



The Washington Report

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

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House and Senate Move Forward on Police Reform

House Action

On June 10, the House Judiciary Committee held an oversight hearing on “Policing Practices and Law Enforcement Accountability” which largely focused on the issues of officer use of lethal force, officer accountability and transparency in policing. The issue that was most discussed during the hearing was qualified immunity with Democrats focused on how to ensure that officers are stripped of this protection, and Republicans concerned with how its elimination, coupled with the removal of the “intentional” standard for civil rights cases, would make it hard to retain and hire qualified officers.

While the hearing mainly dealt with proposals and policies that are in the Justice in Policing Act (H.R. 7120), several Democrats and Republicans on the Committee took the opportunity to attack police unions, blaming them almost entirely for problem officers remaining on the force. This was incredibly disturbing to us as unions simply want to protect their officers’ right to due process, a right we give all citizens, a right all unions work to protect for their members in disciplinary actions. Blaming unions is how management avoids taking blame for not following the processes and procedures agreed to – by both sides – in a collective bargaining agreement. NAPO will fight any attempt at curbing officers’ rights to bargain over wages, hours *and* working conditions.

NAPO sent two letters to the House Judiciary Committee: one in response to the hearing and the entire process and one outlining our most significant concerns with the Justice in Policing Act. In the [first letter](#), we take issue with the fact that the voice of rank-and-file officers played no role in the hearing or the development of the Justice in Policing Act. House Democrats shut us out of the discussion completely despite our efforts to get a seat at the table. Yes, we have significant concerns with several provisions of the Justice in Policing Act, including those impacting *mens rea*, qualified immunity, and the current legal standard of “objective reasonableness” for the use of force outlined in the 1989 U.S. Supreme Court decision *Graham v. Connor*. However, we believe there are areas that we can come together on to address transparency, accountability and training in law enforcement.

In our [second letter](#), we highlighted the areas where we have strong opposition and others where we agree on the intention and goal, but not the process. NAPO urged Committee leadership to consider our concerns and the perspective of the officers on the street and give us a seat at the table as this legislation moves forward. Until those considerations are granted, NAPO opposes the Justice in Policing Act. And in any event, we can never support any bill that would strip officers of their qualified immunity protections.

On June 17, the House Judiciary Committee held a markup on the Justice in Policing Act. After 12 hours of heated debate over the bill and Republican proposed amendments, all of which failed, the bill was approved by a party line vote. During the markup, Representative Ken Buck (R-CO) offered an amendment to remove the provision of the bill that eliminates qualified immunity, which went down on a party line vote. NAPO conferred with his staff on the amendment and appreciate him standing up for officer protections. Representative Greg

Steube (R-FL) introduced an amendment to repeal the provision that restricts law enforcement's access to surplus military equipment, which also failed along party lines. Several Committee Republicans voiced support for amending qualified immunity but could not support its elimination. The House is scheduled to vote on the Justice in Policing Act on June 25 and it is expected to pass the House on a party line vote.

Senate Action

The Senate Judiciary Committee held an oversight hearing on "Police Use of Force and Community Relations" on June 16, which included two panels of witnesses comprised of community leaders, politicians, civil rights proponents and academics, federal prosecutors and local law enforcement representatives. Much like the House oversight hearing, much of this hearing focused on the issue of qualified immunity, with panelists strongly split on whether it needs to be eliminated - the law enforcement witnesses against the elimination and the others for it. Other reform proposals that received a lot of attention were lowering the intent standard for civil rights violations from "willfully" to "knowingly or with reckless regard" and the creation of a national police misconduct registry.

The hearing did not land on any specific proposals to coalesce around and move forward. Senators Kamala Harris (D-CA) and Corey Booker (D-NJ) introduced the Justice in Policing Act and Senator Tim Scott (R-SC) introduced the Republican's police reform measure, the JUSTICE Act (S. 3985), on June 17 (more on that below). Committee Chairman Lindsey Graham (R-SC) stated that he hopes both sides can come together on a compromise that can be passed into law. NAPO submitted a [statement for the record](#) for the oversight hearing.

