

PROBATION OFFICER PROTECTION ACT OF 2017

MAY 8, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1039]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1039) to amend section 3606 of title 18, United States Code, to grant probation officers authority to arrest hostile third parties who obstruct or impede a probation officer in the performance of official duties, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

This bill amends the federal criminal code to authorize a probation officer to arrest a third party (i.e., a person other than the probationer or individual on supervised release) without a warrant if there is probable cause to believe the person forcibly assaulted or obstructed a probation officer engaged in the performance of official duties.

Background and Need for the Legislation

Under current law, a federal probation officer may arrest a probationer or individual on supervised release if the officer has probable cause to believe that the offender has violated a condition of his or her probation or release.¹ The officer may make the arrest with or without a warrant.²

In practice, formal arrests by probation officers are rare. Rather, probation officers use this authority to lawfully engage in less restrictive means against the probationer or supervised releasee, such as ordering the offender to stand aside during a search; instructing the offender not to interfere with the officer's movements; or, in rare cases, temporarily restraining an offender who poses a physical danger.

Current law does not, however, address a probation officer's arrest authority in situations in which a third party attempts to physically obstruct the officer or cause the officer physical harm. Although obstructing a probation officer in the performance of his or her official duties is illegal, when a probation officer encounters an uncooperative or violent third party, the officer may be forced to retreat because he or she lacks authority to restrain the third party. This lack of authority and resulting need to retreat, rather than restrain the third party, exposes probation officers to greater risk of harm and allows the third party—along with any evidence or individual the third party may be attempting to shield—to elude capture. As a result, evidence that an offender has violated a condition of his or her probation or supervised release, or evidence of other criminal activity, may be lost.

In some circumstances, a probation officer may be able to enlist the assistance of local police in responding to a hostile third party. But this is not, in and of itself, an adequate solution. First, unless the probation officer knows in advance that he or she is likely to encounter a hostile third party and can find an available police officer to accompany him or her, the probation officer must wait for police backup to arrive. This is often not a viable option. Second, even if a local police officer is available to accompany the probation officer, because the probation officer lacks arrest authority, he or she cannot lawfully assist the police officer if the police officer is accosted. Third, requiring federal probation officers to rely on local law enforcement in responding to uncooperative or violent third parties burdens local police departments and diverts police resources from other uses.

¹See 18 U.S.C. §3606.

²*Id.*

Hearings

The Committee on the Judiciary held no hearings on H.R. 1039.

Committee Consideration

On May 3, 2017, the Committee met in open session and ordered the bill H.R. 1039 favorably reported, without amendment, by a roll call vote of 15 to 7, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 1039:

1. Motion to report the bill favorably. Approved by a roll call vote of 15 to 7.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman	X	.....	.....
Mr. Sensenbrenner, Jr. (WI) .....	.....	.....	.....
Mr. Smith (TX) .....	.....	.....	.....
Mr. Chabot (OH)	X	.....	.....
Mr. Issa (CA)	X	.....	.....
Mr. King (IA)	X	.....	.....
Mr. Franks (AZ)	X	.....	.....
Mr. Gohmert (TX)	X	.....	.....
Mr. Jordan (OH)	X	.....	.....
Mr. Poe (TX)	X	.....	.....
Mr. Chaffetz (UT) .....	.....	.....	.....
Mr. Marino (PA)	X	.....	.....
Mr. Gowdy (SC)	X	.....	.....
Mr. Labrador (ID) .....	.....	.....	.....
Mr. Farenthold (TX)	X	.....	.....
Mr. Collins (GA) .....	.....	.....	.....
Mr. DeSantis (FL) .....	.....	.....	.....
Mr. Buck (CO)	X	.....	.....
Mr. Ratcliffe (TX) .....	.....	.....	.....
Ms. Roby (AL) .....	.....	.....	.....
Mr. Gaetz (FL)	X	.....	.....
Mr. Johnson (LA)	X	.....	.....
Mr. Biggs (AZ)	X	.....	.....
Mr. Conyers, Jr. (MI), Ranking Member .....	.....	X	.....
Mr. Nadler (NY) .....	.....	X	.....
Ms. Lofgren (CA) .....	.....	.....	.....
Ms. Jackson Lee (TX) .....	.....	X	.....
Mr. Cohen (TN) .....	.....	.....	.....
Mr. Johnson (GA) .....	.....	X	.....
Mr. Deutch (FL) .....	.....	X	.....
Mr. Gutiérrez (IL) .....	.....	.....	.....
Ms. Bass (CA) .....	.....	.....	.....
Mr. Richmond (LA) .....	.....	.....	.....
Mr. Jeffries (NY) .....	.....	.....	.....

