

# **Recommendations for the FY 2022 Appropriations Security Supplemental**

Prepared by Demand Progress

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## **Introduction**

The following are our recommendations for items to include in the security supplemental. They are informed by our experiences studying Legislative branch operations over the last decade, including several years of research into the U.S. Capitol Police (USCP).<sup>1</sup>

The recommendations were formulated in light of three major current threats to Capitol security. The first threat arises from the current political climate, in which insurrections sacked the Capitol and white supremacists are threatening the lives of Members of Congress and staff. The second relates to continuity of congressional operations concerns arising from the COVID-19 pandemic. And the third threat arises from the danger of espionage, with a particular focus on cybersecurity in connection with foreign efforts to affect the 2016 and 2020 elections.

While some may suggest that funding is a key issue for the USCP, we believe the failures with respect to the Capitol Police are more closely tied to how the force is organized, managed, led, and overseen. Indeed, funding for the Capitol Police has increased from FY 2000 to FY 2021 from \$127 million to \$515 million (in constant dollars), with a commensurate significant increase in staffing. An examination of the \$1.2 billion increase in the 302b allocation for the Legislative branch from 1995 to present shows that two-thirds of the increase — the lion's share — has gone to the Capitol Police and the Architect of the Capitol. This has exerted significant downward pressure on funding for congressional policymaking and operations, and we must stay mindful that sustaining any increase in funding for the Capitol Police in future years will further weaken the policymaking and oversight capacity of the Legislative branch unless it is balanced by commensurately larger increases in allocations to the Legislative branch.

We will not recapitulate here our findings about the many potential issues we have found with Capitol Police operations,<sup>2</sup> but would gladly go into greater detail if it is warranted.

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<sup>1</sup> A list of our articles and research can be found at <https://github.com/DanielSchuman/Policy/wiki/Capitol-Police>

<sup>2</sup> But you can read a summary of those findings at <https://firstbranchforecast.com/2021/01/06/a-primer-on-the-capitol-police-what-we-know-from-two-years-of-research/>

# Recommendations

## District Security

- **Federal buildings.** The most secure location for a congressional district office is inside a federal building, which has additional benefits such as a high speed internet connection and co-location with other services. Members of Congress have testified that they wish to house their offices in federal buildings but are unable to pay the cost.<sup>3</sup> Congress should establish a low flat rate fee to set up and maintain a congressional office in an appropriate federal building and should cover any excess rent costs through a separate, dedicated fund. In addition, Members should be incentivized to take over offices used by their predecessors, which should help reduce costs to appropriately equip and secure those offices.
- **Secure facilities.** Members of Congress who work on matters that are highly classified must be able to consult with committee and personal staff, read documents, send secure email, otherwise be able to hold meetings. Given the fast pace of action and the fact that many Members may be working remotely, it is important that they have access to a SCIF or other appropriate facility to be able to do this work. There are public and private-sector SCIFs all across the country. Arrangements should be made for Members to be able to use them at short notice and on an extended basis. In addition, staff are also working remotely and arrangements should be made to accommodate them as appropriate.
- **Local events.** Security at in-district events remains a concern. Members have expressed concerns about USCP coordination with local authorities as being cursory. This should be a point of further inquiry. There should be SOP for Members/staff to trigger additional support and a baseline by which such support is automatically provided (e.g. tracking threats) .
- **Travel.** We do not have a recommendation here, but more may need to be done to protect Members and staff as they travel.
- **Dry runs.** The USCP should provide regular training, guidance, and test runs for emergency preparedness. Training should be required for all new Members, staff, interns, Hill employees, contractors, and press. A robust communications plan should be included as part of this effort.

