RESOLVED, That the American Bar Association urges Congress to enact legislation that:

1. implements the “Law Enforcement Equipment Working Group Recommendations Pursuant to Executive Order 13688” dated May 2015;
2. places strict limitations on the authority of federal agencies to provide State, local, and tribal law enforcement agencies (LEAs) with excess military equipment, or funds to purchase military equipment, in order to maximize the safety and security of law enforcement officers and the communities they serve;
3. establishes a prohibited equipment list identifying categories of military equipment that LEAs would not be able to acquire from any federal agency or using any federal funds;
4. harmonizes any federal programs involving the transfer of excess military equipment, or funds to purchase military equipment, to LEAs so that they have consistent and transparent policies;
5. mandates that LEAs that are eligible to receive military equipment, or funding for such equipment, from any federal agency receive necessary training, and have policies in place that address appropriate use and employment of military equipment and the protection of civil rights and civil liberties in the use of such equipment; and
6. expands the federal government’s monitoring and compliance capabilities to ensure that LEAs acquiring military equipment, or funding for such equipment, from any federal agency comply with the above training and policy requirements.
For decades, the Federal Government has provided, and continues to provide, State, local, and tribal law enforcement agencies (LEAs) with military equipment, including firearms, ammunition, and tactical vehicles. LEAs may acquire equipment from the Federal Government from a variety of federal programs, including excess accumulations from the U.S. Department of Defense (DOD) (commonly referred to as the “1033 Program”), the U.S. General Services Administration’s (GSA) Federal Surplus Personal Property Donation Program, or funding provided by the U.S. Department of Justice (DOJ), U.S. Department of Homeland Security (DHS) or U.S. Department of the Treasury (Treasury).

I. Neighborhoods Are Not War Zones, and Citizens Are Not Wartime Enemies

“Over the last several years, however, community members, LEA leaders, civil rights advocates, and elected leaders have voiced concerns about what has been described as the ‘militarization’ of law enforcement due to the types of equipment at times deployed by LEAs and the nature of those deployments. The most widely publicized example of this phenomenon occurred during the widespread protests in Ferguson, Missouri, in August 2014. At times, the law enforcement response to those protests was characterized as a "military-style" operation, as evidenced by videos and photographs that showed law enforcement officers atop armored vehicles, wearing uniforms often associated with the military, and holding military-type weapons. Even before the events in Ferguson, however, civil rights organizations conducted significant research on the perceived harms of “militarization” of civilian law enforcement agencies in the United States and advocated for systemic change.”

In June 2014, the ACLU released a report, “War Comes Home, The Excess Militarization of American Policing”. According to the report, LEAs, and heavily armed Special Weapons and Tactics (SWAT) teams in particular, routinely use military weapons provided by the federal government, including Mine Resistant Ambush Protected vehicles, battering rams and flashbang grenades. SWAT teams force their way into people’s homes in the middle of the night, often deploying explosive devices such as flashbang grenades to temporarily blind and deafen residents, to serve a search warrant on the suspicion that someone may be in possession of a small amount of drugs. The purportedly non-lethal flashbang grenades has set homes on fire, induced heart attacks, and resulted in civilian deaths. “In 2010, 7-year-old Aiyana Stanley-Jones was killed when, just after midnight, a SWAT team threw a flashbang grenade through the window into the living room where she was asleep. The flashbang burned her blanket and a member of the SWAT team burst into the house, firing a single shot, which killed her.”

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3 See id.
The report concludes: “American policing has become unnecessarily and dangerously militarized, in large part through federal programs that have armed state and local law enforcement agencies with the weapons and tactics of war, with almost no public discussion or oversight. Using these federal funds, state and local law enforcement agencies have amassed military arsenals purportedly to wage the failed War on Drugs, the battlegrounds of which have disproportionately been in communities of color. But these arsenals are by no means free of cost for communities. Instead, the use of hyper aggressive tools and tactics results in tragedy for civilians and police officers, escalates the risk of needless violence, destroys property, and undermines individual liberties.”