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Cicilline (RI)	X	.....
Mr. Swalwell (CA)
Mr. Lieu (CA)
Mr. Raskin (MD)
Ms. Jayapal (WA)
Mr. Schneider (IL)	X	.....
Total	15	7	.....

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1039, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MAY 5, 2017.

Hon. BOB GOODLATTE,
Chairman.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1039, the Probation Officer Protection Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1039—Probation Officer Protection Act of 2017

H.R. 1039 would amend current law to allow federal probation officers to arrest a person if there is probable cause that the person has assaulted, intimidated, or otherwise interfered with any probation officers while performing their official duties. The bill also would direct the Administrative Office of the U.S. Courts (AOUSC) to implement rules and regulations governing probation officers' conduct while exercising that authority.

Based on an analysis of information provided by the AOUSC about the very small number of arrests that would probably occur under the bill, CBO estimates that implementing H.R. 1039 would have no significant effect on the federal budget.

Enacting H.R. 1039 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1039 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Robert Reese. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 1039 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 1039 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1039 will grant probation officers authority to arrest hostile third parties who obstruct or impede a probation officer in the performance of official duties.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1039 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

Section-by-Section Analysis

Section 1. Short Title. This section cites the short title of the bill as the “Probation Officer Protection Act of 2017.”

Section 2. Authority of Probation Officers. This section amends the federal criminal code to authorize a probation officer to arrest a third party (i.e., a person other than the probationer or person on supervised release) without a warrant if there is probable cause to believe the person forcibly assaulted or obstructed a probation officer engaged in the performance of official duties.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART II—CRIMINAL PROCEDURE

* * * * *

CHAPTER 229—POSTSENTENCE ADMINISTRATION

* * * * *

SUBCHAPTER A—PROBATION

SUBCHAPTER A—PROBATION

Sec.

3601. Supervision of probation.

* * * * *

[3606. Arrest and return of a probationer.]

3606. Arrest authority of probation officers.

* * * * *

§ 3606. Arrest [and return of a probationer] *authority of probation officers*

[If there] *(a) If there* is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. A probation officer may make such an arrest wherever the probationer or releasee is found, and may make the arrest without a warrant. The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or releasee, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or United States marshal may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

(b) A probation officer, while in the performance of his or her official duties, may arrest a person without a warrant if there is probable cause to believe that the person has forcibly assaulted, resisted, opposed, impeded, intimidated, or interfered with the probation officer, or a fellow probation officer, in violation of section 111. The arrest authority described in this subsection shall be exercised under such rules and regulations as the Director of the Administrative Office of the United States Courts shall prescribe.

* * * * *

Dissenting Views

H.R. 1039, the “Probation Officer Protection Act,” is a well-intentioned, but flawed proposal that would expand the arrest authority of federal probation officers (USPOs). This change would significantly alter the role of these officers, invite abuse in application of the expanded authority, and raise constitutional concerns. For these reasons and those discussed below, we respectfully dissent and urge our colleagues to oppose this legislation when it comes to the floor.

