirement	Condition
H.R. 7120, the George Floyd Justice in Policing Act of 2020	
Section 114(a) would require applicants under the JAG program to study and implement effective management, training, recruiting, hiring, and oversight standards and programs to promote effective community and problem solving strategies for law enforcement agencies.	JAG applicants would be required to use not less than 5% of their allocation for this purpose.

[1] For more information on the JAG program see CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*. For more information on the COPS program, see CRS In Focus IF10922, *Community Oriented Policing Services (COPS) Program*.

Proposed Requirement	Condition
Section 118 would require federal, state, tribal, and local law enforcement agencies to report data to DOJ on stops for traffic violations, pedestrian stops, frisks and body searches, and the use of deadly force by a law enforcement officer.	States that do not comply would be ineligible to receive funding under JAG or any other law enforcement assistance program (such as the COPS program) unless the state has ensured, to DOJ's satisfaction, that it and each local law enforcement agency within it is in substantial compliance with the requirements of the section.
Section 201 would require states to submit disciplinary records to the National Police Misconduct Registry, which would be established by the bill. DOJ would have to establish the registry within 180 days of the enactment of the bill.	Submitting records would be a condition of receiving JAG funds. States would be required to submit records at the beginning of the first fiscal year that is one year after the enactment of the bill, and every fiscal year thereafter. States would be required to submit specified records every 180 days.
Section 202 would require states and units of local government, other than Indian tribes, to submit records to DOJ showing that their officers are certified to work as law enforcement officers in the state. State and local governments would also be required to submit evidence to DOJ that they have a certification and decertification for purposes of employment as a law enforcement officer in that state or unit of local government that is consistent with the rules that DOJ would be required to publish.	States and units of local government would be ineligible for funding under the JAG program unless they submit the required records. These records would be treated in the same manner as other records states are required to submit to the National Police Misconduct Registry. This requirement would go into effect at the beginning of the fiscal year that is one year after the date of enactment of the bill.
Section 223 would require states and Indian tribes to submit reports to DOJ on the use of force by, and against, law enforcement officers, including incidents where a law enforcement officer uses deadly force against a civilian, incidents where a law enforcement officer shoots a civilian, incidents where a civilian shoots a law enforcement officer, incidents involving the death or arrest of a law enforcement officer, and any other incidents involving use of force by or against a law enforcement officer that is not included in one of the above instances; deaths in custody; and arrests and bookings. States and tribal governments would be required to establish a system and a set of policies to ensure that all use of force incidents are reported by local and tribal law enforcement officers.	States or Indian tribes that do not submit the required reports would be subject to a penalty of up to 10% of their JAG award. This requirement would go into effect at the beginning of the fiscal year that is one year after the date of enactment of the bill.
Section 331 would require that state and local governments or state and local law enforcement agencies have policies and procedures designed to eliminate racial profiling and show that they have eliminated any existing practices that permit or encourage racial profiling. These policies would be required to include training on racial profiling, and collection of data on racial profiling required under Section 341 of the bill.	State and local governments or state or local law enforcement agencies that apply for funding under the JAG and COPS programs would be required to certify that they have these policies in place. This requirement would go into effect 12 months after the date of enactment of the bill.
Section 332 would require that DOJ, within six months of enactment of the bill, issue regulations for the operation of administrative complaint procedures and independent audit programs to ensure that such programs and procedures provide an appropriate response to allegations of racial profiling by law enforcement agents or agencies.	If DOJ determines that a recipient of a JAG or COPS grant is not in compliance with the requirements of Section 331 or the regulations issued by DOJ under Section 332, DOJ would be required to withhold, in whole or in part, a grantee's funds under the JAG and COPS programs until the recipient complies.

