

“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder



**Public Comment from the
New Jersey Institute for Social Justice
on the Attorney General’s Revisions to
New Jersey’s Use of Force Guidelines**

July 31, 2020

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do social justice.

Attorney General Gurbir Grewal:

My name is Brooke Lewis, and I am the Trustee Social Justice Legal Advocacy Fellow at the New Jersey Institute for Social Justice (the “Institute”). I am writing to provide public comment on the Attorney General’s revisions to New Jersey’s Use of Force guidelines on behalf of the Institute.

The Institute is a legal advocacy organization that works to ensure that people of color live in a society that respects their humanity, provides equality of economic opportunity, empowers them to use their voice in the political process and protects equal justice.

The undeniable truth — that Black lives matter — is currently being tested everywhere in our country, particularly in the context of law enforcement killings of numerous Black people in states across the country, including right here in New Jersey.

The time for deep structural change is now.

Any police reform effort must center on the community’s voice so that new policies and practices directly address the safety needs of those communities. We take this approach in our role on the Monitoring Team overseeing reforms to the Newark Police Division under a federal consent decree, where, through community surveys, public meetings and ongoing community feedback, we ensure that community needs are at the heart of the reform process.

It is essential that even as we implement reforms in policing, we simultaneously rethink the entire institution of policing and work toward reducing its footprint in our communities, with a focus on what community members need to feel — and be — safe and protected. That includes investing in alternatives to policing that focus on demilitarization, the use of restorative justice, non-police first responder models and increased funding for community resources that will allow communities to develop their own methods to keep themselves safe outside of law enforcement intervention.

This moment, perhaps more than any other in recent history, reveals that America is sick with the virus of racism. We see it in the persistent disparities in wealth. In the persistent discrimination in mass incarceration. In the persistent attempts to suppress the vote. And in the persistent violence by police on Black bodies.

All of these things are true right here in New Jersey, where Black people face some of the worst racial disparities in America – including in our criminal justice system.

For example, racial disparities begin early in New Jersey’s criminal justice system, where a Black person is more than three times more likely to have police force used against them.¹

Black adults are 12 times more likely to be incarcerated than white adults.²

And, a Black child is 21 times more likely to be in prison in New Jersey than a white child³ – the highest youth incarceration disparity rate in America, even though Black and white kids commit most offenses at similar rates.⁴

To transform this unacceptable reality, and to make Black lives really matter in New Jersey, we urge the Attorney General to take the following five immediate steps.

First, New Jersey must reform its use of force practices by banning chokeholds. Currently pending in the legislature are two bills, A4284⁵ and S2617,⁶ that will make the use of chokeholds by law enforcement a first-degree crime punishable by up to 20 years in prison and/or up to a \$200,000 fine. Banning the use of chokeholds, without exception, and establishing criminal liability is a critical step in reforming our state’s use of force practices and holding law enforcement officers accountable.

Second, New Jersey should eliminate qualified immunity for law enforcement. Qualified immunity is a legal rule that provides immunity to officers who commit civil rights violations, unless those rights were “clearly established.”⁷ The rule has prevented countless victims of police brutality from obtaining damages from their assailant in court. Recently, Colorado passed a bill that eliminates the qualified immunity defense for police officers who violate the Colorado

¹ Stephen Stirling & S.P. Sullivan, *Hundreds of N.J. cops are using force at alarming rates. The state’s not tracking them. So we did.*, NJ.COM (Nov. 29, 2018), https://www.nj.com/news/2018/11/nj_police_use_of_force_punch_kick_pepper_spray_sho.html

² ASHLEY NELLIS, THE SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS (2016), <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>.

³ OJJDP, EASY ACCESS TO THE CENSUS OF JUVENILES IN RESIDENTIAL PLACEMENT: 1997-2017, RACE/ETHNICITY BY STATE 2017 (RATE PER 100,000 JUVENILES), https://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Race.asp?state=59&topic=State_Race&year=2017&percent=rate.

⁴ JOSHUA ROVNER, THE SENTENCING PROJECT, RACIAL DISPARITIES IN YOUTH COMMITMENTS AND ARRESTS 6 (2016), <https://www.sentencingproject.org/publications/racial-disparities-in-youth-commitments-and-arrests/>.

⁵ Assemb. B., No. 4284, Leg. 219th (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/A4500/4284_I1.HTM.

⁶ Senate B., No. 2617, Leg. 219th (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/S3000/2617_I1.PDF.

⁷ Harlow v. Fitzgerald, 457 U.S. 800, 818, (1982).

