

PROTECT AND SERVE ACT OF 2018

MAY 11, 2018.—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

MINORITY VIEWS

[To accompany H.R. 5698]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5698) to amend title 18, United States Code, to punish criminal offenses targeting law enforcement officers, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

H.R. 5698 creates a new statute in title 18, United States Code, to allow for federal prosecution of defendants who knowingly cause or attempt to cause serious bodily injury to any law enforcement officer. In order to qualify for federal prosecution, the victim must either be a federal law enforcement officer, or, if a state or local officer, there must be a nexus to interstate commerce. A prosecution may only be pursued if the Attorney General certifies (1) the State does not have jurisdiction; (2) the State has requested that the Federal Government assume jurisdiction; (3) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in protecting the public safety; or (4) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

Background and Need for the Legislation

Police agencies in the United States are currently facing a crisis resulting from a spate of high-profile use of force incidents. As a result, police officers are facing increasing levels of hostility and violence, fueled by growing anti-police sentiment. In the aftermath of the August 2014 events in Ferguson, Missouri, there has been an increase in ambush-style attacks on police officers.

On July 7, 2016, Micah Xavier Johnson ambushed and fired upon a group of police officers in Dallas, Texas, killing five officers and injuring nine others. Two civilians were also wounded. Johnson was an Army Reserve Afghan War veteran, who was reportedly angry over police shootings of black men and stated that he wanted to kill white people, especially white police officers. The shooting happened at the end of a protest against police killings of Alton Sterling in Baton Rouge, Louisiana, and Philando Castile in Falcon Heights, Minnesota, which had occurred in the preceding days. The shooting was the deadliest incident for U.S. law enforcement since the September 11 attacks, surpassing two related March 2009 shootings in Oakland, California, an April 2009 shooting of Pittsburgh police officers, and a November 2009 ambush shooting in Lakewood, Washington.

Only ten days after the Dallas ambush shooting, on July 17, 2016, Gavin Eugene Long shot six police officers in Baton Rouge, Louisiana, in the wake of the shooting of Alton Sterling. Three officers died and three were hospitalized, one critically. Long, who associated himself with organizations linked to black separatism and the sovereign citizen movement, was shot and killed by a SWAT officer during a shootout with police at the scene.

Despite great efforts to rebuild trust over the past several years between police departments and the communities they serve, in 2017 alone, 64 police officers died in the line of duty and 21 in ambush style attacks. Only a few weeks ago, on April 19, 2018, two sheriffs' deputies were gunned down while eating at a Chinese food restaurant in a suspected ambush in Gainesville, Florida. These types of ambushes not only strike fear into law enforcement officers, who already put their lives on the line each day, but they also further undermine police-community relations.

Ambush style attacks on police show no indication of slowing down. H.R. 5698 is intended to deter these horrific crimes.

Hearings

The Committee on the Judiciary held no hearings on H.R. 5698. However, the Committee has held hearings on the subject of police targeting generally, including on May 17, 2017, and has examined this subject as part of its Policing Strategies Working Group.

Committee Consideration

On May 9, 2018, the Committee met in open session and ordered the bill (H.R. 5698) favorably reported, without amendment, by voice vote, 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 there were no recorded votes during the Committee's consideration of H.R. 5698.

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 H.R. 5698, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 10, 2018.

Hon. BOB GOODLATTE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5698, the Protect and Serve Act of 2018.

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

Sincerely,

KEITH HALL.

Enclosure.

cc: Honorable Jerrold Nadler
Ranking Member

H.R. 5698—Protect and Serve Act of 2018

As ordered reported by the House Committee on the Judiciary on
May 9, 2018.

H.R. 5698 would make attacking a law enforcement officer, under certain circumstances (for example, during interstate travel by the offender or the victim), a federal crime. As a result, the government could pursue some cases that it otherwise may not be able to prosecute. CBO expects that the bill would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such spending would be subject to the availability of appropriated funds.

Because people prosecuted and convicted under H.R. 5698 could be subject to criminal fines, the federal government might collect additional amounts under the bill. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and associated direct spending would not be significant because the bill would probably affect a small number of cases.

Pay-as-you-go procedures apply because enacting H.R. 5698 would affect direct spending and revenues. However, CBO estimates that any such effects would be insignificant in any year.

CBO estimates that enacting H.R. 5698 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5698 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 5698 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 finds that H.R. 5698 contains no directed rule making within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 5698 protects Federal, state, local, and tribal law enforcement officers from tar-

geted “ambush” attacks, by creating a new statute penalizing such activity.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5698 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. Section 1 cites the short title of this Act as the “Protect and Serve Act of 2018.”

