

May 3, 2023



The Honorable Dick Durbin
Chairman
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lindsey Graham
Ranking Member
Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Oppose the Protect and Serve Act of 2023

Dear Chair Durbin and Ranking Member Graham:

On behalf of The Leadership Conference on Civil and Human Rights, NAACP Legal Defense and Educational Fund, Inc. (NAACP LDF), and the undersigned organizations, we write to urge you to oppose introduction, co-sponsorship, or a vote on the Protect and Serve Act of 2023. The Protect and Serve Act would create a new federal criminal offense applicable to anyone who “knowingly assaults a law enforcement officer causing bodily injury, or attempts to do so.”¹ This bill contains several provisions comparable to federal hate crimes statutes,² though with a lower *mens rea* standard that renders it easier to criminalize acts or even attempted acts committed against an officer than violence motivated by racial, religious, gender, or other animus.³ Even if the *mens rea* standard were identical to that in federal hate crimes statutes, this bill would remain unacceptable. It is a false equivalence to put law enforcement in the same category as people protected by federal hate crime laws, who have historically and systematically experienced discrimination. Further, it is an ineffective approach to improving public safety or preventing assaults on law enforcement officers.

I. State and federal criminal laws already offer ample protection to law enforcement officers.

The Protect and Serve Act perpetuates a false and dangerous narrative that law enforcement officers are under attack and in need of additional protections. On the contrary, all 50 states already have laws that enhance penalties for people who commit offenses against law enforcement officers, including for

¹ Protect and Serve Act of 2023. H.R. 743. 118th Cong. 2023.

² Language in H.R. 734 mimics provisions of 18 U.S.C.A. § 249 (Westlaw through P.L. 117-327). Specifically, the penalty, H.R. 734 (2)(a)(1) and 18 U.S.C.A. § 249(a)(1)(A); circumstances described or applicable, H.R. 743 (2)(b) and 18 U.S.C.A. § 249(a)(B); certification requirement, H.R. 734 (a)(2) and 18 U.S.C.A. § 249(a)(B)(b); and the rule of construction H.R. 734 (2)(c)(2) and 18 U.S.C.A. § 249 (a)(B)(b)(2) are comparable.

³ See 18 U.S.C.A. §§ 245, 249 (cited as Federally Protected Activities and Hate Crime Acts, respectively, under Chapter 13 of Title 18), both require that a person act *willfully* in the commission of the criminal offenses addressed under the statute, but H.R. 743 relies on a lower *mens rea* standard of *knowingly*. This heightens protections for officers above those of people experiencing violence based on race, color, ethnicity, religion, national origin, gender, sexual orientation, gender identity, or disability. See 18 U.S.C.A. § 249.

assaults and homicides.⁴ Federal law also currently imposes a life sentence or death penalty on persons convicted of first-degree murder of federal employees or officers,⁵ killing state and local law enforcement officers or other employees assisting with federal investigations,⁶ and killing officers of the U.S. courts.⁷ Federal law also contains penalties for those who assault federal law enforcement officers.⁸

Creating these protections for law enforcement officers akin to hate crimes is misguided and does not advance public safety nor is there evidence that the approach would be effective in preventing the harm it claims to address. Officers already benefit from significant protections under federal and state law. We urge Congress to embrace a more holistic approach to public safety that supports alternative responders for non-criminal and other low level 911 calls, expands and institutionalizes restorative justice programs, and invests in equitable access to education, health care, housing, and economic opportunities — rather than continuing to invest in a system that predominantly leads to arrest, incarceration, or worse.

II. The greatest threat of violence in police interactions stems from law enforcement officers and their actions.

The loss of any life, including law enforcement, is tragic. But laws already exist to address violence committed against law enforcement officers. There are not, however, sufficient measures to prevent the loss of life created by law enforcement. Law enforcement officers have continued to engage in egregious violence, disproportionately against Black and Brown people, even when they are unarmed, present no threat, and have committed either no crimes or extremely minor offenses. On January 3, 2023, Keenan Anderson was involved in a traffic accident.⁹ In an ensuing encounter with Los Angeles Police Department officers, multiple officers restrained him while one officer tased him consecutively at least six times in 42 seconds.¹⁰ Mr. Anderson died hours later. On January 7, 2023, Tyre Nichols was stopped by Memphis Police officers for alleged reckless driving and was so badly beaten by officers during the encounter that he died in the hospital three days later.¹¹ On February 22, 2023, Timothy Johnson was shot and killed while unarmed by a Fairfax County Police officer after a foot pursuit upon the belief that Mr. Johnson had stolen sunglasses.¹² In the past 12 months, law enforcement officers have shot and killed

⁴ “Statutes Providing Enhanced Penalties for Crimes Against Police.” *Anti-Defamation League*. 2016. <https://app.leg.wa.gov/committeeschedules/Home/Document/181114>; see also Bedi, Monu. “The Asymmetry of Crimes By and Against Police Officers.” 66 *Duke L.J. Online* 79. 2017.

