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Minnesota

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Dear Chair Lesch and Members of the House Judiciary and Civil Law Committee,

Right now, some Minnesotans are finally confronting a reality which many Black, Indigenous, and People of Color in this State have known their entire lives—our systems of policing are intrinsically rooted in racism and discrimination, dressed in the rhetoric of protecting the public while being expressed through state-sanctioned violence. For BIPOC Minnesotans, the consequences have been tragic, traumatic, and fatal. George Floyd, and many other victims of police violence, should still be alive.

The American Civil Liberties Union of Minnesota supports efforts to end police violence and advance the civil rights and liberties of Minnesotans by reducing criminalization of communities, promoting transparency and accountability of law enforcement, and reducing racial disparities. The Minnesota Police Accountability Package contains first steps in beginning those efforts. We urge this committee and all members of the Legislature to consider ways to build on and strengthen all the initial proposals laid out in this package. Minnesotans, especially those who have historically borne the brunt of police violence and brutality, need bold, unequivocal action to address the systemic roots of police violence, rather than the symptoms.

We are glad to see the inclusion of Restore the Vote in this package, as the ACLU-MN has been engaged in working to restore voting rights for formerly incarcerated individuals for a number of years. We are also pleased with the inclusion of language that takes a first step towards effective cash bail reform.

The Reforming Accountability Act **Prosecutorial Reform**

We support the movement towards independent prosecutorial authority in cases involving peace officer wrongdoing. However, we believe independence should be strengthened beyond the current bill language by 1) creating an independent branch or office within the Attorney General's office that is solely responsible for prosecutions of peace officers, or 2) creating a wholly independent office for prosecutions of peace officers.

We also believe accountability would be enhanced by expanding the prosecutorial authority of the Attorney General or other independent office to cases alleging offenses by peace officers that did not result in death. The importance of an independent prosecutor does not diminish with decreased severity of offenses; in fact, independent review of "minor" offenses could lead to earlier identification of officer behavior patterns, and could increase community confidence in the system.

In the alternative, we urge deletion of the provision that allows the Attorney General to request county attorney appearance, and instead add a provision allowing county attorneys to initiate prosecution if the Attorney General does not do so within a set amount of time. Allowing the Attorney General to essentially return a case to the county attorney at his or her discretion defeats the principle of an independent prosecutorial authority. However, by the same token, county attorneys should not be barred from initiating prosecution if the Attorney General does not act. We believe an automatic trigger for allowing county attorney action is more in line with the underlying principle of this proposal.

Use of Force Reform

The ACLU-MN is glad to see reconsideration of the law governing use of deadly force by law enforcement. We support the move toward narrowing the circumstances in which a peace officer is authorized to use deadly force. However, we believe this bill should be stricter, limiting use of deadly force by a peace officer only to circumstances where it is necessary to protect the officer or another from imminent death or great bodily harm, and where all other measures have been exhausted. Use of deadly force should be an absolute last resort, rather than a preemptive action against a potential future threat.

Additionally, standards such as “reasonably believes” and “totality of circumstances” still provide avenues for implicit bias and facially neutral, deeply discriminatory factors to be taken into account. Things such as neighborhood environment, crime rates, and school performance have been impacted by decades of discriminatory and disproportionately applied policies, yet they can be pointed to as “objective” measures of what a reasonable belief is, or what the “totality of the circumstances” are, in willful blindness to the bias baked into the underlying assumptions. Moreover, requiring exhaustion of all other measures alongside a heightened “imminent” threat standard preserves sanctity of life and proportionality as overarching principles governing law enforcement’s use of force.

In line with deadly force being the last resort, we urge the Legislature to adopt explicit prohibitions on the use of deadly force, clear definitions of what constitutes an imminent threat, and de-escalation requirements. We urge the Legislature to require peace officers to render aid once there is no longer an imminent threat. We also urge consideration of establishing evidentiary presumptions that place the burden on law enforcement to establish the necessity of use of deadly force in deadly force cases. And we urge establishment of reporting requirements for all instances of use of force to allow for transparency about how, when, and why law enforcement uses force, including deadly force, and whom force is used against.

The Reclaiming Community Oversight Act

Law Enforcement Oversight Council Reform

We are pleased to see language which amends MN Stat. 696.89, Subd. 17 and allows for more citizen-led investigation into allegations of peace officer misconduct. However, we urge the Legislature to go further than this language by empowering citizen oversight councils to enforce discipline that it has recommended. Time and again, law enforcement agencies have shown inability or unwillingness to effectively hold their own officers accountable for misconduct. Patterns of complaints indicate a higher risk for serious officer misconduct, yet discipline is

exceedingly rare.¹ It is time to give this responsibility and authority to the public whose safety purportedly rests with those law enforcement officers.

Data Collection and Regulatory Reform

The ACLU-MN supports the move towards increasing non-law enforcement membership on the POST Board. We also encourage reduction of the number of law enforcement members. Members of the public, especially people from communities most directly and detrimentally impacted by police violence must be given a central voice in policing and public safety. The current system is built on a presumption that law enforcement themselves are both capable and best positioned to train and license other law enforcement officers. Case after case has shown this approach to be unsuccessful. This failure has resulted in devastating and long-lasting trauma to Minnesota's communities of color, and it cannot be addressed without recognition and rectification of the central role law enforcement themselves have played in it. Prioritizing law enforcement voices on the POST Board has not worked. Rebalancing the POST Board membership is a step in the right direction of addressing historical trauma and centering impacted community voices in the discussion.

Duty to Intercede

We are pleased to see a proposal addressing law enforcement duty to intercede. An obligation to intervene in the event of unauthorized use of force was part of the Temporary Restraining Order stipulated to by the Minneapolis Police Department in the Department of Human Rights' recently initiated investigation². This principle should be extended statewide.

We urge strengthening of this proposal by mandating intervention if an officer reasonably believes another peace officer is using unauthorized force, and providing for narrowly tailored exceptions to this mandate.

Police Residency Reform

Finally the ACLU-MN appreciates the focus on repealing the ban on residency conditions for peace officers. Minneapolis Police officers overwhelmingly live outside the city³, and while place of residency certainly does not guarantee behavior, we believe that local entities, including those outside Minneapolis and St. Paul, should be permitted to prioritize the importance of officer residency in building trust with the communities that the officers work in.

In addition to the proposals discussed above, the Data Practices Modifications for Peace Officers, Warrior Training Prohibition, Ban on Choke Holds, Police Officer Critical Incident Review, and Community Led Public Safety are proposals that the ACLU-MN views as positive first steps toward a new vision of policing and public safety in Minnesota.

However, much more work remains to be done on these proposals as well as in other areas. Systemic racism and discrimination are thoroughly intertwined with policing and criminal

¹ <https://theconversation.com/police-officers-accused-of-brutal-violence-often-have-a-history-of-complaints-by-citizens-139709>

² <https://minnesota.cbslocal.com/wp-content/uploads/sites/15909630/2020/06/Stipulation-and-Order-Signed.pdf>

³ <https://theweek.com/articles/916897/1-important-fact-about-minneapolis-police-department>

justice—reimagining these systems and confronting and addressing the harms they have inflicted will not, and cannot, end with the proposals being heard today. The ACLU-MN is deeply committed to working with legislators and stakeholders to make sure Minnesota continues building on these initial steps.

Respectfully,

Julia Decker
Policy Director
ACLU-MN