

New York Office
40 Rector Street, 5th Floor
New York, NY 10006-1738

T 212.965.2200
F 212.226.7592

www.naacpldf.org



Washington, D.C. Office
1444 Eye Street, NW, 10th Floor
Washington, D.C. 20005

T 202.682.1300
F 202.682.1312

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Via Regular and Electronic Mail

Senator Whitney Westerfield
Senate Judiciary Committee Chair
702 Capitol Ave
Annex Room 228
Frankfort KY 40601
Whitney.Westerfield@LRC.KY.Gov

Re: Oppose H.B. 14, “Blue Lives Matter” Bill

Dear Senator Westerfield:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to urge you to vote against H.B. 14, which would extend Kentucky’s hate crimes statute to cover police officers and other first responders. While LDF supports efforts to advance fair and responsible policing practices that ensures the safety and wellness of both law enforcement and the communities they protect and serve, extending hate crimes protections to police officers and other first responders is a profoundly inappropriate and misguided proposal. The proposed bill would: extend hate crimes to a population that has not been the target of harassment, oppression or discrimination recently or historically in the state of Kentucky; needlessly replicate existing Kentucky laws that already provide for enhanced punishments for crimes committed against law enforcement officers; and have a negative impact on the relationship between law enforcement and the communities they serve.

LDF is the nation’s oldest and foremost civil rights legal organization. For 75 years, we have relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African-Americans and other persons of color in the areas of education, voting, employment, housing, and criminal justice. LDF advocates for unbiased and responsible policing through litigation and policy advocacy. We have also represented law enforcement officers in lawsuits as they sought to enforce their rights to equal employment opportunities within their own local police agencies. With this experience, LDF is well positioned to offer the following critique of H.B. 14.

I. Hate crimes laws address crimes motivated by a person's status as a member of a historically persecuted group.

Hate crimes are correctly understood as crimes motivated by a victim's status as a member of a historically persecuted or discriminated-against group. Almost every state has a hate crimes statute, and states generally hold a similar conception of what constitutes a hate crime.¹ Kentucky's hate crimes law currently reflects this understanding: it enhances sentencing for certain crimes motivated by the race, color, religion, sexual orientation, or national origin of the victim.² Police officers and other first responders simply do not suffer from the broad or historical societal discrimination similar to that suffered by the individuals and groups covered by Kentucky's existing hate crimes statute and which have been the predicate for enacting hate crime statutes.³

Congress,⁴ states,⁵ the law enforcement community,⁶ and prosecutors⁷ also share the understanding of the essential nature of a hate crime as one that is motivated by

¹ See ALLISON M. SMITH ET AL., CONGRESSIONAL RESEARCH SERVICE, STATE STATUTES GOVERNING HATE CRIMES (2016), <https://fas.org/sgp/crs/misc/RL33099.pdf> [hereinafter CRS REPORT].

² KY. REV. STAT. ANN. § KRS 532.031 (2017).

³ See e.g., Civil Rights Act of 1968, Pub. L. No. 90-284, §101, 82 Stat. 73, 73 (1968); Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, §280003, 108 Stat. 1796, 2096 (1994); Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, §§4701-4713, 123 Stat. 2190, 2835 (2009)[hereinafter Hate Crimes Prevention Act].

⁴ The 2007 House Judiciary Committee Report on the Hate Crimes Prevention Act found pertinent that broad societal discrimination warranted extension of hate crimes protection to crimes predicated on a victim's sexual orientation, gender, gender identity, or disability and that these groups, along with the classifications of race, color, religion, and national origin, shared a common history of being targeted for hate-based violence. See H. REP. NO. 110-13 at 2, 5-6, 10-13 (2007); see also H. REP. NO. 111-86 at 5 (2009).

⁵ See CRS REPORT, *supra* note 1.

⁶ The International Association of Chiefs of Police (IACP) has recommended that hate crimes be defined as those crimes based on "actual or perceived race, religion, ethnicity/national origin, disability, sexual orientation, or, where legally permissible, gender." IACP, HATE CRIME IN AMERICA SUMMIT RECOMMENDATIONS (1998), <http://www.iacp.org/ViewResult?SearchID=140>. The IACP and the National Sheriff's Association also supported the expanded definition of "hate crimes" to include sexual orientation, gender, gender identity, or disability. See 153 Cong. Rec. S12027 (daily ed. Sept. 25, 2007).