⁵ 18 U.S.C.A. § 1114 (Westlaw through P.L. 117-327).

⁶ 18 U.S.C.A. § 1121(a)(1) (Westlaw through P.L. 117-327).

⁷ 18 U.S.C.A. § 1503 (Westlaw through P.L. 117-327).

⁸ 18 U.S.C.A. § 111 (Westlaw through P.L. 117-327).

⁹ Olson, Emily. “A \$50M Claim Is Filed Against LA Over the Death of a Man Who Was Tased by Police.” *NPR*. Jan. 21, 2023. <https://www.npr.org/2023/01/14/1149132089/keenan-anderson-patrisse-cullors-lapd-body-cam-footage>.

¹⁰ *Ibid*.

¹¹ Franklin, Jonathan, & Bowman, Emma. “What We Know About the Killing of Tyre Nichols.” *NPR*. Jan. 28, 2023. <https://www.npr.org/2023/01/28/1151504967/tyre-nichols-memphis-police-body-cam-video>.

¹² Burke, Minyvonne. “Virginia Officer Who Fatally Shot Timothy Johnson Is Fired As Police Release Bodycam Video.” *NBC News*. Mar. 23, 2023. <https://www.nbcnews.com/news/us-news/virginia-officer-fatally-shot-timothy-johnson-fired-police-release-bod-rcna76296>.

1,074 people, based on limited available data that does not capture other forms of fatal force or serious force inflicted by officers.¹³ It is insulting to these victims and their families that Congress has yet to act to enact police accountability but is considering a law that would provide superfluous protections to police officers.

For the reasons summarized above, we urge you to oppose introduction, co-sponsorship, or a vote on the Protect and Serve Act of 2023. Thank you for your consideration of this matter. If you have any questions, please contact Chloé White, senior policy counsel, justice, at The Leadership Conference, at white@civilrights.org, or Kristina Roth, senior policy associate at LDF, at (347) 978-5212 or kroth@naacpldf.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
NAACP Legal Defense and Educational Fund, Inc.
Advancement Project
Alabama State Association of Cooperatives (AL)
Alianza Nacional de Campesinas, Inc.
American Civil Liberties Union
American Friends Service Committee
Amnesty International USA
Asian Americans Advancing Justice – AAJC
Asian Pacific American Labor Alliance, AFL-CIO
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Avodah
Bend the Arc: Jewish Action
Bend the Arc Jewish Action: South Jersey (NJ)
Brockton Interfaith Community (MA)
Carolina Jews for Justice (NC)
Center for Law and Social Policy
Center for Policing Equity
Center for Security, Race and Rights
Center for the Study of Hate & Extremism
Civil Rights Corps
Color Of Change
Drug Policy Alliance
Human Rights Campaign
Human Rights First

¹³ “1,074 People Have Been Shot and Killed by Police in the Past 12 Months.” *Wash. Post*. Apr. 24, 2023. <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (Based on incomplete data collected by the Washington Post, law enforcement officers killed over one thousand people in 2022).

Human Rights Watch
IKAR
Innocence Project
Jewish Community Action (MN)
Jewish Council on Urban Affairs (IL)
Jewish Youth for Community Action (CA)
Jews For Racial & Economic Justice (JFREJ) (NY)
Justice Strategies
Keshet
LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law
March On / Future Coalition
Matthew Shepard Foundation
Mitsui Collective
MomsRising
Muslim Advocates
NAACP
National Action Network
National Association of Criminal Defense Lawyers
National Center for Transgender Equality
National Council of Churches
National Council of Jewish Women
National Disability Rights Network (NDRN)
National Employment Law Project
National Organization for Women
National Urban League
People For the American Way
PFLAG National
Pretrial Justice Institute
Project On Government Oversight
Reconstructionist Rabbinical Association
Reproaction
Sikh American Legal Defense and Education Fund (SALDEF)
Southern Poverty Law Center Action Fund
T'ruah: The Rabbinic Call for Human Rights
The Sentencing Project
The Sikh Coalition
The Workers Circle
Tivnu: Building Justice (OR)
True Colors United
Union for Reform Judaism
Unitarian Universalist Association
Unite for Reproductive & Gender Equity (URGE)

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WAVE Educational Fund (WI)

CC: The Honorable Charles Schumer, Majority Leader
The Honorable Mitch McConnell, Minority Leader