Insight

Update on Police Reform Efforts

TARA O'NEILL HAYES | MARCH 3, 2021

Executive Summary

- The House of Representatives is set to vote again on the George Floyd Justice in Policing Act, though it is unlikely to become law at this point despite bipartisan support for police reform.
- Republicans introduced their own police reform bill last year, the JUSTICE Act, that has many similar provisions but also contains significant differences; these points of contention remain.
- While federal legislation is likely to continue to stall, state and local governments can independently implement changes in how they respond to certain emergency situations, using methods that can decrease the likelihood of interacting with police and improve the wellbeing of at-risk individuals.

Introduction

This week, the House of Representatives will again consider the George Floyd Justice in Policing Act, as it did in June 2020. This legislation would impose a litany of new federal standards and mandates on local police forces across the country, as summarized here. Given opposition from Republicans and some moderate Democrats, this bill will likely not become law. In the meantime, there are opportunities for state and local government to continue implementing more targeted reforms to reduce police interactions with nonviolent individuals.

Assessing the George Floyd Justice in Policing Act and the JUSTICE Act

The policies contained in the George Floyd Justice in Policing Act are broadly aimed at ending what are viewed as abusive and dangerous police tactics, such as use of no-knock warrants, chokeholds, and lethal uses of force, and at creating more liability by eliminating

qualified immunity for police officers, requiring the use of body cameras, and creating a national registry of police misconduct. Other measures aimed at reducing the disparities in arrests experienced by racial minorities would require training on racial profiling and implicit bias and greater data collection regarding all police interactions. Several measures to improve transparency regarding police conduct, hiring, and interactions with the public are also included.

While policing in the United States has considerable economic and budgetary implications—with significant police funding coming from federal grants—this legislation has only negligible budgetary effects, according to the Congressional Budget Office (CBO). CBO estimates that an increase in criminal and civil litigation would increase federal court costs, and fines paid as a result of violations of the new standards would bring in some additional revenues, which would be used to make payments to victims through the Crime Victims Fund that the bill would establish. Ultimately, CBO expects a net increase in the federal deficit of just $4 million over the next decade if this legislation becomes law.

President Biden has announced his support for the legislation, but it is unclear whether it will pass the Senate. Given the negligible budgetary effects, there is no chance this legislation could be passed through reconciliation in the Senate, as is being done to pass the American Rescue Plan. Thus, at least 60 votes will be needed to move this bill past the filibuster. While Senate Republicans last year showed support for police reform with their own measure, the JUSTICE Act, they are unlikely to support the Justice in Policing Act being considered by the House.

The JUSTICE Act, introduced last year by Senator Tim Scott, has many similar provisions as the House bill, but there are important differences. For example, the provisions relating to use of force, chokeholds, and the duty to intervene do not ban such actions but rather discourage their use by either conditioning funding on their elimination or providing additional funding for training intended to teach alternative techniques. The JUSTICE Act is silent on qualified immunity for police and imposes no new restrictions on the use of military equipment by police departments. One area addressed by the JUSTICE Act but not the House bill is sexual misconduct by police officers, closing the law enforcement consent loophole.

At this point, it seems highly unlikely that police reform legislation will be signed into law without both sides making some compromises, which Speaker Pelosi has made clear she is not yet interested in doing, despite pleas from some in her own caucus.

Other Opportunities for Reform

There are, however, other opportunities for police reform that are not included in either the Justice in Policing Act or the JUSTICE Act. These reforms do not require federal legislation, and many may be implemented without additional funds. These reforms primarily involve changing who responds to certain calls for help from the public. For example, incidents involving an unstable individual with mental illness could be answered by a crisis support team rather than police if there is no indication of a threat of violence. Individuals dealing with substance abuse could be taken to treatment centers rather than jail. Cities across the country have seen significant benefits after implementing these types of measures, including fewer arrests and hospitalizations, more individuals receiving treatment, and budgetary savings.