



**Statement by the
NAACP Minnesota/Dakotas Area State Conference
Before the Public Safety
and Criminal Justice Reform Committee**

June 13, 2020

Introduction

100 years ago, nearly to the day, three African American men, Elias Clayton, Elmer Jackson, and Isaac McGhie, were lynched by a mob of thousands in Duluth while police stood by ineffectually, having ignored clear warnings of the planned lynchings from earlier in the day.¹ The Minnesota legislature responded to that heinous crime with arguably the strongest anti-lynching legislation at the time, and became one of the first states to ban lynching altogether.² The State of Minnesota needs to answer the call again to confront what has happened in the hundred years since then.

For far too long, the State of Minnesota has failed to address police violence and racial inequities in our justice system. These problems have been well known and thoroughly documented since even before the Duluth lynchings. As Dr. Kenneth Clark observed more than fifty years ago while testifying to the Kerner Commission:

“I read the report . . . of the 1919 riot in Chicago, and it is as if I were reading the report of the investigating committee on the Harlem riot of '35, the report of the investigating committee of the Harlem riot of '43, the report of the McCone Commission on the Watts riot. I must again in candor say to you members of this Commission – it is a kind of Alice in Wonderland – with the same moving picture re-shown over and over again, the same analysis, the same recommendations, and the same inaction.”³

Minnesota has been the subject of similar reports with the same sort of findings and regrettably the same inaction. In 1993, the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System found that in Hennepin County people of color were arrested and charged at vastly disproportionate rates. As the Task Force observed, “One glaring signpost of the specter of racism in the disposition of criminal cases is the fact that although people of color comprise 6% of the state's population, they comprise 45% of the prison population.”⁴

In 2003, The Council on Crime and Justice and Institute on Race and Poverty jointly reported to the legislature, “Law enforcement officers stopped Black, Latino, and American Indian drivers at greater rates than White drivers, searched Blacks, Latinos, and American Indians at greater rates than White drivers, and found contraband as a result of searches of Blacks, Latinos, and American Indians at lower rates than in searches of White drivers.”⁵

¹ Duluth NAACP Website at <https://duluthnaacp.org/news/9016060>; see also Ann Juergens, *Lena Olive Smith: A Minnesota Civil Rights Pioneer*, 28 WILLIAM MITCHELL LAW REVIEW 397, 417 (2001) at <https://open.mitchellhamline.edu/facsch/61/>.

² *Id.*; see also Michael J. Nolan, *Defendant, Lynch Thyself: A California Appellate Court Goes from the Sublime to the Ridiculous in People v. Anthony J.*, 4 THE SOCIAL JUSTICE LAW REVIEW 53, 69-70 (2001) (providing a historical review of state anti-lynching legislation).

³ UNITED STATE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 265 (1968) (“Kerner Commission”) at <https://babel.hathitrust.org/cgi/pt?id=mdp.39015000225410&view=1up&seq=287>.

⁴ STATE OF MINNESOTA, SUPREME COURT TASK FORCE ON RACIAL BIAS IN THE JUDICIAL SYSTEM at S-3 (1993) at http://www.mncourts.gov/mncourtsgov/media/scao_library/CEJ/1993-Minnesota-Supreme-Court-Task-Force-on-Racial-Bias-in-the-Judicial-System-Final-Report.pdf.

⁵ COUNCIL ON CRIME AND JUSTICE & INSTITUTE ON RACE AND POVERTY AND COUNCIL ON CRIME AND JUSTICE, *Minnesota Statewide Racial Profiling Report: All Participating Jurisdictions*, REPORT TO THE MINNESOTA LEGISLATURE (2003) at <https://www.leg.state.mn.us/docs/2004/mandated/040200.pdf>.

In 2010, there was a class action lawsuit against the Metro Gang Strike Force, a multi-jurisdictional police task force commissioned to fight drug trade and violent crime throughout Minnesota. An investigation revealed that since its inception in 1997, officers were improperly seizing money and property, and often brutalizing innocent victims, many of whom were people of color.⁶

Between 2006 and 2012 in Minneapolis, the city paid out \$14 million for alleged police misconduct, though very few of these cases resulted in disciplinary action for officers.⁷ In addition to instances of police misconduct and use of force, arrest data from the Minneapolis Police Department suggests a disparate impact in enforcement of low-level offenses against people of color. Of the nearly 100,000 arrests for low-level offenses made by Minneapolis police officers between 2012 and 2014, African Americans accounted for 59%, despite representing only 19% of the city's population.⁸

As a recent report by the Minnesota Advisory Committee to the U.S. Commission on Civil Rights found, selective enforcement of nonviolent offenses contributes to higher rates of incarceration for people of color. Statewide, African Americans represent 6% of the population, yet as of January 2016 they made up 35% of the state's prison population. For American Indians, the disparity is even starker. Despite making up only 1% of the population, American Indians account for 10% of the state's prison population.⁹

Finally, we have the recent efforts of the Working Group on Police-Involved Deadly Force Encounters, which concluded its work just over three months ago, followed by a familiar failure by the legislature to enact any meaningful police reform. As the Working Group stated:

There have been many firm opinions over the years about why police-involved deadly force encounters persist, and those opinions have grown more intense and more polarized as people's and communities' frustration, grief, and anger has grown. This has also made practical solutions for reducing them that can be effectively implemented and widely adopted harder and harder to agree on. In the meantime, people continue losing their lives, survivors' lives continue being changed forever, communities continue being torn apart, and trust between community and law enforcement continues to fray.¹⁰

During these decades of inaction, police violence and abuse of power have continued unabated. As of the past several years, for young men of color, being killed by the police has become a leading cause of

⁶ Randy Furst, *Payouts reveal brutal, rogue Metro Gang Strike Force*, STAR TRIBUNE, Aug 5, 2012 at <https://www.startribune.com/payouts-reveal-brutal-rogue-metro-gang-strike-force/165028086/> (reviewing approximately 600 pages of documents released from the lawsuit).

