



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

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The Honorable Nancy Pelosi

Speaker

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

The Honorable Kevin McCarthy

Minority Leader

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

Dear Speaker Pelosi and Minority Leader McCarthy:

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 continued opposition to the George Floyd Justice in Policing Act.

We, as rank-and-file officers, support improving policing practices, particularly regarding ensuring transparency, proper accountability, and training in law enforcement. However, we have continued to be unfairly locked out of the discussion around this overhaul of the law enforcement profession. The result is a bill with which we have significant concerns – concerns that have not been addressed since the Act initially passed the House on June 25, 2020.

Representative Pete Stauber reintroduced the JUSTICE Act (H.R. 677), which addresses many of the same issues as the George Floyd Justice in Policing Act. The biggest difference is that in the drafting of the JUSTICE Act, Representative Stauber and Senator Tim Scott included the law enforcement community at the table to ensure they took into consideration the concerns and needs of the practitioners on the streets, in addition to those of the communities they serve, in making significant reforms to policing practices. It is by gaining the buy-in of the law enforcement community that any reforms will enjoy greater implementation and execution by agencies across the country.

Our most significant concerns with the George Floyd Justice in Policing Act include amending Section 242 of Title 18 United States Code to lower the standard for *mens rea* and the practical elimination of qualified immunity for law enforcement officers. Combined, these two provisions take away all good faith legal protections for officers while making it easier to prosecute them criminally for good faith 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, and unknowable, right. Further, the threat of the elimination of qualified immunity has already caused decent, experienced officers and newly hired officers alike to question whether the risks of the profession are worth the noble job of serving and protecting their communities.

Another provision of serious concern is the change proposed to the current legal standard of “objective reasonableness” for the use of force, as 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 analyzing the use of force is the threat perceived by the officer or others *at the scene*. To pass Constitutional muster, the use of force has to be not unreasonable given what the officer perceived to be the threat at the time, not with the 20/20 vision of hindsight. Changing this well-settled Constitutional principal to one of subjective, after-the-fact second guessing 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 threatens the safety and lives of our families, communities, and officers.

Let me assure you that no officer wants to work with a bad cop – it makes the job more dangerous and difficult. We support ensuring that officers who have serious allegations of misconduct against them substantiated can no longer serve as law enforcement officers. At the same time, we can and 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 be provided the same right to due process that all other citizens enjoy. It is also a right all labor associations honor for their members in disciplinary actions.

We support creating national standards for training on de-escalation and communication techniques to help officers stabilize situations and reduce the immediate threat, so that more time, options, and resources can be used to resolve the situation without requiring the use of force. Such training will go much further in achieving the goals of this legislation than would the deprivation of legal protections for officers. We also believe that rank-and-file officers, as practitioners, 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. However, “chokeholds” are a vital tool for officers to have when necessary to save their own life or the life of another. 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 techniques outright and we oppose making them a *per se* civil rights violation.

Data collection on the use of force is one key to improving policing. It is important that the data collected on the use of force reflect 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. NAPO supports the FBI’s Use of Force Database and promoting greater use of it by federal, state, and local law enforcement agencies.

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 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 governments will somehow 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 their voices heard.

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. It is frankly unconscionable that the concerns and perspective of officers on the street have not been given any consideration whatsoever. 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 continue 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

Cc: The Honorable Jerrold Nadler, Chair, House Committee on the Judiciary
The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary