



The Washington Report

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

September 16, 2019

NAPO Endorses Bill to Help Ensure Cop-Killers Don't Escape Justice

Senators Pat Toomey (R-PA) and John Cornyn (R-TX) reintroduced Eric's Law (S. 2264), legislation that would require the impaneling of a new jury if a federal jury fails to unanimously recommend the death penalty.

Under current law, the murder or attempted murder of a federal law enforcement officer is an aggravating factor in death penalty determinations in federal court. The death sentence may be imposed whether the officer was targeted or murdered on duty, because of the performance of their duty, or because of their status as a public official. Any persons contemplating harming a law enforcement officer must know that they *will* face serious punishments.

NAPO supports Eric's Law because we believe it is critical to ensuring that justice is served, especially in cases where a law enforcement officer is murdered. Allowing cop killers to escape the utmost penalty under law is an affront to the men and women who have dedicated their lives to protecting our communities as law enforcement officers. This legislation protects against that by allowing federal prosecutors to empanel a second jury for the sentencing phase of a federal capital case if the first jury does not recommend by a unanimous vote that the defendant should be sentenced to death.

In addition to ensuring cop killers are punished by the strongest penalty under law, NAPO also strongly supports legislation, both at the federal and state level, that would increase penalties for crimes committed against law enforcement officers. Establishing stricter penalties for those who harm law enforcement officers will deter crime. Any person contemplating harming an officer must know that they will face serious punishments.

We will continue to work with key members of Congress such as Senators Toomey and Cornyn, who continue to be champions of this issue, to ensure that those who harm or attempt to harm public safety officers are subject to the strictest penalties.

NAPO Opposes Bill that Changes Use of Force Standard

NAPO came out in opposition to the Police Exercising Absolute Care with Everyone (PEACE) Act of 2019, which was introduced by Representatives William Lacy Clay (D-MO) and Ro Khanna (D-CA) on August 9. Amongst other things, this bill would change the current standard for the use of force by *federal* officers

to require that force be used only when *necessary* to prevent imminent death or serious bodily injury. It also includes a provision that states that *any state or locality* that does not have a policy similar to the legislation will not be eligible for any federal funding.

NAPO takes serious issue with several aspects of the bill, starting with the premise that law enforcement officers go out with the intention to use force. Also, at issue is the underlining assumption that the current legal standard of “objective reasonableness” for the use of force outlined in the 1989 U.S. Supreme Court decision *Graham v. Connor* is not sufficient to guide officers’ decisions. 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.

Further, NAPO has concerns with the bill’s prohibition on use of deadly force and the requirement to give verbal warning as we believe they are more likely to result in increased injuries and death, not only to the responding officers but the public as well. While officers should be, and are, trained in communication and de-escalation practices, the strict language of this legislation ties officers’ hands. In the case of the recent Dayton, Ohio shooting, under this legislation, the responding officers would have no legal defense for having taken out the active shooter and saving the lives of countless individuals.

While many offenders and despairing persons can certainly be helped with effective communications and negotiation techniques, it is equally certain that many offenders and desperate persons cannot. Policy makers must recognize that fact or risk that the safety of the officer and the public he or she is protecting will no longer be the paramount objective.

Finally, we have serious concerns that this bill would negatively impact the availability of resources for officers to use to keep our communities safe by tying the ability of state and local governments to be awarded much-needed grants to the implementation of these unrealistic and dangerous use of force requirements.

NAPO has let the House Judiciary Committee know of our concerns with this legislation.

House Judiciary Schedules “Police Misconduct” Hearing

The House Judiciary Committee announced on September 13 that it will be holding an oversight hearing on policing practices on September 19. Committee Chairman Jerry Nadler (D-NY) met with the Rev. Al Sharpton on July 23 and agreed to hold this “police misconduct” hearing in the wake of the Department of Justice clearing New York City Police Officer Daniel Pantaleo of any federal criminal charges. This was the same day that Congress passed the permanent authorization of the 9/11 Victim Compensation Fund and praised the heroism and sacrifice of our nation’s first responders.

The hearing will focus on the role of the federal government in addressing concerns about unconstitutional practices, including “pattern and practice” investigations, racial profiling and use of force, enhancing police accountability, and in developing 21st century policing practices. Chairman Nadler announced a lineup of six witnesses that is anything but fair and balanced and will largely leave out the voice of rank-and-file law enforcement. Witnesses include the Rev. Al Sharpton and James Blake, a former tennis pro who was mistakenly detained by New York City officers because he matched the description of a suspect, the Leadership Conference on Civil and Human Rights, the Center for Policing Equity, and Ron Davis, former COPS Office Director and founding partner of 21st Century Policing LLC. This hearing is a direct, political attack on rank-and-file law enforcement that will do nothing to advance the conversation around policing

in America. It is being held solely for Democrats to score political points, most evident in the fact that Rev. Sharpton is a witness.