II. Military Surplus Records Show School Districts Around the Country Received Advanced Military Equipment From the Federal 1033 Program.

In September 2014, the NAACP Legal Defense Fund discovered that grenade launchers, M-16 assault rifles and other weapons intended for military combat had made their way on to K-12 campuses for use by school district police under the 1033 program. The data showed that 22 school districts in Texas, California, Florida, Georgia, Kansas, Michigan, Nevada, and Utah are participating in the 1033 Program, which provides military surplus to local law enforcement organizations. Texas school districts dominated the list of those participating in the 1033 Program, with at least 10 districts reportedly participating. Altogether, these 10 districts had received 64 M-16 rifles, 18 M-14 rifles, 25 automatic pistols, extended magazines, and 4,500 rounds of ammunition. Some of these Texas districts received armored plating, tactical vests, and military vehicles. In California, at least half a dozen school districts reportedly allow campus officers to carry high-powered rifles.4

“We saw in Ferguson how the use of military equipment intensified interactions between community members and police. Those same tensions are playing out in our schools between students of color and school police where implicit bias, broad discretion, and little accountability are resulting in excessive use of force, expulsions and suspensions for minor offenses, and referrals to the juvenile justice system,” said Janel George, Education Policy Counsel for the NAACP Legal Defense Fund. “Adding military weapons will only exacerbate existing tensions and negatively impact students most vulnerable to overly punitive discipline—especially students of color.”5

On September 15, 2014, the NAACP Legal Defense Fund and more than 20 education and civil rights advocacy organizations from across the U.S. called on the federal government to stop the transfer of military weapons to school police through the federal

5 Id.
III. Federal Review of Federal Programs Providing Military Equipment to LEAs

In August 2014, then President Obama ordered a government-wide review of military equipment provided to LEAs. The findings of that Federal Review highlighted a “lack of consistency in how Federal programs are structured, implemented, audited, and informed by conversations with stakeholders.” The Federal Review also identified several areas of focus that could better ensure the appropriate use of Federal programs to maximize the safety and security of law enforcement officers and the communities they serve, including: (1) harmonizing Federal programs so that they have consistent and transparent policies; (2) mandating that LEAs that participate in Federal equipment programs receive necessary training; (3) ensuring that those LEAs have policies in place that address appropriate use and employment of controlled equipment; and (4) requiring that those LEAs also adopt policies addressing protection of civil rights and civil liberties in the use of equipment.

In accordance with the Federal Review, on January 16, 2015, then President Obama issued Executive Order No. 13688, “Federal Support for Local Law Enforcement Equipment Acquisition”. That Executive Order emphasized the need to “ensure that LEAs have proper training regarding the appropriate use of controlled equipment, including training on the protection of civil rights and civil liberties, and are aware of their obligations under Federal nondiscrimination laws when accepting such equipment. To this end, executive departments and agencies (agencies) must better coordinate their efforts to operate and oversee these programs.”

IV. Law Enforcement Equipment Working Group Recommendations Pursuant to Executive Order 13688 dated May 2015

In accordance with Executive Order No. 13688, a federal interagency Law Enforcement Working Group was established, consulted with stakeholders, deliberated, and developed the following recommendations to improve the federal programs providing military equipment and funding to LEAs.

A. Establishment of Federal Government-wide Prohibited Equipment Lists. The Prohibited Equipment List identified categories of equipment that LEAs would not be able to acquire via transfer from Federal agencies or purchase using Federally-provided

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8 See id., p.6.
funds (e.g., Tracked Armored Vehicles, Bayonets, Grenade Launchers, Large Caliber Weapons and Ammunition).

