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Hate Crime Laws to Protect Police are Misguided

Kami Chavis

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JURIST Guest Columnist **Kami N. Chavis** of **Wake Forest University School of Law** discusses the recent proposals to add police officers to hate crime statutes...

In May, the state of Louisiana enacted a law that would make it hate crime to target **police, EMS personnel, and firefighters**. In light of the recent massacre in Dallas, other states may rush to enact similar legislation that adds police as a protected class to existing hate crimes legislation. Policymakers should resist the temptation to enact this similar legislation, as a **symbolic gesture** of solidarity with police officers. Protecting police officers is an important goal. Expanding the class of protected individuals to include police officers, however, subverts **the purpose of traditional hate crimes legislation** which is to protect historically marginalized groups from being targeted based on characteristics such as race, religion, sexual orientation or gender identify.

On July 7, 2016, Micah Xavier Johnson perpetrated an unspeakable act when he fatally shot five police officers and injured seven others as they protected peaceful demonstrators in Dallas, Texas.

Johnson **told negotiators** he initiated the attack because he “wanted to kill white people,” and citing recent police shootings, Johnson also said he wanted to “kill police officers.” This tragedy came only days after the nation was reeling from the fatal police shooting of Alton Sterling, in Baton Rouge, Louisiana and Philando Castile in Falcon Heights, Minnesota, which were the events that inspired the protestors to demonstrate in downtown Dallas. Had Johnson survived to face prosecution, his statement that he wanted to “kill white people” would likely be enough evidence to prove he was motivated by racial bias and would subject him to a prosecution of a hate crime in **many states** and **under federal law**. His targeting of police officers, however, might subject him to enhanced penalties, but would not be prosecuted as a “hate crime” in most jurisdictions because police officers currently are not a protected class under the federal hate crimes statute nor under most state statutes. Prior to the Dallas incident, however, there have been federal and state bills introduced that would make targeted violence against police officers hate crimes. In the wake of the tragedy, there is likely to be a strong push for such laws, but for the reasons outlined below, adding police officers as a protected class is a misguided way to demonstrate solidarity in the wake of the Dallas tragedy.

These efforts to expand hate crimes statutes should fail for several reasons. First, adding officers as a protected class is unnecessary because **many jurisdictions already have enhanced penalties** for those committing violent acts against police officers or interfering with their official duties. Second, while protecting police officers against those who would target them is an important goal, the Louisiana law and other recent proposal do not appear to be based on legitimate goals to protect police, but many critics see them as thinly veiled backlashes to recent calls for police reform. Viewed as such, these laws could be far more detrimental to building the trust and strengthening relations between police officers and the communities, which are past the tipping point. Such laws are inextricably linked to the widespread public protests in response to the recent spate of high profile deaths at the hands of police. The videotaped death of Eric Garner at the hands of police and the shooting death of Michael Brown in Ferguson, Missouri in 2014, as well as aggressive police tactics that police used to confront peaceful protestors in the wake of Brown’s death, are widely referenced as the catalyst for the current calls for criminal justice reform. Immediately following these events, several other high-profile police-involved deaths of unarmed black people, including Tamir Rice, Sandra Bland and Walter Scott, many criminal justice advocates called for widespread reforms in the criminal justice system, with a particular emphasis on policing reform. Just as the individual officers who committed these acts should not mar the reputation of their profession and officers nationwide, legitimate calls for police reform cannot be seen as an indictment on the entire profession. There are real systemic issues within policing and the criminal justice system that policymakers need to confront, and engaging in dialogue about necessary improvements does not mean that these critics are assailing the motives of every individual police officer.