## Spending & Spending Transparency

- **302(b) allocations and defense vs. non-defense spending.** Funding for the Capitol Police has increased by 300% over the last 20-ish years, which is placing a significant strain on the tiny (and slow-growth) Legislative branch budget. Consideration should be given to categorizing some spending on the USCP as defense spending (i.e. 050), which would provide an additional funding source that would not come at the expense of non-defense discretionary spending. Some appropriations subcommittees already draw funds from both non-mandatory defense and non-defense appropriations, and this would

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<sup>3</sup> See [https://modernizecongress.house.gov/imo/media/doc/ModernizationCommittee\\_10152020r1Compressed%20\(newest%20qpo%20report\).pdf#page=129](https://modernizecongress.house.gov/imo/media/doc/ModernizationCommittee_10152020r1Compressed%20(newest%20qpo%20report).pdf#page=129)

be in line with those practices. We would suggest a 50/50 split between defense and non-defense.

- **Mandatory overtime.** USCP is generally appropriated ~\$50m in mandatory overtime for USCP employees. According to the USCP Fraternal Order of Police, mandatory overtime is often resented by officers. This is also a significant amount of money. Alternative arrangements, such as drawing from other local security forces (such as DC Police, National Guard, etc.) or making sure the USCP is the proper size, could save money and address a longstanding concern.
- **Semiannual report of disbursements.** The USCP is required to submit a semi-annual statement of disbursements per 2 U.S. Code § 1868a, which are to be published as House documents, but the most recent statement we can find is from 2018 and there are large gaps in what's available from the Government Publishing Office (GPO). The USCP should be required to publish all the statements on their website, submit them to GPO, and to additionally publish them as a CSV file along the lines of what the House of Representatives does for their statements of disbursements. This would bring them into compliance with law and allow for Congress, civil society, and journalists to be able to monitor their spending.
- **Congressional Budget Justifications (CBJs).** CBJs are plain language explanations of how an agency intends to spend the funding it is requesting from Congress. Executive branch agencies are required to publish their CBJs on their websites per OMB Circular A-11, and some Legislative branch agencies voluntarily do so as well. The House of Representatives occasionally publishes volume 1 of its Legislative branch hearings, which contains all the CBJs that it receives; the Senate has historically published such a compilation, but the last version we could find on GPO's website is from 2007.<sup>4</sup> The USCP should publish its CBJ online two weeks after submission to Congress (to put it in line with OMB Circular A-11) and we'd encourage the House and Senate to release their current and historical reports containing the text of agency and office requests. This will facilitate oversight by oversight committees, civil society, and journalists.

## USCP Jurisdiction

- The physical jurisdiction of the USCP was significantly expanded in the 1990s and our compilation of publicly-released information arrests suggest that significant time is spent making arrests that are off-campus, off-hours, and unrelated to the work of protecting Congress. The USCP should be refocused on protecting Congress and its staff and should not prioritize making off-campus drug arrests, conducting off-campus traffic stops, and enforcing Union Station rules. That mission is better met by the DC Police Department, the Park Police, or other law enforcement agencies.

## Cybersecurity

- **Official.** It is unclear the extent to which everyone connected to Congress — all personal, committee, and leadership offices, plus support offices and agencies — are on secure devices that are up-to-date, using two-factor authentication, and use password managers. For example, it is our understanding that while the House telephone network

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<sup>4</sup>See <https://www.govinfo.gov/content/pkg/CHRG-109shrg25765/pdf/CHRG-109shrg25765.pdf>

and the Senate telephone network are encrypted, that calls between the House and Senate are not. Furthermore, while there are entities that are working on aspects of cybersecurity, we are not aware of a Congress-wide effort. Given the decentralized nature of Congress, the additional need to work remotely, and the dangers that arise from having non-official people on the Capitol campus, it would be wise to establish and fund a Congress-wide cybersecurity entity that is provided appropriate authority to direct and sufficient funds to implement cybersecurity best practices.

