

To: Members of Congress
From: Center for American Progress Action Fund
CAPAF: Urges a NO Vote on the Motion to Proceed on S. 3985 the JUSTICE Act
Date: Tuesday, June 23, 2020

The killing of George Floyd and the ensuing nationwide protests have forced the nation to grapple with the impact of systematic racism in our society. Policing is one system, born out of slave patrols in the south, that continues to have vestiges of its origins. This history has been acknowledged by police chiefs and organizations like the International Association of Chiefs of Police. But acknowledgment is not enough – now is the time to act and make change. As U.S. Senators you are at a unique and critical moment where most of the nation understands that racism is a significant problem. The broad desire to do something meaningful around police reform is significant and you must ensure the actions you take are meaningful. Any legislation you pass must have accountability provisions. The JUSTICE Act, sponsored by Sen. Tim Scott (R-SC), fails to include any accountability measures for either law enforcement officers or police departments. The JUSTICE Act is not police reform and should not be considered by the Senate without significant changes.

The Center for American Progress Action Fund urges you to oppose the JUSTICE Act and vote NO on the motion to proceed.

The so-called JUSTICE Act is filled with exploitable loopholes and takes the same decades-old approach of funding police departments without requiring real accountability. Congress has tried incentive grants, studies and commissions, and most importantly, police departments already have access to federal resources to do much of what the JUSTICE Act provides. This legislation is more of the same. If the Senate is serious about police reform, they should turn their attention to the Justice in Policing Act.

The JUSTICE Act fails to meet the common-sense accountability measures that Americans broadly support:

- The JUSTICE Act provides significant loopholes that law enforcement can exploit. For example, sec. 105 permits chokeholds when deadly force is authorized, but many states have a broad definition of when deadly force can be used (see Georgia). The bill's definition of chokeholds also does not prohibit carotid holds. Two-thirds support banning police from using chokeholds and strangleholds (68%).
- The JUSTICE Act does not even incentivize the prohibition of no knock warrants, but merely requires the state to report incidents when no knock warrants were used (sec. 102). 52% of the public support banning no-knock warrants that allow police to enter a person's residence unannounced.
- The bill does not remove qualified immunity as a defense or immunity, does not criminalize the reckless use of excessive force, and does not expand the authority to conduct pattern or practice investigations. Three quarters of Americans support "allowing victims of police misconduct to sue police departments for damages."

The bulk of this bill creates task forces, commissions, best practices, and incentive grants – which alone will do virtually nothing to reform policing. What the bill leaves out is any way to enforce failures to

abide by best practices or trainings. Moreover, we already had a comprehensive commission under President Obama and the work that the Justice Department spearheaded under his leadership. This bill recreates the wheel without adding substance or accountability.

The JUSTICE Act takes proposals from the Justice in Policing Act (JPA) and waters them down significantly to make them meaningless. For example, the JPA creates a national police misconduct registry that requires the submission of complaints against the police, including those that were substantiated and dismissed. Failure to submit the information would result in the state being ineligible to receive Byrne Justice Assistance Grants. The JUSTICE Act requires only the submission of incidents that result in the death or serious bodily injury of another or the discharge of a weapon (sec. 101). This is an extremely limited number of incidents of police brutality and violence. Additionally, the penalty is only a 20% reduction in Byrne grants, meaning states could still devote the other 80% to the same law enforcement activities, with only a 5% reduction in subsequent years.

The only redeeming aspects of the bill are the inclusion of prohibitions for acts that may already be criminalized under federal or state law. The first criminalizes the falsification of a report (sec. 106); the second clarifies under federal law that a law enforcement officer cannot engage in a sexual act with someone who is arrested or detained (Title X); the third is the Justice for Victims of Lynching (Title IV).

Sen. Scott's JUSTICE Act is not a good faith effort at accomplishing meaningful police reform. At a minimum the Senate should include critical accountability provisions from the Justice in Policing Act including qualified immunity, extend pattern or practice to state Attorney General's, ban on chokeholds in all circumstances, ban on no-knock warrants, extend federal civil rights criminal violation to cover reckless conduct. Given the absence of accountability measures as noted above, the Center for American Progress Action Fund urges you to oppose the JUSTICE Act and vote NO on the motion to proceed. If you have any questions, please contact Lia Parada in our Government Affairs office at lparada@americanprogress.org