Subtitle B—Counter-Drug Activities

Sec. 1011. Extension of Department of Defense Authority to Provide Support for Counter-drug Activities and Activities to Counter Transnational Organized Crime.
Sec. 1012. Extension of Authority to Provide Additional Support for Counter-drug Activities of Certain Foreign Governments.

SEC. 1011. EXTENSION OF DEPARTMENT OF DEFENSE AUTHORITY TO PROVIDE SUPPORT FOR COUNTER-DRUG ACTIVITIES AND ACTIVITIES TO COUNTER TRANSNATIONAL ORGANIZED CRIME.

Subsection (a) of section 1004 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 374 note), is amended by striking "During fiscal years 2012 through 2017" and inserting "During fiscal years 2012 through 2019".

SEC. 1012. EXTENSION OF AUTHORITY TO PROVIDE ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF CERTAIN FOREIGN GOVERNMENTS.

(a) EXTENSION OF AUTHORITY.—Subsection (a)(2) of section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85; 111 Stat. 1881), as most recently amended by section 1012 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 963), is further amended by striking "expires September 30, 2017" and inserting "shall be available through the end of fiscal year 2019".

(b) REDUCTION IN WAITING PERIOD FOR OBLIGATION OR EXPENDITURE OF FUNDS AFTER NOTIFICATION OF CONGRESS.—Subsection (f)(2)(B) of such section is amended by striking "60 days" and inserting "15 days".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal consists of two sections (1011 and 1012) that would provide extensions of

the Department of Defense's (DoD) principal authorities to provide support to law enforcement agencies to counter drug trafficking and transnational organized crime. Extensions of these authorities would help maintain stability for the program, avoiding potential lapses in authority if the National Defense Authorization Act (NDAA) is enacted after the end of a particular fiscal year.

SEC. 1011: EXTENSION OF DEPARTMENT OF DEFENSE AUTHORITY TO PROVIDE SUPPORT FOR COUNTER-DRUG ACTIVITIES OR ACTIVITIES TO COUNTER TRANSNATIONAL ORGANIZED CRIME

Section 1011 would extend the authority provided in section 1004 of the NDAA for Fiscal Year (FY) 1991 (Public Law 101–510; 104 Stat. 1629; 10 U.S.C. 374 note) (referred to as "section 1004 authority"). For more than two decades, Section 1004 authority has served as the foundation of Department of Defense counternarcotics support to Federal, State, local, tribal, and foreign law enforcement partners to stem the flow of illicit drugs into the United States. The authority has also proven critical in accomplishing broader national security objectives by deepening military-law enforcement cooperation and in building the counternarcotics capacity of our foreign partners. As such, section 1004 is an important tool for meeting U.S. national security objectives as outlined in the Quadrennial Defense Review and the Department's Counternarcotics and Global Threats Strategy. Extension of the authority would reflect the growing recognition of the linkages between transnational organized crime and national security threats.

SEC. 1012. EXTENSION OF AUTHORITY TO PROVIDE ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF CERTAIN FOREIGN GOVERNMENTS.

This proposal would extend section 1033 of the NDAA for FY 1998 (referred to as "section 1033 authority") through FY 2019 and reduce the congressional notification period from 60 days to 15 days. An extension of authority through FY 2019 would help improve out-year planning. Reducing the notification period for the counter-drug plans required by the authority would help expedite the provision of counternarcotics-related equipment and help ensure that appropriated funds can be executed before the end of the relevant FY. Linking the authority period to a particular FY instead of a specific calendar date would allow the expiring authority to be temporarily extended through continuing resolutions and prevent the unintended lapse of the authority should the reauthorizing NDAA be enacted after the end of a particular fiscal year. Reducing the notification period to 15 days would allow for sufficient time for congressional review and align the notification period for counter-drug plans with that for the certification required under subsection (f) of Section 1033.

Budget Implications: All costs are funded in the annual appropriation requests of the Drug Interdiction and Counter-Drug Activities, Defense Account. The resources reflected in the tables below are funded within the FY 2017 President's Budget.