- **Unofficial.** Members of Congress and congressional staff are often targets of advanced information collection operations, but current law is understood to prevent providing official resources to guide staff towards better practices and more secure tools. For example, Gmail offers “advanced protection,” which makes it harder to hack accounts, but it takes a little work to set it up. In addition, Members/employees should be encouraged to use better two-factor authentication methods (such as a yubikey but not a text message) and a password manager (like 1Password). Congress should consider providing or subsidizing the use of these tools, or at a minimum training staff and Members on their importance and how to use them. It would be a good use of resources to help Members/staff secure their devices and teach them better operational security.

## **Health**

- Members of Congress, staff, and employees have been, and continue to be subjected to an extreme trauma. While the Office of the Attending Physician (OAP) is providing some services, it is likely that many people will have significant ongoing mental health needs that cannot be adequately met by OAP and may not be met using their health care plans. Other staff may not be able to afford to use their health care coverage (or it may be insufficient). Additional resources should be brought to bear to provide short and longer term mental health support for all congressional employees (and possibly their loved ones).
- All Members of the USCP who are required to be physically present should be provided as soon as possible with COVID-19 vaccines. All who are not required to be physically present should be directed to work remotely.
- Members of Congress, staff, workers, and journalists who are physically present in congressional buildings should be provided with on-demand testing for COVID-19.

## **Threat Tracking**

- The USCP should provide threat assessment reports to each individual Member of Congress and disclose aggregate reports quarterly concerning threats to Members of Congress and their staff.
- The USCP should actively encourage Member offices to report threats, and provide guidance on how to report.
- The USCP, in concert with other relevant authorities, should actively pursue criminal action against those who make threats against Members of Congress or their staff and report to those Members and staff the status and disposition of reports of threats.
- Additional legal assistance, in the form of restraining orders or other appropriate actions, should be rendered to Members and staff who are the recipients of threats.

- The House and Senate, the USCP IG, and other appropriate entities should provide appropriate whistleblower protections to Capitol Police officers who wish to report wrongdoing or otherwise raise concerns. In addition, an anonymous complaint system that is independent of the USCP leadership should be established and publicized.

### **USCP Communications**

- **On campus communications in emergencies.** Before and on January 6th, 2021, the Capitol Police did not take sufficient measures to fully inform Members, staff, employees, visitors, and guests of an emergency and what action to take to keep them safe. Significant amounts of effort and time have already gone into improving emergency communications in the Capitol complex. We do not have immediate recommendations for what else to do given the existing significant expenditure of resources.
- **Capitol adjacent communications (neighbors).** The Capitol Police do not communicate well with Members, staff, employees, visitors, and guests on and near the Capitol Complex, especially concerning time-sensitive matters. We have a number of suggestions about how they do so, but to start, the Capitol Police should begin to use its dormant Twitter for time sensitive (and other) matters, and get in the practice of publishing more information (including all press releases and statements) on its website. It also should regularly convene meetings with neighboring businesses and residents concerning the interplay between the USCP and the neighborhood. (The current FY 2021 appropriations bill requests the USCP establish a community notification system for weather and security incidents.)
- **Communications Office.** The USCP communications office is well known for its dismissiveness towards requests from reporters and the general public as well as general disinclination towards transparency, accountability, and answering questions. A person with a journalistic or transparency background should be hired by the USCP to provide timely, helpful, and responsive answers to journalists and the general public, and should be empowered to do so. This person/office should be authorized to publish information online without prior approval.

### **General information about USCP activities and oversight thereof.**

- **The USCP should hold regular briefings and public meetings** with the press, public, and staff. Staff briefings should include an overview of USCP resources and protocols in case of emergency. Agenda should be drafted in advance — with outside input on the contents of the agenda — and minutes of these meetings should be posted publicly online, as should video of the conversation.
- **Arrest information** should be publicly released in accordance with best practices followed by major police departments.
  - The USCP should identify, at least on a weekly basis, all arrests made by the USCP, which occur in partnership with the USCP, or that relate to Capitol security. It should further track and publicly report on whether the arrest resulted in prosecution and conviction. (The FY 2021 appropriations bill already requested a report on the jurisdiction of the USCP that details the USCP working relationship with MPD, the number of arrests made beyond USCP's primary and

extended jurisdictions, and how many times USCP has responded to incidents outside of its jurisdiction, as well as the reason for responding. This report is due 90 days after the enactment of that legislation.)