Finally, and perhaps most importantly, adding police officers as a protected class to hate crimes statutes whose original purpose was to eliminate violence against traditionally marginalized group actually dilutes the power of the statutes. Examining the historical context in which hate crimes statutes were created demonstrates why adding police officers as a protected class within those statutes does not comport with the underlying rationale of such laws. The federal government originally enacted hate crimes laws to deter widespread violence and domestic terrorism blacks experienced during Reconstruction. Between 1877 and 1950, **3,959 blacks were lynched** [PDF]. Traditional hate crimes statutes typically protected immutable characteristics such as race or ethnicity and many jurisdictions have expanded them to other traditionally marginalized groups and include sexual orientation and gender identity as protected classes. These groups stand in stark contrast to someone’s chosen occupation, no matter how vital or dangerous that occupation is.

Moreover, there have been far more reported instances of bias-motivated crimes against traditionally protected groups than fatalities of police officers, which calls into question the need to include police officers alongside these other groups. In 2014, there were **5,462 reported hate crimes against individuals based on traditional protected status** (race, gender identity, sexual orientation). In contrast, during 2014, there were **145 police fatalities**, and it is likely that only a small fraction of

these police fatalities were the result of perpetrators specifically targeting police. As the 21st century Task Force noted, police departments and localities should focus on building trust and legitimacy between police and the community. Adding police officers to these protected classes when they clearly are not facing widespread or systemic targeted violence (as other groups have), is not only unnecessary, but prompts questions about the true motivations underlying the current campaign to include officers as a protected class.

In addition to concerns about diluting the import and symbolism of hate crimes legislation, there are several practical reasons to avoid expanding protected classes to include occupations such as police officers. First, as mentioned previously, adding this class of victims to the many state statutes would be redundant. Second, it is notoriously difficult to meet the burden of proof in hate crimes because the prosecution has to demonstrate. Not all racial minorities or other people in traditionally protected groups are targeted *because* of their membership in these groups, so proving that a perpetrator was motivated by bias is extremely difficult. Although the shooter in the Dallas massacre specifically mentioned his intention, there will be many instances where determining whether a victim's occupation motivated the suspect. Finally, some might argue that providing greater protections to police in this manner is necessary to avoid a chilling effect on officers in the performance of their duties. However, police officers already enjoy a number of special privileges and immunities designed for this purpose. Under the doctrine of qualified immunity, police officers are protected from liability as long as their conduct does not violate clearly established statutory or constitutional rights. In addition to qualified immunity, **several states** and police unions have incorporated various aspects of the Law Enforcement Officers' Bill of Rights, which is set of provisions intended from investigation and prosecution involving performance of their official duties. These provisions often impede oversight or reform of police practices and make it difficult to discipline officers who may have engaged in misconduct.

When an event such as the Dallas tragedy occurs, it is tempting to respond with symbolic legislation to demonstrate solidarity with those noble men and women who are tasked with keeping the public safe. However, any such effort must be properly contextualized and should not become a distraction from the larger issue of criminal justice reform. It is true that police officers and other responders do not often get the recognition and praise they deserve for the difficult and important role they play in keeping our society safe. A few bad apples in police departments have tarnished the image of police officers in general, but it is important to note that these "bad apples" are often products of institutions that have tolerated or encouraged improper practices or procedures. Advocating for reform and increased accountability of police officers and police departments as a whole is a legitimate goal, and cannot be viewed as an indictment against all officers.

It is clear that proponents of adding police officers as a protected class are searching for ways to support police officers at a time when increased scrutiny has tarnished the reputation a noble profession. Focusing on higher pay, more time off, and increased opportunities for professional development and training would also be effective ways to demonstrate respect for the role of police officers and acknowledge their service. In addition to suggesting recommendations to build community relationships, the Presidents Task Force on 21st Century Policing also made several recommendations for promoting officer wellness such as promoting mental health issues unique to officers and ensuring funding for the distribution of individual tactical first aid kits and asking Congress to expand the Bulletproof Vest Program. Legislators concerned about officers would be well-advised to advocate for those practical recommendations rather than pressing for the inclusion in legislation intended to deter crimes against traditionally marginalized groups.

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