



The Washington Report

The Newsletter of the National Association of Police Organizations
Representing America's Finest

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NAPO Delegates Approve 2018 Resolutions

At NAPO's 40th Annual Convention in San Diego, California, on July 13-17, 2018, NAPO delegates approved [five resolutions](#) marking the Association's legislative priorities for the next year. The resolutions concerned NAPO's positions on mental health coverage for public safety officers, collective bargaining rights for first responders, protecting governmental pension plans, opposition to blanket prison reform policies, and resources for officers in the fight against opioids:

Resolution in support of state coverage of mental health benefits for public safety officers – NAPO strongly believes that PTSD must be recognized as a line of duty, compensable condition under state law and we will continue to support efforts at the local, state and federal levels to ensure public safety officers have unfettered access to mental health benefits.

Resolution in support of extending basic collective bargaining rights to all public safety officers – NAPO supports the Public Safety Employer-Employee Cooperation Act and we urge Congress to recognize that public safety is best protected through effective partnerships between first responders on the front lines and the agencies that employ them and make this vital legislation federal law. This is particularly important in light of the Supreme Court's *Janus* decision.

Resolution in support of governmental pension plans – NAPO urges state and local governments, as well as Congress, to recognize that traditional governmental pension plans are cost effective, efficient, create value, and help workers attain a modest, stable retirement. Public pension plans are the best way to provide retirement benefits to employees and thus must be protected.

Resolution concerning the impact of federal prison reform on state and local resources and crime rates – NAPO opposes to any blanket prison reform policies that do not address the concerns or meet the needs of the law enforcement community. Significant changes to our nation's correctional system should first be thoroughly studied and must include the input of the federal, state and local public safety communities, which play an integral role in the system.

Resolution in support of ensuring law enforcement have the tools they need in the fight against opioids – NAPO believes rank-and-file law enforcement officers must be given the training, resources and support necessary to keep themselves and the communities they serve safe in the fight to end the opioid crisis. This includes funding for agencies to train and equip their officers with naloxone, a robust national strategy through ONDCP and a strong HIDTA Program. Additionally, NAPO feels that protections from civil liability should be

given to officers who are authorized to administer anti-overdose drugs to ensure that they will not hesitate to administer these lifesaving drugs.

These resolutions reflect NAPO's current work as well as ongoing priorities to protect our members' health, safety and benefits. We will keep our members up to date as we continue to work on these priority issues.

NAPO Endorses LEOSA Reform Act

NAPO pledged its support for the LEOSA Reform Act (H.R. 6105), sponsored by Congressman Don Bacon (R-NE), which will make improvements to the Law Enforcement Officers' Safety Act (LEOSA, or better known as H.R. 218). This legislation would ensure that LEOSA is easily, fairly and broadly implemented.

The objective of the LEOSA Reform Act is to address specific issues that qualified active and retired law enforcement officers are facing when utilizing their rights under LEOSA. The bill would expand the areas qualified current or retired officers are allowed to carry a firearm, including in a school zone. LEOSA currently does not exempt an officer from the Gun Free School Zone Act.

It would also allow qualified current or retired officers to carry a firearm on property open to the public, including Amtrak. Current law allows private persons to ban weapon carry on their property and allows states to ban weapon carry on state property. The LEOSA Reform Act would remove that ban and allow concealed carry pursuant to LEOSA to be legal in areas such as a movie theater or shopping mall, but still allow it to be restricted in the case of an airport or court house. It would also allow qualified current or retired officers to carry a firearm in a national park.

Importantly, the LEOSA Reform Act also addresses the issues of magazine capacity and qualification for concealed carry under LEOSA. While LEOSA exempts officers from state restrictions on the type of ammunition that can be carried, it does not exempt them from state restrictions regarding magazine capacity. Many officers when traveling to other states unknowingly put themselves at legal jeopardy when their magazine does not comply with state law. The LEOSA Reform Act would allow officers to carry any magazine not prohibited by federal law.

Regarding qualification to carry under LEOSA, the legislation would amend the qualification standards to allow retired law enforcement officers to obtain certification from any certified firearms instructor, which could include retired law enforcement firearms instructors and civilian firearms instructors, and the officers may be qualified to any state standard. This would address issues many retired officers, particularly those who retired to a different state than the one they served in, have faced when trying to qualify under LEOSA.

NAPO firmly believes that all qualified off-duty and retired or separated officers across the country should be able to carry firearms for the protection of themselves, their families and our nation's communities, and the LEOSA Reform Act will go a long way to ensuring that right. We look forward to working with Congressman Bacon to move this bill forward.

