



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

June 9, 2020

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RE: Written Testimony from Law Enforcement Leaders to the President's Commission on Law Enforcement and the Administration of Justice

Dear Attorney General Barr, Director Keith, and Principal Deputy AAG Sullivan:

On behalf of Law Enforcement Leaders to Reduce Crime & Incarceration, we thank you for the opportunity to submit written testimony to President Trump's Commission on Law Enforcement and the Administration of Justice. In this moment of deep social unrest following the police killing of George Floyd in Minneapolis and police involvement in many additional deaths, shootings, and violent incidents, the Commission's work is of great urgency.

We urge the Commission to seize this opportunity to advance public safety by recommending reforms that will (1) require law enforcement accountability, (2) help build trust and legitimacy in communities, and (3) encourage the implementation of innovative, nationwide strategies to reduce unnecessary incarceration by addressing the social factors that often lead to criminal justice system involvement.

Law Enforcement Leaders to Reduce Crime & Incarceration unites over 200 current and former police chiefs, federal and state chief prosecutors, attorneys general, and correctional officials from all

50 states. Relying on hundreds of years of collective experience, we believe unnecessary involvement with the criminal justice system is counterproductive, as it can create more crime, waste taxpayer dollars, and further divide law enforcement from the communities we seek to protect.

Please find our recent federal policy report attached to this testimony, entitled *Ensuring Justice & Public Safety: Federal Criminal Justice Priorities for 2020 and Beyond*, which we issued on April 15 of this year. Started long before the COVID-19 pandemic and current unrest, the report includes policy solutions in each of five areas, many of which touch directly upon the questions the Commission has been asked to address. Specifically, we offer recommendations on reducing unnecessary incarceration, increasing mental health and drug treatment, bolstering community policing, improving juvenile justice, and reducing recidivism.

In addition to the recommendations included in *Ensuring Justice & Public Safety*, we offer the following testimony in response to specific areas the Commission seeks to address.

I. Promoting Public Confidence and Respect for the Law and Law Enforcement Officers

A. Improvements in Policing and Accountability to Win and Maintain Community Trust

Public confidence and respect for the law and law enforcement officers must be earned.

The killing of George Floyd on May 25, 2020 at the hands of a police officer, and the apparent complicity of fellow officers in his death, were senseless and indefensible. This unnecessary use of lethal force underscores the urgent need for law enforcement reform to ensure that police practices respect the dignity, rights, and life of every person who comes into contact with police.¹

It is law enforcement's core responsibility to protect the safety of all people if we are to build trust and nurture police legitimacy in our communities. While no single law enforcement incident represents a whole agency, it is imperative in this moment of crisis that we acknowledge how police misconduct undermines hard-earned public trust.² Winning and maintaining that trust is essential to building healthy communities, and ensuring safety and justice for all. Moreover, the quest for racial justice is a core part of making America truer to its constitutional ideals — and improving law enforcement must be a central part of that effort.

It is simple: without the trust of our communities, law enforcement cannot effectively conduct criminal investigations and serve victims of crime.

The Commission should prioritize and incentivize police practices that encourage stronger relationships with communities and root out misconduct and unethical behavior. Law enforcement across the nation must normalize accountability, address racial disparities in the administration of criminal justice, and promote equal justice under the law.³ To do so, this Commission should promote transparency and accountability nationwide by recommending that federal grant monies and funding streams be tied to the adoption of improved policies for agencies that receive federal funds. For those agencies that do not receive federal grants or funding, the federal government should encourage local governments and municipalities to make changes at the local level.

First, local governments and municipalities should be encouraged or required (in the event they receive law enforcement funding or grant program funding) to reform police contracts and state laws that unduly protect officers who are subjected to internal discipline.⁴ Far too often, police disciplinary processes are slow and ineffectual, with decisions by police executives and chiefs subject to reversal or modification by arbitrators, civil service boards, and grievance panels.⁵ To increase transparency and accountability, reforms to police contracts and civil service protections are needed.