Section 1011: Funds used under this authority are budgeted in the Drug Interdiction and Counter-Drug Activities, Defense appropriation.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	$464.1	$474.3	$485.2			Drug Interdiction and Counter Drug Activities, Defense	01	0105D	0208889D
Total	$464.1	$474.3	$485.2						

Section 1012: Funds used under this authority are budgeted in the Drug Interdiction and Counter-Drug Activities, Defense appropriation. The current cap on Section 1033 authority is $125 million per year.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2017	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**Appropriation From**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	$125	$125	$125			Drug Interdiction and Counter Drug Activities, Defense	01	0105D	0208889D
Total	$125	$125	$125						

Changes to Existing Law: This proposal would make the following changes to existing law:

Section 1011 of this proposal would make the following changes to section 1004 of the National Defense Authorization Act for FY 1991 (Public Law 101–510; 104 Stat. 1629; 10 U.S.C. 374 note), as most recently amended by section 1011 of the National Defense Authorization Act for FY 2015 (Public Law 113-291; 128 Stat. 3483):

Section 1004 of the National Defense Authorization Act for Fiscal Year 1991
(Public Law 101–510; 10 U.S.C. 374 note)

SEC. 1004. ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES AND ACTIVITIES TO COUNTER TRANSNATIONAL ORGANIZED CRIME.

(a) SUPPORT TO OTHER AGENCIES.— ~~During fiscal years 2012 through 2017~~ <u>During fiscal years 2012 through 2019</u> the Secretary of Defense may provide support for the counter-drug activities or activities to counter transnational organized crime of any other department or agency of the Federal Government or of any State, local, tribal, or foreign law enforcement agency for any of the purposes set forth in subsection (b) if such support is requested—

(1) by the official who has responsibility for the counterdrug activities or activities to counter transnational organized crime of the department or agency of the Federal Government, in the case of support for other departments or agencies of the Federal Government;

(2) by the appropriate official of a State, or local, or tribal government, in the case of support for State, or local, or tribal law enforcement agencies; or

(3) by an appropriate official of a department or agency of the Federal Government that has counter-drug responsibilities or responsibilities for countering transnational organized crime, in the case of support for foreign law enforcement agencies.

(b) TYPES OF SUPPORT.—The purposes for which the Secretary of Defense may provide support under subsection (a) are the following:

(1) The maintenance and repair of equipment that has been made available to any department or agency of the Federal Government or to any State or local, or tribal government by the Department of Defense for the purposes of—

(A) preserving the potential future utility of such equipment for the Department of Defense; and

(B) upgrading such equipment to ensure compatibility of that equipment with other equipment used by the Department of Defense.

(2) The maintenance, repair, or upgrading of equipment (including computer software), other than equipment referred to in paragraph (1) for the purpose of—

(A) ensuring that the equipment being maintained or repaired is compatible with equipment used by the Department of Defense; and

(B) upgrading such equipment to ensure the compatibility of that equipment with equipment used by the Department of Defense.

(3) The transportation of personnel of the United States and foreign countries (including per diem expenses associated with such transportation), and the transportation of supplies and equipment, for the purpose of facilitating counter-drug activities or activities to counter transnational organized crime within or outside the United States.

(4) The establishment (including an unspecified minor military construction project) and operation of bases of operations or training facilities for the purpose of facilitating counter-drug activities or activities to counter transnational organized crime of the Department of Defense or any Federal, State, or local, or tribal law enforcement agency within or outside the United States or for the purpose of facilitating counter-drug activities or activities to counter transnational organized crime of a foreign law enforcement agency outside the United States.

(5) Counter-drug or counter-transnational organized crime related training of law enforcement personnel of the Federal Government, of State, and local, and tribal governments, and of foreign countries, including associated support expenses for trainees and the provision of materials necessary to carry out such training.

(6) The detection, monitoring, and communication of the movement of—

(A) air and sea traffic within 25 miles of and outside the geographic boundaries of the United States; and

(B) surface traffic outside the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.

