



May 18, 2017

## Vote “No” on H.R. 1039, the Probation Officer Protection Act of 2017

Dear Representative:

On behalf of The Leadership on Civil and Human Rights and the 45 undersigned organizations, we urge you to vote “No” on H.R. 1039, the Probation Officer Protection Act of 2017 (POPA), which would broadly authorize federal probation officers to make warrantless arrests of parties not under their supervision. Authorizing probation officers to arrest third parties is unnecessary and dangerous; would inhibit successful reentry; and would implicate serious constitutional concerns. Moreover, given the racial disparities that exist in the U.S. criminal justice system, POPA is likely to have a disproportionate impact on people of color and to exacerbate/perpetuate their mass incarceration. We urge you to reject this proposal and explore available alternatives that ensure the protection of probation officers while avoiding the pitfalls of broadly expanding their arrest authority.

### ***POPA Gives Broad Arrest Authority***

Under 18 U.S.C. § 3606, a federal probation officer has the authority to arrest a probationer or person on supervised release if the probation officer has probable cause to believe that the probationer has violated a condition of his or her release. Currently, federal probation officers are not permitted to arrest third parties. POPA would amend 18 U.S.C. § 3606 to permit probation officers to 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 a probation officer, or a fellow probation officer, in violation of section 111.”<sup>1</sup> In other words, probation officers would be authorized to arrest—*without a warrant*—any third party on the scene who the officer claims is “interfering” with their work.<sup>2</sup> This broad definition of behavior triggering third party arrest authority raises Fourth Amendment concerns.

### ***POPA Is Unnecessary***

There is no evidence that expanding federal probation officers’ warrantless arrest authority is necessary. Statistics from the Federal Law Enforcement Officers Association (FLEOA) show that only two percent of searches conducted by federal probation officers in 2013 resulted in any confrontation with “uncooperative” third parties.<sup>3</sup> Furthermore, of the 909 searches conducted by federal probation officers in 2013, only seven led to the arrest of a third party when probation officers sought the assistance of local law enforcement. Similarly, in 2014, only 1.7 percent of the 1,566 searches conducted by probation officers involved any

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“reportedly uncooperative” third parties, and only five of these encounters resulted in a third-party arrest by local law enforcement.

### ***POPA Would Be Dangerous***

Members of Congress should be reluctant to extend law enforcement-like powers to anyone not trained as a law enforcement officer – and probation officers are not police officers. Federal probation officers complete only six weeks of orientation training.<sup>4</sup> In contrast, new law enforcement officers complete 16 to 21 weeks of classroom training,<sup>5</sup> and they often must complete three additional weeks of on-the-ground field training.<sup>6</sup> If probation officers try to confront, restrain, and arrest uncooperative third parties, they are likely to heighten the physical danger they face in the field, not reduce it. The threat of arrest—and therefore physical seizure—could increase and escalate the physical confrontations between probation officers and third parties. De-escalation is the desirable outcome—not an extended violent altercation in which probation officers attempt to arrest third parties. In North Carolina, a probationer died while his probation officer attempted to arrest him.<sup>7</sup> Incidents that result in violence or in an arguably unlawful arrest may create expensive and time-consuming litigation for the U.S. Probation and Pretrial Services System. Instead of engaging hostile third parties, probation officers should remove themselves from dangerous situations and call for the assistance of trained local law enforcement who are fully prepared to handle hostile situations. Probation officers already do this, and it works.

### ***POPA Would Inhibit Successful Reentry***

Allowing probation officers to arrest third parties would also inhibit successful reentry for probationers. Part of the benefit of the probation system is that it allows probationers to live in society with their families while they serve out their sentences and transition to full reentry into the community. But the prospect of arrest for the individuals who agree to help with the probationer’s reentry may deter them from serving as hosts and may make it harder to achieve this transition successfully. Probation officers must have reasonable suspicion to conduct a warrantless search of a probationer’s home;<sup>8</sup> absent reasonable suspicion, the probationer or a third party must consent to a search and may limit the consent to search only to public areas.<sup>9</sup> But if, for example, a mother, who has opened her home to her son on probation, blocks a probation officer from searching her bedroom for various reasons (*e.g.*, because her grandchildren are in the bedroom), under POPA she could be arrested for “interfering” with the probation officer. Such scenarios could deter people from agreeing to host probationers who have nowhere else to live. This would undermine the probation system. These scenarios also threaten an innocent third party’s ability to exercise his or her Fourth Amendment rights.

### ***There Are Alternatives to POPA***

Since 2006, more than 80 state and county criminal justice departments have adopted the Effective Practices in Community Supervision (EPICS) model to improve relationships between probation and parole officers and their probationers or parolees. EPICS focuses on behavioral change rather than threats of re-incarceration and officers play a more direct role in changing criminal behavior.<sup>10</sup> Reducing the hostility between the probationer and the probation officer will likely cause less hostility between the officer and third parties as well.

Probation officers can protect themselves by enlisting the help of trained law enforcement.<sup>11</sup> Every jurisdiction gives probation officers the option of calling law enforcement officers for support when conducting home visits, and law enforcement officers can arrest hostile third parties if necessary. In Connecticut, probation officers do not have the authority to make arrests but they may detain an individual for a reasonable time until a law enforcement officer arrives or transport the individual to the nearest location where a law enforcement officer can make an arrest.<sup>12</sup> Calling more fully-trained law enforcement for backup is likely to prevent the situation from becoming more volatile, and it is therefore preferable to probation officer arrests. Additionally, probation officers can be better trained on de-escalation techniques and strategies to improve the relationship between the probation officer and the probationer.