Additional specific policies the federal government can encourage to promote accountability and transparency include, but are not limited to, the establishment of a national database of all officers who have been terminated or who resigned due to misconduct; increased data collection and reporting regarding police use of force; and implementation of a nationwide standard that raises the threshold for the use of force.⁶

In addition, the Commission should recommend that federal, state, and local authorities work together to fully investigate allegations of police misconduct and prosecute appropriate cases when there is sufficient evidence, and that the Department of Justice engage in pattern or practice investigations of departments in the event of systematic abuses. Anything less fails to live up to the ideals of the Department of Justice and its solemn duty to “ensure fair and impartial administration of justice for all Americans.”⁷

B. Community Policing Incentives and Support Through COPS and Byrne-JAG

To build local trust and participate in effective community engagement, police departments need adequate and reliable funding. In an era of tightening state and city budgets, critical law enforcement strategies such as community policing initiatives are suffering cuts.

Community policing’s central feature is an emphasis on collaboration between the police and the community, who share joint responsibility to work towards public safety. Dating to approximately the 1970s, community policing refers to a broad range of strategies used by many departments to varying degrees, but when implemented effectively, its two core components remain community partnership and problem solving.⁸

However, the most recent Department of Justice survey, which is itself dated, found that 39 percent of participating police departments had cut back on community policing.⁹ In addition, many local governments across the country are contemplating budget cuts to police in the short term as communities recover from the pandemic. A recent survey conducted by the National League of Cities found that local governments predict budget cuts to police in nearly half of all cities of all sizes.¹⁰ In addition, local leaders and activists nationwide are including demands to defund the police as part of the current calls for reform, such as the cut of \$150 million to the Los Angeles Police Department.¹¹ Non-targeted police budget cuts that result in the deprioritization of problem-solving and community policing strategies will almost certainly harm, rather than help, as communities work to build and maintain trust in this time of crisis.

The Commission should recommend restoring targeted funding to the Office of Community Oriented Policing Services (COPS) and providing technical support and expertise to police departments so they may expand their community policing strategies. Such efforts should include

increased funding for the COPS Office's Collaborative Reform Initiative – Technical Assistance Center (CRI-TAC), which encourages collaborative reform processes at the local level at no cost.¹² The COPS Office is also uniquely situated to advance community policing by acting as an information clearinghouse. Renewing federal support for true community policing, where communities and the police work collaboratively in good faith to co-produce public safety, is an important step towards promoting community trust and respect for law enforcement.¹³

C. Implementation of Modern Policing Metrics

It is often said that what gets measured gets done. Traditional evaluations of police success have typically focused on a relatively narrow range of standard indicators: reductions in crime, clearance rates, response times, and enforcement productivity.¹⁴ Evaluation metrics with a narrow focus do not, however, adequately incentivize police departments to meet the myriad expectations of our communities, nor do they capture the deep complexity of modern policing.

Given the range of responsibilities undertaken by today's police departments, modern evaluation and management systems should be more comprehensive and based at least partly on community-oriented policing strategies, community service, and citizen engagement. More holistic management measures would enable departments to make more informed decisions about resource allocation and how to address each community's priorities.

The commission should advise the Office of the Justice Programs (OJP) and Bureau of Justice Assistance (BJA) to prioritize and promote the development of modern police management tools, including but not limited to the CompStat360 framework already being tested in certain jurisdictions, to help departments across the nation address their local concerns and priorities.¹⁵

Grants from the Edward Byrne Memorial Justice Assistance Grant Program (Byrne-JAG) and State and Local Law Enforcement Assistance funding through OJP could also be used to incentivize community policing by tying grants to modern community policing standards and metrics. In addition, OJP and BJA should be tasked with providing technical support, training, and assistance for the implementation of these more modern police management tools that encourage effective, community-oriented policing strategies.

II. Law Enforcement Challenges Associated with Mental Illness, Homelessness, Substance Abuse, and Other Social Factors that Influence Crime and Strain Criminal Justice Resources

Law enforcement cannot arrest and incarcerate its way out of public health, safety, and social crises.