- Arrest information should be broken down by individual and incident; should include the location, date, and time of the arrest; the alleged criminal violation(s); the name of the person arrested; and other relevant information. Such information should be published as structured data and be published cumulatively on a website. USCP should cease removing links to arrest information on their website and make that information more complete and robust. (The FY 2021 appropriations bill already requests the USCP begin publishing arrest summaries posted in user-friendly format that is searchable, sortable, downloadable format and on a cumulative basis.)
- The USCP should make publicly available any guidance or regulations it has with respect to the disclosure (or non-disclosure) of arrest information.
- The FY 2021 appropriations bill requests the USCP submit use of force data to the FBI's National Use of Force Data Collection database and brief the House and Senate Committees on Appropriations on efforts to tabulate and submit its use of force data to the FBI by March 27, 2021. We encourage that this be funded and required on an ongoing basis.
- **The USCP Inspector General** should follow best practices followed by federal Inspectors General.
  - **Final Inspectors General** reports should be made publicly available no later than two weeks after their transmission to the relevant committees of jurisdiction. They should be published on the USCP IG website — which should be managed separately from the USCP website — and on oversight.gov, the federal Inspectors General web portal maintained by the Council of Inspectors General on Integrity and Efficiency. In circumstances where the full report cannot be released on the basis of a specific articulable reason that would undermine an ongoing criminal matter or would provide specific details concerning congressional security the disclosure of which would cause a specifically articulable threat to the safety of Congress, a summary of the report findings should be made publicly available. In the unusual circumstance where a report contains classified material, the IG should follow the best practices demonstrated by the GAO on its website with respect to classified matters. Reports must not be kept as “draft” to avoid public disclosure. In addition, already issued IG reports should be published online immediately. (We note that report language in the FY 2021 appropriations bill requested the IG to conduct a review of all issued reports within the previous three years and provide to the Committees a report listing which reports could have been made public.)
  - **IG Independence.** The USCP IG should be fully independent of USCP leadership and the Capitol Police Board. The IG should be chosen by and report to Congress; the IG should submit a separate congressional budget justification that is not subject to prior review by the USCP or its board; the IG should be funded through a separate budgetary line item; the IG should be encouraged to

participate in CIGIE; the restriction imposed on the IG preventing them from speaking with the public by the Capitol Police Board should be rescinded and the IG specifically authorized to speak to the public. Funding for the IG should be increased.

- **FOIA.** Congress should apply FOIA to the USCP in a similar fashion as it is applied to the Copyright Office. In other words, FOIA should be extended to the USCP, which should go through a rulemaking to implement best practices, and denials of requests for information would be appealable in federal court.

## **Diversity and Inclusion**

- We encourage a comprehensive review of Capitol Police employees to determine whether any have ties with white supremacist organizations or other hate groups, and to (continuously) review employment on that basis.
- The FY 2021 appropriations bill requested the USCP participate in the Attorney General's new program implementing evidence-based training programs on de-escalation and the use-of force, as well as on police-community relations, and to report back to the Committees on Appropriations on their efforts within 90 days of consulting with the AG.
- The FY 2021 appropriations bill requested the USCP provide a report concurrent with the budget submissions that details: 1) the number of activities to try to promote workforce diversity, including partnering with organizations that focus on developing opportunities for minorities and women; 2) the steps taken to attract and retain a diverse workforce, and; 3) a breakout of USCP positions sworn and civilian by race and gender. We further request that the breakout of USCP positions as described in (3) be published online on an annual basis in a structured data format.
- The FY 2021 appropriations bill requested the USCP submit a report to the Committee on Appropriations and the Committee on House Administration detailing: 1) what policies and procedures are in place at the academy to eliminate unconscious bias and racial profiling during training; 2) what steps the USCP has taken to eliminate existing practices that permit or encourage racial profiling; and 3) arrest information disaggregated by race, ethnicity, and gender. We request the report be made publicly available and number (3) be published online on a continuous basis (as described in the section on arrest information).
- The USCP should gather and publish information about allegations and punishments meted out to USCP members, with a breakdown by rank and diversity (gender and race). Allegations of USCP discrimination on this basis have been the subject of multiple lawsuits over decades.
- The USCP should establish an Independent Diversity and Inclusion Officer who reports directly to Congress and is empowered to speak with the public.