DESCRIPTION

H.R. 1039, “the Probation Officer Protection Act,” amends section 3606 of title 18 of the United States Code to expand the arrest authority of USPOs. Currently, these officers only possess the authority to arrest individuals under the supervision of the U.S. Probation Office.¹ As amended by the bill, section 3606 would authorize USPOs to arrest persons other than supervisees without a warrant if there is probable cause to believe the person assaulted or obstructed a USPO in the course of his or her duties in violation of section 111 of title 18.² The arrest authority would be further defined by rules and regulations set by the Director of the Administrative Office of the U.S. Courts (AO). Proponents of H.R. 1039 contend that this authorization would also allow USPOs to temporarily control, direct, and detain third parties during the execution of supervision-related searches, including those conducted pursuant to a warrant.³

BACKGROUND

I. FEDERAL PROBATION OFFICERS

USPOs perform a critical service in supervising, monitoring, and managing supervisees, including individuals on probation and individuals on supervised release from prison. They are predominantly responsible for achieving the goals of supervision, which include long-term, positive change in their supervisees.⁴

¹ 18 U.S.C. § 3606 (2017) authorizes a USPO to arrest a probationer or a person on supervised release if there is probable cause to believe that the person being supervised has violated a condition of his probation or release.

² 18 U.S.C. § 111 (2017) prohibits assaulting, resisting, or impeding any officer or employee of the United States or of any agency in any branch of the United States Government.

³ ADMINISTRATIVE OFFICE OF THE U.S. COURTS, Office of Legislative Affairs, Judicial Conference Proposal, *Criminal Judicial Procedure, Administration, and Technical Amendments Act of 2017*, 115th Congress, 1st Session [hereinafter “Judicial Conference Proposal”]; Letter from Hon. Ricardo S. Martinez, Chair, Committee on Criminal Law of the Judicial Conference of the United States, to Senator Orrin Hatch (R-UT) (Feb. 13, 2017).

⁴ FEDERAL JUDICIAL CENTER, U.S. Probation and Pretrial Services, *Charter for Excellence* (2002).

The U.S. Probation and Pretrial Services System is an arm of the judicial branch of the U.S. government. “Federal probation officers are directly responsible to the courts they serve” and are considered the “eyes and ears” of the federal courts.⁵ Practices of each district vary in some respects, including applicable case law and court culture.⁶ To foster consistency among districts, however, policy is developed and subsequently approved by the Judicial Conference of the United States. The AO and the Federal Judicial Center provide centralized support.⁷

In recent years, USPOs have conducted an increased number of pre-approved, exigent, and consent searches. In 2013, for example, USPOs conducted 909 searches.⁸ Of the 475 searches in which a third party was present, a third party was uncooperative on 18 occasions, seven third parties were arrested and/or restrained by local law enforcement, and two third parties possessed a loaded firearm. USPOs encountered a third party in 498 searches in 2014. Of those searches, a third party was uncooperative on 27 occasions, and five third parties were arrested. In 2016, 555 of 1060 searches conducted pursuant to a court-ordered search condition or with consent involved third parties.⁹ On 39 occasions, officers described one or more third parties as uncooperative.¹⁰ Reported third party obstruction typically included: verbal threats; verbal and nonverbal intimidation; hiding from officers; refusal to leave the search site; swallowing or flushing narcotics; releasing aggressive dogs; refusal to provide identity; denying officers entry into a residence; and failing to follow directives.

II. FEDERAL PROBATION OFFICER ARREST POWER COMPARED TO OFFICERS WITH FULL POLICE POWER

Under current law, a USPO may arrest a probationer or individual on supervised release if the officer has probable cause to believe that the individual has violated a condition of his or her probation or supervised release.¹¹ The officer may make the arrest with or without a warrant.¹² In practice, however, USPOs rarely make formal arrests. USPOs typically use their authority to exert less restrictive uses of force, such as ordering a supervisee to stand aside during a search, instructing an offender not to interfere with the officer’s activities, or temporarily restraining a supervisee who poses a physical danger to the officer’s safety or attempts to obstruct the officer during the course of a search.¹³

⁵ U.S. COURTS, *Probation and Pretrial Services: Mission*, available at <http://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-services-mission>.

⁶ James Johnson, *State of the System: Federal Probation and Pretrial Services*, 79-SEP Fed. Probation 34 (2015).

⁷ *Id.*

⁸ Memorandum from Federal Law Enforcement Officers Association, *Proposal to Enhance the Safety of Probation Officers During the Performance of Their Official Duties* (on file with H. Comm. on the Judiciary Democratic staff).

