

To: Senate Judiciary Committee
From: James Lyall, Executive Director ACLU of Vermont
Re: S.219
Date: 6-17-2020

Thank you for inviting us to testify on S.219. We are in a historic moment, and we appreciate this committee's work to respond rapidly. S.219 contains multiple provisions that we support and have championed, in some cases for years, and generally facing the opposition of law enforcement. But while we recognize the committee is operating on a very tight timeframe, we urge you to make some critically important changes—in particular, with respect to body cameras, use of force standards, and data collection, as discussed below.



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The police murder of George Floyd in Minneapolis, another in a long line of police killings of Black men and women across the country, and the mass brutality exhibited by police officers in response to nationwide protests have laid bare the urgent need to meaningfully curtail police power, and combat systemic racism and white supremacy in this country, including here in Vermont.

As you know, in Vermont today, Black motorists are still [stopped and searched at disproportionate rates](#), our prisons have some of the [worst racial disparities in the country](#), [images of police brutality appear regularly](#) on [video recordings](#), and the number of police killings is [steadily increasing](#).

For these reasons, we must underscore the point that S.219, though it may represent important progress, will not be nearly enough. Even with the changes we are urging, it will still not be enough—far more remains to be done to respond to this moment and reimagine policing in this state. To be effective, more of this urgent work must be led and articulated not by law enforcement but by other experts, particularly impacted communities and individuals whose voices are not given the same privileged position in so many of our institutions—our courts, our media, and our legislatures. And that is a large part of why we are where we are today.

S.219

S.219 contains several positive and long overdue reforms to increase police accountability in Vermont. This testimony focuses on three areas where improvements are needed.

- 1) **Body Cameras:** The ACLU of Vermont opposes the use of police body cameras unless they are accompanied by robust, appropriate, and enforceable policies governing their use. Promulgation of those policies must not be left to law enforcement, which often opposes best practices, particularly those governing transparency.

S.219 currently lacks adequate provisions regulating police use of body cameras. The ACLU has extensive national and local expertise in this area, and submitted with this testimony is a copy of the ACLU's police

body camera model legislation, as well as a shorter Briefing Paper from 2017. We urge you to incorporate these or substantially similar policies in S.219, including but not limited to the following:

-To protect privacy and ensure proper use, video and audio recording functions of the body camera must be activated when a law enforcement officer is responding to a call for service or at the initiation of another law enforcement encounter. The body camera must not be deactivated until the encounter has fully concluded. There must be protections for victims, tipsters, and sensitive locations.

-Constitutional rights protections: Body cameras must not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, and must not be equipped with or subjected to any real time facial recognition technologies.

-Public access: All footage of an interaction or event captured by a body camera, if identified with reasonable specificity and requested by a member of the public, must be provided to the person or entity making the request in accordance with the Public Records Act.

No pre-statement review: No law enforcement officer should review or receive an accounting of any footage of a use of force incident prior to completing any required initial reports, statements, and interviews regarding the recorded event, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

Consequences for failure to comply with these policies, including disciplinary action, inadmissibility as evidence, presumption of innocence for defendants who reasonably assert exculpatory evidence was destroyed or not captured, etc.

This is a complex topic and so at a minimum, we would encourage the creation of some mechanism to adopt model body camera policies as soon as possible and before body cameras are deployed—again, providing that legislators and not law enforcement officials are setting and reviewing those policies.

Without those protections, police use of body cameras will earn public distrust and fail in their purpose, as a potential tool of police accountability.

- 2) **Use of Force**: While we support the creation of a statewide use of force standard, we encourage you to strengthen it. This standard, as you know, is based on a California law that was watered down to gain the support of law enforcement. We urge you to look to the original language for a



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stronger policy to reverse the continuing increase in fatal use of force incidents in Vermont year after year. We also suggest the same standard should apply to all use of force, not just deadly force.

- 3) **Data Collection:** We would encourage that police data collection not be limited to traffic stops, which is only one aspect of law enforcement activity and not representative of the various—and often biased—interactions that police have with the public. We should be collecting data on all police stops.

Lastly, we recommend additional language to reiterate that law enforcement agencies must comply with public records requests relating to the data collected. We have heard that multiple Vermont agencies have claimed they do not need to comply with the Public Records Act because the data is provided to Crime Research Group. That would be a false claim that undermines transparency and accountability and should be corrected.

Finally, for all the progress this bill represents, we must draw attention to the need for more transformative approaches to public health, safety, and well-being than are included in S.219, but which can and must be addressed in the very near future. Some of those approaches are referenced in the testimony we sent to the Senate Judiciary and Government Operations committees last week. We will have additional, detailed recommendations and look forward to making further contributions to these efforts.

Conclusion

For many, the events of recent weeks have called into question the credibility and legitimacy of modern policing in its present form, or at least, the ability of that institution to reform itself or to dictate the terms of what real change looks like. Despite decades of work to curb police violence and address systemic racism, Vermonters and millions of other Americans are now insisting on bold, new approaches, **with an emphasis on fundamentally reimagining the role of law enforcement in our society and reprioritizing investments in programs and services that do more to ensure public health, safety, and well-being.**

That is the approach this legislature has embraced through Justice Reinvestment—investing more in people and communities by redirecting funds from a punitive, racist, deadly, and costly justice system. That logic applies equally to policing and the same approach is warranted.

The ACLU supports those efforts, in solidarity with the communities most directly impacted by over-policing, particularly Black and low-income communities—many of whom have been calling for this shift in priorities for years—and we look forward to working with legislators to advance additional, effective, and meaningful police reforms at the earliest opportunity. Thank you.



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