(7) Construction of roads and fences and installation of lighting to block drug smuggling corridors across international boundaries of the United States.

(8) Establishment of command, control, communications, and computer networks for improved integration of law enforcement, active military, and National Guard activities.

(9) The provision of linguist and intelligence analysis services.

(10) Aerial and ground reconnaissance.

(c) LIMITATION ON COUNTER-DRUG REQUIREMENTS.—The Secretary of Defense may not limit the requirements for which support may be provided under subsection (a) only to critical, emergent, or unanticipated requirements.

(d) CONTRACT AUTHORITY.—In carrying out subsection (a), the Secretary of Defense may acquire services or equipment by contract for support provided under that subsection if the Department of Defense would normally acquire such services or equipment by contract for the purpose of conducting a similar activity for the Department of Defense.

(e) LIMITED WAIVER OF PROHIBITION.—Notwithstanding section 376 of title 10, United States Code, the Secretary of Defense may provide support pursuant to subsection (a) in any case in which the Secretary determines that the provision of such support would adversely affect the military preparedness of the United States in the short term if the Secretary determines that the importance of providing such support outweighs such short-term adverse effect.

(f) CONDUCT OF TRAINING OR OPERATION TO AID CIVILIAN AGENCIES.—In providing support pursuant to subsection (a), the Secretary of Defense may plan and execute otherwise valid military training or operations (including training exercises undertaken pursuant to section 1206(a) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1564)) for the purpose of aiding civilian law enforcement agencies.

(g) RELATIONSHIP TO OTHER LAWS.—(1) The authority provided in this section for the support of counter-drug activities or activities to counter transnational organized crime by the Department of Defense is in addition to, and except as provided in paragraph (2), not subject to the requirements of chapter 18 of title 10, United States Code.

(2) Support under this section shall be subject to the provisions of section 375 and, except as provided in subsection (e), section 376 of title10, United States Code.

(h) CONGRESSIONAL NOTIFICATION OF FACILITIES PROJECTS.—(1) When a decision is made to carry out a military construction project described in paragraph (2), the Secretary of Defense shall submit to the congressional defense committees written notice of the decision, including the justification for the project and the estimated cost of the project. The project may be commenced only after the end of the 21-day period beginning on the date on which the written notice is received by Congress.

(2) Paragraph (1) applies to an unspecified minor military construction project that—

(A) is intended for the construction, modification, or repair of any facility for the purposes set forth in subsection (b)(4); and

(B) has an estimated cost of more than $250,000.

(3) This subsection may not be construed as an authorization for the use of funds for any military construction project that would exceed the approved cost limitations of an unspecified minor military construction project under section 2805(a)(2).

(i) DEFINITIONS RELATING TO TRIBAL GOVERNMENTS.—In this section:

(1) The term “Indian tribe” means a federally recognized Indian tribe.

(2) The term “tribal government” means the governing body of an Indian tribe, the status of whose land is “Indian country” as defined in section 1151 of title 18, United States Code, or held in trust by the United States for the benefit of the Indian tribe.

(3) The term “tribal law enforcement agency” means the law enforcement agency of a tribal government.

(j) DEFINITION OF TRANSNATIONAL ORGANIZED CRIME.—In this section, the term “transnational organized crime” means self-perpetuating associations of individuals who operate

transnationally for the purpose of obtaining power, influence, monetary, or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption or violence or through a transnational organization structure and the exploitation of transnational commerce or communication mechanisms.

Section 1012 of this proposal would make the following changes to section 1033 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85, Nov. 18, 1997), as most recently amended by section 1012 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92; 129 Stat. 963):

SEC. 1033. AUTHORITY TO PROVIDE ADDITIONAL SUPPORT FOR COUNTER-DRUG ACTIVITIES OF OTHER COUNTRIES.