Fugitive Extradited from Mexico in Murder Case of Border Patrol Agent Brian Terry

On July 31, Attorney General Jeff Sessions announced the extradition of Heraclio Osorio-Arellanes, who is charged with the first-degree murder of U.S. Border Patrol Agent Brian Terry, from Mexico to the United States. Osorio-Arellanes has been in custody awaiting extradition since his arrest by Mexican authorities on April 12, 2017, and he will be arraigned in U.S. District Court in Tucson, Arizona, on August 8.

On December 14, 2010, Agent Terry was fatally shot when he and other Border Patrol agents encountered Osorio-Arellanes and four other members of a “rip crew”, a criminal gang that attempts to steal from drug and alien smugglers, operating in a rural area north of Nogales, Arizona. Of the six defendants charged along with Osorio-Arellanes in the case, three have pleaded guilty, two were convicted following a jury trial, and one other defendant is still awaiting trial.

The defendants are charged with first-degree murder, second-degree murder, conspiracy to interfere with commerce by robbery, attempted interference with commerce by robbery, use and carrying a firearm during a crime of violence and assault on a federal officer. In addition to the murder of Agent Terry, the indictment alleges that the defendants assaulted Border Patrol Agents William Castano, Gabriel Fragoza and Timothy Keller, who were with Agent Terry when they encountered the gang.

It is a victory for the law enforcement community that this cop-killer is finally facing justice and NAPO thanks the Departments of Justice and Homeland Security and the Mexican government for their work to ensure Osorio-Arellanes is held accountable for his heinous crime.

Under the U.S. – Mexico Extradition Treaty, enacted in 1980, both countries may refuse to extradite their nations, unless the country seeking extradition assures that the death penalty will not be imposed. In 2001, the Mexican Supreme Court ruled that this language encompasses the extradition of anyone who faces the possibility of the death penalty or life in prison. This ruling requires the United States to assure a sentence of a fixed number of years in order to prosecute a criminal who has fled to Mexico, which is impossible as neither a judge nor a prosecutor can make such a judgment in advance of a trial. Since 2001, many violent felons have fled to Mexico to evade prosecution under the auspices of this ruling.

NAPO has long lobbied for the U.S. government to work with the Mexican government to overcome the 2001 ruling by the Mexican Supreme Court. We view the extradition of Osorio-Arellanes as a significant step in the right direction. We will continue to work to ensure that all criminals who flee the United States are promptly returned to meet justice.

NAPO Endorses Restoration of the Armed Career Criminal Act

NAPO endorsed the Restoring the Armed Career Criminal Act, sponsored by Senators Orrin Hatch (R-UT) and Tom Cotton (R-AR). Congress passed the Armed Career Criminal Act (ACCA) in 1984 to protect our nation’s communities from the most dangerous violent criminals. Specifically, the ACCA established a 15-year mandatory minimum sentence for repeat violent felons convicted of unlawful possession of a firearm in violation of 18 U.S.C. § 922(g) who have been previously convicted of serious felonies on three separate occasions.

When the Supreme Court effectively voided the ACCA in its 2015 decision in *Johnson v. United States* due to part of the definition of “violent felony” being unconstitutionally vague, it took away an important tool that law enforcement used to get the worst career criminals off our streets. The Restoring the Armed Career Criminal Act will fix the ACCA by using a specific definition for “serious felony” and restore the Act, thus giving prosecutors and law enforcement back a significant resource in the fight against violent crime.

Senators Hatch and Cotton introduced the bill in response to the horrific kidnapping and murder of two Utah teenagers early this year by a career criminal who was released from prison early because of the *Johnson v. United States* decision. The retroactive release of violent criminals after *Johnson* allowed Jerrod Baum, a repeat violent felon convicted under the ACCA, to leave prison early in 2016. Baum, a neo-Nazi, was charged with numerous felonies, including attempted murder in 1991, and took a plea deal. In 1995, he pleaded guilty to aggravated assault against a prison guard. In 2003, he was convicted of possessing a firearm as a felon. In 2005, he was again convicted of possessing a firearm as a felon and was sentenced to fifteen years under the ACCA.

Yet, despite this history and due to the annulment of the ACCA, he was released early from prison and the result was the alleged kidnapping and murder two teenage girls.

NAPO looks forward to working with Senators Hatch and Cotton to pass the Restoring the Armed Career Criminal Act to ensure that violent, career criminals like Baum are taken off our nation's streets.

NAPO Opposes Email Privacy Act Inclusion in NDAA

The House voted to include the Email Privacy Act as an amendment to its version of the National Defense Authorization Act (NDAA) for Fiscal 2019, which passed overwhelmingly on May 24. The Senate – after strong lobbying from NAPO and the law enforcement community – rejected any efforts to include the language in its version of the NDAA and both chambers went to conference at the end of June to negotiate the differences between their two bills.

