



# The Washington Report

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

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May 5, 2014

## **NAPO WASHINGTON REPORT**

### **NAPO Urges Department of Labor to Improve Overtime Rules for Law Enforcement**

On April 29, 2014, NAPO's Executive Director, Bill Johnson, wrote a letter to the Secretary of Labor and the Department of Labor's Principal Deputy Administrator of the Wage and Hour Division to urge that overtime rules for law enforcement be improved.

Johnson referenced the President's March 13, 2014 memorandum, which directed the Department of Labor to update regulations regarding who qualifies for overtime protection. In so doing, the Department is to consider how the regulations could be revised to:

- Update existing protections in keeping with the intention of the Fair Labor Standards Act.
- Address the changing nature of the American workplace.
- Simplify the overtime rules to make them easier for both workers and businesses to understand and apply.

One item that is of direct relevance to each of these points is the current status of the Section 207(k) exemption as applied to law enforcement officers. When Congress applied the FLSA to state and local governments in 1974, it enacted a partial overtime exception for public safety employees as 29 U.S.C. § 207(k). As written, the Section 207(k) exemption set an overtime threshold of 216 hours in a 28-day period. However, Section 207(k) also authorized the Secretary to conduct a study of the average number of hours worked by fire protection and law enforcement personnel, and to establish by rule different overtime thresholds depending upon the result of that study.

Before the Secretary's study was complete, the Supreme Court had held in *National League of Cities v. Usery* 426 U.S. 833 (1976), that the FLSA could not constitutionally be applied to state and local governments. In response, the Secretary's study reviewed the work hours of only Federal employees. When a court found the failure to include state and local firefighter and law enforcement hours in the study was erroneous, the Secretary redid the study, and published the final results at 48 F.R. 50,518 (September 8, 1983). After the Supreme Court reversed *National League of Cities* in *Garcia v. San Antonio Metropolitan Transit Authority*, the Secretary issued the overtime standards as 29 C.F.R. § 553.230. Those standards set the maximum hours for law enforcement personnel at 171 hours in a 28-day work period, with lower maximum standards if work periods of less than 28 days are chosen; the firefighter maximum threshold is 212 hours.

Much has changed in the more than 25 years since the Secretary's work hours study was concluded. It is clear that the average work hours for law enforcement personnel are much less than 171 hours in a 28-day period. In most of the country, law enforcement officers work the equivalent of 40-hour weeks. In some parts of the country, the prevailing hours are even less than 40 hours a week owing to the particular shift schedules used by employers. The same changes have occurred, though not to the same extent, with fire protection work hours.

It is hard to overstate the impact of the inappropriately high maximum work thresholds of 29 C.F.R. § 553.230. Under 29 U.S.C. § 207(h), an employer is allowed credits against its overtime liability under the FLSA if it makes premium payments described in 29 U.S.C. §207(e)(5)-(7). Since most law enforcement employees have schedules that approximate 40-hour weeks, their employers make premium payments for work outside normal shift schedules. The result is that Section 207(h) credits allow law enforcement employers to avoid compliance with a wide variety of the FLSA's provisions. It is difficult to imagine, for example, how such credits would not completely erode any liability for non-compliance with the FLSA's regular rate and time-of-payment provisions. Once again, the same is true of fire protection employees, though not to the same extent.

Beyond this, the thresholds in 29 C.F.R. § 553.230 are factually inaccurate. They do not reflect the reality of public safety work hours in the country, and have not for many years. Those thresholds should be updated.

**Johnson requested that this vitally important area of the FLSA overtime regulations be addressed as part of the Department's response to the President's Memorandum. (Johnson's letter is attached for your review). NAPO will continue to engage the Department of Labor on this issue and provide our members with regular updates.**

## **NAPO VICTORY!**

### **House Judiciary Committee Approves Justice for Victims of Trafficking Act**

On April 30, 2014, the House Judiciary Committee approved three bills to combat the growing problem of human trafficking in the United States. Most notably, the Committee approved by voice vote the Justice for Victims of Trafficking Act (H.R. 3530). NAPO has been a strong supporter of this legislation since the bill was introduced by **Congressman Ted Poe (R-TX)**. The legislation is a comprehensive human trafficking bill that will boost support and protection for domestic human trafficking victims by increasing and streamlining law enforcement resources, enhancing victims' services, and strengthening our laws to ensure that both buyers and sellers engaged in sex trafficking are held accountable for their crimes.