⁹ ADMINISTRATIVE OFFICE OF THE U.S. COURTS, Office of Legislative Affairs, *Fact Sheet: Federal Probation / Pretrial Officer Incidents Involving Third Parties*.

¹⁰ *Id.*

¹¹ See 18 U.S.C. § 3606 (2017).

¹² *Id.*

¹³ See Guide to Judiciary Policy, Vol. 8 (Probation and Pretrial Services), Pt. E (Supervision of Federal Offenders), Appendix 4A (Search and Seizure Guidelines) (last revised Mar. 15, 2011), at VIII.C.2 [hereinafter “Guide”].

Notwithstanding the statutory authority provided in section 3606 of title 18, existing Judicial Conference policy forbids USPOs from making warrantless arrests to initiate revocation proceedings.¹⁴ Officers are instead instructed to obtain a court-ordered warrant, which the U.S. Marshals Service executes.¹⁵ Pursuant to this policy, an officer may arrest a supervisee if probable cause to arrest arises during the execution of a search under the limited circumstances that the violation conduct is serious enough or the supervisee is dangerous enough to require taking the supervisee immediately into custody, and the officer can make the arrest safely.¹⁶

As provided in section 111 of title 18, obstructing a USPO in the performance of his or her official duties is prohibited. Nevertheless, USPOs do not have statutory authority to enforce this statute as they only have authority over individuals currently serving probation or supervised release. They do not possess the authority to issue commands, detain, or arrest a third party who attempts to physically obstruct the officer or inflict physical harm on the officer when the officer is conducting a search, serving a warrant, or performing a regular supervision visit. In current practice, USPOs sometimes utilize the assistance of local law enforcement officers in responding to hostile third parties.

CONCERNS WITH H.R. 1039

I. H.R. 1039 IS OVERLY BROAD AND RAISES SIGNIFICANT FOURTH AMENDMENT CONCERNS

H.R. 1039 would grant USPOs the authority to enforce section 111 even though it is notoriously nebulous and subject to countless interpretations. The statute's vague terms, such as "opposed" and "interfered", invite abuse and would allow USPOs to arrest individuals who are merely uncooperative in violation of the Fourth Amendment.¹⁷

USPOs supervise and monitor offenders through contact with others, including family members and employers. Individuals under supervision waive some of their Fourth Amendment protections as a condition of their supervision. Third parties, however, do not with respect to their private spaces. As the American Civil Liberties Union (ACLU) observes, "the real world implications of this could be that the mother of a son on probation is arrested for denying a probation officer access to her private space, like her bedroom."¹⁸ In such ways, overbroad interpretations of "interference" with a USPO's duties may lead to overzealous exercise of arrest authority that violates the Constitution.

¹⁴*Id.* at VIII.C.3.

¹⁵*Id.*

¹⁶*Id.*

¹⁷Letter from David Patton, Executive Director, Federal Defenders of New York, & Jon Sands, Federal Defender, District of Arizona, to Members of the H. Comm. on the Judiciary 6 (Mar. 30, 2017) (on file with Democratic staff of the H. Comm. on the Judiciary) [hereinafter "Defender Letter"].

¹⁸Letter from Faiz Shakir, National Political Director, & Kanya Bennett, Legislative Counsel, American Civil Liberties Union (ACLU), to Rep. Bob Goodlatte, Chairman, & Rep. John Conyers, Jr., Ranking Member, H. Comm. on the Judiciary 2 (Apr. 26, 2017) (on file with H. Comm. on the Judiciary Democratic staff) [hereinafter "ACLU Letter"].

Proponents of this bill argue that it is necessary to allow USPOs to arrest third parties who forcibly interfere with these officers or seek to harm them physically. However, we understand that USPOs would, if this bill is enacted, sometimes exercise a “lesser included” authority to detain third parties without making a formal arrest.¹⁹ If H.R. 1039 becomes law, the Judicial Conference plans to instruct USPOs to take measures, including the temporary control of third parties, in some circumstances in “the execution of searches and other work-related contacts (e.g., home visits during supervised release).”²⁰ The potential for detention of third parties elevates our constitutional concerns with the bill.