⁷ Alejandra Matos & Randy Furst, *Minneapolis cops rarely disciplined in big-payout cases*, STAR TRIBUNE, June 3, 2013 at <http://www.startribune.com/minneapolis-cops-rarely-disciplined-in-big-payout-cases/209811991/>.

⁸ ACLU, *Picking up the Pieces: A Minneapolis Case Study* (2015) at <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces>.

⁹ MINN. ADVISORY COMMITTEE TO U.S. COMMISSION ON CIVIL RIGHTS, *Civil Rights and Policing Practices in Minnesota* 9 (2018) at <https://www.usccr.gov/pubs/2018/03-22-MN-Civil-Rights.pdf> (hereafter "MINN. ADVISORY COMMITTEE TO U.S. COMMISSION ON CIVIL RIGHTS").

¹⁰ WORKING GROUP ON POLICE-INVOLVED DEADLY FORCE ENCOUNTERS (Feb. 2020) at <https://dps.mn.gov/divisions/co/working-group/Documents/police-involved-deadly-force-encounters-recommendations.pdf>.

death.¹¹ Nearly 200 people in Minnesota have been killed by the police since 2000.¹² And yet “the cycle of police brutality and racism has been met with cosmetic tinkering instead of substantive structural change.”¹³ The current public protests in our cities and nationwide are a response not only to unjust policing of Black people but are a cry for action to public officials for real change, writ large.¹⁴

The recent murder of George Floyd by the Minneapolis police highlights entrenched, systemic dysfunction and racism that has long plagued police departments and our criminal legal system. The Minnesota legislature must rectify these structural wrongs through legislation before another Black life is needlessly lost.

Reducing Violence and Clarifying Use-of-Force Standards

With this track record, the State would be wise to prioritize revising its use-of-force policies and imposing clear guidelines and restrictions for all Minnesota police departments. There are many promising practices adopted by law enforcement agencies nationwide, including an emphasis on valuing and preserving human life in all situations and an officer’s duty to intervene to prevent the excessive use of force. We urge the State to follow the lead of these other departments by adopting common sense use-of-force policies and training that go beyond what is constitutionally required, and impose clear protocols that are necessary to ensure the safety of members of the public and police. In other words, constitutional requirements should be the floor, not the ceiling.¹⁵

1. Police officers should make respecting and protecting the public and ensuring safety for all citizens their highest priority in all enforcement actions, and departments should affirm this commitment in their use-of-force policies.¹⁶ The Las Vegas Metropolitan Police Department and the New Orleans Police Department, for example, have developed force policies that prioritize

¹¹ Frank Edwards, Hedwig Lee, & Michael Esposito, *Risk of Being Killed By Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES 16793 (Aug. 2019) at <https://pubmed.ncbi.nlm.nih.gov/31383756/>; see also Amina Khan, *Getting Killed by Police is a Leading Cause of Death for Young Black Men in America*, L.A. TIMES, Aug. 16, 2019 at <https://www.latimes.com/science/story/2019-08-15/police-shootings-are-a-leading-cause-of-death-for-black-men> [<https://perma.cc/8P4Y-87NA>] (reporting that Black men and boys are 2.5 times more likely than white men and boys to die during an encounter with police officers).

¹² Jeff Hargarten, Jennifer Bjorhus, MaryJo Webster, and Kelly Smith, *Every police-involved death in Minnesota since 2000*, STAR TRIBUNE, May 31, 2020 at <https://www.startribune.com/fatal-police-encounters-since-2000/502088871/>.

¹³ Leadership Conference on Civil and Human Rights Letter to U.S. House and Senate Leadership, June 1, 2020 at http://civilrightsdocs.info/pdf/policy/letters/2020/Coalition_Letter_to_House_and_Senate_Leadership_on_Federal_Policing_Priorities_Final_6.1.20.pdf.

¹⁴ *Id.* (signatories to the letter included nearly 500 national organizations, including the NAACP).

¹⁵ See POLICE EXEC. RES. FORUM, GUIDING PRINCIPLES ON USE OF FORCE 35 (2016) at <http://www.policeforum.org/assets/30%20guiding%20principles.pdf> (“hereafter PERF GUIDING PRINCIPLES ON USE OF FORCE”) (“Agencies should continue to develop best policies, practices, and training on use-of-force issues that go beyond the minimum requirements of *Graham v. Connor*.”).

¹⁶ *Id.* at 34.

respect and value for human life.¹⁷ As the Police Executive Research Forum concluded, “the sanctity of human life should be at the heart of everything an agency does.”¹⁸

2. Departments policies should promote and clarify the role of police officers as guardians of public safety. Use of force should be used only when necessary and after reasonable attempts to de-escalate or resolve situations without force fail.¹⁹ As mandated by international standards, use-of-force policies should require that officers use only as much force as necessary to address threats.²⁰ As the Seattle Police Department states, “[O]fficers will use physical force only when no reasonably effective alternative appears to exist” to achieve a legitimate and lawful objective.²¹
3. Prohibit inherently dangerous conduct.
 - a. Ban neck restraints of all kinds: chokeholds, strangleholds, general neck restraints, neck-holds, and carotid artery restraints.²² As Justice Thurgood Marshall warned four decades ago, “It is undisputed that chokeholds pose a high and unpredictable risk of serious injury or death.”²³
 - b. Ban shooting into moving vehicles.²⁴ Research has already shown that bans on shooting at or from vehicles have been extremely effective. After the New York Police Department banned shooting at moving vehicles, officer shootings began to plummet. Within the first year, the number of officer-involved shootings declined by 33%.²⁵ Officer deaths in the line of duty also decreased during this time, which strongly suggests that the policy does not jeopardize officer safety.²⁶

¹⁷ Las Vegas Metro. Police Dep’t, Use of Force Policy 2 (2017) at <https://www.lvmpd.com/enus/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf> (hereafter “Las Vegas Metro Use of Force Policy”; New Orleans Police Dep’t, Operations Manual: Use of Force 5 (2015) at <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/>.

