

Policing Reform Legislation: Conditions on Funding and New Grant Authorizations

Updated March 11, 2021

Congressional Research Service
<https://crsreports.congress.gov>

R46431



R46431

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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.

The George Floyd Justice in Policing Act of 2020 (H.R. 7120, 116th Congress) was introduced and passed by the House in June 2020, but it was not taken up by the Senate. The legislation has been reintroduced in the current Congress as the George Floyd Justice in Policing Act of 2021 (JIPA, H.R. 1280). The House passed JIPA on March 3, 2021. The legislation is an omnibus measure 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 JIPA would place on existing DOJ grant programs include the following:

- The bill 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 law enforcement officers. 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.
- The bill would make submitting records to the National Police Misconduct Registry, which would be established by the legislation, a condition of receiving JAG funds.
- The bill 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.

Some examples of new grant programs that would be authorized under JIPA include the following:

- The bill 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 FY2022 to FY2024.
- The bill would authorize grants to states to conduct investigations of repeated civil rights violations by law enforcement officers (also known as *pattern and practice investigations*). The bill would authorize \$100 million each fiscal year from FY2022 to FY2024.

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The death of George Floyd in Minneapolis, MN, while in the custody of law enforcement in May 2020, 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; Breonna Taylor in Louisville, KY; and Daniel Prude in Rochester, NY), 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) in the 116th Congress. The bill was passed by the House on June 25, 2020, but it was not taken up by the Senate. On February 24, 2021, Representative Bass reintroduced the bill in the House as the George Floyd Justice in Policing Act of 2021 (JIPA, H.R. 1280). The House passed JIPA on March 3, 2021. The legislation is an 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; increasing the use of body-worn camera (BWCs); providing for the external, independent investigation and prosecution of law enforcement officers' use of deadly force; banning chokeholds; and providing implicit-bias and de-escalation training to law enforcement officers. The bill 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 JIPA. The report does not discuss provisions that do not establish new requirements for state and local governments (e.g., requirements for federal law enforcement officers to use BWCs or to have cameras in their patrol cars, or to make the use of chokeholds a federal civil rights violation) or do not authorize funding for new grant programs.

Do the New Requirements and Grants in JIPA Apply to Indian Tribes?

In general, it appears that the requirements and grant programs under H.R. 1280 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. However, there are some instances where Indian tribes are exempted from particular requirements.

Conditions on Department of Justice Grant Programs in H.R. 1280

H.R. 1280 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

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*.

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. 1280

Proposed Requirement	Condition
<p>Section 103(d) prevents state and local governments from entering into a contractual agreement, including a collective bargaining agreement, that would prevent the Attorney General from seeking or enforcing equitable or declaratory relief against a law enforcement agency engaging in a pattern or practice of unconstitutional misconduct, or conflicts with any terms or conditions contained in a consent decree.^a</p>	<p>State or local governments that receive JAG or COPS funding cannot make any of these funds available to a local law enforcement agency that enters into or renews a prohibited contractual agreement. 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.</p>
<p>Section 113 would require the Attorney General to analyze existing accreditation standards and, based on the results of this analysis, recommend the adoption of national standards that will result in greater accountability for law enforcement agencies and place a focus on policing with a guardian mentality.^b The Attorney General's recommendations would be required to include standards related to (1) early warning systems; (2) use of force procedures; (3) civilian review procedures; (4) traffic and pedestrian stop and search procedures; (5) data collection and transparency; (6) administrative due process requirements; (7) video monitoring technology; (8) youth justice and school safety; and (9) recruitment, hiring, and training.</p>	<p>JAG applicants would be required to use not less than 5% of their allocation to assist law enforcement agencies with gaining or maintaining accreditation from a certified law enforcement accreditation organization. In addition, the bill would require the Attorney General, as appropriate and consistent with applicable law, to allocate discretionary DOJ grant funding only to states or units of local government that require law enforcement agencies to gain and maintain accreditation from certified law enforcement accreditation organizations.</p>
<p>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.</p>	<p>JAG applicants would be required to use not less than 5% of their allocation for this purpose.</p>
<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>

