NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

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June 24, 2020

United States House of Representatives
Washington, D.C. 20515

Dear Members of Congress:

I am writing to you today on behalf of the National Association of Police Organizations (NAPO), representing over 241,000 sworn law enforcement officers from across the country, to advise you of our opposition to the George Floyd Justice in Policing Act, H.R. 7120.

Unequivocally, what happened to George Floyd was egregious. There was no known legal justification, self-defense justification, or moral justification for the actions of the officer. We, as rank-and-file officers, support improving policing practices; however, we have been unfairly locked out of the discussion and development of this overhaul of the law enforcement profession. The result is a bill with which we have significant concerns. While we believe there are many areas where we can come together to address the need for greater transparency, accountability and training in law enforcement, we cannot support the George Floyd Justice in Policing Act.

Our most significant concerns include amending Section 242 of Title 18 United States Code to lower the standard for *mens rea* (Title I Subtitle A, Section 101) and the practical elimination of qualified immunity for law enforcement officers (Section 102). Combined, these two provisions take away any legal protections for officers while making it easier to prosecute them for mistakes on the job, not just criminal acts. With the change to qualified immunity, an officer can go to prison for an unintentional act that unknowingly broke an unknown law. We believe in holding officers accountable for their actions, but the consequence of this would be making criminals out of decent cops enforcing the laws in good faith.

Another provision of serious concern is the change proposed to the current legal standard of "objective reasonableness" for the use of force outlined in the 1989 U.S. Supreme Court decision *Graham v. Connor* (Sec. 364). The Supreme Court has repeatedly said that the most important factor to consider in applying force is the threat faced by the officer or others *at the scene*. The use of force has to be reasonable given

what the officer perceived to be the threat at the time, not with the 20/20 vision of hindsight.

Law enforcement officers across the nation take an oath that they will run towards danger when everyone else is running away – and they do so to protect our families and communities. Subjectively changing the legal standard for holding officers accountable for their actions will have a chilling effect on the men and women in uniform. It undermines their ability to respond in an immediate and decisive manner, and thus creates a hesitation that would threaten the safety of our families, communities and officers.

No cop wants to work with a bad cop – it makes the job more dangerous and difficult. We support ensuring officers who have substantiated serious allegations of misconduct that have been officially and fairly adjudicated can no longer practice law enforcement, but we must ensure officers have due process before they are decertified. Unfortunately, one of the underlying assumptions of the Justice in Policing Act is that law enforcement officers should not get the right to due process, a right we give all citizens, a right all unions work to protect for their members in disciplinary actions.

We support creating national standards for training on de-escalation and communication techniques to help officers to stabilize situations and reduce the immediate threat so that more time, options, and resources can be used to resolve the situation without the use of force. Such training will go much further in achieving the goals of this legislation to reduce the use of lethal force than the lessening of legal protections for officers. We also believe that rank-and-file officers, as practitioners, or their representatives, must play a role in developing national training standards.

Training standards on the use of force and de-escalation would also reduce the use of "chokeholds" or carotid artery restraints, which are already banned by law enforcement agencies across the country as a means of less-than lethal force for their officers. However, "chokeholds" are a vital tool for officers to have when use of deadly force is justified. If the subject poses an immediate threat to the safety of the officer or others and a "chokehold" is the officer's best or only option, it is vital that she is able to use it. We strongly recommend against criminalizing these maneuvers outright and we oppose making them a civil rights violation (Sec. 362(c)). We advise prohibiting "chokeholds" unless deadly force is authorized.

Data collection on the use of force is key to improving integrity and transparency in policing. It is important that the data collected on the use of force reflects the entirety of the situation: use of force by officers and use of force against officers, and not just force using firearms. The Federal Bureau of Investigation began collecting such data in their Use of Force Database in 2019, which they established in collaboration with state and local law enforcement.

Data collection, training, and certification all cost a significant amount of money, yet the Justice in Policing Act does not provide additional funding to help states and localities comply with the many mandates of the bill. In fact, in order to ensure compliance, it penalizes states and law enforcement agencies by taking away all or part of the Byrne Justice Assistance Grant (Byrne JAG) and the Community Oriented Policing Services (COPS) Grant funding. The consequence of this on all sectors of the criminal justice system will be long lasting. At a time when it is well

known that state and local governments are facing serious budget and revenue holes due to the coronavirus pandemic and officers are facing furloughs and layoffs, this legislation assumes that somehow governments will have the funding to comply with the requirements of the bill. To incentivize compliance with any police reform policies, funding must be provided, and it is imperative that all sides have had their voices heard. This is where the George Floyd Justice in Policing Act falls the shortest.

I have highlighted a few of the areas where we have strong opposition and others where we agree on the intention and goal. There are additional areas of the George Floyd Justice in Policing Act not covered in this letter with which we have concerns and those whose objectives we support. We are frustrated that our concerns and the perspective of the officers on the street were not given any consideration as this legislation moved through the House. It is very clear to NAPO that this legislation was written without the consultation of the men and women who do this job every day. We have no choice but to oppose the George Floyd Justice in Policing Act.

Thank you for your attention to our concerns. Please feel free to contact me at (703) 549-0775 if you would like to discuss our concerns further.

Sincerely,

William J. Johnson, Esq.
Executive Director