¹⁸ FIRST GUIDING PRINCIPLE IN THE POLICE EXECUTIVE RESEARCH FORUM’S 30 GUIDING PRINCIPLES ON USE OF FORCE (March 2016).

¹⁹ Samuel Sinyangwe, Examining the Use of Force Policies in Ending Police Violence 4 (2016) at <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57e17531725e25ec2e648650/1474393399581/Use+of+Force+Study.pdf> (finding that policies “requiring officers to exhaust all other means before using deadly force were associated with the largest reductions in police-involved killings”).

²⁰ U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS art. 2 (1979) at <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx> (“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”).

²¹ Seattle Police Dep’t Manual, § 8.200.

²² Miami Police Department Use of Force Policy, Section 21.4.1.20.

²³ *Los Angeles v. Lyons*, 461 U.S. 95, 117-18 (1983) (Marshall, J., joined by Brennan, J., Blackmun, J., Stevens, J., dissenting).

²⁴ Denver Police Dep’t, Operations Manual 105.05 (2015).

²⁵ PERF GUIDING PRINCIPLES ON USE OF FORCE, *supra* note 15, at 45-46.

²⁶ *Id.*

- c. Ban using batons against people who are restrained, even if they are noncompliant, unless they pose an imminent physical threat to officers or others.²⁷
4. Duty to intervene and report in writing to supervisor.²⁸ As the Los Angeles department policy that requires intervention puts it, “Police officers, because of their status as peace officers, have an even greater responsibility to report and prevent misconduct.”²⁹ Although officers who don’t intervene to prevent or stop improper uses of force may be liable for harm caused by their colleagues,³⁰ and although the vast majority of officers (84%) agree that officers should be required to intervene to prevent other officers from using excessive force,³¹ some officers will not intervene without being required to do so. According to the U.S. Civil Rights Commission, 52% of police officers “agree that it is not unusual for a police officer to turn a blind eye to improper conduct by other officers”³² making duty to intervene requirements essential.

Reporting and Data Collection

Estimates of the number of people killed by police are notoriously inaccurate, and no governmental agency has a comprehensive list. As former FBI Director James Comey succinctly acknowledged, “It’s ridiculous that I can’t tell you how many people were shot by the police last week, last month, last year.”³³ Those who study police shootings today still have to rely on databases compiled by two newspapers (the Washington Post and the Guardian) from news reports about those killed by police.³⁴ Reporting to the FBI is voluntary, and as many as half of all deaths by police officer go unreported.³⁵

²⁷ Consent Decree, *United States v. Police Dep’t of Baltimore*, No. 1:17-CV-99-JKB, ¶ 152 (D. Md. 2017) at <https://www.justice.gov/opa/file/925056/> (“Baltimore Consent Decree”); *see also* Seattle P.D. Manual § 8.300 (noting that batons can deliver lethal blows, and explicitly prohibiting strikes to the head unless deadly force is justified).

²⁸ *See, e.g.*, New Orleans Police Department Use of Force Policy, Section 300.3 (“Any officer present and observing another officer using force that is clearly beyond what is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of unreasonable force. Any officer who observes another employee use any use of force incident shall promptly report these observations to a supervisor, and officers observing a level 2, 3 or 4 use of force shall write a Force Statement before the end of the shift, which shall be included in the Use of Force Report.”).

²⁹ L.A. Police Dep’t, Employee’s Duty to Report Misconduct, 1 LAPD Policy Manual Section 210.46.

³⁰ *See Jones v. City of Hartford*, 285 F. Supp. 2d 174, 182 (D. Conn. 2003) (Police officers “have an affirmative duty to intercede on the behalf of a citizen whose constitutional rights are being violated in their presence by other officers.”).

³¹ Rich Morin et al., Pew Res. Ctr., Behind the Badge: Amid Protests and Calls for Reform, How Police View Their Jobs, Key Issues and Recent Fatal Encounters Between Blacks and Police 13 (2017) at http://assets.pewresearch.org/wp-content/uploads/sites/3/2017/01/06171402/Police-Report_FINAL_web.pdf.

³² Advancement Project and PolicyLink, *Limiting Police Use of Force: Promising Community-Centered Strategies* 12 (2014) at https://www.policylink.org/sites/default/files/pl_police_use%20of%20force_111914_a.pdf; U.S. Civil Rights Commission, *Revisiting Who Is Guarding the Guardians: A Report on Police Practices and Civil Rights in America*, Chapter 2 (2000) at <http://www.usccr.gov/pubs/guard/ch2.htm>.

³³ Fossett, Katelyn, *The DIY Effort to Count Who Police Kill*, POLITICO MAGAZINE, June 9, 2015 at <http://www.politico.com/magazine/story/2015/06/diy-effort-police-shootings-118796>.

³⁴ Kate Masters, *Police Kill Far More People with Guns Than Key Federal Data Sources Show*, THE TRACE, March 17, 2016 at <https://www.thetrace.org/2016/03/police-fatal-shootings-federal-data-fbi-cdc/>.

