



May 26, 2017

The Honorable Chuck Grassley  
Chairman  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary  
224 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Bob Goodlatte  
Chairman  
House Committee on the Judiciary  
2138 Rayburn House Office Bldg.  
Washington, DC 20515

The Honorable John Conyers, Jr.  
Ranking Member  
House Committee on the Judiciary  
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**Re: The ACLU Opposes the Back the Blue Act of 2017 (S. 1134/H.R. 2253)**

Dear Chairman Grassley, Ranking Member Feinstein, Chairman Goodlatte, and Ranking Member Conyers:

On behalf of the American Civil Liberties Union (ACLU), we urge you to oppose S. 1134 and H.R. 2253, the Back the Blue Act, legislation that creates new federal crimes for assaulting or killing federally funded law enforcement. The ACLU represents more than 2.5 million members, activists, and supporters who are working to advance the ACLU's mission to defend the principles of liberty and equality embodied in our Constitution and our civil rights laws.

The Back the Blue Act imposes the death penalty and mandatory sentencing schemes that are unnecessary and duplicative; is unlikely to prevent future violence against police; and is counterproductive to improving law enforcement and community relations.

***The Back the Blue Act federalizes local crimes and is unnecessary.***

The Back the Blue Act establishes additional federal crimes for the targeting of current or former U.S. judges, federal law enforcement officers, and broadly defined "federally funded public safety officer[s]."<sup>1</sup> The bill makes it unlawful to kill, attempt to kill, conspire to kill, or assault these persons. The bill also makes it unlawful to avoid prosecution for these new crimes.

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<sup>1</sup> "Federally funded public safety officer" captures state and local law enforcement officers, judges, court employees, firefighters, among others. S. 1134, H.R. 2253, Sec. 2.

The Back the Blue Act duplicates protections for law enforcement that are already extensive at both the federal and state levels. All 50 states have laws that make it a serious crime to assault or kill law enforcement officers. Federal law now requires the death penalty or a life sentence for killing a federal officer,<sup>2</sup> as well as imposes a death or life sentence for killing a local officer involved in a federal investigation.<sup>3</sup> Additionally, the federal death penalty is further made available for federal crimes involving the intentional death of state and local law enforcement and other first responders.<sup>4</sup>

The Back the Blue Act perpetuates the over-criminalization and federalism issues that many across the political spectrum have been concerned about for years, including the ACLU. States are already adequately prosecuting crimes committed against law enforcement officials. Moreover, many states are enacting additional laws that increase penalties for crimes committed against law enforcement that are duplicative of their existing state laws.<sup>5</sup>

***The Back the Blue Act imposes unnecessarily harsh mandatory minimums.***

The Back the Blue Act imposes several mandatory minimum sentences for the targeting of current or former law enforcement. These sentences range from a mandatory minimum of two years for assaulting a law enforcement officer, to a mandatory minimum of 30 years for killing or attempting to kill a law enforcement officer.<sup>6</sup> Furthermore, the legislation does not attribute criminal intent to the offenses it creates, which means that the accidental death of a law enforcement officer would result in a 30-year mandatory minimum sentence. A criminal statute should clearly articulate the criminal intent necessary to commit the crime, as well as identify an appropriate level of guilty intent as an element of the crime to be proven.

The ACLU has long opposed mandatory minimums because they are unnecessarily harsh, eliminate judicial discretion, create racial disparities, and force defendants into plea deals at the expense of their constitutional rights.<sup>7</sup> In recent years, Congress has taken steps to mitigate the harms of existing mandatory minimum sentences, recognizing that “one-size-fits-all” punishments are unjust and unequitable. The Back the Blue Act is a step backwards.

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<sup>2</sup> 18 U.S.C. § 1114.

<sup>3</sup> 18 U.S.C. § 1121.

<sup>4</sup> 18 U.S.C. § 3592.

<sup>5</sup> See Julia Craven, *Louisiana's New 'Blue Lives Matter' Law On Cop Killers Is Actually Pretty Redundant*, HUFF. POST, May 25, 2016, available at [http://www.huffingtonpost.com/entry/louisiana-hate-crime-police\\_us\\_5745ba0ee4b055bb1170c4de](http://www.huffingtonpost.com/entry/louisiana-hate-crime-police_us_5745ba0ee4b055bb1170c4de).

<sup>6</sup> S. 1134, H.R. 2253, Sec. 2.