Proposed Requirement	Condition
Section 334 would require applicants under the JAG program to develop and implement best practices to eliminate racial profiling.	JAG applicants would be required to use not less than 10% of their allocation under the program for this purpose.
Section 361 would require DOJ to establish a training program for law enforcement officers on racial profiling, implicit bias, and procedural justice; establish a clear duty for federal law enforcement officers to intervene in cases where another law enforcement officer is using excessive force against a civilian; and establish a training program that covers the duty to intervene.	State and units of local government would not be eligible for JAG funding unless they require their law enforcement officers to undergo the training DOJ establishes under Section 361. This requirement would go into effect at the beginning of the fiscal year that is one year after the date of enactment of the bill.
Section 362 would prohibit federal law enforcement officers from seeking a no-knock warrant in drug cases.	State and units of local government would not be eligible for COPS funding unless they have a law that prohibits the use of no-knock warrants in drug cases. This requirement would go into effect at the beginning of the fiscal year that is one year after the date of enactment of the bill.
Section 363 would seek to ban the use of chokeholds or carotid holds by state and local law enforcement officers.	State and units of local government would not be eligible for JAG or COPS funding unless they have a law that prohibits the use of chokeholds or carotid holds by state and local law enforcement officers. This requirement would go into effect at the beginning of the fiscal year that is one year after the date of enactment of the bill.
Section 364 would establish new standards for the use of force by federal law enforcement officers so that the use of less-than-lethal force is necessary and proportionate to effect an arrest. When deadly force must be used, other alternatives to the use of force have been exhausted and the use of deadly force is a measure of last resort and used only to prevent imminent serious bodily injury to the officer or another person and where its use poses no risk to a third party. Federal law enforcement officers would also be required to give a suspect a verbal warning that the officer will use force if the suspect resists arrest or flees and give the suspect a chance to surrender.	States and units of local government, other than an Indian tribe, would not be eligible to receive funds under the JAG program unless they have a law that is consistent with the standards that would be established by Section 364. States and units of local government would be eligible to receive withheld JAG funds (for up to five prior fiscal years) if they enact a law consistent with the standards of Section 364 and demonstrate substantial efforts to enforce the law. This requirement would go into effect at the beginning of the fiscal year that is one year after the date of enactment of the bill.
Section 382 would require applicants under the JAG program to establish body-worn camera (BWC) programs.	JAG applicants would be required to use not less than 5% of their allocation for this purpose.
S. 3985, the JUSTICE Act	
Section 101 would require state and local governments to submit data to the Federal Bureau of Investigation's (FBI's) Use of Force Data Collection program.[a]	State and local governments that do not submit data to the FBI's Use of Force Data Collection program would be subject to a 20% penalty on their JAG allocation for the first year of noncompliance and up to a 25% penalty for each subsequent year of noncompliance. This requirement would go into effect at the beginning of the fiscal year after the date of enactment of the bill.

Proposed Requirement	Condition
Section 102 would require state and local governments to submit an annual report to DOJ on the use of no-knock warrants by law enforcement agencies. States would be required to submit the first report no later than January 31 of the first year after the enactment of the bill, and each year thereafter.	State and local governments that do not submit the required annual report would be subject to a 20% penalty on their JAG allocation for the first year of noncompliance and up to a 25% penalty for each subsequent year of noncompliance. This penalty would take effect after the third year after the date of enactment of the bill.
Section 105 would establish incentives for state and local law enforcement agencies to limit the use of chokeholds by officers.	State and local governments would not be eligible for JAG or COPS funding unless they have a policy that prohibits the use of chokeholds by state and local law enforcement officers except when deadly force is authorized. This requirement would go into effect at the beginning of the fiscal year after the date of enactment of the bill.
Section 202 would establish penalties for states and "other entities" that do not have policies in place for the discipline of a law enforcement officer who does not ensure that a federally funded BWC is engaged, functional, and properly secured at all times during which the camera is required to be worn.	Potential penalties would apply to grants awarded under the BWC program that would be authorized by Section 201 (see **Table 2**) of the bill and any other program that provides funding for purchasing BWCs. State and local governments that do not have the required policy in effect would be subject to a 20% penalty under these programs for the first year of noncompliance and up to a 25% penalty for each subsequent year of noncompliance.
Section 301 would require states and units of local government that receive funding under Part E of Title I of the Omnibus Crime Control and Safe Streets Act (Bureau of Justice Assistance Grants) to maintain a system for sharing disciplinary records of law enforcement officers.	States and units of local government that do not meet the disciplinary records requirements would be ineligible for JAG funding.[b]