³⁵ *See* Mark Berman, John Sullivan, Julie Tate and Jennifer Jenkins, *Protests spread over police shootings. Police promised reforms. Every year, they still shoot and kill nearly 1,000 people*, WASHINGTON POST, June 8, 2020 at

In Minnesota, each individual law enforcement agency is responsible for collecting and reporting their data to the Bureau of Criminal Apprehension (“BCA”). In its 2018 report, however, the Minnesota Advisory Committee to the U.S. Commission on Civil Rights highlighted a major inaccuracy, raising questions about the efficacy of the current BCA reporting structure. The Advisory Committee found that according to the BCA database, “Woodbury officers didn’t fire a single incident-related round all year long in 2012.”³⁶ As the Committee observed, in 2012, however, there was a highly publicized incident in which a teenager was shot and killed by Woodbury police.³⁷

1. Collect and analyze all use of force data to determine trends, identify and correct deficiencies uncovered in the analysis, and publicly report findings. The reporting should be made public through a website or some other easily accessed means, and it should clarify what items of data need to be reported (beyond what is requested by the FBI), to include:
 - a. Type of force used;
 - b. Number of officers using force in the incident;
 - c. Officer’s activity when force was used (e.g., handcuffing, search warrant, or pursuit);
 - d. Subject’s activity requiring the officer to use force;
 - e. Officer’s demographics (age, gender, race/ethnicity, rank, number of years with police force, number of years as a police officer);
 - f. Suspect demographics including race/ethnicity,³⁸ age, gender, gender identity, primary language and other factors such as mental illness, cognitive impairment, and developmental disability;
 - g. Injuries sustained, if any, by the suspect.³⁹

https://www.washingtonpost.com/investigations/protests-spread-over-police-shootings-police-promised-reforms-every-year-they-still-shoot-nearly-1000-people/2020/06/08/5c204f0c-a67c-11ea-b473-04905b1af82b_story.html (“It became clear that police were shooting and killing people about twice as often as numbers reported by the FBI, which collected voluntary reports from police departments.”).

³⁶ MINN. ADVISORY COMMITTEE TO U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 9, at 25.

³⁷ *Id.*; see also Tad Vezner & Dan Bauman, *How many Minnesota police encounters turn fatal? Don’t ask the state*, TWIN CITIES PIONEER PRESS, Nov.17, 2015 at <http://www.twincities.com/2015/11/17/how-many-minnesota-police-encounters-turnfatal-dont-ask-the-state/>.

³⁸ Not including ethnicity can be problematic not only because Latinx people are disproportionately impacted by police practices but also because the lack of Latinx data skews racial disparities between Black and White people since without specific ethnicity data, Latinx often count as White. THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, NEW ERA OF PUBLIC SAFETY 239 (2019).

³⁹ San Francisco Police Department General Order, 5.01, at 18.

2. Establish clear protocols on data collection:
 - a. Departmental policies should also provide clear guidance for officers to report uses of force and for supervisors to review and investigate the reported use of force.⁴⁰
 - b. All officers involved in use-of-force circumstances or witnesses to use of force should provide detailed narratives of the facts leading to the use of force.⁴¹ Accurate and timely reporting and preventing incomplete, vague, or boilerplate language in use-of-force reports is critical to misconduct investigations.
 - c. Officers who fail to report uses of force, or who falsify reports, should be disciplined (up to and including termination of employment).⁴²
 - d. Publicly release information about serious and lethal uses of force as soon as possible. Departments should release information soon after officer-involved shootings or other serious use-of-force incidents occur and should regularly update the public as new information becomes available.⁴³ The Las Vegas Metropolitan Police Department, for example, releases the name, rank, tenure, and age of the involved officer to the public within 48 hours and conducts a media briefing within 72 hours.⁴⁴
 - e. Make use-of-force policies publicly available. Many departments already implement publicly accessible policies and systems.⁴⁵
3. Require the collection of data about police stops and arrests by race of suspect. Data about racial profiling is woefully incomplete.⁴⁶ To effectively address racial profiling, police agencies must collect data about all police stops, including the race of the driver and the police officer

⁴⁰ See Sinyangwe, *supra* note 19, at 2-3 (finding that a policy requiring officers to report both uses of force and threats and attempted uses of force led to a 25% reduction in the number of police-involved killings per population).

⁴¹ Baltimore Consent Decree, *supra* note 27, at ¶ 173 (requiring a detailed narrative that includes a specific description of the acts that led to the use of force and the force options that were available to the officers).

⁴² *Id.* at ¶ 138; see also Consent Decree, U.S. v. City of Ferguson, No. 4:16-cv-000180-CDP (E.D. Mo. Mar. 17, 2016) at <http://www.moed.uscourts.gov/sites/default/files/mdl/16-0180/0012-02.pdf>.

⁴³ PERF GUIDING PRINCIPLES ON USE OF FORCE, *supra* note 15, at 52.

⁴⁴ See Las Vegas Metro Use of Force Policy, *supra* note 16, at 33; Interdepartmental Correspondence from Inspector Gen., L.A. Police Comm'n, to Honorable Bd. of Police Comm'rs, Comparative Review of Selected Agency Policies, Investigations, and Training on the Use of Force: OIG Final Report 11 (Oct. 6, 2016) at http://www.lapdpolicecom.lacity.org/101116/BPC_16-0119A.pdf ("The LVMPD stands out among the selected agencies because, as soon as it is feasible, this agency posts a video statement about every incident on YouTube. Approximately 48 hours after an [officer-involved shooting] incident, the LVMPD releases the name, rank, tenure, and age of the involved officer. Then, following an internal briefing approximately 72 hours later, the Undersheriff conducts a comprehensive media briefing.").

⁴⁵ PERF GUIDING PRINCIPLES ON USE OF FORCE, *supra* note 15, at 52.