<sup>7</sup> See ACLU Statement Before the U.S. Sentencing Commission Hearing on *Statutory Mandatory Minimum Penalties in Federal Sentencing*, May 27, 2010, available <https://www.aclu.org/other/aclu-statement-us-sentencing-commission-hearing-statutory-mandatory-minimum-penalties-federal?redirect=drug-law-reform/aclu-statement-us-sentencing-commission-hearing-statutory-mandatory-minimum-penalti>.

***The Back the Blue Act's death penalty provision won't deter crimes against law enforcement.***

The Back the Blue Act adds another aggravating factor for the application of the federal death penalty based upon a person's status as a law enforcement officer, prosecutor, judge, or first responder.<sup>8</sup> Setting aside that the death penalty constitutes cruel and unusual punishment and is arbitrarily applied, disproportionately impacting people of color, the death penalty is already a consequence for those who commit crimes against law enforcement. Both federal and state laws impose capital punishment for such crimes.

Additionally, the death penalty has not proven to be an effective deterrent against crime. Studies claiming that the death penalty has a deterrent effect on murder rates are "fundamentally flawed" and should not be used when making policy decisions.<sup>9</sup> By adding a seventeenth aggravating factor to the federal death penalty statute, the Back the Blue Act ignores scientific research regarding the ineffectiveness of capital punishment.

The Back the Blue Act also sets the stage for increased wrongful executions as it limits federal habeas review.<sup>10</sup> Federal habeas corpus has been the principle means by which the federal courts have forced the states to adhere to constitutional standards for the imposition of the death penalty. In many cases, federal habeas proceedings become the court of last resort for state prisoners with claims of innocence. Any effort to limit federal habeas can result in wrongfully convicted people not having an opportunity to establish their innocence in a federal court.

***The Back the Blue Act creates division between law enforcement and the communities they serve.***

The Back the Blue Act directs the Attorney General to provide grants to state and local law enforcement for "improving the relationship between law enforcement and the communities they serve."<sup>11</sup> However, the bill's other provisions are counter to this objective, including a section that limits police liability for civil rights violations.<sup>12</sup> As indicated by the legislation's sponsors, Senator John Cornyn (R-TX) and Representative Ted Poe (R-TX-2), the objective with Back the Blue, "is sending the message that blue lives matter."<sup>13</sup> The Back the Blue Act is a response to the Black Lives Matter movement and gives law enforcement additional protections under the law – though they are already protected – in a way not afforded to any other profession.

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<sup>8</sup> S. 1134, H.R. 2253, Sec. 3.

<sup>9</sup> Daniel S. Nagin and John V. Pepper, editors; Committee on Deterrence and the Death Penalty; Committee on Law and Justice; Division on Behavioral and Social Sciences and Education; National Research Council of the National Academies, DETERRENCE AND THE DEATH PENALTY, April 2012, available <https://www.law.upenn.edu/live/files/1529-nagin-full-reportpdf>.

<sup>10</sup> S. 1134, H.R. 2253, Sec. 4.

<sup>11</sup> S. 1134, H.R. 2253, Sec. 7.

<sup>12</sup> S. 1134, H.R. 2253, Sec. 5. The Back the Blue Act's Sec. 5 amends 42 U.S.C. Sec. 1983 to limit police liability for civil rights violations when the individual seeking relief under Sec. 1983 was involved with "a felony or a crime of violence." Sec. 5 defines "crime of violence" according to Sec. 16 of Title 18, which includes force against property.

<sup>13</sup> Press Release, *Poe and Cornyn Introduce Back the Blue Act of 2017*, May 16, 2017, available at <https://www.cornyn.senate.gov/content/news/cornyn-poe-introduce-back-blue-act>.

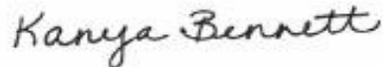
At a time when our country needs to rebuild relations between law enforcement and communities, particularly communities of color, the Back the Blue Act creates even more divisions. The legislation will not enhance police-community relations or public safety as it suggests. As Members of Congress work to advance bipartisan police and other criminal justice reforms, this legislation undermines any progress that has been achieved over the past few years on that front.

For the reasons stated above, the ACLU opposes S. 1134 and H.R. 2253, the Back the Blue Act, and we urge Members to oppose this legislation if it is considered by the Committee. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel, phone: (202) 715-0808 or email: kbennett@aclu.org.

Sincerely,



Faiz Shakir  
National Political Director



Kanya Bennett  
Legislative Counsel

cc: Members of the U.S. Senate Judiciary Committee  
Members of the U.S. House Judiciary Committee