NAPO remains seriously concerned that the elimination of qualified immunity continues to receive so much attention and support. The discussion around qualified immunity continued on the Senate floor on June 17, prompting us to send a [letter to Chairman Graham](#) explaining why this is a red line issue for us. NAPO has successfully argued for qualified immunity on behalf of our officers in the U.S. Supreme Court more than any other national law enforcement organization and we will continue to fight to protect qualified immunity for our members and officers across the country.

Senate Majority Leader Mitch McConnell (R-KY) has lined the JUSTICE Act up for a cloture vote (a vote to allow debate on the bill) for June 24. Senate Republicans need 7 Democrats to join them in voting for cloture in order to allow debate and consideration of the bill to move forward. While Senate Minority Leader Charles Schumer (D-NY) as not indicated yet whether Democrats will allow debate on the bill to happen, House Speaker Nancy Pelosi (D-CA) said that she believes that conference is where the differences between the JUSTICE Act and the Justice in Policing Act should be worked out. If that is the stance of Democratic leadership, it seems that Democrats will allow debate on the bill to move forward.

We will continue to work with House and Senate leadership, members of Congress and staff on the issues we can come together on, but we continue to stand firm against those issues that would take away protections for our members. We will keep our members updated on the status of the Justice in Policing Act and the JUSTICE Act.

Senate Republican Answer to Police Reform Introduced

Senator Tim Scott (R-SC) introduced the Just and Unifying Solutions To Invigorate Communities Everywhere (JUSTICE) Act (S. 3985) on June 17. NAPO worked closely with Senator Scott and Senate Judiciary Committee staff on this legislation and they have largely taken into account our concerns around ensuring officer due process, protecting qualified immunity for officers, supporting the [National Consensus Policy on Use of Force](#) which NAPO helped author, and guarding officer privacy and confidentiality rights.

The JUSTICE Act would:

- Expand on the FBI's Use of Force reporting and require new reporting on "no knock" warrants for closed cases that takes into consideration the crime data within the reporting jurisdiction.

- Expand upon the Department of Justice (DOJ) grant program to provide funding for departments to establish body worn camera programs, including the purchasing of cameras and data retention systems.
- Ensure law enforcement agencies maintain and appropriately share disciplinary records for officer hiring consideration. The disciplinary records to be kept are only those which have been substantiated and adjudicated by a government agency using due process considerations or a court and has resulted in criminal charges or adverse action by the law enforcement agency.
- Direct the DOJ to develop and provide training on de-escalation, implementation, and fulfilment of duty to intervene policies, in consultation with law enforcement labor organizations and other stakeholders.
- Establish the National Criminal Justice Commission to undertake a comprehensive review of the criminal justice system, any such Commission to include actual rank-and-file representation.
- Expands the COPS Hiring Grant to allow funds to be used for departments to hire officers that match the racial and ethnic makeup of their jurisdiction. We understand the goal here, but have very strong concerns about how this section of the bill is written.
- Mandates the consensus development of best practices for policing tactics, employment processes including protecting officer due process, community transparency and administration. Studies on community Use of Force review boards, law enforcement officer engagement on issues related to mental health, homelessness, and addiction; proposals on improving accountability for DOJ grants.
- Makes lynching a federal crime.

While the JUSTICE Act would provide additional grant funding to help states, localities and law enforcement agencies comply with the above provisions, it would also significantly penalizing their Byrne Justice Assistance Grant (Byrne JAG) program and Community Oriented Policing Services (COPS) funding if they do not comply within a certain timeframe. NAPO opposes the use of these vital grant programs as sticks to force compliance.

We appreciate the willingness of Senator Scott to work with us and consider our views on police reform. We cannot yet support this legislation, however, as we still have some very serious concerns about how it would affect the safety and working conditions of officers. We will continue to work the Senator and his staff (and any other Members of Congress who wish to work with us in good faith), to see if we can get us to a place where we can fully support it.

