

## CRS Insights

# The "Militarization" of Law Enforcement and the Department of Defense's "1033 Program"

Nathan James, Analyst in Crime Policy ([njames@crs.loc.gov](mailto:njames@crs.loc.gov), 7-0264)

Daniel H. Else, Specialist in National Defense ([delse@crs.loc.gov](mailto:delse@crs.loc.gov), 7-4996)

August 20, 2014 (IN10138)

[Recent clashes between police and protesters in Ferguson, MO](#), have raised questions about the "militarization" of law enforcement. Such concerns have focused almost exclusively on the expanding role of [Special Weapons and Tactics \(SWAT\) teams](#). Congress has also [turned its attention](#) to the Department of Defense's (DOD) "1033 Program" and what role it might play in the militarization of law enforcement.

## Militarization of Law Enforcement

[SWAT teams first appeared in the later part of the 1960s](#) as a way to respond to extraordinary cases that could not be effectively managed with regular law enforcement officers, tactics, and weapons (e.g., hostage takings, active shooters, or terrorist situations). Law enforcement agencies have also established SWAT teams as a way to combat better-armed criminals. SWAT teams are called upon to handle the most dangerous situations, such as serving high-risk narcotics search warrants, apprehending dangerous fugitives, and rescuing hostages. The tactics employed by SWAT teams are designed to protect the safety of officers, the public, victims, and offenders.

The number of SWAT teams has proliferated since they were first formed in the late 1960s. By the late 1990s, about 89% of police departments in the United States serving jurisdictions of 50,000 or more people and 80% of departments serving jurisdictions of 25-50,000 people [reported having a SWAT team](#). The growth in the number of SWAT teams in small jurisdictions has raised questions about whether they have the [resources necessary to properly train team members](#).

Data show that SWAT teams are being [deployed more frequently](#). There was a reported 1,400% increase in the total number of SWAT deployments between 1980 and 2000. There are an estimated 45,000 SWAT deployments each year. Data also show that nearly 80% of SWAT deployments are for

proactive drug raids or to execute search warrants. In addition, SWAT teams are increasingly used to conduct routine patrol work in crime "hot spots."

[A recently released report](#) by the American Civil Liberties Union (ACLU) argues that while law enforcement might assert that SWAT teams are needed to prevent violence in high-risk situations, the aggressive tactics used by SWAT teams can exacerbate the risk of violence. In addition, the ACLU noted that what constitutes a "high-risk" situation is based on the subjective belief of the officers involved. The ACLU also argues that the aggressive techniques used by SWAT teams during routine investigations can have a negative effect on public confidence in law enforcement.

[Two scholars argue](#) that the "war on drugs" and the "war on terror" have given rise to the militarization of police by providing a crisis in which law enforcement could expand its size, scope, and power; increasing demands from the public for the government to "do something" about the crisis; and facilitating interactions between the military and law enforcement as they conducted joint operations in the "wars." Technological improvements have lowered the cost for law enforcement to adopt military technology. Technology that was once exclusively used by the military—such as facial recognition systems, thermal imaging, and satellite monitoring—can now be used by law enforcement. The ACLU reported that law enforcement agencies are providing SWAT team members with more militaristic training that teaches them to think like soldiers.

## **The 1033 Program**

The "1033 Program" was created by Congress in the National Defense Authorization Act for 1997 ([P.L. 104-201](#)) and is codified in 10 U.S.C. §2576a. It authorizes the Secretary of Defense to provide material support to authorized federal and state law enforcement agencies in the form of transfers of articles suitable for use in counter-drug and counter-terrorism activities. These are drawn from Department of Defense (DOD) stocks deemed excess to military needs.

It was preceded by a 1990 statute, Section 1208 of the National Defense Authorization Act for 1990 and 1991 ([P.L. 101-189](#)), which temporarily authorized transfers of defense equipment to law enforcement agencies for counter-drug enforcement use. The 1997 act made the authority permanent and expanded it to include counter-terrorism activities.

The current statute requires that the Secretary of Defense consult with the Attorney General and the Director of National Drug Control Policy in carrying out its provisions. It also allows the Secretary to transfer property only if (1) it is drawn from existing DOD stocks, (2) the receiving agency accepts the material "as-is, where-is," (3) the transfer is made without expending DOD procurement funds, and (4) all subsequent costs are borne by the receiver.

Nevertheless, the Secretary may transfer the property without charge to the recipient.

The statute specifies that preference will be given to applications specifying that the material will be used in counter-drug or counter-terrorism activities.

The Law Enforcement Support Office ([LESO](#)) of the Defense Logistics Agency (DLA) administers the program. To participate, each state or territory must execute a Memorandum of Agreement (MOA) with DLA, and the governor must appoint a state coordinator. The coordinator keeps property records, investigates alleged property misuse, and reports MOA violations to DLA. The senior official of the receiving law enforcement organization is responsible for all 1033 Program controlled property. Property requiring demilitarization must be returned to DLA when no longer needed.

State agencies wishing to take part apply to the LESO through their state coordinator. Once accepted, the agencies appoint officials to visit a DLA Disposition Services Site to screen property, placing specific requests through their state coordinators. The LESO has final approval authority over individual property transfers.

General categories of material offered by the LESO include office furniture, household goods (e.g., kitchen equipment), exercise equipment, portable electric generators, tents, and general law enforcement supplies (e.g., handcuffs, riot shields, holsters, binoculars, and digital cameras). Heavy equipment, such as cranes, and various types of land vehicles are also available. Watercraft, aircraft, and weapons are eligible for transfer. Other miscellaneous property includes tool kits, first aid kits, blankets and bedding, lawn maintenance supplies, combat boots, and office equipment (computers, printers, fax machines, etc.). According to the LESO, more than 8,000 agencies participate and have received more than \$5.1 billion in property since the program's inception.