



## How to start de-militarizing the police

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June 17, 2020

After the unrest in Ferguson in 2014, replete with images of cops riding in tanks and dressed like an occupying army, the militarization of America's police became a national issue. In 2015, President Obama signed an executive order limiting some transfers of military gear to local law enforcement agencies (LEAs), but President Trump rescinded it soon after he took office. Despite Obama's executive order, little has changed in the problem of police militarization. Now is the moment to fix it. Stopping the unnecessary use of military gear and tactics will not solve all the problems with police, but it could help restore trust and save lives.

The truth is that it will be difficult to de-militarize our police given the amount of gear that is already out there. And we can expect law enforcement officers to understandably complain about the times where military gear might be necessary, such as hostage situations. Given these circumstances, a sensible first step is for municipalities, states, and the federal government to start programs that comprehensively monitor how, why, and when police are using certain types of military gear and tactics.

Since 1997, the Law Enforcement Support Office (LESO) of the Defense Logistics Agency (DLA) has administered what's known as the 1033 program, under which \$7.2 billion worth of equipment has been transferred to over 8,000 LEAs around the country. The LESO is upfront about the equipment it transfers, and the vast majority is harmless, such as clothing, office supplies, personal protective equipment, and commercial vehicles. Only 5 percent of the gear is small arms, and less than 1 percent is tactical vehicles. But that still equates to 1,098 Mine-Resistant Ambush Protect (MRAPs) vehicles distributed through the 1033 program as of March 2020.

But merely ending the 1033 program will not fix the problem of militarized police. First, if the Pentagon is going to continue to produce surplus equipment (a good bet), distributing office supplies, clothing and other useful, non-lethal items to LEAs is not necessarily a bad idea. Second, LEAs can and do acquire military gear on their own. And finally, the problem isn't so much that police have military gear, but how they use it. Most of the gear should be collecting dust and rolled out only during extraordinary situations, such as when there are hostages behind barricades or the known presence of heavily armed criminals.

Instead, police seem to use military-style SWAT raids primarily to fight the drug war. According to an ACLU report from 2014, 80 percent of SWAT raids were initiated to serve search warrants,

mostly in drug cases. Those numbers are consistent with reports from Utah and Maryland. In Utah, 83 percent of the time a SWAT raid was used, it was to serve drug warrants. And in Maryland, 90 percent of the time SWAT teams were serving search warrants, again mostly for drugs.

Beyond these studies, we don't have much good and comprehensive data on how military gear and tactics are used by American police, and that's a problem. This is partially due to law enforcement's tendency to viciously oppose almost any transparency requirement. The data from Maryland exists only due to a short-lived law that required police departments to monitor and report on SWAT use. The law was passed after a mistaken SWAT raid on a small-town mayor shed light on SWAT team practices, but with the concession—supported by law enforcement—that it would last only five years. Utah is now the only state to comprehensively monitor SWAT team deployments.

Given the impediments to divesting LEAs of their military gear, states and municipalities should move quickly to establish reporting requirements for their police departments' use of military gear and tactics. For the federal government, such requirements should attach to dangerous military property distributed through the 1033 program. And the requirements should go beyond monitoring the official SWAT team because military-style raids are also conducted by other groups, particularly drug task forces. Special focus should be placed on the types of crimes the raids are used against and whether there is any good reason to believe that the suspects pose unique dangers. Departments should record whether contraband was recovered, whether the presence of children or the elderly was investigated, and whether any shots were fired at pets or otherwise.

Reporting requirements should exist for all forced-entry raids, whether “no-knock” raids or the functionally equivalent “knock-and-announce” raids (cops tend to knock and announce while simultaneously breaking down the door). Raids used against nonviolent crime—especially drug use and possession—should be regarded as presumptively unlawful unless specific facts show that a defendant is particularly dangerous.

Compliance will be difficult. As mentioned, law enforcement organizations generally resist transparency, and police tend to find every loophole a law offers them. For example, when the Supreme Court told police they needed to cite specific facts for a no-knock warrant, police started writing general statements like “all drug dealers are dangerous.” Later, the Court said that general statements are not enough, but the practice is still widespread.

At best, however, reporting requirements are only a first step in de-militarizing the police. But increased transparency will help us understand the scope of the problem. Trust in the police can be restored, but it will be a long process.

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