With approximately two-thirds of individuals who are released from jail or prison being rearrested within three years, arrest and incarceration have proved largely unhelpful to reducing involvement in the criminal justice system.¹⁶ Addressing the underlying reasons people become justice-involved is critical to keeping our communities safe and reducing both incarceration and recidivism.

The federal government, working together with state governments, can help communities develop better responses to the challenges presented by mental illness, homelessness, substance abuse, and other social factors that influence crime and strain criminal justice system resources.

A. Addressing Mental Health & Drug Addiction

Individuals with mental illness or substance abuse problems interact with law enforcement at high rates. Estimates indicate that approximately 79 percent of those behind bars suffer from drug addiction, mental illness, or both.¹⁷ Law enforcement officers are not medical professionals, yet frequently respond first to incidents involving people in crisis — often when a family member, friend, or neighbor calls 911 to report an incident or that someone is in danger. When law enforcement responds, there are typically two options: make an arrest to defuse the situation or leave. Practically speaking, that often results in an arrest.

Different strategies can help. The Commission should promote the implementation and funding of strategies across our nation's criminal justice systems that divert people with mental illness and drug addiction away from arrest and jail.

1. Implementation of Diversionary Programs in the States

Once someone has been formally arrested, that person is likely to suffer myriad long-term collateral consequences from criminal justice system involvement. For many individuals, a public health response would serve better than a law enforcement response. In recent years, jurisdictions across the country have developed numerous strategies and programs to address this challenge. Some programs divert those struggling with mental illness or a substance abuse disorder away from the criminal justice system altogether, while others direct affected individuals to specialized programs within the court system.

Pre-arrest diversion programs allow law enforcement to offer treatment, rather than punishment, to those who need it. One successful example of such a program is the Crisis Response Center in Tucson, Arizona.¹⁸ This approach can help avoid the negative repercussions of an arrest while addressing the underlying causes for an individual's interaction with law enforcement.¹⁹

When pre-arrest diversion is unavailable or inappropriate for public safety reasons, diversionary options after arrest should be available for individuals suffering from mental health or substance abuse issues. Pretrial diversion programs are often initiated by prosecutors' offices, which evaluate an individual's eligibility for a specific program, and upon completion of the program, the prosecutor typically declines to charge a case or agrees to dismiss charges that have been filed.²⁰

To help diversionary programs develop and flourish, the Commission should recommend increased funding for states to provide local governments with improved tools to address the needs of individuals in crisis. Federal assistance and funding to design, implement, and study diversionary programs and practices would go a long way to ensuring these programs are effective at delivering appropriate treatment, reducing recidivism, and conserving law enforcement resources.

2. Community Treatment for Drug Addiction and Mental Health

The Commission should also recommend funding to states from the Substance Abuse and Mental Health Services Administration (SAMHSA) and other grant funding to incentivize states to create community treatment centers to help direct people away from arrest and jail. This strategy would not only better serve many who need help, it would also reduce utilization of costly law enforcement, legal, and emergency services. For individuals with drug addiction and mental health conditions, the lack of access to effective treatment clearly contributes to unnecessary justice involvement.

Local community restoration centers — such as those in San Antonio, Texas and one being developed in Middlesex County, Massachusetts — provide urgent psychiatric care, crisis stabilization and other related services in a less restrictive setting than hospitals or jails, and are sorely needed across the country.²¹ Such centers would provide individuals with needed treatment instead of jail and prison time. In addition, well-designed community-based programs not only help reduce recidivism rates, but also facilitate reductions in the need for emergency services, legal system costs, and overall criminal justice system involvement when compared to traditional methods of arrest and incarceration.²²

B. Improving Juvenile Justice

As discussed at greater length in *Ensuring Justice & Public Safety*, improving juvenile justice is critically important to addressing social factors that often contribute to criminal justice system involvement.

Estimates indicate that approximately 43,000 to 48,000 children were housed in juvenile detention facilities and other residential placements in 2017.²³ That same year, officials made approximately 800,000 juvenile arrests.²⁴ Evidence suggests that the vast majority of justice-involved children have been exposed to complex traumas in their lifetimes.²⁵ When children do not receive sufficient rehabilitative support to address their underlying traumas, justice system involvement often impedes their recovery and rehabilitation.²⁶ This puts youth at greater risk of school dropout, substance abuse disorders, and future offending, among other consequences, which undermines public safety by limiting their potential to thrive in adulthood.