⁴⁶ Vignesh Ramachandran and Katie Kramon, *Are Traffic Stops Prone to Racial Bias?*, THE MARSHALL PROJECT, June 21, 2016 at <https://www.themarshallproject.org/2016/06/21/are-traffic-stops-prone-to-racial-bias#.wHLhHNqCA>.

conducting the stop.⁴⁷ This data should be published on at least a quarterly basis with an analysis of any racial disparities. A growing number of states are passing bills requiring data collection and reporting. For example, in 2012, Connecticut enacted legislation requiring state and local law enforcement agencies to standardize data collection of traffic stops, searches, and arrests.⁴⁸ And in 2015, Illinois and California expanded their data collection laws to include demographic information on pedestrian and traffic stops.⁴⁹ While the Minneapolis Open Data Portal encourages public access to data managed by the city (which includes data relating to law enforcement), some cities make it easier for members of the public to submit additional requests for data collection and reporting.⁵⁰

Accountability Measures

Only a tiny fraction of the officers that fatally shot someone while on duty have been prosecuted.⁵¹ In Minnesota, no police officer had been convicted out of 179 police-involved deaths in Minnesota since 2000 until Somali-American Officer Mohamed Noor was convicted of 3rd degree murder in 2017 (the victim, significantly, was white).⁵² It is believed to be the first time a Minnesota police officer has been convicted of murder for an on-duty shooting.⁵³ In Minnesota, only one other police officer has been charged in a fatal shooting in recent history – Jeronimo Yanez, a Latino officer, who was later acquitted of manslaughter in the 2016 death of Philando Castile.⁵⁴

Similarly, police officers nationwide rarely get charged in the deaths of those in their custody. Over the last several years, on average police have shot and killed between 900 and 1,000 people each year.⁵⁵ Yet between 2005 and 2015, only 54 officers were charged in connection with the thousands of fatal police shootings that occurred during this period.⁵⁶ Six of these officers were charged in federal civil

⁴⁷ See THE FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING AT 24 (2015) (hereafter “PRESIDENT OBAMA’S TASK FORCE ON 21ST CENTURY POLICING”) at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (“Law enforcement agencies should be encouraged to collect, maintain, and analyze demographic data on all detentions (stops, frisks, searches, summons, and arrests).”).

⁴⁸ Conn. Gen Stat. § 54-1m (2016).

⁴⁹ Cal. Gov’t Code § 12525.5 (2015); 625 Ill. Comp. Stat. 5/11- 212 (2015).

⁵⁰ City of Raleigh, Raleigh Open Data – Suggest a Data Set at <https://www.surveymonkey.com/r/752GR3P>.

⁵¹ Ben Cassleman, *It’s Incredibly Rare For A Grand Jury To Do What Ferguson’s Just Did*, DATALAB, November 24, 2014 at <http://fivethirtyeight.com/datalab/ferguson-michael-brown-indictment-darren-wilson/>.

⁵² Rachel Cohen, *After a Black Cop was convicted of killing a white woman, Minnesota activists say focus should be police reform*, THE INTERCEPT, May 2, 2019 AT <https://theintercept.com/2019/05/02/minnesota-police-convicted-justine-damond/>.

⁵³ Amy Forliti, *Conviction for Minneapolis cop prompts questions about race*, ASSOCIATED PRESS, May 1, 2019 at <https://apnews.com/f87950f2f05243fbaa7a93bb1f826f1a>.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Kimblerly Kindy and Kimbriell Kelly, *54 Police Officers Have Faced Criminal Charges for Fatally Shooting Someone While on Duty in the past Decade*, WASHINGTON POST, April 11, 2015 at <http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/>.

rights prosecutions; the rest were charged in state court.⁵⁷ In 20% of the state and federal cases, prosecutors alleged that officers either planted or destroyed evidence to cover up wrongdoing.⁵⁸ By the end of 2015, 19 of the officers who had been charged had cases still pending. Of the other 35, 21 were acquitted, or the charges against them were dropped.⁵⁹

These disparities are the results of continuing gaps that exist when it comes to holding police officers and their departments accountable for wrongdoing.⁶⁰ First, and most importantly, there is a need to hold police officers accountable for the unjustified use of deadly force. Police officers are afforded extraordinary powers not only to deprive individuals of their liberties, but, in extreme circumstances, to deprive them of their lives. As we saw with the murder of George Floyd on May 25th, when these powers are abused, they lead to tragic consequences.

But there is also the need to hold police officers accountable for other misconduct. Community distrust can be traced to the perception of “a cycle of impunity, by which the reluctance of local government to prosecute bad cops empowers future misconduct and drives communities to regard the police as adversaries instead of protectors.”⁶¹ These police behaviors include less lethal forms of brutality, discriminatory enforcement against people of color, and lack of political transparency and accountability.⁶²

1. Appoint an independent prosecutor, not the local county attorney, to investigate all police killings of citizens. As the former Deputy Inspector General for the County of Los Angeles put it, “To prevent further erosion of public trust, state legislatures should move the investigation and prosecution of police-involved deaths to independent agencies.”⁶³ Since most prosecutions rely on maintaining the credibility of the police, when the on-duty actions of officers are under investigation, “prosecutors face ‘an impossible conflict of interest between their desire to maintain working relationships and their duty to investigate and prosecute police brutality.’”⁶⁴ This could be done either by appointing a Special Prosecutor to investigate each police shooting or delegating the investigation to the State Attorney General.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1843-49 (2015) (noting that police agencies are not subject to the same rules of transparency as other executive agencies); Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1117 (2000) (criticizing police departments' “undemocratic opaqueness”).

