



June 25, 2020

RE: Public Defender's Recommendations for Meaningful Statewide Police Reform

Dear Governor Newsom & California Lawmakers:

We write in our capacity as California Public Defenders to outline our hopes and expectations for meaningful statewide reforms to California's system of law enforcement. We understand that time is of the essence with impending legislative timelines and that in addition to the concerns related to law enforcement, there are many other urgent matters to tend to. We also believe that the issues of abusive policing and overreliance on law enforcement and incarceration touch every other issue currently faced by our state.

As Public Defenders, our job is to fight every day for Black liberation. Part of our mission is to affect transformative change to ensure the safety and wellbeing of all communities. Today's client is yesterday's victim. Public safety will not exist until everyone in our community has their basic needs met and ceases to be afraid of their own government. Our proposals for urgent change are based on what we've learned and seen by representing millions of systemically disenfranchised Californians – a disproportionate number of whom are people of color. We do not speak on behalf of the communities who have been most harmed by broken policing and mass incarceration. We speak with them.

We are grateful and proud to be of service in this painful moment of loss and fear – underscored by racism and violent abuse of power – yet accompanied by uprising and the deepest opportunity for change we've seen in our country in half a century. The murders of George Floyd, Breonna Taylor, and Elijah McClain at the hands of on-duty police officers, and that of Ahmaud Arbery by a former police officer and investigator with the local district attorney's office, have led to weeks of public demonstrations. Yet, the killings continue unabated, including the high profile case of an Atlanta officer's shooting killing of Rayshard Brooks. At these demonstrations, we have witnessed and participated in public displays of grief, outrage, and determination.

We have also witnessed and experienced ever escalating responses by law enforcement – and in their reactions, the illustration right before our eyes of exactly what we have been trying desperately to expose as a problem in our country urgently in need of a solution. Like some kind of collective alchemy: they were compelled to show the whole world, in real time, the exact things we showed up to demand they change.

We want something big: meaningful, radical change – radical meaning something that gets at the roots. We are done with expending time and energy on incremental reform for reform’s sake. This moment demands more and our communities deserve more than that. Big structural change is a massive challenge and a massive opportunity for us to work together to meet it.

In order to achieve this vision, we would like to see policy leaders take on the following:

Divestment from systems that criminalize and incarcerate people, and investment in community-based approaches to support health and wellbeing.

Invest in alternatives to policing: This includes community-based solutions that don’t involve law enforcement, such as: unarmed mediation and intervention teams, as well as investment in community-based organizations that help build and support healthy strong communities that are therefore, in turn, more resilient and able to resolve conflicts without police intervention.

Invest in education, economic opportunities & health care: Most harm occurs due to an unmet need. Instead of punishing this behavior at the back end after harm has occurred, we can be proactive about meeting needs at the front end and reducing the resulting harms.

Decriminalization: It is time to reconsider what kinds of behaviors our society has chosen to criminalize and why. Frequently, the answer is rooted in systematic oppression of poor communities, communities of color, and youth with the goal of consolidating power among the wealthy white few. The decriminalization of nonviolent acts would address enforcement tainted by this history. It would allow for a shifting of resources away from the criminal legal system and towards other solutions to resolve issues more properly characterized as public health and economic justice issues that don’t involve state violence through policing and incarceration.

Increase law enforcement transparency and accountability by removing procedural mechanisms that make it impossible to hold police accountable.

Decertification: California is one of only 5 states that does not have a system to decertify police officers for serious misconduct. Decertification is a process for the removal of the license or certificate of a police officer who has engaged in serious misconduct, thereby preventing the officer from serving with any law enforcement agency in that state. In the

absence of such a law, there is nothing to stop a department from hiring an obviously unfit police officer.

Eliminate Qualified Immunity: California should eliminate qualified immunity (the ability of police officers to argue they acted in good faith when they violated someone's constitutional rights) and give citizens a legal cause of action against officers when they engage in misconduct.

Confidentiality & Procedural Safeguards: California should remove provisions in the Police Officer Bill of Rights Act and increase disclosure requirements in Penal Code section 832.7 related to confidentiality of police misconduct records. Additionally, California should ensure Police Chiefs have the power to fire officers who have been engaged in misconduct, and that these firings adhere to the decertification section above.

End the outsized political power of police unions and other law enforcement political lobbies and stop accepting carve-out amendments to appease these forces.

Police Union Contracts: Police unions exercise their considerable political power to negotiate contracts with local governments that stifle efforts to improve police oversight. The power of police unions to insert unreasonable and overly protective terms into local government contracts is a primary obstacle in reforming police departments. California should limit the power of police unions to negotiate away citizens' rights and hold law enforcement accountable.

Increase limitations on lobbying and endorsements: Police unions and associations spend vast amounts of money to influence legislators and policy in order to insulate police departments from meaningful reform efforts. California should investigate mechanisms to limit the power of police unions and associations to fund campaigns for political positions directly related to the criminal justice system or directly responsible for police oversight.

Limit legislative carve outs based on political pressure from law enforcement: The political power of law enforcement has led to carve outs undercutting and limiting criminal justice reform efforts. Additionally, in every case involving a law enforcement victim, people are punished far more severely, regardless of the facts of the case. Not only that, but individuals incarcerated for crimes causing any harm to law enforcement are routinely denied parole and locked out of consideration for other extraordinary relief like commutation and resentencing. This exclusion occurs no matter how much evidence there is of their lack of public safety risk or personal change. It's time for us to think differently and reexamine the political influence of law enforcement and how it has led to the reckoning of this moment.

In outlining these recommendations, we also offer our assistance in drafting, passing and implementing them. We welcome conversations about these proposals and are ready to provide lawmakers with the necessary research and technical expertise to see them through. We are also looking further into the future and are focused not only on what we want to change about

contemporary law enforcement, but what we want to build instead. We invite everybody interested in creating a more whole, healthy, and just world to join us. Let's not squander the opportunity of this moment.

In Community & Justice,

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