Congressman Poe noted: "There are three different groups in the crime of human trafficking: the buyer, the trafficker, and the victim. This legislation addresses all three. The Justice for Victims of Trafficking Act implements a new, robust and aggressive strategy to help combat human trafficking in the United States. It targets demand by treating people who buy other people like what they are: criminals. Finally, it increases support for and protection of those who have suffered: the victims. Congress must take the lead and ensure that victims of human trafficking are no longer treated as criminals. We must end this modern day slavery that occurs in our own backyards."

**NAPO is pleased that this bill passed the House Judiciary Committee and looks forward to continuing to work with Congressman Poe and his staff as the bill is reviewed by the full House.**

#### **Source:**

"Congressman Ted Poe." *HOUSE JUDICIARY COMMITTEE APPROVES THREE BILLS TO COMBAT HUMAN TRAFFICKING*. N.p., 30 Apr. 2014. Web. 05 May 2014.

# **NAPO Participates in Senator Durbin's Hearing on Law Enforcement Responses to Americans with Developmental Disabilities and Mental Health Conditions**

On April 29, 2014, NAPO participated in a Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights hearing, entitled "Law Enforcement Responses to Disabled Americans: Promising Approaches for Protecting Public Safety." The hearing was chaired by U.S. Senator Dick Durbin (D-IL), the Senate's Assistant Majority Leader and Chairman of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights.

Because of inadequate social and mental health services, law enforcement officers have increasingly become the first responders for individuals with mental illness or developmental disabilities who are in crisis. State and local law enforcement agencies have taken the lead in developing innovative solutions, such as Crisis Intervention Teams. Localities that use these approaches have seen fewer injuries and deaths among officers and people with mental illness or developmental disabilities, increased jail diversion rates, fewer lawsuits following crisis incidents, and stronger ties with the mental health and disability communities. The hearing explored how Congress and the Executive Branch can support and strengthen these efforts.

Witnesses at the hearing included: The Department of Justice's Bureau of Justice Assistance Director, The Honorable Denise E. O'Donnell; Chicago Police Department First Deputy Superintendent, Alfonza Wysinger; Plano Police Department Sergeant, A.D. Paul; Fourth Judicial District of Minnesota Judge, The Honorable Jay M. Quam; Mental Health Advocate and Best Selling Author, Pete Earley; and the National Down Syndrome Society's Advocate of the Year and mother of Ethan Saylor, Patti Saylor.

Among the solutions discussed at the hearing are:

- Passing the bipartisan Justice and Mental Health Collaboration Act, which Senator Durbin has cosponsored. The bill reauthorizes the Mentally Ill Offender Treatment and Crime Reduction Act and authorizes grants for training law enforcement officers to identify and respond to incidents involving people with mental illness or substance abuse disorders.
- Data collection by the Justice Department on law enforcement's interactions with the disabled, particularly where the use of force is involved.
- The Justice Department issuing best practices on law enforcement interactions with disabled Americans, which could serve as a model for state and local law enforcement.

**NAPO provided the attached statement for the record, which highlights our commitment to ensuring law enforcement officers receive the necessary training to appropriately identify and respond to individuals with mental health conditions and developmental disabilities. NAPO also stressed the importance of increased collaboration between mental health agencies and criminal justice agencies.**

**NAPO looks forward to working with Senator Durbin on this important issue in the future, and will keep our members updated on developments.**

## **Source:**

"Durbin: Federal Government Must Help Law Enforcement Respond to Disabled Americans." - *Press Releases*. N.p., n.d. Web. 05 May 2014.

# NAPO Meeting on Capitol Hill – Senator Durbin’s Staff

On April 30, 2014, NAPO met with a senior staffer for **Senator Dick Durbin (D-IL)** to highlight our support of the following pieces of legislation:

**Justice and Mental Health Collaboration Act (JMHCRA):** As noted above, the JMHCRA reauthorizes the successful MIOTCRA and extends the Justice and Mental Health Collaboration Program (JMHCPC) for five years. The JMHCPC can help law enforcement agencies across the United States in their responsibilities in assisting those, and dealing with citizens with mental health issues.

**Bulletproof Vest Partnership (BVP) Grant Program Reauthorization Act:** The BVP Grant Program provides federal funds to state and local law enforcement departments to assist state and local law enforcement efforts to purchase bullet resistant vests. NAPO continues to expend all available efforts to garner additional support for the House and Senate versions of this bill.