President Signs Executive Order on Safe Policing for Safe Neighborhoods

On June 16, NAPO Executive Director Bill Johnson was at the White House to witness President Trump sign the Executive Order on [Safe Policing for Safe Communities](#). In the Executive Order, it is evident that the President listened to the voice of rank-and-file law enforcement, the practitioners on the streets most impacted by these reforms. While the Executive Order directs the Administration to incentivize transparency, accountability and training, it also protects officer due process rights, and allows officers the tools necessary to protect themselves and their communities. Additionally, it ensures officer privacy and confidentiality rights. NAPO supports the Executive Order and thanks the President for his leadership on this issue. We look forward to working with the Administration, the Attorney General and the Congress to implement its provisions.

Coronavirus Aid to States and Localities Sidelined by Police Reform

It has been a month since the Democrats passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, H.R. 6800, which provided extensive aid in response to the COVID-19 pandemic.

While the need for aid increases, particularly for state and local governments who are facing serious budget holes and revenue shortages, the Senate has taken no action on the HEROES Act or created a proposal of their own. Republicans in both chambers of Congress support waiting to see if the economy begins recovering as much of the nation begins reopening. They also argue that the funding from the CARES Act has not completely be spent and it is too soon to appropriate additional funds until they know how the earlier emergency packages impact the economy.

The drive for police reform in the wake of the death of George Floyd and the resulting protests and riots across the country has also pushed this issue lower on the priorities list for Congress. The White House has indicated they are looking to make a deal with House and Senate leadership on another emergency coronavirus package after the July 4 recess, but it seems White House pressure will need to be strong to move Republicans to move on providing more aid.

On June 16, Federal Reserve Chairman Jerome Powell warned Congress that if they do not continue to provide economic aid, and swiftly, including money to state and local governments, that the nation's economic recovery would stall. In response to the Chairman's comments, Senate Democrats are pushing their Republican counterparts on the Appropriations Committee to support including additional aid in the Fiscal 2021 spending bills that the Committee is beginning to consider, but there as been pushback. The House Appropriations Committee will be considering additional aid in its versions of the FY 21 spending measures.

There is bipartisan support for providing direct aid to state and local governments to help them offset the revenue shortfalls and avoid mass layoffs and budget cuts. NAPO supports the SMART Act, H.R. 6954 / S. 3752, a bipartisan bill that would provide state, county, and municipal governments with \$500 billion in targeted financial aid. In addition to our support for the SMART Act, we are working in conjunction with our partners representing state and local governments to push Congress to act quickly on additional aid.

Economic assistance to state and local government is not our only priority for another coronavirus recovery package. We continue to work on establishing in statute that COVID-19 will be presumed to have been contracted in the line of duty for the purposes of the Public Safety Officers' Benefits (PSOB) death and disability benefits. To date, over 120 officers have died from contracting COVID-19 in the line of duty and it is essential we ensure their families get these much-needed benefits.

Further, the need for funding to help law enforcement agencies purchase and provide their officers with sufficient personal protective equipment (PPE) remains an issue. As does funding to help agencies pay for COVID-19 related overtime, hazard pay and additional sick leave. Direct aid to state and local governments would go a long way to covering these costs and preventing pending furloughs and layoffs of officers and agency personnel.

NAPO in the News

On June 15, NAPO's President Mick McHale was quoted in an op-ed in *The Center Square* entitled, "[Defund police unions not police departments](#)" by William Haupt III, which blamed police unions for "bad cops" being able to remain on the job.

"The National Association of Police Organizations, which monitors every major department, demands strict individual responsibility from every officer. But according to President Michael McHale, 'This current national campaign to discredit all departments is out of line. We're extremely disappointed to see this. This anti-police movement could nail the coffin shut for all American law enforcement. Those who support our police officers are happy. Those that hate the police never will be happy.'"

On June 13, NAPO's Executive Director Bill Johnson was interviewed for a *Washington Examiner* article entitled, "[Big Tech scrapping facial recognition services for police](#)" that discussed the move by IBM, Microsoft, and Amazon to put a moratorium on state and local law enforcement's use of their facial recognition software.