Sec. 2. Crimes Targeting Law Enforcement Officers. This section amends Chapter 7 of title 18 of the United States Code by creating § 120, a new statute to prosecute individuals who knowingly cause, or attempt to cause, serious bodily injury or death to a law enforcement officer.

This section creates a statutory maximum penalty of 10 years and/or a fine for assault on officers that does not include the killing, intent to kill, kidnapping, or attempt to kidnap. For crimes under that do include the killing, intent to kill, kidnapping, or attempt to kidnap of an officer, § 120 allows for imprisonment of any term of years (including life sentences), and/or a fine.

Prosecution under the new § 120 would be allowed in all cases involving Federal law enforcement officers. For non-Federal officers, prosecution would be allowed under this provision in cases involving interstate travel and/or commerce across State or national borders.

Additionally, prosecution under this new statute would require the Attorney General to certify (1) the State does not have jurisdiction; (2) the State has requested that the Federal Government assume jurisdiction; (3) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in protecting the public safety; or (4) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

This section also includes a rule of construction, clarifying that nothing in this bill shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of § 120.

This section defines “law enforcement officer” as any governmental or public agency employee who is “authorized by law to engage in or supervise the prevention, detection, investigation, or the incarceration of any person for any criminal violation of the law; and to apprehend or arrest a person for any criminal violation of the law.” It defines “State” as a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

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 (new matter is printed in italic

and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 7—ASSAULT

Sec.

111. Assaulting, resisting, or impeding certain officers or employees.

* * * * *

120. *Crimes targeting law enforcement officers.*

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§ 120. *Crimes targeting law enforcement officers*

(a) *IN GENERAL.*—Whoever, in any circumstance described in subsection (b), knowingly causes serious bodily injury to a law enforcement officer, or attempts to do so—

(1) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(2) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if—

(A) death results from the offense; or

(B) the offense includes kidnapping or an attempt to kidnap, or an attempt to kill.

(b) *CIRCUMSTANCES DESCRIBED.*—For purposes of subsection (a), the circumstances described in this subparagraph are that—

(1) the conduct described in subsection (a) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(A) across a State line or national border; or

(B) using a channel, facility, or instrumentality of interstate or foreign commerce;

(2) the defendant uses a channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subsection (a);

(3) in connection with the conduct described in subsection (a), the defendant employs a firearm, dangerous weapon, explosive or incendiary device, or other weapon that has traveled in interstate or foreign commerce;

(4) the conduct described in subsection (a)—

(A) interferes with commercial or other economic activity in which the victim is engaged at the time of the conduct; or

(B) otherwise affects interstate or foreign commerce; or

(5) the victim is a Federal law enforcement officer.

(c) *CERTIFICATION REQUIREMENT.*—

(1) *IN GENERAL.*—No prosecution of any offense described in this section may be undertaken by the United States, except

under the certification in writing of the Attorney General, or a designee, that—

(A) the State does not have jurisdiction;

(B) the State has requested that the Federal Government assume jurisdiction;

(C) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in protecting the public safety; or

(D) a prosecution by the United States is in the public interest and necessary to secure substantial justice.

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to limit the authority of Federal officers, or a Federal grand jury, to investigate possible violations of this section.

(d) DEFINITIONS.—In this section:

(1) LAW ENFORCEMENT OFFICER.—The term “law enforcement officer” means an employee of a governmental or public agency who is authorized by law—

(A) to engage in or supervise the prevention, detention, investigation, or the incarceration of any person for any criminal violation of law; and

(B) to apprehend or arrest a person for any criminal violation of law.

(2) STATE.—The term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

* * * * *

Minority Views

H.R. 5698 the “Protect and Serve Act,” would create a new offense under title 18 of the U.S. Code for the crime of targeting law enforcement officers. Violations of this provision could result in up to life imprisonment for acts involving kidnapping, rape or death. H.R. 5698 was introduced by Representative John Rutherford (R-FL) only one day before being considered by the Committee and no hearings have been held on this legislation or the issue of expanding federal police protections.¹ Nonetheless, even a cursory analysis indicates that the bill duplicates and seeks to further expand the large number of already existing criminal statutes protecting law enforcement officers.²

While rooted in laudable goals, this legislation does not actually strengthen protections for law enforcement officers and it fails to

¹In conjunction with 2017 Police Week, the Committee passed H.R. 115, the “Thin Blue Line Act,” which similarly sought to multiply federal police protections, but additionally invoked the death penalty. Rather than creating a new offense under title 18, the Thin Blue Line Act created an additional aggravating factor under existing federal law, 18 U.S.C. § 3592, for killing a first responder in the course of their official duties. H.R. 115 was reported favorably by the Judiciary Committee by a vote of 19 to 12. It passed the House by a vote of 271 to 143 on May 18, 2017. The Senate has yet to consider that bill.