**Community Oriented Policing Services (COPS) Improvement and Reauthorization Act:** NAPO stressed the importance of passing this legislation, which would reauthorize the COPS Program for five years and raise the current hiring cap from \$75,000 to \$125,000. Additionally, the President’s FY 2015 Budget includes \$247 million for the COPS Hiring Program. NAPO has been advocating for the COPS Hiring Program to be funded at a minimum of the amount requested by President Obama.

**As noted above, Senator Durbin is supportive of the JMHCRA. The Senator is also a cosponsor of the BVP Grant Program Reauthorization Act. We look forward to working with the Senator’s staff to ensure the passage of these important bills.**

## CJS Bill Passes House Appropriations Subcommittee on Commerce-Justice-Science

On April 30, 2014, the House Appropriations Subcommittee on Commerce-Justice-Science approved the FY15 federal spending bill that funds Department of Justice (DOJ) programs. The bill provides \$27.8 billion for DOJ programs in FY15, an increase of \$383 million over current spending.

**Thanks to your help in reaching out to your members of Congress to request support for the Mentally Ill Offender Treatment and Crime Reduction Act (MIOTCRA), under this bill, MIOTCRA would receive \$9 million. It received \$8.2 million in FY14.**

Other highlights from the bill include:

- Byrne JAG - \$376 million.
- Victims of Trafficking Grants - \$46 million
- Second Chance Act - \$63 million
- Drug courts - \$41 million
- COPS Hiring - \$70 million

**The full committee plans to mark-up the bill this week. NAPO will continue to advocate for full funding for vital law enforcement grant programs, including the COPS Program and the Byrne-JAG Program. We will keep our members updated on the status of the appropriations bills.**

**Please monitor NAPO's website [www.napo.org](http://www.napo.org), and Facebook page: National Association of Police Organizations, and follow us on Twitter @NAPOpolice for breaking news and updates.**



**NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.**  
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April 29, 2014

**THOMAS J. NEE**  
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Patrolmen's Association

Hon. Thomas E. Perez  
Secretary of Labor

**MICHAEL McHALE**  
Executive Vice President  
Florida Police Benevolent  
Association

Hon. Laura A. Fortman  
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Wage and Hour Division

**CHRIS COLLINS**  
Recording Secretary  
Las Vegas Police Protective  
Association

United States Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

**SEAN M. SMOOT**  
Treasurer  
Police Benevolent & Protective  
Association of Illinois

Re: The President's Memorandum of March 13, 2014 and the Section 207(k)  
Exemption for Law Enforcement Officers (FLSA Overtime)

**KEITH DUNN**  
Sergeant-at-Arms  
New Jersey State Policemen's  
Benevolent Association

Dear Mr. Secretary and Principal Deputy Administrator Fortman:

**JOHN A. FLYNN**  
Executive Secretary  
Patrolmen's Benevolent  
Association of New York City

I write to you on behalf of the roughly one million hourly-wage earning law enforcement officers in this country, especially the several hundred thousand represented by our association. As you know, the President, by his Memorandum of March 13 of this year, directed the Department to update regulations regarding who qualifies for overtime protection. In so doing, the Department is to consider how the regulations could be revised to:

**WILLIAM J. JOHNSON**  
Executive Director

- Update existing protections in keeping with the intention of the Fair Labor Standards Act.
- Address the changing nature of the American workplace.
- Simplify the overtime rules to make them easier for both workers and businesses to understand and apply.

One item that of direct relevance to each of these points is the current status of the Section 207(k) exemption as applied to law enforcement officers.

**Statutory and Regulatory Background.** When Congress applied the FLSA to state and local governments in 1974, it enacted a partial overtime exception for public safety employees as 29 U.S.C. § 207(k). As written, the Section 207(k) exemption set an overtime threshold of 216 hours in a 28-day period. However, Section 207(k) also authorized the Secretary to conduct a study of the average number of hours worked by fire protection and law enforcement personnel, and to establish by rule different overtime thresholds depending upon the result of that study.

Before the Secretary's study was complete, the Supreme Court had held in *National League of Cities v. Usery* 426 U.S. 833 (1976), that the FLSA could not constitutionally be applied to state and local governments. In response, the Secretary's study reviewed the work hours of only Federal employees. When a court found the failure to include state and local firefighter and law enforcement hours in the study was erroneous, the Secretary redid the study, and published the final results at 48 F.R. 50,518 (September 8, 1983). After the Supreme Court reversed *National League of Cities* in *Garcia v. San Antonio Metropolitan Transit Authority*, the Secretary issued the overtime standards as 29 C.F.R. § 553.230. Those standards set the maximum hours for law enforcement personnel at 171 hours in a 28-day work period, with lower maximum standards if work periods of less than 28 days are chosen; the firefighter maximum threshold is 212 hours.