B. Establishment of Federal Government-wide Controlled Equipment Lists. The Controlled Equipment List identified categories of equipment (e.g., Wheeled Armored or Tactical Vehicles, Specialized Firearms and Ammunition, Explosives and Pyrotechnics, Riot Equipment) that LEAs, other than those solely serving schools with grades ranging from kindergarten through grade 12, would be able to acquire if they provide additional information, certifications, and assurances. While inclusion on these lists would not preclude an LEA from using other funds for such acquisitions, the Working Group’s report urged LEAs to give careful consideration to the appropriateness of acquiring such equipment for their communities.

C. Harmonization of Federal Acquisition Processes. All Federal equipment acquisition programs would require LEAs that apply for controlled equipment to provide mandatory information in their application, including a detailed justification with a clear and persuasive explanation of the need for the controlled equipment, the availability of the requested controlled equipment to LEA in its inventory or through other means, certifications that appropriate protocols and training requirements have been adopted, evidence of the civilian governing body’s review and approval or concurrence of the LEA’s acquisition of the requested controlled equipment, and whether the LEA has been or is in violation of civil rights and other statutes, regulations, or programmatic terms. Ongoing coordination among the various Federal agencies would ensure that a uniform process is in place to assess the adequacy of the justification in each application.

D. Required Protocols and Training for LEAs that Acquire Controlled Equipment. LEAs that acquire controlled equipment through Federal resources would be required to adopt General Policing Standards, including community policing, constitutional policing, and community input and impact principles. LEAs also would be required to adopt Specific Controlled Equipment Standards on the appropriate use, supervision, evaluation, accountability, transparency, and operation of controlled equipment. LEAs must train their personnel on General Policing and Specific Controlled Equipment Standards on an annual basis.

E. Required Information Collection and Retention for Controlled Equipment Use in Significant Incidents. LEAs would be required to collect and retain certain information when the LEA uses controlled equipment in operations or actions that are deemed to be Significant Incidents. LEAs would also be required to collect and retain information when allegations of unlawful or inappropriate police actions involving the use of controlled equipment trigger a Federal compliance review of the LEA. Upon request, the LEA must provide a copy of this information to the Federal agency that supplied the equipment/funds. This information also should be made available to the community the LEA serves in accordance with the LEAs applicable policies and protocols.
F. Approval for Third-Party Transfers or Sales. LEAs would be required to receive approval from the Federal agency that supplied the funds or equipment before selling or transferring controlled equipment. Third-party LEAs acquiring controlled equipment would be required to provide to the Federal Government the same information, certifications, and assurances that were required of selling/transferring LEAs. Sales or transfers to non-LEAs are restricted to certain types of controlled equipment that do not pose a great risk of danger or harm to the community if acquired by non-LEAs.

G. Increase Federal Government Oversight and Compliance. The Federal Government would expand its monitoring and compliance capabilities to ensure that LEAs acquiring controlled equipment adhere to protocols, training, information collection and retention, and other requirements proposed by the recommendations this report. Additionally, the Federal Government would create a permanent interagency working group to, among other things, evaluate the Controlled and Prohibited Equipment Lists for additions and deletions, track controlled equipment purchased with Federal resources, develop Government-wide criteria for evaluating applications and conducting compliance reviews, and sharing information on sanctions and violations by LEA applicants. The United States Digital Service would assist Federal agencies in the creation of a database that tracks information about controlled equipment acquired through Federal programs.

H. Status/History
President Obama approved the above recommendations and the Prohibited Equipment List took effect on May 18, 2015, and all other provisions started at the beginning of federal fiscal year 2016.


V. Pending Legislation
Pending before Congress are two bills, HR 1556, introduced on March 16, 2017 and S.1856 introduced on September 25, 2017. Both of these bills seek to limit the authority of the Department of Defense (DOD) to transfer excess military equipment to LEAs, and S.1856 further seeks to limit federal grant programs, which provide LEAs with funds to purchase military equipment.

