



DIGITAL FOURTH

The Massachusetts campaign to protect digital data
from unconstitutional government surveillance

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Joint Committee on Public Safety and Homeland Security
Hearing on Public Safety, March 8, 2016

Digital Fourth is a Massachusetts-based civil liberties nonprofit founded in 2012. Our board consists mostly of academics. We meet weekly, and have an extensive network of volunteers across the state. We have worked on several issues in state legislation, including opposing an expansion of the state's wiretap statute. Our current bills before this Committee limit the acquisition of military equipment by police departments (H. 2169) and mandate police bodycams and data collection on police stops (H. 2170).

Our central concern is the **Fourth Amendment to the US Constitution**, which reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

SUPPORT H. 2169, "An Act assuring municipal control of military equipment procurement by local law enforcement"

This is a one-paragraph bill, without significant cost implications, that aims to deal with a serious problem in the Commonwealth.

Over \$12 million in military surplus equipment has made its way from the wars in Iraq and Afghanistan back to the streets of Massachusetts alone. Some of this equipment is, in our view, innocuous: It can be a good way for police departments to equip themselves with rifles, helmets, handcuffs and other material no longer needed for military use. A few of the most extreme items, such as a grenade launcher owned by West Springfield PD and a tracked vehicle owned by Norfolk PD, have been returned to the federal government, after substantial publicity during 2014 and pressure from the Obama administration. But there remains a substantial category of **present acquisitions** that give inappropriately military capacities to municipal police departments, and beyond this, a constant flow of **new technologies of surveillance and crowd control**, that we believe should be used by police departments only after a vote by the civilian elected officials of the town or city.

When police departments were first created, they were intended to express the principle that "*the police are the public, and the public are the police.*"¹ The Founders were so concerned about the use of military forces for domestic repression that they refused to set up a peacetime standing army. After Reconstruction, the Posse Comitatus Act forbade the military from exercising police powers. Except in times of extraordinary local lawlessness, such as the resistance to desegregation in the South in the

¹ Sir Robert Peel, *Principles of Law Enforcement*, 1829, Principle #7: "*The police at all times should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police are the only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the intent of the community welfare.*"



1960s, the National Guard is generally not a daily presence in our streets, and everyday policing is meant to be left to municipal, lightly armed officers. In the 1980s, however, this began to change, in response to a massive increase in crime. SWAT teams spread across the country, initially presented as being useful for hostage situations and gang warfare. But in today's low-crime environment, with crime levels not seen since the early 1960s, SWAT teams are mostly used to execute drug warrants. The equipment and tactics intended to deal with that 1980s crime wave remain in place.

In the 2000s, there was a flood of funding for training in response to terrorist attacks. In "Urban Shield" trainings, police act essentially as a military, treating the public as potential threats rather than as fellow Americans and Massachusetts residents fully entitled to the protections of the Constitution. If the training you receive is for an extraordinary breakdown in civil order, ordinary policing tactics get lost; if you think of members of the public as a threat, then their Fourth Amendment protections are much less likely to be consistently respected.

We saw where these trends were leading in Watertown in 2013, where *nine thousand* officers and National Guardsmen turned out with military assault vehicles, to participate in an unsuccessful lockdown and house-to-house search for a single fugitive teenager. Even small-town police departments are getting in on the militarization trend; Rehoboth, MA, with 11,000 people and seven golf courses, now has a \$700,000 mine-resistant military assault vehicle. Our thorough checks with the town showed that **this vehicle was acquired by the police department without any vote or process on the part of Rehoboth's civilian elected officials.** They didn't vote to accept it, but left the decision entirely to the police chief.

It is through small decisions like this, town by town, that our police departments are slowly changing to look less like the people they serve, and more like occupying armies. This builds a charged atmosphere of hostility and confrontation, contributing to our having a rate of killings by police sixteen times that of Germany's (the risk officers face, in terms of death in the line of duty, being much the same). In Ferguson, MO, the situation only calmed when the local, militarized police force was sidelined and the much more lightly armed state police came in and walked with the protesters. We believe that if such equipment is to be part of local police forces, it should only be with the explicit, recorded consent of the elected officials, so as to provide oversight and accountability.

Our bill explicitly tries to set the same systems in place for new technologies of surveillance and control. It's not just about the armored vehicles, bayonets, grenade launchers and fully automatic rifles. It's also about controversial technologies such as stingrays, drones, and ultrasound crowd control devices. Much inappropriate secrecy surrounds the deployment of such systems, and we believe that it is appropriate for the public to know whether they are being deployed by their police departments; the best way to achieve this is, again, by having the elected officials explicitly, as a matter of public record, vote on whether they should be used.

We urge you to report this bill out favorably.

TESTIMONY RESPECTFULLY SUBMITTED BY

A handwritten signature in black ink, reading "Alex Marthews".

Alex Marthews, Chair, Digital Fourth

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