



April 26, 2017

The Honorable Bob Goodlatte, Chairman
Committee on the Judiciary
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Washington, DC 20515

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The Honorable John Conyers, Jr., Ranking Member
Committee on the Judiciary
2141 Rayburn House Office Building
Washington, DC 20515

Re: ACLU Opposes H.R. 1039, The Probation Officer Protection Act (POPA) of 2017

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the American Civil Liberties Union (ACLU), we urge you to oppose H.R. 1039, the Probation Officer Protection Act (POPA) of 2017, a bill that would amend 18 U.S.C. Sec. 3606 to give federal probation officers authority to arrest third parties without a warrant. The ACLU represents almost 2 million members, activists, and supporters who are working to advance the ACLU's mission of defending the principles of liberty and equality embodied in our Constitution and our civil rights laws.

H.R. 1039 is a solution in search of a problem since there is no statistical or evidence otherwise to support the need to expand federal probation officers' arrest authority. Federal probation officers are not at substantial risk from third parties. Additionally, H.R. 1039 creates safety concerns for both probation officers and the community and has the potential of violating a third party's Fourth Amendment rights.

The Probation Officer Protection Act is a solution in search of a problem.

There is no evidence suggesting that federal probation officers need arrest authority beyond what is currently authorized by law.¹ One of the bill's primary proponents, the Federal Law Enforcement Officers Association (FLEOA), offers no helpful statistics to support the position that federal probation officers need third party arrest authority. FLEOA's statements are actually counter to their position. In a January 6, 2017, letter to the Senate Judiciary Committee, FLEOA itself admits that "formal arrests by probation officers are rare."² There is no data-driven imperative for expanding federal probation officer arrest authority.

In fact, the Federal Probation & Pretrial Officers Association (FPPOA) February 13, 2017, letter states that in 2015, of the 987 searches that were conducted, only 30 involved uncooperative third parties. That is 3%. And furthermore, FPPOA does not indicate how many of those 30 incidents resulted in actual arrests.³ With federal probation officers' encounters involving so few uncooperative third parties and apparently even fewer incidents that actually result in arrest, the federal probation officers' own statistics lead to the conclusion that there is no need for probation officers to execute arrests of third parties. When probation officers face genuine physical danger, they should retreat and seek the assistance of trained law enforcement.

The Probation Officer Protection Act would put probation officers in danger.

Probation officers are not trained law enforcement officers, so they should not be given increased police powers, the exercise of which could put them in harm's way. If probation officers are given authority to restrain and arrest uncooperative third parties, they are likely to heighten the physical danger for themselves and third parties.

Instead of engaging with resistant third parties, probation officers should rely upon the assistance of trained local law enforcement. This is the existing practice of probation officers, and according to their own statistics, this seems to work. Currently, federal probation officers are required to call in the United States Marshals or other law enforcement in order to arrest third parties. The reason is that probation officers lack the training necessary to safely execute an arrest, while the other law enforcement agents have the capacity to do so. Federal probation officers complete only six weeks of orientation training. New law enforcement officers complete 16 to 21 weeks of classroom training and they often must complete three additional weeks of field training.

¹ 18 U.S.C. § 3606.

² Letter from FLEOA National President, Nathan R. Catura, to Sen. Hatch and Sen. Feinstein, Jan. 6, 2017, available at http://www.fleoa.org/downloads/Hatch_Feinstein.pdf.

³ Letter from FPPOA National President, Craig F. Penet, to Sen. Hatch, Feb. 13, 2017, available at <https://www.hatch.senate.gov/public/cache/files/3c6ba017-4b72-4b1c-b4fc-464cfab98f62/SenatorHatch.pdf>.

The Probation Officer Protection Act is overly broad and raises Fourth Amendment concerns.

Federal probation officers would be authorized in POPA 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.”⁴ Currently, 18 U.S.C. § 3606 authorizes probation officers to arrest probationers without a warrant based on probable cause that the probationer has violated the conditions of his or her probation or release. However, probation officers do not have the training or on the job experience to make probable cause determinations necessary to make arrests of third parties compared to local law enforcement officers and the U.S. Marshals.

A real world implication of giving federal probation officers third party arrest authority 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. This bill would give a probation officer authority to decide that the mother’s decision constituted “interference” and subsequently arrest her. Although probationers willingly surrender some of their Fourth Amendment rights as a condition of probation, third parties housing a probationer do not when it comes to their private spaces.

The Probation Officer Protection Act hinders 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 individuals who assist people on probation reentering their communities may deter family members from providing a home to people on probation. This also runs counter to part of the mission of the U.S. Probation and Pretrial Services, which is “to bring about long-term positive change in individuals under supervision.”⁵

For the reasons above, the ACLU opposes the Probation Officer Protection Act and we urge the Members to oppose this legislation when 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

⁴ H.R. 1039 (115th Cong.).

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>.

cc: Chairman Chuck Grassley, U.S. Senate Judiciary Committee
Ranking Member Dianne Feinstein, U.S. Senate Judiciary Committee
Members of the U.S. Senate Judiciary Committee
Members of the U.S. House Judiciary Committee