In September, 2017, a broad coalition of civil liberties, civil and humans rights, and government accountability groups sent a joint letter to the Armed Services Committee, the Senate Committee on the Judiciary, the Senate Homeland Security and Governmental Affairs Committee urging a moratorium on the U.S. Department of Defense’s 1033 Program, the largest and most prominent federal program providing LEAs
VI. Conclusion

Since the protections provided by Executive Order No. 13688 are no longer available, there are no restrictions on the types of military equipment that may be provided to LEAs, including school district police. LEAs as well as K-12 school district police may once again receive any military equipment available through the 1033 federal program, including tracked armored vehicles, bayonets, grenade launchers, large caliber weapons and ammunition.

The American Bar Association supports the sensible recommendations of the federal interagency “Law Enforcement Working Group Pursuant to Executive Order 13688 dated May 2015” as summarized above and as fully detailed in the Exhibit A. The American Bar Association further urges Congress to pass legislation that places strict limitations on the authority of federal agencies to provide LEAs with excess military equipment, or funds to purchase military equipment, in order to maximize the safety and security of law enforcement officers and the communities they serve.

It is clear from extensive investigation and research conducted by the various federal agencies and other stakeholders that oversight and training are necessary to ensure that LEAs only receive equipment that is appropriate for community and campus policing, and have proper training regarding the appropriate use of controlled equipment, including training on the protection of civil rights and civil liberties.

Respectfully submitted,

Robert N. Weiner
Chair, Section of Civil Rights and Social Justice
August 2018
GENERAL INFORMATION FORM

Submitting Entity: Section of Civil Rights and Social Justice

Submitted By: Robert N. Weiner, Chair, Section of Civil Rights and Social Justice

1. Summary of Resolution(s). This Resolution urges Congress to enact legislation or regulations that implements the “Law Enforcement Equipment Working Group Recommendations Pursuant to Executive Order 13688” dated May 2015.


3. Has this or a similar resolution been submitted to the House or Board previously? No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption? There are no related existing ABA policies.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A


7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates. We will work with relevant stakeholders within and outside of the American Bar Association and the Governmental Affairs Office to implement the policy.

8. Cost to the Association. (Both direct and indirect costs) Adoption of this proposed resolution would result in only minor indirect costs associated with Section staff time devoted to the policy subject matter as part of the staff members’ overall substantive responsibilities.

9. Disclosure of Interest. (If applicable) There are no known conflicts of interest.

10. Referrals. By copy of this form, the Report with Recommendation will be referred to the following entities:

    Section of Administrative Law and Regulatory Practice
    Section of Business Law
    Infrastructure and Regulated Industries Section
    Section of State and Local Government Law
    Coordinating Committee of Military Lawyers
    Standing Committee on Gun Violence
Standing Committee on Law and National Security
Standing Committee on Governmental Affairs
Standing Committee on Delivery of Legal Services
Standing Committee on Armed Forces Law
Solo, Small Firm and General Practice Division
Government and Public Sector Lawyers Division
Criminal Justice Section

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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EXECUTIVE SUMMARY

1. **Summary of the Resolution**
   
   This Resolution urges Congress to enact legislation or regulations that implements the “Law Enforcement Equipment Working Group Recommendations Pursuant to Executive Order 13688” of dated May 2015.

2. **Summary of the Issue that the Resolution Addresses**
   
   American policing has become unnecessarily and dangerously militarized, in large part through federal programs that have armed state and local law enforcement agencies [“LEAs”] with the weapons and tactics of war, which this resolution is designed to address.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**
   
   This Resolution would urge Congress to enact legislation or regulations that implement the “Law Enforcement Equipment Working Group Recommendations Pursuant to Executive Order 13688” dated May 2015.

   It is clear from extensive investigation and research conducted by various federal agencies and other stakeholders that oversight and training are necessary to ensure that LEAs receive only equipment that is appropriate for community and campus policing, and have proper training regarding the appropriate use of controlled equipment, including training on the protection of civil rights and civil liberties.

4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**
   
   No minority views or opposition have been identified.