Probation officers' role within our judicial system is to assist with a probationer's transition back into society and report to the court on a probationer's progress. To expand probation officers' authority to allow probation officers to arrest—*without a warrant*—any person whom they claim is opposing or impeding their work in some way is unnecessary, likely to be dangerous, and would inhibit successful reentry. For the probation system to work, we need the cooperation of the third parties contemplated by this bill—family and friends—to assist probationers and individuals on supervised release as well as the probation officers visiting them. The threat of arrests of third parties in a probationer's environment will erode the goodwill necessary for that vital cooperation.

For the foregoing reasons, we urge you to vote “No” on the Probation Officer Protection Act of 2017. If you have any questions, please contact Sakira Cook, Senior Counsel, The Leadership Conference, at [cook@civilrights.org](mailto:cook@civilrights.org) or 202-466-3311.

Sincerely,

The Leadership Conference on Civil and Human Rights  
AFL-CIO  
African American Policy Forum  
The American Civil Liberties Union  
Bend the Arc Jewish Action  
Black Youth Vote! - National Coalition on Black Civic Participation  
Center for Community Change Action  
Church of Scientology National Affairs Office  
Council on American-Islamic Relations (CAIR)  
CURE (Citizens United for Rehabilitation of Errants)  
Defending Rights & Dissent  
Drug Policy Alliance  
Equal Justice Society  
Equity Matters  
Jewish Council For Public Affairs  
Lambda Legal

Law Enforcement Action Partnership  
MomsRising  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National Action Network  
National African American Drug Policy Coalition, Inc.  
National Association of Criminal Defense Lawyers  
National Association of Social Workers  
National Black Justice Coalition  
National CAPACD (Coalition for Asian Pacific American Community Development)  
National Center for Transgender Equality  
National Coalition of Anti-Violence Programs  
National Council For Incarcerated and Formerly Incarcerated Women and Girls  
National Council of Churches  
National Immigration Law Center  
National LGBTQ Task Force Action Fund  
National Organization for Women  
National Urban League  
National Women's Law Center  
NETWORK Lobby for Catholic Social Justice  
OneAmerica  
People For the American Way  
PolicyLink  
Southeast Asia Resource Action Center (SEARAC)  
StoptheDrugWar.org  
Trans United  
The United Methodist Church - General Board of Church and Society  
URGE: Unite for Reproductive & Gender Equity  
WA Appleseed  
YWCA USA

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<sup>1</sup> Probation Officer Protection Act of 2017, S.367, 115<sup>th</sup> Cong. (2017).

<sup>2</sup> “To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide ‘whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to’ probable cause.” *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citing *Ornelas v. U.S.*, 517 U.S. 690, 696 (1996)). The probable cause test is flexible and “not reducible to ‘precise definition or quantification.’” *See Florida v. Harris*, 568 U.S. \_ (2013) (quoting *Pringle*, 540 U.S. at 371). Such flexibility leaves some room for probation officer discretion.

<sup>3</sup> Derived from statistics provided by FLEOA’s 2015 Proposal. Computed as  $(x / n)$ , where  $x =$  “On 18 occasions, a third party was ‘uncooperative,’” and  $n =$  “USPOs conducted 909 approved searches.”

<sup>4</sup> Probation and Pretrial Officers and Officer Assistants, UNITED STATES COURTS, <http://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-officers-and-officer>.

<sup>5</sup> Law Enforcement Training Academies, Bureau of Justice Statistics, <http://www.bjs.gov/index.cfm?ty=tp&tid=77>.

<sup>6</sup> *Id.*

<sup>7</sup> WBTV Web Staff, *Probation Officer ID'd After Person Dies While Being Detained in Anson Co.*, WBTV-News 3 (Oct. 28, 2016), <http://www.wbvtv.com/story/33506639/probation-officer-idd-after-person-dies-while-being-detained-in-anson-co>.



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<sup>8</sup> See *U.S. v. Knights*, 534 U.S. 112 (2001); *U.S. v. Sanchez*, 608 F.3d 685 (10<sup>th</sup> Cir. 2010); *U.S. v. Trujillo*, 404 F.3d 1238 (10<sup>th</sup> Cir. 2005).

<sup>9</sup> See *Sanchez*, 608 F.3d at 691.

<sup>10</sup> J.B. Wogan, *The Changing Relationship Between Ex-Criminals and Their Parole Officers*, *Governing* (Oct. 2015), <http://www.governing.com/topics/public-justice-safety/gov-probation-parole-states-community-supervision.html>.

<sup>11</sup> As one court noted, “While regular law enforcement officers are not empowered to conduct the visits that probation officers are required to make to the homes of convicted persons serving federal terms of supervised release, it is entirely appropriate for law enforcement officers providing support for a home visit ‘to be on the scene’ -a role that is ‘predicated upon the probation officers’ more limited law enforcement authority.’” *United States v. Reyes*, 283 F.3d 446, 469–70 (2d Cir. 2002).

<sup>12</sup> § 54-108d. *Authority of probation officers to detain certain persons, seize contraband and act as member of fugitive task force*, Conn. Gen. Stat. Ann. § 54-108d (West).