Legal Rights Center, Inc.

A LAW FIRM OF AND FOR THE PEOPLE

1611 Park Avenue South, Minneapolis, Minnesota 55404-1683

To: Representative Carlos Mariani

From: Michael Friedman, Executive Director of the Legal Rights Center (and former Board Chair of the Minneapolis Civilian Police Review Authority, 2003-2005)

Date: June 11, 2020

Re: Statutory Changes for special session; police reform

With apologies for the delay, I’m writing to bring forth ideas for statutory changes aimed at improving police accountability and community trust.

In recent days, I have seen many thoughtful and potentially effective suggestions put forward by others, including (but not limited to): Javier Morillo (article in The Reformer), Communities United Against Police Brutality, Slate.com (Ifill 6-3-20), and the Star Tribune editorial by William Pentelovitch. Without taking time to summarize the ideas presented therein, I am generally in agreement and encourage you to access all if you have not already done so.

But I do wish to add four specific ideas that are within the realm of the Legislature and which I have not seen specifically raised. The suggestions come primarily from my experience with the Civilian Review Authority, where I witnessed the accountability process in operation and with access to the private data of complaints and knowledge of how they resolved.

1. **Amend 13.43 (data practices) so that records pertaining to a personnel matter become public once it is determined that misconduct occurred (and not based solely on whether discipline results).**

I was recently quoted in the Star Tribune about this point and have raised it there in past guest editorials. Minnesota has long tolerated a perverse incentive at all levels of government in that the easiest way for any department head to avoid negative public exposure for their agency, or even scandal, is to take no action against an employee’s misconduct. (Which allows all related information to remain private.) The results in policing are plain to see. Effecting this change also allows transparency for evaluating police chiefs (and other government management); how effective is the supervision? How willing are they to ensure appropriate employee service to the public?

1. **In the section that allows for (or newly expands upon) the authority of jurisdictions to create non-police mechanisms for police review (i.e. civilian review), repeal the law that allows only a police chief to determine that misconduct occurred, and instead allow that mechanism to provide such determination in conjunction with the public transparency of #1.**

What I’m suggesting was the prior practice during the years I Chaired the Minneapolis CRA; we determined when misconduct occurred. But the police union fought hard against it (with city attorney and police management allies) because it potentially discredited police witnesses and enhanced risk for civil liability if a factfinding of misconduct was available through discovery or subpoena (for the latter enhanced by the fact that the city had failed to impose a disciplinary consequence). About 10 years ago, the legislature amended language so that only a police chief could officially determine misconduct. If that language remains in statute, any reviving of external police accountability mechanisms would be a charade.

1. **Amend PELRA so that it does not apply to any agency for which deadly force is authorized.**

I have limited knowledge of labor law, but it does seem there are statutory ways to exempt police, either in whole or in the grievance provisions.

1. **Mandate that prosecutors and judges who have received police statements that are demonstrably false – whether or not a criminal case becomes charged – to report such to the police chief; classify such data – as well as any further investigation and consequence taken by the police chief – as public.**

Corruption in the system includes the lack of consequence for police dishonesty, which affects far more of our community members than police use of force. At present, false testimony by police in their reports – even when amply proven through video – has no consequence beyond dismissal of the criminal proceedings. Justice system partners employed by Minnesota, such as prosecutors and judges, act as if exempt from addressing this critical problem.

As I am a new public member of the Lawyers Board for Professional Responsibility, I intend to propose similar language for prosecutors in Ethics rules. Doing so would best be supported by similar obligation through statute.

Please let me know if you would like to further discuss any of these ideas (612-677-2139), and I welcome your sharing them with colleagues or others.