⁶¹ John V. Jacobi, *Prosecuting Police Misconduct*, 2000 WISCONSIN LAW REVIEW 789, 879 (quoting Alexa P. Freeman, *Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality*, 47 HASTINGS LAW JOURNAL 677, 719 (1996)).

⁶² Nirej Sekhon, *Police and the Limit of Law*, 119 COLUMBIA LAW REVIEW 1711, 1712-13 (2019).

⁶³ Walter Katz, *Enhancing Accountability and Trust with Independent Investigations of Police Lethal Force*, 128 HARVARD LAW REVIEW FORUM 235, 241 (2015).

⁶⁴ Alexa P. Freeman, *Unscheduled Departures: The Circumvention of Just Sentencing for Police Brutality*, 47 HASTINGS L.J. 677, 719 (1996).

2. Ensure that community-based civilian review boards and independent monitors can provide oversight and discipline police officers.⁶⁵ Civilians and not police personnel should have the power to investigate and make findings on police officer wrongdoing. Police should not be policing themselves.⁶⁶ Civilian oversight also furthers democratic principles by allowing civilians to have more control over their police departments.⁶⁷ As President Obama's 2015 Task Force on 21st Century Policing found, "Some form of civilian oversight of law enforcement is important in order to strengthen trust with the community."⁶⁸
 - a. Subpoena power. The power to compel both law enforcement and civilian witnesses to provide information is essential to the investigatory process.⁶⁹ This should include potential penalties for noncompliance up to and including dismissal of officers and civil fines for departments.
 - b. Sufficient resources, including appropriate expertise, adequate staff and funding, and clearly defined roles.⁷⁰
 - c. Independent power to recommend and impose discipline on officers who are found to have violated policy or the law.⁷¹

⁶⁵ Sharon R. Fairley, *Survey Says?: U.S. Cities Double Down on Civilian Oversight of Police Despite Challenges and Controversy*, 2020 CARDOZO L. REV. DE NOVO 1 (survey of the civilian oversight organizations in the one hundred most populous U.S. cities.).

⁶⁶ Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature*, VERA INSTITUTE JUSTICE 2 (May 5-8, 2002) at http://vera.org/sites/default/files/resources/downloads/Civilian_oversight.pdf.

⁶⁷ Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON REVIEW 1033, 1039 (2016).

⁶⁸ PRESIDENT OBAMA'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 47, at 26.

⁶⁹ Nathan Witkin, *The Police-Community Partnership: Civilian Oversight as an Evaluation Tool for Community Policing*, 18 SCHOLAR 181, 215 (2016) (noting that subpoena power is a way to overcome both apathy and resistance on the part of witnesses).

⁷⁰ D.C. Office of Police Complaints, About Office of Police Complaints, <https://policecomplaints.dc.gov/page/about-office-police-complaints> (the D.C. OPC has been staffed with personnel who receive and investigate public complaints regarding key areas of misconduct, including harassment, inappropriate language or conduct, retaliation, unnecessary or excessive force, discrimination, and officers' failure to identify themselves during interactions).

⁷¹ On March 16, 2016, the Newark Municipal Council passed legislation creating one of the nation's strongest police civilian review boards. David Porter, *Newark OKs Strong Police Review Board; Union Vows Fight*, ASSOCIATED PRESS, Mar. 16, 2016, at <http://bigstory.ap.org/article/a4867d7361a24653ab5a3bc13e727d2a/newark-ok-strong-police-review-board-union-vows-fight>; see generally City of Newark, N.J., Ordinance Amending Title II, Chapter 2, Office of the Mayor and Agencies of the Revised General Ordinances of the City of Newark, New Jersey 2000, as Amended and Supplemented, by Creating and Establishing a Civilian Complaint Review Board 16-0276 (Mar. 16, 2016) at <https://newark.legistar.com/LegislationDetail.aspx?ID=2573481&GUID=13232B4A-53F9-4E99-8440-8FE11FB761B2&Options=&Search=&FullText=1>; but see New Jersey Press Release, April 27, 2020, Oral Argument in New Jersey Supreme Court Will Decide on Powers of Newark's Civilian Complaint Review Board at <https://www.insidernj.com/press-release/oral-argument-new-jersey-supreme-court-will-decide-powers-newarks-civilian-complaint-review-board/>.

3. Establish early intervention systems (“EIS”) or other forms of early warning systems to track officers who appear to exhibit a pattern of repeated problematic behavior such as a higher than average rate of citizen complaints or uses of force.⁷²
 - a. EIS policies should be designed to ensure administrative intervention “before serious problems arise.”⁷³
 - b. Departments should also take into account whether the force applied equals the resistance encountered, thus identifying and enrolling those officers who use excessive force, albeit infrequently, into early intervention programs.⁷⁴
 - c. Use EIS to assign risk scores to police officers and then use those risk scores as a filter when dispatching officers to certain neighborhoods, such as not dispatching a “hot” officer to a high intensity incident in a high-risk neighborhood.⁷⁵
 - d. Provide for community input on EIS criteria and the ability for community members to submit their video and other evidence.⁷⁶
4. Body worn camera footage can play a valuable role in policing by providing direct evidence of police-community interactions, if the policy is properly structured. Some studies suggest that body cams have contributed to improved police behavior. In Oakland, as part of a broader consent decree,⁷⁷ use of body cameras resulted in more than 70% decline in uses of force and a similarly large decline in civilian complaints over the seven-year period (2008 to 2015).⁷⁸

⁷² See, e.g., In re Cincinnati Policing, C-1-99-317, 2002 U.S. Dist. LEXIS 15928 (S.D. Ohio 2002); Memorandum of Agreement between the U.S. Dep’t of Justice and the City of Cincinnati, Ohio and the Cincinnati Police Dep’t (Apr. 12, 2002) at <http://www.usdoj.gov/crt/split/Cincmoafinal.php>. at Part VII; Gurbir S. Grewal, State of N.J. Office of the Att’y Gen., Attorney General Law Enforcement Directive 2018-3 Statewide Mandatory Early Warning Systems (Mar. 20, 2018) at <https://www.nj.gov/lps/dcj/agguide/directives/ag-directive-2018-3.pdf>; see generally Samuel Walker & Morgan Macdonald, *An Alternative Remedy for Policy Misconduct: A Model State “Pattern or Practice” Statute*, 19 GEORGE MASON UNIVERSITY CIVIL RIGHTS LAW JOURNAL 479, 508 (2009) (“EIS have emerged in recent years as one of the most important new management tools for monitoring officer performance.”).

