

To: House Government Operations and Judiciary Committees
From: James Lyall, Executive Director ACLU of Vermont
Re: S.219 & S.119
Date: 6-23-2020

Thank you for inviting the ACLU of Vermont to testify on S.219 and S.119. We are in a historic moment, and we appreciate this legislature's work to respond rapidly. These bills contain police reform measures that we have supported, in some cases for years, and with staunch opposition from law enforcement. But while we recognize the committee is operating on a very tight timeframe, we urge you to make some critically important changes, discussed below.



Most importantly, we encourage you to see this as the beginning of a broader movement to reimagine policing in this state and this country, and to expand upon these efforts when the legislature reconvenes. And we offer some initial recommendations for what that work might look like, also discussed below.

Lastly, we emphasize that in order for this urgent work to be effective, more of it **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 legislature. And that is a large part of why we are where we are today.

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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 law enforcement 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.

When it comes to the national crisis in policing, Vermont is not an outlier or an exception, and reforms long overdue must not be derailed by any suggestion that Vermont somehow stands apart from these national events. In this context, the notion that Vermont is exceptional is false just as it is offensive, particularly to Black and Brown community members who are disproportionately targeted by our police.

As you know, in Vermont today, Black motorists are [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](#).

This week, the ACLU reached a settlement in its racial profiling lawsuit against the town of Bennington, whose police department is described by the International Association of Chiefs of Police (IACP) as exhibiting a “warrior mentality” and badly out of step with best practices. In the IACP’s survey of local residents, 40% of respondents said they didn’t trust Bennington police, while 20% reported experiencing discrimination.

These are examples of the limits of traditional police reform efforts and the urgent need for Vermont’s legislature to sharply reduce the immense power of police, and to finally make law enforcement accountable to our communities.



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For these reasons, we again underscore the point that the bills under consideration today, though they may represent important progress, will not be nearly enough. Even with the changes we urge below, they will still not be enough—far more remains to be done to respond to this moment and reimagine policing in this state, and we look forward to supporting that work.

S.219

S.219 contains several positive reforms to increase police accountability in Vermont. The following section focuses on 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. Critically, the promulgation of those policies must not be left to law enforcement, which has often opposed best practices, including in drafting the Law Enforcement Advisory Board’s (LEAB’s) “model” policy in 2016 (discussed below).

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, **which currently lacks any adequate provisions regulating police body cameras**. They include but are not limited to the following:

-To protect privacy and ensure proper use, video and audio recording functions of the body camera must be activated only 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 or as requested by a victim or witness.



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-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 or other biometric 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, so at a minimum we would encourage the creation of some mechanism to ensure that adequate policies are in place as soon as possible and before body cameras are deployed by DPS. Ideally, Vermont would adopt a statewide body camera policy governing all Vermont law enforcement. Either way, **it is critical that legislators and not law enforcement officials are the ones setting and reviewing these policies.**

Such was not the case in the drafting of the Vermont Law Enforcement Advisory Board's (LEAB's) body camera policy. That policy was presented to the ACLU after the fact and the many concerns we raised—detailed in our letter to the LEAB, included with this testimony—were ignored. Without stronger protections, police use of body cameras will earn public distrust and fail in their purpose as a tool of police accountability.

Finally, any funding for body cameras should come from existing police budgets. In a time of budget crisis, it would be perverse to provide more taxpayer funding for police that could go to schools, housing, education, and healthcare, among other priorities.

- 2) **Use of Force:** This bill is an important first step to limiting police use of force, but could still do far more, such as banning no-knock raids or removing police from encounters with people in mental health crisis, to prevent situations in which officers may be more likely to use deadly force.
- 3) **Data Collection:** We also 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. For greater accountability, our state 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 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 misperception should be corrected.

S. 119

Law enforcement should not be using force, much less deadly force, unless absolutely necessary. While we support the creation of a statewide use-of-force standard, we encourage you to strengthen it. The standard articulated in S.119, 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 stronger policy to ensure force is in fact only used when necessary, in order to reverse the continuing increase in fatal use-of-force incidents in Vermont year after year. We also recommend that the same standard should apply to all use of force, not just deadly force.

Additional Reforms Needed to Curb Police Violence and Advance Racial Justice

For all the progress these two bills represent, there is a clear need for more transformative approaches to public health, safety, and well-being, and an end to police practices that disproportionately target people of color, people with disabilities, and low-income communities. In the weeks and months ahead, we urge you to take up the following additional recommendations:

1. **Invest in communities, divest from policing:** We all know that the safest communities don't have more police, they have more resources. Yet, when budget cuts are discussed, it is inevitably critical services and supports that are first to go. The extraordinary level of funding our country and our state currently devote to policing comes at the expense of other community needs, including health care, housing, education, and jobs—things that go



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further to creating safe and vibrant communities than over-policing. Cities and towns are revisiting budgets and reprioritizing spending with all of this in mind. The legislature should do the same.

2. Remove police from schools: Vermont must end the use of police in schools (so-called school resource officers or SROs) and instead provide funding for educational support services. Currently, very little is tracked or published about the use of SROs in Vermont, but we do know students of color are 2-3 times more likely than white students to be arrested at school and there are significant geographic disparities as well. Similar data from states around the country show that SROs contribute to the “school-to-prison pipeline” that disproportionately impacts students of color and students with disabilities.

3. End qualified and municipal immunity: Vermont law should not shield officers who abuse their power from meaningful accountability or the municipalities that indemnify them. Vermont can and should eliminate qualified immunity ([as Colorado recently did](#)) and take additional steps to disincentivize police misconduct and abuse.

4. Ban law enforcement possession and use of military-grade equipment and techniques, including no-knock raids, as well as abusive “crowd control techniques,” such as use of pepper spray, rubber bullets, tear gas, sound canons, and “kettling.” Police militarization is unnecessary and dangerous. Giving police military equipment also gives them a green light to use paramilitary tactics with civilians, and [that’s exactly what has happened](#), especially in already over-policed communities and in response to public demonstrations nationwide.

5. Ban law enforcement possession and use of other problematic technologies, including new surveillance technologies, advanced or autonomous weaponry, and predictive policing technologies.

6. Limit police discretion, including discretion to cite or arrest for petty, low-level offenses (including “disorderly conduct”), and prohibit consent-based searches. Vermont must do far more to prevent unnecessary police interactions which disproportionately impact people of color.

7. Increase transparency, including an end to confidentiality for officer disciplinary records.

8. Require civilian control over internal police disciplinary decisions and ban collective bargaining agreement provisions that limit oversight and accountability.



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9. **Require appointment of independent counsel** outside of State’s Attorneys and the Attorney General’s office to review and prosecute police excessive force and other misconduct.

10. **Increase legislative oversight** of police, state’s attorneys, courts, parole board, and Department of Corrections practices impacting racial disparities at the county and statewide levels through regular data collection, public production, and analysis.

This is by no means an exhaustive list and we look forward to providing additional information and recommendations.



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 criminal legal 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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