Long-standing case law establishes that police officers are allowed to stop or detain third parties on the premises when conducting a search pursuant to a warrant if there is reasonable suspicion that a limited seizure is necessary for officer safety. Fundamental to these cases is broad police arrest authority and a neutral magistrate judge’s finding that there is probable cause for a search based on the presence of someone who has committed a crime or evidence of a crime on the premises to be searched.²¹ These cases emphasize that officers may exercise the lesser-included power to detain any person who might present a safety risk when connected to a validly issued search warrant. Probable cause, supporting the issuance of a valid search warrant, is of prime importance in assessing the reasonableness of such intrusions and, subsequently, finding that a detention was reasonable.²²

USPOs, however, do not conduct searches pursuant to warrants based on probable cause. Instead, they conduct warrantless searches related to supervisees based on reasonable suspicion.²³ Their power to search is based on the theory that they may conduct administrative searches to further the goals of supervision, namely, rehabilitation and protection of the public. With respect to supervisees, the warrant and probable cause requirements of the Fourth Amendment may be set aside when the special needs of the administrative agency are beyond the regular needs of law enforcement, the privacy interests of the supervisee are diminished, and the agency’s special needs make a warrant and probable cause requirement impractical.²⁴ Once a supervisee has been convicted and his or her liberty depends on the observance of supervision conditions, the government’s special needs outweigh the supervisee’s interest in being free from searches conducted without a warrant.²⁵

Nevertheless, the constitutional interests of third parties are not outweighed by these governmental needs. Although the bill would expand the arrest authority of USPOs under section 3606, these constitutional interests of third parties would remain unchanged. As previously stated, courts that found detentions reasonable in connection with the execution of search warrants based their holdings primarily on the probable cause determinations of magistrate

¹⁹ *Judicial Conference Proposal* at 19.

²⁰ *Id.*

²¹ See *Michigan v. Summers*, 425 U.S. 692 (1981); *Muehler v. Mena*, 544 U.S. 93, 99 (2005).

²² *Muehler v. Mena* at 99 (detention for the duration of the search was reasonable since a neutral magistrate issued a warrant to search the premises based on probable cause).

²³ *Guide, supra*, at III.A.

²⁴ *Griffin v. Wisconsin*, 483 U.S. 868, 875 (1987) (warrantless search based on reasonable suspicion upheld as constitutional); *U.S. v. Knights*, 534 U.S. 112, 117 (2001).

²⁵ *U.S. v. Knights*, at 121.

judges, a fact absent in the execution of supervision-related searches. Such seizures made by USPOs would, therefore, be unconstitutional given the absence of probable cause supporting their searches, a factor deemed critical by the Supreme Court. The distinction between supervision searches and police-initiated searches is made clearer when considering the concept of USPOs acting as “stalking horses” for the police. Several federal districts recognize the potential for police officers to take advantage of the reduced standards USPOs enjoy to justify a search as pretext to circumvent the need to establish probable cause for police-initiated searches.²⁶

II. H.R. 1039 RAISES SEPARATION OF POWERS CONCERNS

H.R. 1039 raises concerns with the Separation of Powers Clause of the Constitution by authorizing USPOs, who serve as administrative units of the district courts, to enforce section 111 of title 18 against private citizens. USPOs are employees of the Judicial Branch and have a close relationship to the courts, which they serve.²⁷ This legislation would effectively assign an executive function, namely, arresting and prosecuting offenders, to an entity within the Judicial Branch. Similarly, challenges to arrests made by USPOs under this new authority, including constitutional challenges, would require district judges to review the actions of their own agents, which undermines the integrity of the Judicial Branch.²⁸ And, in light of the potential applications of the arrest authority permitted under H.R. 1039 (as previously discussed), the likelihood of such constitutional challenge is heightened.