We were made aware of a July 13, 2018 letter from the tech industry, trade associations, and advocacy groups advocating for the inclusion of the Email Privacy Act in the NDAA. Their letter refers to a “carefully negotiated compromise bill”; however, no one from the law enforcement community participated in those negotiations. NAPO joined with other national law enforcement organizations on a letter to the leadership of the House and Senate Armed Services Committees relaying that fact and the fact that as representatives of all facets of federal, state and local law enforcement, we still have serious concerns with the Email Privacy Act and the NDAA is not the place to hash those out.

We have continuously engaged with the House and Senate dating back to our first formal letter of opposition for the Email Privacy Act on November 28, 2012. Despite significant engagement, the Email Privacy Act reform bill that passed the House under suspension and was subsequently passed as an amendment to the House NDAA does not address some of our most significant concerns. While we believe that the Electronic Communications Privacy Act (ECPA) does need to be updated, the Email Privacy Act in its current form is not the way to accomplish that goal.

It has been our long-held position that Congress should ensure any comprehensive ECPA update must address law enforcement concerns about access to digital evidence regardless of where it is stored. As it stands today, the Email Privacy Act fails to address those concerns.

We felt strongly that the inclusion of this bill within the NDAA was not the appropriate place to address barriers to digital evidence and we urged the leadership of both the House and Senate Armed Services Committees to reject its inclusion in the final version of the NDAA.

NAPO and our law enforcement partners prevailed, and the Email Privacy Act was not included in the final NDAA, which was sent to the President to be signed into law on August 3. This victory is short-lived, however, as House Appropriators also included the Email Privacy Act in the Fiscal 2019 Financial Services Appropriations Act. We must now work with Senate appropriators to ensure that the language is not included in the final FY 2019 Financial Services spending measure.

We will keep our members up-to-date on the status of the Email Privacy Act and our efforts to ensure it does not pass unless it addresses the serious concerns of the law enforcement community.

NAPO Opposes Carve-Outs to Project Safe Neighborhoods

The Senate Appropriations Committee approved its version of the Fiscal 2019 Commerce, Justice, Science and Related Agencies (CJS) Appropriations Act, which contained considerable funding for many of NAPO's priority

state and local law enforcement grant programs, including the Project Safe Neighborhoods Grant Program (PSN). At first glance, it funded PSN at its full authorized level of \$50 million, much like the House Appropriators did in their FY19 CJS Appropriations Act. However, upon inspection, the Senate bill includes significant carve-outs to this important program.

Senate Appropriators carved out \$33 million from the \$50 million allocated to PSN to fund the gang and youth violence education and prevention program, the Byrne Criminal Justice Innovation Program, and community-based violence prevention initiatives. While these programs are important, NAPO sent [a letter](#) to top Senate Appropriators urging them to provide separate appropriations for these programs and dedicate the full \$50 million to PSN.

PSN is a vital state and local law enforcement grant program that has brought together federal, state and local law enforcement agencies to target violent gang and gun crimes in our communities since its inception in 2001. It has funded evidenced-based and data-driven programs to fight gangs and violent crimes in our communities such as targeted police patrols, school and community intervention programs, and enhanced federal prosecution of gun crimes. Importantly, the funding provided by Project Safe Neighborhoods is locally controlled, ensuring the resources meet local needs.

NAPO is working to get the spending measure amended during full Senate consideration of the bill to ensure all \$50 million appropriated to Project Safe Neighborhoods remain dedicated to that program.

Join NAPO for Our 2018 Annual Legal Seminar: The Aftermath of *Janus* and Other Current Issues for Attorneys

**November 14 – 16, 2018 ~ Caesars Palace Hotel & Casino
Las Vegas, Nevada**

Earn 12.5 Hours of CLE Credits Including 2 Hours of Ethics!

Key Issues will include: The Recap of *Janus* Supreme Court Decision, The Legal Duty of Fair Representation, Representing Officers in Critical Incidents, Expert Testimony in Use of Force Cases Jury Selection & Social Media, Protecting Yourself in a Tech World, Opioid Multi District Litigation, Federal Update: Trump Administration Policies and Changes to Consent Decrees.

Seminar Registration is attached and also available on NAPO's website.

For Seminar Information, Agenda and Hotel Registration [click here](#)

If you have any questions or need additional information please do not hesitate to contact NAPO's Director of Events, Elizabeth Loranger, at eloranger@napo.org or (703) 549 - 0775.

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