To help disrupt these on-ramps to criminal justice system involvement, the Commission should recommend that the federal government take concrete steps to improve juvenile justice systems across the country. Notably, because there is a 94 percent participation rate in Juvenile Justice Delinquency Prevention Act (JJDP) grant programs among state, local and tribal juvenile justice systems, the federal government is uniquely positioned to lead efforts for national, lasting reform addressing some of the social factors that cause so many of America's children to become involved in the criminal justice system.²⁷

The Commission should recommend federal support for the implementation of state, local, and tribal juvenile justice systems designed for rehabilitation and treatment, informed by research on adolescent brain development and trauma.²⁸ The Commission should recommend that Congress provide incentives to all 50 states to raise the age of criminal responsibility, while eliminating the practice of automatically transferring youth to adult status without an initial review by a juvenile court.²⁹ The federal government should also support state efforts to design juvenile justice programs that promote diversion and rehabilitation in order to reduce reliance on juvenile incarceration, by

fully funding the Office of Juvenile Justice and Delinquency Prevention, JJDP A grants, and Juvenile Accountability Block Grants.

C. Improving & Expanding Recidivism Reduction

Although there are of course varying causes for recidivism and rearrest, many of those who seek to reenter society successfully are faced with seemingly insurmountable barriers, including but not limited to limitations on employment, student aid, public benefits, housing, and bars to occupational licensing. Addressing the social and economic factors that lead to our currently high recidivism rates is critically important to reducing future crime and unnecessary incarceration.³⁰

In order to support the successful reentry of incarcerated, justice-involved people into society, we must develop comprehensive reentry planning that starts on the first day a person is arrested. As discussed in *Ensuring Justice & Public Safety*, the Commission should support reentry planning and implementation by recommending policies that (1) improve education and vocational training in jails and prisons, including the restoration of Pell grants for all incarcerated people who qualify;³¹ (2) expand access to federal housing; (3) end the practice of terminating Medicaid for people in jail or prison, a policy change that is particularly important in light of the ongoing COVID-19 pandemic; and (4) provide relief from the collateral consequences of a conviction.

Helping people reenter society after jail or prison helps stop future crime, restore communities, and promote respect for the law and government, and ultimately, will save law enforcement resources. For these reasons, the Commission should recommend a robust strategy that helps people reenter society and stops the revolving prison door.

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Law enforcement, working alone, cannot make a community safe. Only by working with the community can police help address the myriad social problems that lead to criminal justice system involvement. To help close the gap, build stronger and healthier communities, and promote respect for law enforcement and government, we must adopt improved strategies for mental health services, drug rehabilitation, youth programming, and reentry support.

As communities across the country work to recover from the current unrest, while also attempting to contain the COVID-19 outbreak, it is more critical than ever that law enforcement redouble its efforts improve equity and public safety outcomes within the criminal justice system, and that we hold ourselves and each other to a higher standard. Proactive engagement with communities and continual reevaluation of law enforcement strategies are critical to improving our nation's safety and security, particularly for those who have received disparate treatment and inadequate enforcement of the law for too long.

In these fraught times, the Commission can help repair law enforcement's relationships with the communities it serves. We must all work for justice for underserved communities, and implement strategies that promote meaningful legitimacy in law enforcement from the ground up, not the top

down. We thank the President’s Commission on Law Enforcement and Administration of Justice for considering our recommendations and perspective.

Respectfully,



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¹ International Association of Chiefs of Police, “Statement from IACP President Steven R. Casstevens on Use-of-Force Incident in Minneapolis,” May 27, 2020, <https://www.theiacp.org/news/blog-post/statement-from-iACP-president-STEVEN-R-CASSTEVENS-on-use-of-force-incident-in-Minneapolis>.

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³ Law Enforcement Action Partnership, “Recommendations to Transform Policing,” June 3, 2020, <https://lawenforcementactionpartnership.org/national-policing-recommendations/>.

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