Constitution's Bill of Rights. In contrast, New Jersey is currently considering A306, which would codify the qualified immunity defense for first responders, including law enforcement officers, who forcibly enter a property to provide emergency services.⁸ Instead, New Jersey should follow in the footsteps of Colorado by eliminating the qualified immunity defense.

Third, New Jersey must safeguard the right to criticize and record police conduct. In 2017, the United States Court of Appeals for the Third Circuit ruled in *Fields v. Philadelphia*⁹ that a person's right to record police conduct receives First Amendment protection under the United States Constitution. As part of a federal consent decree, the Newark Police Division (NPD) drafted a new policy that provides specific procedures for how police officers must interact with recording bystanders to ensure the bystanders' constitutional rights are protected. The policy expressly prohibits officers from stopping, detaining or arresting people for recording police conduct; limits the exigent circumstances under which an officer may pursue a warrantless search and seizure of a recording device; and expressly prohibits officers from threatening force or arrest toward people who criticize police.¹⁰

A person's ability to record and criticize police conduct without fear of retaliation is critical to ensuring police accountability, as bystander recordings have proven to provide critical evidence in cases of police misconduct, including in the murder of George Floyd. Thus, New Jersey must create statewide standards for protecting the First Amendment right to record police conduct, modeled after the progressive safeguards outlined in NPD's policy.

Fourth, New Jersey must stop police militarization by discouraging local police departments from participating in the Department of Defense's 1033 program and increasing statewide oversight of the transfer of military equipment to local law enforcement agencies. The 1033 program allows the federal government to transfer surplus military equipment to local police departments. In recent years, many New Jersey police departments have received millions of dollars of military equipment from the 1033 program. For instance, as of 2018, Ocean County has acquired over \$28 million worth of military equipment, while Bergen County has acquired equipment valued at over \$24 million.¹¹ Since 2018, New Jersey has received a total \$11.8 million in equipment statewide.¹² While this equipment is transferred at little to no cost to municipalities,¹³ local police departments are still responsible for costs related to the maintenance and training necessary to keep and operate the equipment.¹⁴

⁸ Assemb. B., No. 306, 219th Leg. (N.J. 2020).

⁹ 862 F.3d 353 (2017).

¹⁰ NEWARK POLICE DIV., FIRST AMENDMENT RIGHT TO OBSERVE, OBJECT TO, AND RECORD POLICE ACTIVITY POLICY (2019), https://c3bb32f4-4b49-462c-abf8-5d2c1d510fe0.filesusr.com/ugd/582c35_d198ac4670cc41c2b075fccfeaa85245.pdf.

¹¹ *1033 Program Usage by County*, MAPPING POLICE MILITARIZATION PROJECT, <https://mpm-project.org/1033-program-usage-by-county/>.

¹² *N.J. Cops receive millions in surplus military gear. See what your town got.*, NJ.COM (July 6, 2020), <https://www.nj.com/crime/2020/07/nj-cops-receive-millions-in-surplus-military-gear-see-what-your-town-got.html>.

¹³ *Law Enforcement Support Organization (LESO)-1033 Program*, N.J. OFFICE OF EMERGENCY MGMT., <http://ready.nj.gov/programs/leso-1033-program.shtml> (last visited July 30, 2020, 1:27PM).

¹⁴ N.J.S.A. 40A:5-30.1, https://www.njleg.state.nj.us/2014/Bills/PL15/23_.PDF.

Police militarization undermines the public's trust and does not reduce violent crimes or increase officer safety.¹⁵ Instead of protecting officers and community members, the presence of military-grade equipment often escalates confrontations with residents and alienates police officers from the communities they serve. Unsurprisingly, these harms are disproportionately felt by Black communities, where research shows militarized police units are more likely to be deployed.¹⁶ Recognizing the harms of police militarization, there is already an effort at the federal level to end the 1033 program.¹⁷

Police militarization must stop.

As Senate Bill 1632 would require, the Attorney General's Office should direct the Office of Emergency Management to review the 1033 program, as well as increase statewide oversight and transparency regarding the transfer of military equipment to local departments.¹⁸

Fifth, New Jersey must redirect law enforcement funding toward developing a non-law enforcement first-response system to address mental health crises. Those living with an untreated, severe mental illness account for *at least* one in four of all fatal police interactions, making those with untreated, severe mental illness 16 times more likely to be killed during a police encounter.¹⁹ As the Treatment Advocacy Center, a national nonprofit organization dedicated to eliminating barriers to the successful treatment of severe mental illness, emphasized in its 2015 report, “[g]iven the prevalence of mental illness in police shootings, reducing encounters between on-duty law enforcement and individuals with the most severe psychiatric diseases may represent the single most immediate, practical strategy for reducing fatal police shootings in the United States.”²⁰

Here, in New Jersey, Maurice Gordon, an unarmed Black man experiencing mental health challenges, was recently fatally shot by a state trooper during a traffic stop.²¹ These tragic interactions only underscore the need for New Jersey to rethink its response to mental illness.