Source: CRS analysis of H.R. 7120 and S. 3985

a. For more information on the FBI's Use of Force Data Collection program, see https://www.fbi.gov/services/cjis/ucr/use-of-force.

b. S. 3985 would also make state and local governments ineligible for grants under Chapter B, Subpart 2, Part E, Title I of the Omnibus Crime Control and Safe Streets Act, but these grants are not regularly funded by Congress.

Authorized and Appropriated Funding in H.R. 7120 and S. 3985

Both H.R. 7120 and S. 3985 would authorize new grant programs to help promote policing reforms, for purposes such as conducting external, independent investigations or prosecutions of law enforcement officers who allegedly use deadly force, helping law enforcement agencies purchase BWCs, or assisting state and local law enforcement agencies with collecting data that would be required under each bill. In addition to authorizing new grant programs, both bills would authorize funding for DOJ to provide training and technical assistance to state and local governments on how to implement the requirements of the legislation, and S. 3985 would authorize funding for a National Criminal Justice Commission. A key difference between the two bills is that H.R. 7120 would authorize appropriations for several new programs, while S. 3985 would both authorize new programs and appropriate funding for them. The new authorizations and appropriations that would be provided by the bills are outlined in **Table 2**.

Table 2. New Authorizations in H.R. 7120 and S. 3985

Program	Authorization/Appropriation
H.R. 7120, the George Floyd Justice in Policing Act of 2020	
Section 103(b) would authorize grants for states to conduct pattern and practice investigations.	The bill would authorize $100 million each fiscal year from FY2021 to FY2023.
Section 104 would authorize grants to states and tribal governments to assist with implementing statutes that provide for the independent investigation or prosecution of law enforcement officers who allegedly use deadly force.	The bill would authorize $750 million each fiscal year from FY2021 to FY2023.
Section 114(b) would authorize grants to community-based organizations to promote effective community and problem solving strategies for law enforcement agencies, or effective strategies and solutions for public safety, including strategies that do not rely on responses from law enforcement agencies.	The bill would authorize $25 million for FY2021.
Section 116 would authorize additional funding for DOJ's pattern and practice and civil rights investigations as well as the Community Relations Service (CRS).	The bill would authorize $25 million for FY2021 for pattern and practice and civil rights investigations and $3 million for CRS.
Section 117 would create a task force at DOJ to coordinate the process of detection and referral of complaints regarding incidents of alleged law enforcement misconduct.	The bill would authorize $5 million each fiscal year.
Section 224 would authorize DOJ to make training and technical assistance grants to assist tribal and local law enforcement agencies that employ fewer than 100 officers with meeting the use of force data reporting requirements under Section 223 or creating a system that tracks use of force complaints against officers. Section 225 would require DOJ to audit states to determine whether they are complying with use of force data submission requirements.	The bill would authorize such sums as necessary for these purposes.
Section 333 would authorize a demonstration grant program for DOJ to fund data collection programs on the hit rates (i.e., when contraband is found) for stops and searches by law enforcement agencies. DOJ can award up to five grants to law enforcement agencies that serve communities where there is a significant concentration of racial or ethnic minorities and that are not already collecting data voluntarily. DOJ would be required to enter into a contract with an institution of higher education to analyze the data collected through the funded program.	The bill would authorize $5 million for a two-year period for the program and $500,000 for the evaluation.
Section 335 would authorize funding for DOJ to carry out the requirements related to programs to end racial profiling by state and local law enforcement in Part III, Subtitle A, Title III of the bill.	The bill would authorize such sums as necessary for these purposes.
S. 3985, the JUSTICE Act	
Section 104 would authorize DOJ to make grants to assist state and units of local government with collecting data on use of force (Section 101) and no-knock warrants (Section 102).	The bill would appropriate $112 million to remain available until expended.