⁷³ Debra Livingston, *Police Reform and the Department of Justice: An Essay on Accountability*, 2 BUFFALO CRIMINAL LAW REVIEW 815, 846-48 (1999), available at [http://wings.buffalo.edu/law/bcl/bcl/articles/2\(2\)/livingston.pdf](http://wings.buffalo.edu/law/bcl/bcl/articles/2(2)/livingston.pdf).

⁷⁴ Thomas D. Bazley, et al., *Early Intervention Program Criteria: Evaluating Officer Use of Force*, 26 JUSTICE QUARTERLY 107 (March 2009) at <https://www.tandfonline.com/doi/pdf/10.1080/0741882080198974>.

⁷⁵ Samuel Carton et al., *Identifying Police Officers at Risk of Adverse Events*, 22nd ACM SIGKDD Conference on Knowledge Discovery and Data Mining (2016) at <https://www.kdd.org/kdd2016/papers/files/adf0832-cartonAemb.pdf>.

⁷⁶ Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. DAVIS LAW REVIEW 897, 898 (2017) (“recordings by community members also can help supplement the gross under-inclusiveness of just relying on formally filed complaints”).

⁷⁷ See generally Settlement Agreement Re: Pattern and Practice Claims, *Allen v. City of Oakland*, COO-4599 TEH (JL) (N.D. Cal. Dec. 2008) (requiring the department to implement any procedures that would increase officer accountability).

⁷⁸ Mike Blasky, *Oakland Police Becoming Example for Departments Seeking to Reform*, MERCURY NEWS, May 9, 2015 at <http://www.mercurynews.com/2015/05/09/oakland-police-becoming-example-for-departments-seeking-to-reform/>.

- a. Require community input whenever a city or town institutes a body camera policy or changes a body camera policy.⁷⁹
- b. Departments should require officers to record all encounters with safeguards to protect privacy and preserve community relationships. This approach requires officers to inform individuals that they are being recorded if possible.⁸⁰
- c. Department policy should prohibit officers from viewing footage before filing a report, providing a statement, or being interviewed about an officer-involved shooting, death in custody, criminal matter, or incident in which they have been accused of misconduct.⁸¹
- d. Require *Miranda*-style warning so that suspects know that they do not have to make a statement until after viewing and hearing the body camera footage.
- e. Upon entering private property, officers must request permission for use of body worn cameras in any non-criminal investigatory setting, such as accompanying an ambulance or other first responders.

Structural Reform

1. Reform Minnesota Board of Peace Officers Standards and Training.
 - a. Increase the number of members from the general public to provide a better ratio of members of the public to law enforcement.
 - b. The diversity of the board should be ensured by including similar language as to what is currently included to ensure geography diversity (“In making appointments the governor shall strive to achieve representation from among the geographic areas of the state.”). A similar requirement for representative diversity should be added.⁸²
 - c. The Board of Peace Officer Standards and Training should report to the Commissioner of Public Safety, not the Governor.
 - d. Community member participants on the Board of Peace Officer Standards and Training should have expertise and experience in this issue.

⁷⁹ See Am. Civ. Liberties Union, *Community Control Over Police Surveillance (CCOPS) Model Bill* (Oct. 2018) at <https://www.aclu.org/other/community-control-over-police-surveillance-ccops-model-bill>.

⁸⁰ See e.g., Baltimore Consent Decree, *supra* note 27, at ¶ 271 (requiring Baltimore police officers to inform individuals “that they are being recorded unless doing so would be unsafe, impractical, or impossible.”).

⁸¹ Oakland Police, Department General Order I-15.1 Portable Video Management System 3 (eff. July, 16, 2015) at <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak054254.pdf>; see also Joel M. Schumm, Nat’l Ass’n of Criminal Def. Lawyers, *Policing Body Cameras: Policies and Procedures to Safeguard the Rights of the Accused* 24-25 (2017).

⁸² Minnesota Statute 626.841.

- e. All members of the Board of Peace Officer Standards and Training should complete certified cultural proficiency training at least every two years and before beginning their tenure on the board.⁸³
 - f. Minnesota should enact a strong decertification law that takes away the ability of unfit officers to continue in law enforcement. States have broad authority to dictate which behaviors can be punished through decertification given the power granted to peace officers to arrest, search, and use deadly force.⁸⁴ One potential solution to this problem is to prevent officers with demonstrable records of misconduct from being hired in the first place through some sort of state-wide decertification index.⁸⁵
2. Demilitarization of the police force. Police departments should divest themselves of military equipment and stop using tanks, armored trucks, M-16s, and other similar hardware to protect and serve.⁸⁶ Not surprisingly, evidence suggests that this type of militarized policing heightens the risk of violent conflict.⁸⁷ Demilitarization, on the other hand, would not just better protect citizens from police violence, it also promotes officer safety and overall community well-being.⁸⁸
 3. Smaller, less serious crimes should be referred to other agencies, not the police. Instead of calling the police for a non-life-threatening mental health crisis or drug addiction, social workers or other qualified professionals should be contacted instead. Law enforcement should not be the primary responder to mental health crises, and there should never be a police-only response to mental health crisis calls. Instead, police departments should utilize Crisis Intervention Teams⁸⁹ which reduce the use of force in encounters with people in mental

⁸³ PRESIDENT OBAMA'S TASK FORCE ON 21ST CENTURY POLICING, *supra* note 47, at 58 ("Law enforcement agencies should implement ongoing, top down training for all officers in cultural diversity and related topics that can build trust and legitimacy in diverse communities. This should be accomplished with the assistance of advocacy groups that represent the viewpoints of communities that have traditionally had adversarial relationships with law enforcement.").