(a) AUTHORITY TO PROVIDE SUPPORT.—(1) Subject to subsection (f), the Secretary of Defense may provide any of the foreign governments named in subsection (b) with the support described in subsection (c) for the counter-drug activities of that government. In providing support to a government under this section, the Secretary of Defense shall consult with the Secretary of State. The support provided under the authority of this section shall be in addition to support provided to the governments under any other provision of law.

(2) The authority to provide support to a government under this section ~~expires September 30, 2017~~ shall be available until the end of fiscal year 2019.

(b) GOVERNMENTS ELIGIBLE TO RECEIVE SUPPORT.—The foreign governments eligible to receive counter-drug support under this section are as follows:

(1) The Government of Peru.
(2) The Government of Colombia.
(3) The Government of Afghanistan.
(4) The Government of Bolivia.
(5) The Government of Ecuador.
(6) The Government of Pakistan.
(7) The Government of Tajikistan.
(8) The Government of Turkmenistan.
(9) The Government of Uzbekistan.
(10) The Government of Azerbaijan.
(11) The Government of Kazakhstan.
(12) The Government of Kyrgyzstan.
(13) The Government of Armenia.
(14) The Government of Guatemala.
(15) The Government of Belize.
(16) The Government of Panama.
(17) The Government of Mexico.
(18) The Government of the Dominican Republic.
(19) The Government of Guinea-Bissau.
(20) The Government of Senegal.
(21) The Government of El Salvador.

(22) The Government of Honduras.
(23) Government of Benin.
(24) Government of Cape Verde.
(25) Government of The Gambia.
(26) Government of Ghana.
(27) Government of Guinea.
(28) Government of Ivory Coast.
(29) Government of Jamaica.
(30) Government of Liberia.
(31) Government of Mauritania.
(32) Government of Nicaragua.
(33) Government of Nigeria.
(34) Government of Sierra Leone.
(35) Government of Togo.
(36) The Government of Chad.
(37) The Government of Libya.
(38) The Government of Mali.
(39) The Government of Niger.
(40) Government of Kenya.
(41) Government of Tanzania.

(c) TYPES OF SUPPORT.—The authority under subsection (a) is limited to the provision of the following types of support to a government named in subsection (b):

(1) The types of support specified in paragraphs (1), (2), and (3) of section 1031(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 110 Stat. 2637).[1]

(2) The transfer of patrol boats, vehicles, and, subject to section 484(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2291c(a)), aircraft.

(3) The maintenance and repair or upgrade of equipment of the government that is used for counter-drug activities.

(4) The transfer of detection, interception, monitoring and testing equipment.

(5) For the Government of Afghanistan only, individual and crew served weapons of 50 caliber or less and ammunition for such weapons for counter-narcotics security forces.

(d) APPLICABILITY OF OTHER SUPPORT AUTHORITIES.—Except as otherwise provided in this section, the provisions of section 1004 of the National Defense Authorization Act for Fiscal

---

[1] (1) The transfer of nonlethal protective and utility personnel equipment.
(2) The transfer of the following nonlethal specialized equipment:
(A) Navigation equipment.
(B) Secure and nonsecure communications equipment.
(C) Photo equipment.
(D) Radar equipment.
(E) Night vision systems.
(F) Repair equipment and parts for equipment referred to in subparagraphs (A), (B), (C), (D), and (E).
(3) The transfer of nonlethal components, accessories, attachments, parts (including ground support equipment), firmware, and software for aircraft or patrol boats, and related repair equipment.

Year 1991 (Public Law 101-510; 10 U.S.C. 374 note), shall apply to the provision of support under this section.

(e) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated for any fiscal year after fiscal year 2014 in which the authority under this section is in effect for drug interdiction and counter-drug activities, an amount not to exceed $125,000,000 shall be available in such fiscal year for the provision of support under this section.

(f) CONDITION ON PROVISION OF SUPPORT.—

(1) The Secretary of Defense may not obligate or expend funds during a fiscal year to provide support under this section to a government named in subsection (b) until the end of the 15-day period beginning on the date on which the Secretary submits to the congressional committees a written certification described in subsection (g) applicable to that fiscal year. The first such certification with respect to any such government may apply only to a period of one fiscal year. Subsequent certifications with respect to any such government may apply to a period of not to exceed two fiscal years.