⁷ The National District Attorneys' Association (NDAA) defines hate crimes as those crimes motivated "by bias against a group or an individual's actual or perceived inclusion in an identifiable group," including the individual's "race or ethnic/national origin, religion, sexual orientation, disability, gender, and age." AMERICAN PROSECUTOR'S RESEARCH INSTITUTE, NDAA, A LOCAL PROSECUTOR'S GUIDE FOR RESPONDING TO HATE, http://www.ndaa.org/pdf/hate_crimes.pdf. The NDAA also supported the definition of Hate Crimes Prevention Act, which extended hate crimes

historically entrenched societal biases against individuals or groups based on immutable traits such as race, color, religion, national origin, sexual orientation, gender, and disability. Since Kentucky's hate crimes statute—like all hate crimes laws—are intended to address the unique problem of violence directed towards historically persecuted groups, including police officers would be inconsistent with the common understanding of hate crimes and weaken the purpose of the law as an effective response to prejudice-based violence. Police officers simply do not constitute a historically persecuted or marginalized minority group.

II. Kentucky police officers are not subjected to widespread or increasing attacks warranting heightened protection under the Kentucky hate crimes statute.

Broadening hate crimes protections should be based on evidence demonstrating a need for greater protection. The hate crimes provision of the Civil Rights Act of 1968 was passed by Congress in response to widespread attacks on African-Americans attempting to vote, attend school, apply for employment, and engage in other federally-protected activities.⁸ Also, the record leading up to the passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 (Hate Crimes Prevention Act) cited compelling FBI statistical evidence showing a copious number of hate-based attacks nationally on protected groups and a dramatic rise in crimes predicated on the victim's identification or perceived identification with a particular sexual orientation, gender, gender identity, or disability.⁹ Other vulnerable groups, such as seniors and veterans, were specifically not included in the Hate Crimes Prevention Act, because Congress found there was no record of group-based violence or widely held societal prejudice.¹⁰

protection to sexual orientation, gender, gender identity, or disability. *See* 153 Cong. Rec. S12027 (daily ed. Sept. 25, 2007).

⁸ *See* S. REP. NO. 90-721, at 1838-39 (1967).

⁹ *See* H. REP. NO. 111-86, at 5 (2009)(noting that between 1991 and 2007 the FBI had identified over 118,000 reported violent hate crimes; for the year 2007, the FBI documented 7,624 hate crimes with racially-motivated bias accounting for approximately half (50.8%) of all incidents, religious bias accounted for 1,400 incidents (18.4%), sexual orientation bias for 1,265 incidents (16.6%), and ethnicity/national origin bias for 1,007 incidents (13.2%.); H. REP. NO. 110-113, at 6 (2007)(citing FBI statistics of more than 113,000 reported hate crimes between 1991 and 2005; in 2005 the FBI documented 7,163 bias-motivated criminal incidents identified by law enforcement agencies and 8,795 victims arising from 8,373 separate criminal offenses. FBI statistics also showed that racially-motivated bias accounted for more than half (54.7%) of all incidents. Religious bias accounted for 1,227 incidents (17.1%), sexual orientation bias accounted for 1,017 incidents (14.2%), followed by ethnicity/national origin bias with 944 incidents (13.7%).).

¹⁰ *See* H. REP. NO. 111-86, at 13 (2009).

No evidence has been presented by proponents of H.B. 14 that status as a police officer or first responder has rendered Kentucky police officers vulnerable to bias or discrimination in a manner remotely similar to individuals or groups who have been systematically brutalized or deprived of civil rights or equal treatment due to their status as a member of a minority group. In fact, the opposite appears to be the case: there has been a continuing decline in the number of officers killed in the line of duty.¹¹ Additionally, there is no such statistical showing of a need for heightened legal protection of police officers in Kentucky. According to FBI statistics, only six officers have been feloniously killed in Kentucky between 2006 and 2015.¹² While the loss of one first responder is far too many, the killing of six officers over nine years does not justify the expansion of Kentucky's hate crime statute to law enforcement and first responders.

III. Kentucky law already offers ample protection to police officers

Extending hate crimes protection to law enforcement officers needlessly duplicates Kentucky law that already establishes special offenses and enhanced criminal penalties for crimes of violence against police. The Kentucky penal code expressly addresses killings or assaults against police officers in numerous provisions.¹³

Moreover, hate crime protections are intended to aid prosecution of crimes that are historically under-charged and are typically enacted when law enforcement or prosecutors lack the will, capacity, or legal remedies to prosecute offenses committed

¹¹ See Press Release, Federal Bureau of Investigation, FBI Releases 2015 Statistics on Law Enforcement Officers Killed and Assaulted (Oct. 18, 2016), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2015-statistics-on-law-enforcement-officers-killed-and-assaulted>; Martin Kaste, *Is There A 'War On Police'? The Statistics Say No*, NATIONAL PUBLIC RADIO (Sept. 17, 2015), <http://www.npr.org/2015/09/17/441196546/is-there-a-war-on-police-the-statistics-say-no>; Radley Balko, *Once again: There is no 'war on cops.' And those who claim otherwise are playing a dangerous game*, WASHINGTON POST (Sept. 10, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/09/10/once-again-there-is-no-war-on-cops-and-those-who-claim-otherwise-are-playing-a-dangerous-game/?utm_term=.144e3c91fa5b.