**The Issue – The Need To Revise The Maximum Hours Threshold.** Much has changed in the more than 25 years since the Secretary's work hours study was concluded. It is clear that the average work hours for law enforcement personnel are much less than 171 hours in a 28-day period. In most of the country, law enforcement officers work the equivalent of 40-hour weeks. In some parts of the country, the prevailing hours are even less than 40 hours a week owing to the particular shift schedules used by employers. The same changes have occurred, though not to the same extent, with fire protection work hours.

It is hard to overstate the impact of the inappropriately high maximum work thresholds of 29 C.F.R. § 553.230. Under 29 U.S.C. § 207(h), an employer is allowed credits against its overtime liability under the FLSA if it makes premium payments described in 29 U.S.C. §207(e)(5)-(7). Since most law enforcement employees have schedules that approximate 40-hour weeks, their employers make premium payments for work outside normal shift schedules. The result is that Section 207(h) credits allow law enforcement employers to avoid compliance with a wide variety of the FLSA's provisions. It is difficult to imagine, for example, how such credits would not completely erode any liability for non-compliance with the FLSA's regular rate and time-of- payment provisions. Once again, the same is true of fire protection employees, though not to the same extent.

Beyond this, the thresholds in 29 C.F.R. § 553.230 are factually inaccurate. They do not reflect the reality of public safety work hours in the country, and have not for many years. Those thresholds should be updated.

On behalf of America's law enforcement officers, then, we would respectfully request that this vitally important area of the FLSA overtime regulations be addressed as part of the Department's response to the President's Memorandum.

Respectfully submitted,



William J. Johnson  
Executive Director and General Counsel

cc: The President  
The Vice President



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JOHN A. FLYNN  
*Executive Secretary*  
Patrolmen's Benevolent  
Association of New York City

### NATIONAL HEADQUARTERS

WILLIAM J. JOHNSON  
*Executive Director*

April 25, 2014

The Honorable Dick Durbin  
Chair, Subcommittee on the Constitution,  
Civil Rights, & Human Rights  
Senate Judiciary Committee  
711 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Durbin:

On behalf of the National Association of Police Organizations (NAPO), I am writing to you to express appreciation for chairing a hearing of the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights to discuss law enforcement responses to Americans with developmental disabilities or mental illness.

NAPO is a coalition of police unions and associations from across the United States that serves to advance the interests of America's law enforcement through legislative and legal advocacy, political action, and education. Founded in 1978, NAPO now represents more than 1,000 police units and associations, 241,000 sworn law enforcement officers, and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.

Public safety officers are routinely called upon to respond to situations that involve citizens with developmental disabilities or mental illness. It is vital that these officers receive the necessary training to appropriately identify and respond to these individuals. NAPO is a strong advocate for increasing training for public safety officers on how to respond to these citizens, which is critical for the safety of the officers involved and the individuals at the scene.

Moreover, individuals with mental illness are significantly overrepresented in our prison and jail populations. Providing public safety officers with training to assist those in crisis will help to ensure that these citizens receive the help they need as opposed to being placed in the criminal justice population.

Additionally, increased collaboration between mental health agencies and criminal justice agencies will yield public safety benefits. First responders are often ill-advised of those with serious mental health conditions when responding to calls to facilities that treat these individuals. Failure to properly identify such facilities for first responders leads to an increased risk of injury of both the first responder and the patient. It is imperative that public safety



officers be made aware of the potential to come into contact with a large group of individuals who may suffer from mental health conditions in order to appropriately respond and maintain public safety.

Law enforcement officers are called upon more frequently than ever to respond to individuals with mental illness or developmental disabilities who are in crisis. Public safety officers must be provided necessary training to respond to these individuals. An investment in training will assist with keeping officers and the communities they serve safe.

Thank you for taking action on this important issue. NAPO stands ready to assist with any efforts necessary as you explore how Congress and the Executive Branch can help support the law enforcement community with responding to individuals with mental health conditions and developmental disabilities.

If you have any questions, or if we can be of further assistance, please feel free to contact me at: (703) 549-0775. We look forward to working with you in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Johnson", with a long horizontal flourish extending to the right.

William J. Johnson  
Executive Director