AMENDMENT TO RULES COMMITTEE PRINT 116–57

OFFERED BY MR. JOHNSON OF GEORGIA

At the end of subtitle E of title X, insert the following:

SEC. 10. LIMITATION ON DEPARTMENT OF DEFENSE TRANSFER OF PERSONAL PROPERTY TO LOCAL LAW ENFORCEMENT AGENCIES.

(a) FINDINGS.—Congress makes the following findings:

(1) Under section 2576a of title 10, United States Code, the Department of Defense is authorized to provide excess property to local law enforcement agencies. The Defense Logistics Agency, administers such section by operating the Law Enforcement Support Office program.

(2) New and used material, including mine-resistant ambush-protected vehicles and weapons determined by the Department of Defense to be “military grade” are transferred to Federal, Tribal, State, and local law enforcement agencies through the program.
(3) As a result local law enforcement agencies, including police and sheriff’s departments, are acquiring this material for use in their normal operations.

(4) As a result of the wars in Iraq and Afghanistan, military equipment purchased for, and used in, those wars has become excess property and has been made available for transfer to local and Federal law enforcement agencies.

(5) In Fiscal Year 2017, $504,000,000 worth of property was transferred to law enforcement agencies.

(6) More than $6,800,000,000 worth of weapons and equipment have been transferred to police organizations in all 50 States and four territories through the program.

(7) In May 2012, the Defense Logistics Agency instituted a moratorium on weapons transfers through the program after reports of missing equipment and inappropriate weapons transfers.

(8) Though the moratorium was widely publicized, it was lifted in October 2013 without adequate safeguards.

(9) On January 16, 2015, President Barack Obama issued Executive Order 13688 to better co-
ordinate and regulate the federal transfer of military
weapons and equipment to State, local, and Tribal
law enforcement agencies.

(10) In July, 2017, the Government Account-
ability Office reported that the program’s internal
controls were inadequate to prevent fraudulent appli-
cants’ access to the program.

(11) On August, 28, 2017, President Donald
Trump rescinded Executive Order 13688 despite a
July 2017 Government Accountability Office report
finding deficiencies with the administration of the
1033 program.

(12) As a result, Federal, State, and local law
enforcement departments across the country are eli-
gible again to acquire free “military-grade” weapons
and equipment that could be used inappropriately
during policing efforts in which people and taxpayers
could be harmed.

(13) The Department of Defense categorizes
equipment eligible for transfer under the 1033 pro-
gram as “controlled” and “un-controlled” equip-
ment. “Controlled equipment” includes weapons, ex-
plosives such as flash-bang grenades, mine-resistant
ambush-protected vehicles, long-range acoustic de-
vices, aircraft capable of being modified to carry ar-
mament that are combat coded, and silencers, among other military grade items.

(b) IN GENERAL.—Section 2576a of title 10, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A), by striking “counterdrug, counterterrorism, and border security activities” and inserting “counterterrorism”; and

(B) in paragraph (2), by striking “, the Director of National Drug Control Policy,”;

(2) in subsection (b)—

(A) in paragraph (5), by striking “and” at the end;

(B) in paragraph (6), by striking the period and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

“(7) the recipient submits to the Department of Defense a description of how the recipient expects to use the property;

“(8) the recipient certifies to the Department of Defense that if the recipient determines that the property is surplus to the needs of the recipient, the
recipient will return the property to the Department of Defense;

“(9) with respect to a recipient that is not a Federal agency, the recipient certifies to the Department of Defense that the recipient notified the local community of the request for personal property under this section by—

“(A) publishing a notice of such request on a publicly accessible Internet website;

“(B) posting such notice at several prominent locations in the jurisdiction of the recipient; and

“(C) ensuring that such notices were available to the local community for a period of not less than 30 days; and

“(10) the recipient has received the approval of the city council or other local governing body to acquire the personal property sought under this section.”;

(3) by striking subsection (d);

(4) by redesignating subsections (e) and (f) as subsections (o) and (p), respectively; and

(5) by inserting after subsection (e) the following new subsections:
“(d) Annual Certification Accounting for Transferred Property.—(1) For each fiscal year, the Secretary shall submit to Congress certification in writing that each Federal or State agency to which the Secretary has transferred property under this section—

“(A) has provided to the Secretary documentation accounting for all controlled property, including arms and ammunition, that the Secretary has transferred to the agency, including any item described in subsection (f) so transferred before the date of the enactment of the Stop Militarizing Law Enforcement Act; and

“(B) with respect to a non-Federal agency, carried out each of paragraphs (5) through (8) of subsection (b).

“(2) If the Secretary cannot provide a certification under paragraph (1) for a Federal or State agency, the Secretary may not transfer additional property to that agency under this section.

“(e) Annual Report on Excess Property.—Before making any property available for transfer under this section, the Secretary shall annually submit to Congress a description of the property to be transferred together with a certification that the transfer of the property would not violate this section or any other provision of law.
“(f) LIMITATIONS ON TRANSFERS.—(1) The Secretary may not transfer to Federal, Tribal, State, or local law enforcement agencies the following under this section:

“(A) Controlled firearms, ammunition, bayonets, grenade launchers, grenades (including stun and flash-bang) and explosives.

“(B) Controlled vehicles, highly mobile multi-wheeled vehicles, mine-resistant ambush-protected vehicles, trucks, truck dump, truck utility, and truck carryall.

“(C) Drones that are armored, weaponized, or both.

“(D) Controlled aircraft that—

“(i) are combat configured or combat coded; or

“(ii) have no established commercial flight application.

“(E) Silencers.

“(F) Long-range acoustic devices.

“(G) Items in the Federal Supply Class of banned items.

“(2) The Secretary may not require, as a condition of a transfer under this section, that a Federal or State agency demonstrate the use of any small arms or ammunition.
“(3) The limitations under this subsection shall also apply with respect to the transfer of previously transferred property of the Department of Defense from one Federal or State agency to another such agency.

“(4)(A) The Secretary may waive the applicability of paragraph (1) to a vehicle described in subparagraph (B) of such paragraph (other than a mine-resistant ambush-protected vehicle), if the Secretary determines that such a waiver is necessary for disaster or rescue purposes or for another purpose where life and public safety are at risk, as demonstrated by the proposed recipient of the vehicle.

“(B) If the Secretary issues a waiver under subparagraph (A), the Secretary shall—

“(i) submit to Congress notice of the waiver, and post such notice on a public Internet website of the Department, by not later than 30 days after the date on which the waiver is issued; and

“(ii) require, as a condition of the waiver, that the recipient of the vehicle for which the waiver is issued provides public notice of the waiver and the transfer, including the type of vehicle and the purpose for which it is transferred, in the jurisdiction where the recipient is located by not later than 30 days after the date on which the waiver is issued.
“(5) The Secretary may provide for an exemption to the limitation under subparagraph (D) of paragraph (1) in the case of parts for aircraft described in such subparagraph that are transferred as part of regular maintenance of aircraft in an existing fleet.

“(6) The Secretary shall require, as a condition of any transfer of property under this section, that the Federal or State agency that receives the property shall return the property to the Secretary if the agency—

“(A) is investigated by the Department of Justice for any violation of civil liberties; or

“(B) is otherwise found to have engaged in widespread abuses of civil liberties.

“(g) CONDITIONS FOR EXTENSION OF PROGRAM.—Notwithstanding any other provision of law, amounts authorized to be appropriated or otherwise made available for any fiscal year may not be obligated or expended to carry out this section unless the Secretary submits to Congress certification that for the preceding fiscal year that—

“(1) each Federal or State agency that has received controlled property transferred under this section has—

“(A) demonstrated 100 percent accountability for all such property, in accordance with paragraph (2) or (3), as applicable; or
“(B) been suspended from the program
pursuant to paragraph (4);
“(2) with respect to each non-Federal agency
that has received controlled property under this sec-
tion, the State coordinator responsible for each such
agency has verified that the coordinator or an agent
of the coordinator has conducted an in-person inven-
tory of the property transferred to the agency and
that 100 percent of such property was accounted for
during the inventory or that the agency has been
suspended from the program pursuant to paragraph
(4);
“(3) with respect to each Federal agency that
has received controlled property under this section,
the Secretary of Defense or an agent of the Sec-
retary has conducted an in-person inventory of the
property transferred to the agency and that 100 per-
cent of such property was accounted for during the
inventory or that the agency has been suspended
from the program pursuant to paragraph (4);
“(4) the eligibility of any agency that has re-
ceived controlled property under this section for
which 100 percent of the property was not ac-
counted for during an inventory described in para-
graph (1) or (2), as applicable, to receive any prop-
11

erty transferred under this section has been sus-

pended; and

“(5) each State coordinator has certified, for
each non-Federal agency located in the State for
which the State coordinator is responsible that—

“(A) the agency has complied with all re-
quirements under this section; or

“(B) the eligibility of the agency to receive
property transferred under this section has been
suspended; and

“(6) the Secretary of Defense has certified, for
each Federal agency that has received property
under this section that—

“(A) the agency has complied with all re-
quirements under this section; or

“(B) the eligibility of the agency to receive
property transferred under this section has been
suspended.

“(h) PROHIBITION ON OWNERSHIP OF CONTROLLED
PROPERTY.—A Federal or State agency that receives con-
trolled property under this section may never take owner-
ship of the property.

“(i) NOTICE TO CONGRESS OF PROPERTY DOWN-
GRADES.—Not later than 30 days before downgrading the
classification of any item of personal property from con-
trolled or Federal Supply Class, the Secretary shall submit to Congress notice of the proposed downgrade.

“(j) Notice to Congress of Property Cannibalization.—Before the Defense Logistics Agency authorizes the recipient of property transferred under this section to cannibalize the property, the Secretary shall submit to Congress notice of such authorization, including the name of the recipient requesting the authorization, the purpose of the proposed cannibalization, and the type of property proposed to be cannibalized.

“(k) Quarterly Reports on Use of Controlled Equipment.—Not later than 30 days after the last day of a fiscal quarter, the Secretary shall submit to Congress a report on any uses of controlled property transferred under this section during that fiscal quarter.

“(l) Reports to Congress.—Not later than 30 days after the last day of a fiscal year, the Secretary shall submit to Congress a report on the following for the preceding fiscal year:

“(1) The percentage of equipment lost by recipients of property transferred under this section, including specific information about the type of property lost, the monetary value of such property, and the recipient that lost the property.
“(2) The transfer of any new (condition code A) property transferred under this section, including specific information about the type of property, the recipient of the property, the monetary value of each item of the property, and the total monetary value of all such property transferred during the fiscal year.”.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to any transfer of property made after the date of the enactment of this Act.