NAPO will be at the hearing and will submit testimony. We encourage our members to send letters and statements to the Committee in support of rank-and-file law enforcement. If you would like it to be submitted for the official hearing record, please send your letter to Andy Edmiston at aedmiston@napo.org by COB Thursday, September 19. Contact Andy at (703) 549-0774 if you have any questions.

Keep an eye out for NAPO's testimony and an update on the hearing later this week.

NAPO on the Hill: Kelsey Smith Act, Collective Bargaining

Kelsey Smith Act

On September 4, NAPO met with the staff of Senate Law Enforcement Caucus Co-Chairs, **Senators Roy Blunt (R-MO) and Chris Coons (D-DE)**, to discuss the Caucus's support for moving the Kelsey Smith Act forward. It is our hope that the Senate Commerce Committee, which has jurisdiction over this bill as it relates to telecommunications, will take up and approve the bill as soon as possible.

The Kelsey Smith Act would require telecommunications companies to give law enforcement information about the location of a subscriber's phone when there is an emergency involving the risk of death or serious physical injury. While current law does not prohibit these companies from giving location information to police in emergencies, it does not require them to do so and there is no uniform standard in the industry for responding to such requests.

Kelsey Smith was tragically abducted and murdered in June 2007. It took Verizon four days after the initial emergency request to give law enforcement the geographic coordinates of Kelsey's phone. After the information was received, it only took 45 minutes for law enforcement to find her body. Unfortunately, the Kelsey Smith case is not uncommon. Problems with service provider responsiveness to law enforcement requests are real and widespread.

Twenty-four states have passed their own versions of the Kelsey Smith Act, thanks to the dedication and hard work of Kelsey's parents, Greg and Melissa Smith. NAPO is working to ensure that Congress passes a federal minimum standard for telecommunications companies to respond to law enforcement emergency geolocation requests so that law enforcement in every state across the country has speedy access to this vital information in emergency situations.

If you have any questions about the specifics of this legislation, please contact Andy Edmiston at aedmiston@napo.org.

Public Safety Collective Bargaining

NAPO is working with House Education and Labor Committee staff to move forward our Public Safety Employer-Employee Cooperation Act (H.R. 1154). Back on June 26, the House Education and Labor Subcommittee on Health, Employment, Labor, and Pensions held a hearing on "Standing with Public Servants: Protecting the Right to Organize". The hearing focused on legislation supporting and protecting public employee unionization – the Public Safety Employer-Employee Cooperation Act and the broader Public Service Freedom to Negotiate Act (H.R. 3463), which covers all public employees, including public safety. The Committee is now looking to move forward one or both bills and we are urging the Committee to act on our bill.

While we have no issue with the Committee moving forward the Public Service Freedom to Negotiate Act, we strongly believe that our bill is better for public safety and has a stronger chance of moving. The Public Safety Employer-Employee Cooperation Act has 169 bipartisan cosponsors compared to the 148 Democrat-only cosponsors of the other bill.

The Public Safety Employer-Employee Cooperation Act will guarantee that law enforcement officers, firefighters, and emergency medical service workers in all 50 states have the right to discuss workplace issues with their employers. It will provide a framework for such discussions, while respecting the right and flexibility of states to write their own laws for public safety workers. This legislation will not overturn current collective bargaining laws – it will only provide the basic right of collectively bargaining over wages, hours, and working conditions to those who currently do not have them.

NAPO strongly feels that the public safety is best protected through effective partnerships between first responders on the front lines and the agencies that employ them. This legislation will ensure that public safety officers can meet with local officials to discuss how they do their jobs and how best to protect the public.

If you would like to join this effort and ensure your Congressional Representative is supporting the Public Safety Employer-Employee Cooperation Act, please contact Andy Edmiston at aedmiston@napo.org.

NAPO in the News

NAPO Executive Director Bill Johnson was interviewed for a *National Review* article, published August 15, 2019, entitled "[Philly Mayor Peddles False Narrative for Gun Control After a Man with a Long Criminal History Shoots Six Police Officers](#)".