New Jersey has begun to recognize the importance of reforming law enforcement's response to mental illness by expanding the use of Crisis Intervention Teams (CIT), which provide law

¹⁵ Nsikan Akpan, *Police Militarization fails to protect officers and targets black communities, study finds*, PBSNEWS HOUR (Aug. 21, 2018, 12:40 PM), <https://www.pbs.org/newshour/science/police-militarization-fails-to-protect-officers-and-targets-black-communities-study-finds>.

¹⁶ *Id.*

¹⁷ Katelyn Burns, *Some senators want to stop police from getting military-grade equipment or weapons*, VOX (June 2, 2020, 1:20 PM), <https://www.vox.com/policy-and-politics/2020/6/2/21277981/senators-police-military-equipment-weapons>.

¹⁸ Senate B., No. 1632, 219th Leg. (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/S2000/1632_11.PDF.

¹⁹ DORIS A. FULLER ET AL., OVERLOOKED IN THE UNDERCOUNTED: THE ROLE OF MENTAL ILLNESS IN FATAL LAW ENFORCEMENT ENCOUNTERS, TREATMENT ADVOCACY CENTER 1 (2015), <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>.

²⁰ *Id.*

²¹ Rebecca Everret, *Fatal Shooting of unarmed man by cop during traffic stop raises questions about mental health training, communication*, NJ.COM (June 15, 2020), <https://www.nj.com/burlington/2020/06/fatal-shooting-of-unarmed-man-by-cop-during-traffic-stop-raises-questions-about-mental-health-training-communication.html>.

enforcement officers training on how to respond to individuals with a mental illness.²² In early June of this year, you and Governor Murphy announced your intention to explore our state's capacity for statewide CIT training by launching a pilot program in Atlantic City, Paterson, Trenton, Millville, and for the New Jersey State Troopers assigned in Trenton.²³ There is also a bill pending in the New Jersey Assembly, A4366, which would require all police departments in the state to receive CIT training.²⁴

Expanding CIT training is helpful, but not sufficient. New Jersey must also take a meaningful step toward limiting interactions between law enforcement and people with untreated, severe mental illness through the creation of a non-law enforcement first responder system. In Oregon, for example, the CAHOOTS program has for 31 years provided 24/7 crisis intervention in situations that would otherwise be handled by law enforcement.²⁵ The CAHOOTS program is run by the White Bird Clinic in Eugene, an agency that provides a continuum of care to the community and responds to medical and psychological crises. An emergency response team in the CAHOOTS program consists of a medic and a crisis worker, although police may accompany or respond in place of the CAHOOTS team if the caller reports violence or a crime in progress.²⁶

Similar to Oregon, New Jersey must develop non-law enforcement response teams to respond to mental and other health crises. In fact, the City of Newark has already begun to successfully address violence from a community-based, public health paradigm with the creation of the Newark Community Street Team. The Newark Community Street Team, among other things, hires and trains outreach workers to mediate conflicts that may result in violence.²⁷ The success of this program is an example of what is possible when New Jersey commits to expanding community-based, public health models to achieve public safety.

While we rightly focus on urgently reimagining policing and what Black communities need to feel protected and safe, we must also keep our eye on the larger picture — on the pressure that has built up from the widespread cracks of structural racism.

We must repair these cracks and build a new foundation if we are ever to become a New Jersey that lives up to its promise. A New Jersey where Black lives really matter.

Thank you.

²² Press Release, State of New Jersey, Governor Murphy and AG Grewal Announce Continued Progress and New Measures to Strengthen Police-Community Trust (June 2, 2020), <https://www.nj.gov/governor/news/news/562020/20200602a.shtml>.

²³ *Id.*

²⁴ Assemb. B., No. 4366, Leg. 219th (N.J. 2020), https://www.njleg.state.nj.us/2020/Bills/A4500/4366_11.HTM.

²⁵ CAHOOTS, WHITE BIRD CLINIC, <https://whitebirdclinic.org/services/cahoots/> (last visited July 10, 2020, 3:27 PM).

²⁶ *Id.*

²⁷ *About Us*, NEWARK COMMUNITY STREET TEAM, <https://www.newarkcommunitystreetteam.org/about-us/> (last visited July 30, 2020, 3:09PM).