Program	Authorization/Appropriation
Section 201 would authorize DOJ to make grants to state, local, and tribal governments to help law enforcement agencies establish BWC programs.	The bill would appropriate $100 million each fiscal year, to remain available until expended, for FY2021 to FY2025.
Section 301 would authorize DOJ to make grants to states to help states and their units of local government develop systems for sharing disciplinary records of law enforcement officers.	The bill would appropriate $100 million to remain available until expended.
Section 601(b) would require DOJ to develop a training program for law enforcement officers on alternatives to the use of force, on de-escalation techniques, and on strategies for safely responding to people suffering from mental health crises. DOJ would be required to develop a process for certifying programs that offer this training. DOJ would also be required to provide regional "train the trainer" programs through the end of FY2023.	The bill would appropriate $20 million each fiscal year, to remain available until expended, for FY2021 to FY2025 for these purposes.
Section 601(c) would require DOJ to make grants to states for the purpose of providing training to law enforcement officers on alternatives to use of force, on de-escalation tactics, or on techniques and strategies for responding to a behavioral health crisis.	The bill would appropriate $50 million each fiscal year, to remain available until expended, for FY2021 to FY2025.
Section 602 would require DOJ to develop training for law enforcement agencies and officers on the development, implementation, fulfillment, and enforcement of the duty of a law enforcement officer to intervene when another law enforcement officer is engaged in excessive use of force. DOJ would be required to develop a process for certifying programs that offer the training. DOJ would also be required to provide regional "train the trainer" programs until the end of FY2023. This section would authorize DOJ to make grants to state and local law enforcement agencies to pay for officers to attend duty-to-intervene training.	The bill would appropriate $100 million each fiscal year, to remain available until expended, for FY2021 to FY2025.
Title VII of would establish a National Criminal Justice Commission, which would be tasked with undertaking a comprehensive review of the criminal justice system, submitting recommendations to the President and Congress regarding federal criminal justice reform, and disseminating its findings and supplemental guidance to all levels of government.	The bill would appropriate $7 million each fiscal year for FY2021 and FY2022 to fund the commission's operations.
Section 802(a) would extend the authorization of appropriations for the JAG program.	The bill would extend the authorization of appropriations at $800 million each fiscal year for FY2021 to FY2025.
Section 802(b) would extend the authorization of appropriations for the COPS program.	The bill would extend the authorization of appropriations at $400 million each fiscal year for FY2021 to FY2025.

Program	Authorization/Appropriation
Section 812 would require the Director of the National Museum of African American History and Culture to develop and disseminate a program to train federal, state, and local law enforcement officers or recruits on the history of racism in the United States. The director would also be required to conduct education programs for law enforcement officers and recruits that focuses on racial reconciliation, with the goals of understanding the history of racism in the United States, improving relationships between law enforcement and the communities they serve, and training law enforcement officers who can effectively train their peers on these topics.	The bill would appropriate $2 million each fiscal year, to remain available until expended, for FY2021 to FY2025 for this training.
Section 1002 would authorize DOJ to make grants to states that have laws that make it a criminal offense for any person acting under color of law of the state to engage in a sexual act (as defined at 18 U.S.C. § 2246) with an individual who has been arrested by, is detained by, or is in custody of any law enforcement officer; and prohibits a person charged with such an offense from asserting the consent of the other individual as a defense. Grants must be used for the same purposes as formula grants under the STOP Violence Against Women and the Sexual Assault Services programs.[a]	The bill would appropriate $5 million each fiscal year, to remain available until expended, for FY2021 to FY2025.

Source: CRS analysis of H.R. 7120 and S. 3985.

a. For more information on the STOP Violence Against Women and the Sexual Assault Services programs, see CRS Report R45410, *The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization*.

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