¹² FEDERAL BUREAU OF INVESTIGATION, LAW ENFORCEMENT OFFICERS FELONIOUSLY KILLED, 2006-2015, https://ucr.fbi.gov/leoka/2015/tables/table_1_leos_fk_region_geographic_division_and_state_2006-2015.xls.

¹³ For example, disarming a police officer is a Class D felony, which carries a penalty of one to five years imprisonment. KY. REV. STAT. ANN. § KRS 508.160 (2017). Assaulting a police officer is an offense of third degree assault, also a Class D felony. KY. REV. STAT. ANN. § KRS 508.025 (2017). For the offenses of second degree manslaughter and reckless homicide, where the victim is a police officer the subject is considered a "violent offender" for sentencing purposes, which carries numerous additional sentencing consequences. KY. REV. STAT. ANN. § KRS 439.3401 (2017); KY. REV. STAT. ANN. § KRS 532.047 (2017). For a death penalty eligible murder convictions, the killing of a police officer is an aggravating factor. KY. REV. STAT. ANN. § KRS 532.025 (2017).

against certain individuals or groups.¹⁴ There is no evidence to suggest that Kentucky prosecutors are unwilling, are unable, or lack the legal remedies needed to charge individuals with crimes against law enforcement or that judges are unwilling to apply the special sanctions available under Kentucky law.

IV. H.B. 14 is polarizing, harms community-police relations, and does not improve officer safety or wellness.

H.B. 14 threatens to sow division between police and communities and does nothing to improve officer safety or wellness.

First, this bill comes at a moment when our country is in the throes of a national policing crisis, with a seemingly never-ending stream of police shootings of unarmed African-Americans captured on bystander videos. Using hate crimes laws that have historically been developed to give protection to people of color from distinct forms of violence motivated by prejudice, including police violence, is a particularly disconnected and non-responsive policy choice.

Moreover, bills similar to H.B. 14 that have been introduced in several states around the country with the moniker “Blue Lives Matter” not only perpetuate a false narrative that police are under attack, they create a false equivalency between these purported attacks and grassroots movements developed in the wake of police-involved shootings of unarmed African-Americans to advocate for policies that address issues of police excessive force, biased policing, and other police practices that fail communities. Instead of focusing on these well-documented and longstanding issues affecting people of color, this bill cynically exploits the activism of groups, such as Black Lives Matter, which advocate for policing reform and seek to protect and advance the civil and human rights of victims of police misconduct. Undermining police-community relations in this manner sows seeds of division, which ultimately threatens the safety of both officers and communities. To be sure, the response to this bill has been extremely polarizing.¹⁵

Finally, H.B. 14 does nothing to genuinely improve officer safety and wellness. It does not call for support services, de-escalation training, improved safety measures, increased

¹⁴ See 155 Cong. Rec. S10663-02 (daily ed. Oct. 22, 2009)(statement of Sen. Dodd)(noting that the special nature of hate crimes make investigations particularly difficult, especially for small, local police departments); see also 153 Cong. Rec. S4446 (daily ed. Apr. 12, 2007)(statement of Sen. Kennedy).

¹⁵ See Ryland Barton, *Amid Protests, ‘Blue Lives Matter’ Bill Passes Kentucky House*, WFPL (Feb. 13, 2017), <https://wfpl.org/amid-protests-blue-lives-matter-bill-passes-state-house/>; Tom Loftus, *Blue Lives Matter’ bill approved by House panel*, THE COURIER-JOURNAL (Feb. 8, 2017), <http://www.courier-journal.com/story/news/politics/ky-general-assembly/2017/02/08/panel-approves-making-attack-first-responder-hate-crime/97650368/>.

supervision, or any of the other multiple measures available to Kentucky's first responders that are widely accepted as promoting safety.¹⁶

For the reasons summarized above, we urge you to vote against H.B. 14. There is no justification for creating a "police officer" or "first responder" category in Kentucky's hate crimes law. The groups covered by Kentucky's hate crimes statute bear a legacy of violence that is deserving of heightened protection—a protection that would be diluted if police officers or other professions were included in the hate crimes statute. At a time when we need to foster healing between law enforcement and our communities, we should not enact legislation which not only does nothing to advance this, but could exacerbate already tense relations between law enforcement and the communities they are sworn to serve.

Sincerely yours,



Todd A. Cox

Director of Policy



Sonia Gill Hernandez

Policy Counsel

¹⁶ See e.g., PRESIDENT'S TASKFORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASKFORCE ON 21ST CENTURY POLICING 61-68 (May 2015), https://cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.