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## *House of Representatives*

### **The Justice for Peace Officers Act of 2005 (September 27, 2005)**

**MR. DREIER.** On April 29, 2002, Los Angeles County Sheriff's Deputy David March was brutally slain execution-style during a routine traffic stop. Suspect Armando Garcia fled to Mexico within hours of Deputy March's death and has eluded prosecution by U.S. authorities.

Tragically, Mexico's refusal to extradite individuals who may face the death penalty or life imprisonment has complicated efforts to bring Armando Garcia back to the U.S. to face prosecution for his crime. Over the last three years, I have fought to see Armando Garcia and other fugitives accused in killings brought back to the U.S. I have met with officials from the Department of Justice and the State Department. I have written repeatedly, joined by other members of Congress, to President Bush and to Secretaries of State Colin Powell and Condoleezza Rice, calling for aggressive action to change Mexico's extradition policy. I have even met with high officials of the Mexican government in an effort to impress upon our neighbor the intolerable nature of its extradition policy. However, three years later, Armando Garcia and thousands of other fugitives still roam free.

I will continue to work with the administration to bring Deputy March's murderer to justice. I will also continue our fight to persuade Mexico to change its policy. But until that is achieved, I believe that the Congress has a duty to act as well.

It was at the urging of Los Angeles County Sheriff Lee Baca that my friend from Pasadena, Mr. Schiff, and I introduced H.R. 2363, the Peace Officer Justice Act, to make it a federal crime to kill a peace officer and flee the country to avoid prosecution. This bill ensures that criminals who murder law enforcement officials and escape to another country will have the full weight of the federal government on their trail.

Currently under federal law, it is a crime to kill a federal peace officer or state/local officers if they are engaged in a federal investigation. We believe there is no reason that a heinous crime, such as the one in Deputy March's case, should not also be a federal crime with the same penalties as the murder of a federal officer.

The punishment for fleeing prosecution under existing law is no more than five years or merely a fine. I believe that a fine or five years imprisonment for the cold-blooded murder of a law enforcement officer is tantamount to no justice at all. The Peace Officer Justice Act makes such an act punishable by the federal murder statute, which includes the death penalty or life in prison. This legislation is supported by the Fraternal Order of Police and the National Sheriffs' Association.

However, Los Angeles County District Attorney Steve Cooley has decided to strongly oppose the bill citing several concerns with its provisions. Specifically, Mr. Cooley believes that making such a crime a violation of federal law would provide “exclusive jurisdiction” for the federal government to pursue a cop-killer who flees the country. In response, I made clear that **this bill provides concurrent jurisdiction for the federal government to prosecute; not the authority to supersede jurisdiction of states or localities.** Therefore, either the federal government or the state/local prosecutor could pursue the case. In fact, if the state has already pursued its own prosecution of such a crime, that would not prohibit the federal government from pursuing a subsequent prosecution under this bill. For example, in *United States v. Lanza*, 260 U.S. 377, 382 (1922), the U.S. Supreme Court upheld the conviction in federal court of a person previously convicted in state court for performing the same act. The Court stated “We have here two sovereigns deriving power from different sources, capable of dealing with the same subject-matter within the same territory...Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other.” This “dual sovereignty doctrine” has also been used to uphold successive prosecutions by two states for the same conduct. See e.g. *Heath v. Alabama*, 474 U.S. 82 (1985) (permitting a defendant who crossed a state line in the course of a kidnap/murder to be prosecuted for murder in both states). However, Mr. Cooley strongly disagrees with U.S. Supreme Court precedent.

Mr. Cooley also cites California Penal Code 793, which prohibits the prosecution of any crime that has already been tried in the U.S. or other State. He argues that California would not be able to prosecute cop-killers who flee the country due to the State law and the federal government’s “exclusive jurisdiction” of such cases.

Mr. Cooley also argues that if federal prosecutors, using their “exclusive jurisdiction” of such crimes, decide to forego the death penalty or life imprisonment to extradite a suspect back from Mexico to the U.S., that any term of years set by the federal government would be less than any term that California prosecutors would seek for punishment. Specifically, he cites that under California law, second degree murder of a law enforcement officer, without special circumstances, is punishable by a minimum of 25 years to life with the possibility of parole, while second degree murder under the federal murder statute is “any term of years or life.” In addition, Mr. Cooley cites that local prosecutors are more experienced at prosecuting murder cases and are better at the job than federal prosecutors.