(2) In the case of funds appropriated and available for support under this section to a government named in subsection (b), the obligation or expenditure of funds under this section to provide support to that government shall also be subject to the condition that—

(A) the Secretary submit to the congressional committees the counter-drug plan described in subsection (h); and

(B) a period of ~~60 days~~ <u>15 days</u> expires after the date on which the report is submitted.

(3) In the case of subsequent fiscal years in which support is to be provided under this section to a government named in subsection (b), the obligation or expenditure of funds under this section to provide support to that government shall also be subject to the condition that the Secretary submit to the congressional committees any revision of the counter-drug plan described in subsection (h) applicable to that government.

(4) For purposes of this subsection, the term "congressional committees" means the following:

(A) The Committee on Armed Services and the Committee on Foreign Relations of the Senate.

(B) The Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

(g) REQUIRED CERTIFICATION.—A written certification required by subsection (f)(1) for a government to receive support under this section for any period of time is a certification of each of the following with respect to that government:

(1) That the provision of the support to the government will not adversely affect the military preparedness of the United States Armed Forces.

(2) That the equipment and materiel provided as support will be used only by officials and employees of the government who have undergone background investigations by that government and have been approved by that government to perform counter-drug activities on the basis of the background investigations.

(3) That the government has certified to the Secretary of Defense that—

(A) the equipment and materiel provided as support will be used only by the officials and employees referred to in paragraph (2);

(B) none of the equipment or materiel will be transferred (by sale, gift, or otherwise) to any person or entity not authorized by the United States to receive the equipment or materiel; and

(C) the equipment and materiel will be used only for the purposes intended by the United States Government.

(4) That the government has implemented, to the satisfaction of the Secretary of Defense, a system that will provide an accounting and inventory of the equipment and materiel provided as support.

(5) That the departments, agencies, and instrumentalities of the government will grant United States Government personnel access to any of the equipment or materiel provided as support, or to any of the records relating to such equipment or materiel, under terms and conditions similar to the terms and conditions imposed with respect to such access under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(6) That the government will provide security with respect to the equipment and materiel provided as support that is substantially the same degree of security that the United States Government would provide with respect to such equipment and materiel.

(7) That the government will permit continuous observation and review by United States Government personnel of the use of the equipment and materiel provided as support under terms and conditions similar to the terms and conditions imposed with respect to such observation and review under section 505(a)(3) of the Foreign Assistance Act of 1961 (22 U.S.C. 2314(a)(3)).

(h) COUNTER-DRUG PLAN.—The Secretary of Defense, in consultation with the Secretary of State, shall prepare for each fiscal year (and revise as necessary for subsequent fiscal years) a counter-drug plan involving the governments named in subsection (b) to which support will be provided under this section. The plan for a fiscal year shall include the following with respect to each government to receive support under this section:

(1) A detailed security assessment, including a discussion of the threat posed by illicit drug traffickers in the foreign country.

(2) An evaluation of previous and ongoing counter-drug operations by the government.

(3) An assessment of the monitoring of past and current assistance provided by the United States under this section to the government to ensure the appropriate use of such assistance.

(4) A description of the centralized management and coordination among Federal agencies involved in the development and implementation of the plan.

(5) A description of the roles and missions and coordination among agencies of the government involved in the development and implementation of the plan.

(6) A description of the resources to be contributed by the Department of Defense and the Department of State for the fiscal year or years covered by the plan and the manner in which such resources will be utilized under the plan.

(7) Each fiscal year in which support is to be provided to a government under this section, a schedule for establishing a counter-drug program that can be sustained by the

government within five years, and for subsequent fiscal years, a description of the progress made in establishing and carrying out the program.

(8) A reporting system to measure the effectiveness of the counter-drug program.

(9) A detailed discussion of how the counter-drug program supports the national drug control strategy of the United States.