Proposed Requirement	Condition
<p>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.</p>	<p>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.</p>
<p>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 the use of force in 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 and Indian tribes would not be required to report any incidents under this section that they are already required to submit to DOJ under the Death in Custody Reporting Act (34 U.S.C. §12104(a)(2)).</p>	<p>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.</p>
<p>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 a prohibition on racial profiling, training on racial profiling, collection of data on racial profiling required under Section 341 of the bill, and participation in the administrative complaint procedure and independent audit program that meets the requirements of Section 332 of the bill.</p>	<p>State and local governments or state or local law enforcement agencies that apply for funding under the JAG and COPS programs, with the exception of funding for active shooter training, 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.</p>
<p>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.</p>	<p>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, with the exception of funding for active shooter training programs, until the recipient complies.</p>
<p>Section 334 would require applicants under the JAG program to develop and implement best practices to eliminate racial profiling.</p>	<p>JAG applicants would be required to use not less than 10% of their allocation under the program for this purpose.</p>

Proposed Requirement	Condition
<p>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.</p>	<p>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.</p>
<p>Section 362 would prohibit federal law enforcement officers from seeking a no-knock warrant in drug cases.</p>	<p>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.</p>
<p>Section 363 would seek to ban the use of chokeholds or carotid holds by state and local law enforcement officers.</p>	<p>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.</p>
<p>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. When feasible, prior to using force, federal law enforcement officers would also be required to identify themselves as federal law enforcement officers, issue a verbal warning that they intend to apprehend the suspect, 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.</p>	<p>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.</p>
<p>Section 382 would require applicants under the JAG program to establish BWC programs. Applicants would be required to use set-aside funds for purchasing or leasing BWCs, expenses related to implementing a BWC program, and implementing policies or procedures related to the effective implementation and operation of a BWC program.</p>	<p>JAG applicants would be required to use not less than 5% of their allocation for this purpose.</p>

Source: CRS analysis of H.R. 1280, as introduced in the 117th Congress.

- a. For more information on consent decrees, see CRS Legal Sidebar LSB10494, *Reforming Patterns of Unconstitutional Policing: Enforcement of 34 U.S.C. § 12601*.
- b. For more information on the *guardian mentality* in law enforcement, see Sue Rahr and Stephen K. Rice, *From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals*, April 2015, <https://www.ojp.gov/pdffiles1/nij/248654.pdf>.

Authorization of Appropriations in H.R. 1280

H.R. 1280 would authorize new grant programs to help promote policing reforms. In addition to authorizing new grant programs, the legislation 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. New authorizations of appropriations that would be provided by the bill are outlined in **Table 2**.

Table 2. New Authorizations in H.R. 1280

Program	Authorization/Appropriation
Section 103(b) would authorize grants for states to conduct pattern and practice investigations. ^a	The bill would authorize \$100 million each fiscal year from FY2022 to FY2024.
Section 104 would authorize grants to states and tribal governments to assist with implementing statutes that provide for the independent criminal investigation or prosecution of law enforcement officers who allegedly used force that resulted in death or injury.	The bill would authorize \$750 million each fiscal year from FY2022 to FY2024.
Section 114(b) would authorize grants to community-based organizations 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; or effective strategies and solutions to public safety, including strategies that do not rely on law enforcement responses.	The bill would authorize \$25 million for FY2022.
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 use of force data reporting requirements; creating a system that tracks use of force complaints against officers; creating public awareness campaigns designed to gain information from the public on use of force by or against law enforcement officers; and providing training on de-escalation, implicit bias, crisis intervention techniques, and adolescent development.	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.

Source: CRS analysis of H.R. 1280, as introduced in the 117th Congress.

a. For more information on pattern and practice investigations, see CRS Legal Sidebar LSB10494, *Reforming Patterns of Unconstitutional Policing: Enforcement of 34 U.S.C. § 12601*.

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