Johnson accused the businesses of overcorrecting by "[throwing] the baby out with the bathwater," instead of admitting their own systems' misidentification of a black person could lead law enforcement to pursue an innocent person.

"If there's problems with it, fix the problem," Johnson said in a Friday phone call. "Stuff comes out — there's problems with it. I think there has to be sensitivity when those problems are more likely to identify people if they're persons of color, but I think if companies are honest about it ... people are willing to give the company the benefit of the doubt — willing to believe they are working on it."

If companies were as concerned as they have acted about the face detectors, other types of uses, like on Facebook or Google, should be suspended as well, according to Johnson.

"The viewpoint of most police at this point is these companies are taking a hiatus now because it's political pressure that's been put upon them. In order to perhaps avoid a boycott or keep sales strong in other lines of business," Johnson said.

It is NAPO's position that a ban or moratorium on facial recognition technology would only take away a tool that is helping to get justice for crime victims and assistance for people in crisis. This move by IBM, Microsoft, and Amazon is purely political and is taking away advanced technology that helps drive better public safety outcomes.

On June 10, NAPO's Executive Director Bill Johnson went on Fox News for an interview regarding police unions getting caught in the crosshairs of the national police reform discussion:

<https://video.foxnews.com/v/6163184347001#sp=show-clips>

On June 9, NAPO Executive Director Bill Johnson spoke to the *Washington Examiner* for an article entitled, "['Ludicrous': Top cops see chaos and economic crises if police defunded](#)." The article took the pulse of national law enforcement leaders on the growing call to defund police, all of whom agreed that such an action would lead to economic downturn for communities, businesses and residents.

"Johnson said calls to cut police budgets or dismantle entire departments are 'dangerously misguided at best and a cynical attempt to create a power vacuum to be exploited at worst.

Police officers know as well as anyone else, and better than most, the urgent need for better housing, healthcare, jobs creation, and social services in marginalized communities. But that does not mean that the vital services for protection of life and property that police departments provide should be cut. It's a false choice."

The Washington Times reached out to NAPO's Executive Director Bill Johnson to get our take on the Democratic police reform proposal, the Justice in Policing Act, for a June 8 article entitled, "[Police Organization slams Democrats proposed overhauls](#)".

Johnson said that the Democrats’ proposal was an “unworkable hodgepodge of conflicting laws and policy. It’s clear when you read this that the authors either have very little knowledge of the conditions of law enforcement or else that they don’t particularly care.”

“Mr. Johnson pointed to a provision in the legislation that would limit the ‘qualified immunity,’ which currently prevents police officers and government officials from being sued for misconduct while acting in their official capacity.

He said the legislation would open officers up to being criminally charged for mistakes that could be portrayed in the media as criminal wrongdoing.

Mr. Johnson said that officers could be punished and even imprisoned for acts they believed were lawful because the proposed reforms don’t outline how an officer could face criminal charges for their actions.

‘Think about that,’ he said. ‘You’ve got federal lawmakers proposing a federal law that says that even when the federal law is so unclear as to be unknowable by any reasonable officer, that officer can still go to prison for an unintentional act that unknowingly broke an unknown law.’”

NAPO and our long-standing relationship with Vice President Biden was the topic of a front-page *Washington Post* article that discussed his 1994 Crime Bill that we were instrumental in crafting and how Biden has changed his criminal justice agenda:

https://www.washingtonpost.com/politics/joe-biden-let-police-groups-write-his-crime-bill-now-his-agenda-has-changed/2020/06/08/82ab969e-a434-11ea-8681-7d471bf20207_story.html

NAPO will continue to ensure our members’ voices are heard loud and clear on the Hill, with the Administration, and in the media.

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.

Please monitor NAPO’s website, www.napo.org, and Facebook page: National Association of Police Organizations, and follow us on Twitter at [NAPOpolice](https://twitter.com/NAPOpolice) for breaking news and updates.