²Subsection (c) of new section 120 provides that no federal prosecution may be undertaken without written certification by the Attorney General or designee stating that a state lacks jurisdiction; the state has requested the federal government to assume jurisdiction; the verdict or sentence obtained pursuant to state charges left demonstratively unvindicated the federal interest in protection the public safety; or prosecution by the federal government is in the public interest and necessary to secure substantial justice. The inclusion of this “certification requirement” acknowledges that states carry primary jurisdiction for attacks on state and local police officers.

make meaningful reforms that would improve police–community relations. Therefore, we believe that the bill represents a wasted opportunity to address serious issues of police accountability and the need to build trust between police departments and the communities that they serve. In recognition of these concerns, organizations committed to the protection of civil rights and civil liberties have written letters in opposition, particularly noting that the Protect and Serve Act, “is divisive and will have a negative impact on the relationship between law enforcement and the communities they serve.”³

For these reasons and those discussed below, we respectfully urge our colleagues to carefully consider the wisdom of moving this legislation and warn of the danger of a potentially divisive debate on the issue of relative victimization between police and civilian law enforcement encounters.

I. H.R. 5698 DUPLICATES FEDERAL AND STATE LAWS THAT ENHANCE SENTENCES OF PERSONS CONVICTED OF CRIMES OF VIOLENCE AGAINST LAW ENFORCEMENT OFFICERS.

There is no question that policing is both difficult and dangerous, exacting a serious physical and mental toll on law enforcement officers. A white paper commissioned by the Ruderman Family Foundation reported that 129 police officers died in the line of duty in 2017 from shootings and vehicle accidents, with an additional 140 reported officer suicides.⁴ In the past ten years, the number of officers feloniously killed has fluctuated, yet not significantly increased or decreased,⁵ as have ambush-style killings of officers.⁶

As a result of the dangers inherent to policing, there is no profession more widely protected under federal and state law than police officers. All 50 states have laws in place that enhance penalties for crimes against peace officers, and in some instances, crimes against a broadly defined category of first responders.⁷ For example, in Colorado, a person convicted of killing a peace officer, firefighter or emergency medical service provider may be sentenced to life without the possibility of parole or sentenced to death.⁸ In addition, federal laws already impose a life sentence or even death on persons

³See Letter to Chairman Bob Goodlatte (R–VA) & Ranking Member Jerrold Nadler (D–NY) from the Coalition Opposition to the Protect and Serve Act (May 8, 2018) (signed by 15 organizations, including the ACLU, NAACP, Human Rights Watch, National Association of Criminal Defense Lawyers, NAACP Defense and Education Fund, Leadership Conference of Civil and Human Rights, and additional faith organizations).

⁴See Ruderman Family Foundation, *Ruderman White Paper on Mental Health and Suicide of First Responders*, at 20 (Apr. 2018), available at https://rudermanfoundation.org/white_papers/police-officers-and-firefighters-are-more-likely-to-die-by-suicide-than-in-line-of-duty.

⁵Between 2007 and 2016, the FBI reported that the number of officers feloniously killed in the U.S. was 58, 41, 48, 56, 72, 49, 27, 51, 41, and 66 for each year, respectively. U.S. Dept. of Justice, 2016 Law Enforcement Officers Killed & Assaulted, <https://ucr.fbi.gov/leoka/2016/officers-feloniously-killed/tables/table-2.xls>. In 2017, 44 officers were killed in a fire-arm related incident. Law Enforcement Officers Memorial Fund, Preliminary 2017 Law Enforcement Officer Fatalities Report, http://www.nleomf.org/assets/pdfs/reports/fatality-reports/2017/2017-End-of-Year-Officer-Fatalities-Report_FINAL.pdf.

⁶Between 2007 and 2016, the number of officers killed in ambush situations were 16, 6, 15, 15, 6, 5, 7, 4, and 17, for each year, respectively. U.S. Dept. of Justice, 2016 Law Enforcement Officers Killed & Assaulted, <https://ucr.fbi.gov/leoka/2016/officers-feloniously-killed/tables/table-2.xls>. In 2017, 8 officers were killed in an ambush-style attack. Law Enforcement Officers Memorial Fund, Preliminary 2017 Law Enforcement Officer Fatalities Report, http://www.nleomf.org/assets/pdfs/reports/fatality-reports/2017/2017-End-of-Year-Officer-Fatalities-Report_FINAL.pdf.