## **Mass Catastrophes**

- In preparation for a possible mass catastrophe that prevents aggregation of Members/staff in a single location, the House, Senate, support offices, and support agencies should provide Members and staff with sufficient technology to be able to work

remotely on an ongoing basis. At this time, some support offices and agencies are actively resisting remote work and are unwilling to make sufficient technology accommodations to fully aid staff in that remote work.

- The House of Representatives should create a commission to study alternatives to the House Rule that provides for a reduction in the size of a quorum necessary for the House of Representatives to conduct business as there are constitution concerns. Such a working group could also address mass incapacitation. (We acknowledge the Brookings/AEI study from the early 2000s and suggest a new one be commissioned.)
- The Senate should put in place provisions that allow for remote deliberations in committees and on the Senate floor that allow for the reporting and passage of measures where a quorum occurs virtually.
- Alternatives to the physical signing and transmission of Congressional documents should be explored and adopted.

### **Independent USCP Oversight Board**

- Many large police departments nationwide have independent “civilian” oversight boards. A similar independent identity should be established for the USCP.
- The independent oversight board should be established to represent the interests of Members of Congress, congressional staff, Capitol Hill essential workers, support office and agency staff, journalists, lobbyists, the general public, and neighborhood/DC residents. Its members should include representatives from those categories and it should hold meetings where the public is invited to attend.
- The Independent Board should be fully independent of the USCP and the Capitol Police Board.
- The Independent Board members should be compensated for their time and provided appropriate staff to support their work.
- The Independent Board should be afforded the opportunity to testify before Congress, to meet regularly with Capitol Police Leadership, to hold public meetings, to inquire into matters of interest to the Independent Board, and obtain information from the USCP, and to make information publicly available as it deems appropriate.

### **Office of Professional Responsibility**

- We are concerned about the independence and actions of the Office of Professional Review.
- The annual summary of OPR complaints should be proactively disclosed online as data, and the tiny amount of summary data should be expanded.
- The OPR should prominently solicit comments from the community.
- Consideration should be given to increasing the OPR’s independence and resources.

### **Capitol Police Board**

- The functioning of the USCP and the Capitol Police Board is one that should be addressed by the commission that is investigating USCP operations. We would welcome the opportunity to make recommendations at the appropriate time concerning its composition and responsibilities.



## **Miscellaneous**

- The Committee on House Administration retained a staffer in 2019 who is an expert on policing and is responsible for overseeing the USCP. We suggest that four positions be created in the oversight committees — two majority, two minority — that are funded out of the USCP budget to support congressional oversight.
- Appropriate funding should be provided for storage of firearms brought into congressional buildings, with the limitation on bringing in firearms expanded.
- Temporary fencing is appropriate in certain circumstances, but we do not support permanent fencing or the closing off of Capitol grounds.
- We note that one appropriate way to give the USCP access to additional resources to repel an invading force is to streamline access to the National Guard.
- The U.S. Park Police is known for being underfunded, and appropriate resources may need to be provided to them.
- The USCP Intelligence Unit may need additional resources and visibility.

Thank you for the opportunity to submit recommendations. We would welcome the opportunity to discuss this further. Please contact Daniel Schuman, policy director, Demand Progress, at 240-237-3930 or [daniel@demandprogress.org](mailto:daniel@demandprogress.org).