

OPPOSE THE BACK THE BLUE ACT
S. 1134 (Sen. Cornyn)/H.R. 2437 (Rep. Poe)

Members of Congress should vote “no” on these identical bills. While violence against law enforcement is unacceptable, **the Back the Blue Act is not a solution because it**

1. Federalizes thousands of local crimes that should be policed by state authorities

Prosecuting violent crime is the states’ duty. All 50 states have strict and harsh laws that make it a serious crime to assault or kill law enforcement officers and court personnel – and many states are already in the process of making these laws even stricter and harsher. The Back the Blue Act would “make a federal case” out of virtually any assault or killing of a current or former law enforcement officer, court employee, or firefighter. This federalization undermines states’ rights and is an unwise and unlimited expansion of federal power. States are already sufficiently punishing violence against police and already take the problem seriously.

2. Will produce unjust and absurd sentences that undermine respect for the law and its officers

The Back the Blue Act would require lengthy, mandatory prison sentences that will produce unjust and absurd results, including punishing people who assault or kill police unintentionally:

- A frightened and mentally ill person who accidentally injures a police officer while being arrested for a status offense would get a 2-year mandatory federal prison sentence
- An inebriated person who resists being taken to a treatment center and accidentally pushes a police officer into his squad car, breaking the officer’s arm, would get a 5-year mandatory prison sentence
- A woman who calls police to her home to stop a burglary, but mistakenly shoots one of the officers after he enters her house, would get at least 20 years in federal prison – or 30 years if the officer died.

Our brave police officers willingly accept the risk of assault and death as part of their jobs. One-size-fits-all punishments will create unjust results that erode respect for the law and its officers, do nothing to protect police, and harm police-community relations.

3. Lacks sufficient *mens rea* (criminal intent) protections to ensure that only the criminally guilty are convicted

It is an age-old, bedrock principle that people should not be convicted of crimes unless they had a “guilty mind” and knowingly and intentionally committed the crime. The Back the Blue Act has no *mens rea* requirements. The accidental death of an officer on duty – for example, in a car accident – would require a 30-year mandatory minimum sentence. Such “strict liability” offenses with such severe sentences are sure to produce unjust results and should not be added to our federal criminal code.

4. Will further fill federal prisons and cost taxpayers millions in prison costs

In FY 2015 alone, more than 50,000 police officers were assaulted nationwide. More than 14,200 of these sustained injuries.¹ Under the Back the Blue Act, most or all of these assaults could be prosecuted in federal courts and result in 2, 5, 10, or 20-year mandatory federal prison sentences. It currently costs almost \$32,000 to put one person in federal prison for one year.² Even assuming that these 14,200 cases garnered the shortest mandatory minimum sentence permitted by the Back the Blue Act (2 years), they would generate an additional **\$908 million** in federal prison costs for taxpayers – for 2015 cases alone. This money would be better spent on providing law enforcement and victims with equipment and services that will actually save their lives.

Despite recent declines, federal prisons are still overcrowded, and federal prison costs consume more than 25 percent of the annual Justice Department budget.³ Federal prisons are expensive and should be reserved for truly federal offenders like terrorists and cybercriminals, not people who should be prosecuted and punished in state courts by local authorities.

5. Is simply unnecessary

We don't need the Back the Blue Act. In addition to state laws that already harshly punish violence against police, there are already federal laws on the books that also do so. There are already mandatory minimum life sentences (or the death penalty) for violating 18 U.S.C. § 1121(a)(1) (first degree murder of a state or local law enforcement officer or any person assisting in a federal criminal investigation), 18 U.S.C. § 1503 (first degree murder of an officer of the court or a juror), and 18 U.S.C. § 1114 (first degree murder of federal officers), and a 20-year mandatory minimum prison term for violating 18 U.S.C. § 1121(b)(1) (killing of a state correctional officer by an inmate).⁴

BACK THE BLUE ACT

NEW OFFENSES	NEW MANDATORY MINIMUM SENTENCES
<p>Killing or attempting or conspiring to kill a U.S. judge, federal law enforcement officer, or federally funded public safety officer while that officer is engaged in official duties or on account of those duties OR</p> <p>Killing a former U.S. judge, federal law enforcement officer, or federally funded public safety officer on account of the past performance of official duties (to be codified as 18 U.S.C. § 1123)</p>	<p>10 years – Life</p> <p>30 years – Life, or the death penalty, if death results</p>
<p>Assaulting a federally funded State or local law enforcement officer while engaged in or on account of performance of official duties OR</p> <p>Assaulting anyone who formerly served as a federally funded State or local law enforcement officer on account of the performance of their official duties or because of the actual or perceived status of the person as a federally funded State or local law enforcement officer (to be codified as 18 U.S.C. § 120)</p>	<p>2 – 10 years, if bodily injury results</p> <p>5-20 years, if substantial bodily injury (defined in 18 U.S.C. § 113) results</p> <p>10 years, if substantial bodily injury (defined in 18 U.S.C. § 1365) results</p> <p>20 years, if a deadly or dangerous weapon was used</p>
<p>Fleeing after the killing, attempted killing, or conspiracy to kill a federal judge or law enforcement officer or a federally funded public safety officer (to be codified as 18 U.S.C. § 1075)</p>	<p>10 years, in addition to the prison term for the underlying offense</p>

¹ Federal Bureau of Investigation, Law Enforcement Officers Killed and Assaulted, 2015, https://ucr.fbi.gov/leoka/2015/officers-assaulted/assaults_topic_page_-2015.

² 81 FR 46957 (July 19, 2016), <https://www.federalregister.gov/articles/2016/07/19/2016-17040/annual-determination-of-average-cost-of-incarceration>.

³ U.S. Dep't of Justice, Office of the Inspector General, Top Management and Performance Challenges Facing the Dep't of Justice III-12 (Nov. 10, 2016), <https://oig.justice.gov/challenges/2016.pdf> (finding that prisons are 16 percent over capacity overall, and that high security prisons are at 31 percent over capacity, and finding that more than 25 percent of the Justice Department budget is devoted to prisons).

⁴ See full list of federal mandatory minimum sentences here: <http://famm.org/wp-content/uploads/2015/11/Chart-All-Fed-MMs-11.10.15-NW.pdf>.