Finally, Mr. Cooley cites the “Rule of Speciality” in the U.S.-Mexico Extradition Treaty, which states that individuals extradited from one country to another can only be prosecuted under the charges included in the extradition request. Therefore, he argues that since H.R. 2363 provides “exclusive jurisdiction” to the federal government in such cases, that California will be barred from prosecuting a cop-killer who flees the country.

Although I strongly disagree with Mr. Cooley’s interpretation of “exclusive jurisdiction,” I have reached out to him and local law enforcement officers for suggestions on how to improve the bill. Based on their feedback, I, along with Mr. Schiff, am introducing the Justice for Peace Officers Act to build on the provisions of H.R. 2363 by enhancing the punishment for cop-killers and those who aid them, providing priority to state/local prosecutors in such cases, making clear that the bill does not supersede state/local jurisdiction and urging the renegotiation of the U.S.-Mexico Extradition Treaty to resolve the death penalty/life imprisonment roadblock.

The Justice for Peace Officers Act, like the Peace Officer Justice Act, makes it a federal crime to kill a peace officer and flee the country. And like H.R. 2363, the Justice for Peace Officers Act makes the crime for first degree murder punishable by the death penalty or life imprisonment. The Justice for Peace Officers Act goes a step further by making murder in the second degree punishable by a mandatory minimum of 30 years in prison or life imprisonment. Under the current "federal murder statute" (18 USC 1111), the punishment for second degree murder is any term of years or life imprisonment. This change ensures that persons guilty of killing a peace officer under second degree murder and fleeing the country will face a significant minimum number of years under lock and key.

The Justice for Peace Officers Act also raises the penalty for those who help cowardly cop-killers flee the country to avoid prosecution. Under the current "accessory after the fact" federal statute (18 USC 3), the punishment for helping suspects, facing the death penalty or life imprisonment, to avoid capture is a maximum of 15 years in prison. The Justice for Peace Officers Act ensures that such aiders and abettors would serve a mandatory minimum sentence of 15 years behind bars.

Let me be clear that it will always be my preference for state and local prosecutors to go after cop killers – police keep our local communities safe and local prosecutors should have primary jurisdiction over these cases. That is why I included language in the Justice for Peace Officers Act to give priority to state/local prosecutors to pursue a suspect of killing a peace officer and fleeing the country. Specifically, the Attorney General, the Deputy Attorney General, the Associate Attorney General, or an Assistant Attorney General, in consultation with the appropriate state/local prosecutors, must provide formal approval in writing to pursue such a case. This gives state/local and federal officials the opportunity to confer on the best course of action, and gives preference to state/local officials since no action can be taken on the federal level without the additional step of obtaining formal written permission. This language is based on a provision in the current "flight to avoid prosecution" federal statute (18 USC 1073). Also, the Justice for Peace Officers Act includes language making clear that nothing in the bill would supersede the authority of state/local prosecutors.

In addition, the penalty under the Justice for Peace Officers Act would be a consecutive sentence to any other state or federal punishment. Since state/local authorities have first priority to prosecute and sentence such a suspect, the provision would ensure that any punishment on the local/state level would be enhanced by an additional federal sentence.

Finally, I firmly believe that the Bush Administration should use all tools available to bring about a change in Mexico's policy regarding the extradition of nationals that will allow these brutal killers to face justice in the U.S. That is why I included a provision in the Justice for Peace Officers Act directing the Secretary of State to enter into formal discussions with the Mexican government on the U.S.-Mexico Extradition Treaty. The provision also directs the Secretary of State to urge the Mexican Government to use all available actions to persuade the Mexican Supreme Court to reconsider its October 2001 ruling so that the possibility of life imprisonment will not have an effect on the timely extradition of criminal suspects from Mexico to the U.S.

Mr. Speaker, I hope that the Justice for Peace Officers Act will signal to Mexico and any other country that refuses to extradite a fugitive cop-killer that the Congress of the United States considers this a crime against America and will bring the full resources of the federal government to bear to seek justice. I urge all of my colleagues to co-sponsor the Justice for Peace Officers Act.