⁸⁴ Utah Rev. Stat. 53-6-211(1)(f)(2012) (permitting decertification if the peace officer engages in sexual conduct while on duty); N.D. Cent. Code § 12-63-12(1)(b) (2012) (permitting decertification for the use of unjustified deadly force in the performance of duties as a peace officer); Conn. Gen. Stat. § 7-294d(c)(2)(H) (2011) (permitting decertification for committing perjury).

⁸⁵ MINN. ADVISORY COMMITTEE TO U.S. COMMISSION ON CIVIL RIGHTS, *supra* note 9, at 31.

⁸⁶ Arthur Rizer & Emily Mooney, *The Evolution of Modern Use-of-Force Policies and the Need for Professionalism in Policing*, 21 FEDERALIST SOC'Y REV. 114, 125 (2020) ("Civilian protests should not be met with armored trucks and M-16s, nor should tanks be features of routine surveillance. It is essential that the line between police and soldier stay intact and that community members do not feel like they are living in a war zone.").

⁸⁷ See, e.g., Am. Civ. Liberties Union, *War Comes Home: The Excessive Militarization Of American Police*, 2 (2014) at <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police> ("[T]he use of hyper-aggressive tools and tactics results in tragedy for civilians and police officers, escalates the risk of needless violence, destroys property, and undermines individual liberties.").

⁸⁸ See Casey Delehanty et al., *Militarization and Police Violence: the Case of the 1033 Program*, RESEARCH AND POLITICS 6 (2017) at <https://journals.sagepub.com/doi/pdf/10.1177/2053168017712885> (concluding that police departments that received military gear were more likely to kill people and that "demilitarization may secure overall community safety").

⁸⁹ Univ. of Memphis CIT Ctr., *The CIT Program: National Model*, <http://www.cit.memphis.edu/overview.php> (describing the "Memphis Model" for pre-arrest jail diversion for those in a mental illness crisis); see also Liza Lucas, *Changing the Way Police*

health crises.⁹⁰ Departments should also integrate deflection programs and other models of harm-reduction policing for people with substance use disorders.⁹¹

4. Mandatory professional liability insurance for all police officers. Like doctors, lawyers, and professional drivers, police officers are currently subject to civil liability for their actions at work, but unlike these other professions, police officers are not required to carry individual professional liability insurance.⁹² A ballot initiative in 2016 to introduce mandatory professional liability insurance for all police officers in Minneapolis failed because it was contradictory to state law.⁹³ New legislation could fix that problem and institute a market-based accountability system that is already effectively utilized by other professions.⁹⁴

About the NAACP

The NAACP is the nation's oldest, largest, and most widely recognized grassroots-based civil rights organization. Its more than half-million members and supporters throughout the United States and the world are dedicated advocates for civil rights in their communities through organizing and litigation. The NAACP Minnesota - Dakotas State Conference is the regional association of NAACP branches located in Minnesota and North and South Dakota. The Minnesota branches are located in St. Paul, Minneapolis, Duluth, Rochester, and St. Cloud and meet quarterly.

Respond to Mental Illness, CNN, Sept. 28, 2016 at <http://www.cnn.com/2015/07/06/health/police-mental-health-training/index.html> ("Traditional training teaches police to control situations by demanding compliance, and the unpredictable nature of a person with a psychiatric condition can be misinterpreted as a threat and quickly escalate to violence. CIT training is meant to prevent that.").

⁹⁰ Doris A. Fuller et al., *Treatment Advocacy Ctr., Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters* (Dec. 2015) at <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>.

⁹¹ Caitlin Schmidt, *New Tucson Police Program Will Refer Opioid Addicts to Treatment, Not Jail*, ARIZ. DAILY STAR, June 30, 2018 at https://tucson.com/news/local/new-tucson-police-program-will-refer-opioid-addicts-to-treatment/article_01b5576b-b401-5a2f-9c1a-8d8efd8a9a0d.html (describing the Tucson program).

⁹² Deborah Ramirez, et al., *Policing the Police: Could Mandatory Professional Liability Insurance for Officers Provide a New Accountability Model?*, 45 AMERICAN JOURNAL OF CRIMINAL LAW 407, 436 (2019).

⁹³ *Bicking v. Minneapolis*, 891 N.W.2d 304, 307 (Minn. 2017).

⁹⁴ Noel Otu, *The Police Service And Liability Insurance: Responsible Policing*, 8 INTERNATIONAL JOURNAL OF POLICE SCIENCE & MANAGEMENT 294, 294-315 (2006); *see generally* John Rappaport, *How Private Insurers Regulate Public Police*, 130 HARVARD LAW REVIEW 1539 (2017); Joanna Schwartz, *How Governments Pay: Lawsuits, Budgets, And Police Reform*, 63 U.C.L.A. LAW REVIEW 1144 (2016); Joanna Schwartz, *Police Indemnification*, 89 N.Y.U. LAW REVIEW 885, 912-13 (2014).