After six Philadelphia, Pennsylvania Police Officers were shot during an eight-hour standoff with Maurice Hill, an armed career criminal, Philadelphia Mayor Jim Kenny firmly place the blame on the NRA and lack of gun control legislation. Responding to Mayor Kenny's statement, Johnson said:

“That argument is B.S. Any evidence that Hill is an NRA member? ...Hill is a threat to everyone around him not because he may or may not be an NRA member but because he has embarked on a life of crime. That is what the problem is. It is not the NRA's advocacy. And the mayor knows that.”

“The lies about cops told by Warren, Harris, and DeBlasio lead to actions like these... It's not the NRA.”

Hill had a long criminal history and his prior felony convictions should have prevented him from being able to possess any firearms. Johnson added, “There are plenty of laws. It's not a lack of gun laws. Hill is not in the business of obeying laws.”

As the article states, what Americans saw that day with Hill was not another active shooter, but an armed career criminal resisting arrest and attempting to murder police there to apprehend him, an unfortunate, but all too familiar, experience for our nation's police.

On August 15, NAPO Executive Director Bill Johnson was quoted in a *Washington Times* article, entitled “[Democrats accused of fueling attacks on cops, ICE with incendiary political rhetoric](#)”, discussing how the political discourse about police is impacting attitudes and actions towards officers. The anti-law enforcement rhetoric being thrown around by politicians against Immigration and Customs Enforcement (ICE) as well as state and local police has helped engender attacks against federal, state and local officers and departments.

In speaking with the *Washington Times*, Johnson pointed to the growing sentiment amongst rank-and-file officers in major cities across the country that liberal local politicians and officials are at odds with their police departments.

“It’s not everybody, obviously, but for a small group, it’s like, ‘Hey let’s stir up something. Here’s a convenient target. No one I know — or the mayor — is going to get upset if I attack the police. It’s dangerous and it’s growing more and more dangerous.’”

Johnson went on to state that the attacks on police and ICE agents are running on “a parallel set of tracks.”

“What you’re seeing in the attacks on the ICE facilities is something that could easily happen in cities like New York, for example, or Chicago. Philly may be going that way. Baltimore. Where it’s not enough to attack individual officers. Let’s attack the station itself. I hope that doesn’t happen, but unless communities demand that these particular elected leaders change their tune, I don’t see anything stopping it. Other than the summer ends.”

NAPO will continue to ensure our members’ voices are heard loud and clear on the Hill, with the Administration, and in the media. If you have any questions about the publication cited above, please contact Bill Johnson at: bjohnson@napo.org.

NLRB Ruling Allows Employers to Unilaterally Change Contracts

On September 10, the National Labor Relations Board (NLRB) adopted the “contract coverage” standard for determining whether a unionized employer’s unilateral change in a term or condition of employment violates the National Labor Relations Act. This makes it easier for employers to impose narrow changes to collectively bargained contracts without consulting unions, relaxing the “clear-and-unmistakable waiver” standard that had been in place since 2007.

Under the “contract coverage” or “covered by the contract” standard, the NLRB will examine the collective bargaining agreement (CBA) to determine whether the change made by the employer was within the scope of contractual language. If the NLRB determines it is, the employer had the right to make the change without bargaining. If the CBA does not cover the employer’s disputed action, the NLRB will find that the employer violated the National Labor Relations Act unless the employer can demonstrate that the union waived its right to bargain over the change.

View the entire NLRB decision [here](#).

NAPO’s Legislative Positions & Sponsor/Cosponsor Updates

NAPO’s updated “Sponsor/Cosponsor” spreadsheet is available at the following link: <http://www.napo.org/washington-report/sponsor-cosponsor-spreadsheet/>. The spreadsheet accompanies the

latest “Legislative Positions” document, which is available at the following link: <http://www.napo.org/washington-report/legislative-priorities/>. NAPO's Legislative Positions is a document that highlights all the legislation that we have taken an official position on or are monitoring during the 116th Congress. It is continually updated to reflect the work we are doing on Capitol Hill.

The “Sponsor/Cosponsor” spreadsheet is a useful tool to check if your members of Congress have supported pieces of legislation that will impact our members. NAPO updates this spreadsheet regularly and continues to ensure our voice is heard on Capitol Hill.

If you have any questions about any of the legislation that NAPO is currently working, please contact Andy Edmiston at: aedmiston@napo.org.

If you have any questions about the issues or legislation discussed in this issue of the Washington Report, contact Andy Edmiston at aedmiston@napo.org or (703) 549-0775. Please monitor NAPO’s website, www.napo.org, and Facebook page: National Association of Police Organizations, and follow us on Twitter at NAPOpolice for breaking news and updates.