III. H.R. 1039 IS A SOLUTION IN SEARCH OF A PROBLEM

USPOs have traditionally requested the aid of police officers endowed with broad police authority in conducting supervision-related searches. Nevertheless, H.R. 1039 would undermine the rehabilitative relationship between USPOs and supervisees even though there is no overwhelming need to grant USPOs the authority to arrest third parties. As pointed out by the ACLU, H.R. 1039 “is a solution in search of a problem because there is no statistical or other evidence otherwise to support the need to expand probation officers’ arrest authority.”²⁹ The Federal Probation & Pretrial Officers Association (FPPOA) states that in 2015, of the 987 searches that were conducted, only 30 involved uncooperative third parties—comprising only 3 percent.³⁰ There is no data to support the conclusion that third parties routinely present substantial risk of danger during encounters with federal USPOs.

²⁶U.S. v. Penson, 141 Fed.Appx. 406 (6th Cir. 2005) citing U.S. v. Martin, 25 F.3d 293 (6th Cir. 1994); U.S. v. Butcher, 926 F.2d 811 (9th Cir. 1991); U.S. v. Cardona, 903 F.2d 60 (1st Cir. 1990).

²⁷U.S. COURTS, *Probation and Pretrial Services: Mission*, supra note 4.

²⁸Defender Letter at 4.

²⁹ACLU Letter at 1.

³⁰*Id.* at 2.

IV. H.R. 1039 WOULD ENDANGER THE SAFETY OF FEDERAL PROBATION OFFICERS

USPOs should not be given increased police power that would only put them in harm's way. They are not trained in the same manner as law enforcement officers who are endowed with full police powers. A newly appointed USPO need only complete a six-week, entry-level, training program, encompassing investigation and supervision duties. On the other hand, new law enforcement officers normally must complete 16 to 21 weeks, or approximately 840 hours, of classroom training and oftentimes three additional weeks of field training.³¹ Additionally, not all USPOs carry firearms as each district determines whether or not these officers may do so.³²

V. H.R. 1039 HINDERS ACHIEVEMENT OF THE GOALS OF SUPERVISED RELEASE AND PROBATION

The substantial potential for challenges to arrests and seizures made pursuant to this authority creates an unnecessary threat to the actual goals of supervision. The constructive role of USPOs in fostering the rehabilitation of supervisees would be damaged if they become *de facto* police officers, detaining, arresting, and issuing orders and directives to family, friends, employers, and other members of supervisees' communities.

CONCLUSION

While we share the desire of the proponents of the bill to protect USPOs from harm, we believe the assistance of law enforcement, as under current practice, is sufficient to do so. Expanding the arrest authority of USPOs, as contemplated under H.R. 1039, raises substantial constitutional concerns, given the nebulousness of some of the terms of the underlying statute it would enforce and certain applications, such as thirty party detentions, which have a high potential for abuse. In sum, as the Federal Public Defenders of New York state, in their letter to the Committee opposing H.R. 1039, "[t]he bill represents a retreat from the current constructive role of probation officers in reintegrating offenders into society. If probation officers assumed the role of police, directing and restraining, or arresting, family and friends, progress in individual cases and the system as a whole would be undermined."³³

Accordingly, we oppose H.R. 1039 and we urge our colleagues to join us in opposition.

MR. CONYERS, Jr.
MR. NADLER.
MS. LOFGREN.
MS. JACKSON LEE.
MR. COHEN.
MR. JOHNSON, Jr.

³¹ DEPT OF JUSTICE, Office of Justice Programs, Bureau of Justice Statistics, *State and Local Law Enforcement Training Academies, 2013*, NCJ 249784 (July 2016).

³² U.S. Courts, *Probation and Pretrial Services: Mission*, *supra* note 4; *State of the System: Federal Probation and Pretrial Services*, 79-SEP Fed. Probation 34, *supra* note 5, at 40 (2015).

³³ Defender letter at 9.

MR. DEUTCH.
MR. GUTIÉRREZ.
MS. BASS.
MR. RICHMOND.
MR. JEFFRIES.
MR. CICILLINE.
MR. LIEU.
MS. JAYAPAL.
MR. RASKIN.