⁷See Anti-Defamation League, Statutes Providing Enhanced Penalties for Crimes Against Police, Fifty States Against Hate, Washington, DC (2016).

⁸Colo. Rev. Stat. § 18–3–107 (2014).

convicted of killing state and local law enforcement officers or other employees assisting with federal investigations,⁹ as well as officers of the U.S. courts.¹⁰

Further, there is no evidence that crimes against law enforcement go unprosecuted or are otherwise treated frivolously. There is similarly no record to suggest that prosecutors are unwilling or unable to charge individuals with crimes against law enforcement. In fact, crimes against police officers are treated as among the most heinous criminal acts and accorded a high degree of culpability and punishment.

II. THE PROTECT AND SERVE ACT IS POLARIZING AND HARMS COMMUNITY-POLICE RELATIONS.

While attacks on law enforcement officials raise legitimate concerns, the duplication of existing law by H.R. 5698 may serve to politicize the unfortunate deaths of law enforcement officers and ultimately exacerbate existing tension between law enforcement and the communities they serve. The Protect and Serve Act is being contemplated at a time when our country is in the throes of a national policing crisis, with a never-ending stream of police shootings of unarmed African Americans captured on video. Creating a new, yet superfluous, crime for offenses committed against law enforcement is a particularly disconnected and non-responsive policy choice.

Unfortunately, the Protect and Serve Act is similar to other “Blue Lives Matter” type bills that create new criminal offenses and penalty enhancements for crimes against police. Collectively, these policy efforts, which have sprung up in state legislatures amid the national call for police accountability, appear to be a political response to the powerful activism of grassroots movements that demand fair and constitutional policing. Rather than focusing on policies that address issues of police excessive force, biased policing, and other police practices that have failed these communities, the aim of H.R. 5698 and similar legislation is to further criminalize. This bill risks being received as yet another attack on these communities and threatens to exacerbate what is already a discriminatory system of mass incarceration in this country. Continuing to undermine police-community relations in this manner sows seeds of division, which ultimately threatens public safety and undermines the work of law enforcement.

CONCLUSION

H.R. 5698 will be considered on the House Floor during the annual Police Week activities in Washington, DC. Rather than advancing legislation that amounts to an empty gesture, the House should focus on real reform measures that will protect law enforcement, first responders, and the communities they serve. Over the years, well-documented, unconstitutional policing practices in communities of color across the United States have eroded trust between these communities and the law enforcement officials sworn

⁹ 18 U.S.C. § 1121(a)(1) (1996).

¹⁰ 18 U.S.C. § 1503 (1996).

to protect them.¹¹ Almost 1,000 people were killed by police in 2017 according to the *The Washington Post*.¹² Another media outlet estimates there were more than 1,100 police-related fatalities last year,¹³ with people of color representing more than 50 percent of those unarmed during fatal encounters with police.¹⁴

Despite this growing record of officer-involved shootings and the impact of video evidence on public perceptions, the Committee has yet to act on legislation that would address policing standards, particularly use of force practices. In fact, in the two years since the creation of the Judiciary Committee Policing Strategies Working Group, the Majority has advanced no police reform legislation, but continues to advance legislation, like H.R. 5698, creating a perception of bias against community-based policing concerns. Americans would be better served if the Committee worked to foster law enforcement reforms aimed at helping local jurisdictions meet their constitutional obligation of fair and unbiased policing. Pursuing the one-sided view of reform contained in H.R. 5698 sends a problematic signal and raises tensions in an already heated climate of community policing.

MR. NADLER.
MS. LOFGREN.
MS. JACKSON LEE.
MR. COHEN.
MR. JOHNSON, Jr.
MR. RICHMOND.
MR. CICILLINE.
MS. JAYAPAL.

○

¹¹ See, e.g., U.S. Dep't of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department* (Aug. 10, 2016), available at <https://www.justice.gov/opa/file/883366/download>.

¹² John Sullivan et al., *Nationwide, Police Shot and Killed Nearly 1,000 People in 2017*, WASH. POST, Jan. 6, 2018, www.washingtonpost.com/investigations/nationwide-police-shot-and-killed-nearly-1000-people-in-2017/2018/01/04/4eed5f34-e4e9-11e7-ab50-621fe0588340_story.html?utm_term=.ad27040e9c69.

¹³ Michael Harriot, *Here's how many people police killed in 2017*, THE ROOT, Jan. 2, 2017, available at <https://www.theroot.com/heres-how-many-people-police-killed-in-2017-1821706614>.

¹⁴ Mapping Police Violence, 2017 Police Violence Report, last visited Apr. 6, 2018, available at <https://policeviolencereport.org/>.