



U.S. Commission on Civil Rights Supports Policing Reform Measures in the Justice in Policing Act of 2020

June 19, 2020

The U.S. Commission on Civil Rights by majority vote supports measures in the Justice in Policing Act of 2020 as consistent with the Commission's call to ensure that every community resident should be able to live, work, and travel confident in an expectation that interactions with police officers will be fair, consistent with constitutional norms, and guided by public safety free from bias or discrimination, as stated in our 2018 report, *Police Use of Force: An Examination of Modern Policing Practices*.¹ The Act prohibits certain police practices, like racial profiling and no-knock warrants in drug cases. It also provides for greater transparency through data collection and publication. It increases police accountability by abolishing qualified immunity and increasing the Attorney General's subpoena power in regards to pattern or practice investigations.² The Commission welcomes these steps as necessary and long overdue, in hopes that they will be a catalyst for continued improvements in criminal justice practices to ensure compliance with Constitutional standards.

The Act's creation of a national, publicly available Registry of all complaints, disciplinary records, and termination records is a crucial first step towards studying and ultimately assisting police to eliminate violations of citizens' civil rights.³ As the Commission highlighted in 2018, "no comprehensive national database exists that captures rates of police use of force."⁴ Without accurate and comprehensive data, it is difficult to understand the scale or nature of police use of force, and therefore, almost impossible to enact meaningful reform. The Act also includes important data transparency measures, such as ensuring that police hiring decisions are made with comprehensive data on the officer's past performance.⁵ Moreover, the Commission supports requiring departments' participation in the Registry as a prerequisite to receiving grant funds from the federal government as consistent with recommendations of the 2018 report.⁶

¹ Specifically, the Commission supports §§ 102, 103(b), 104, and 113-18 of Title I; §§ 201-02 and 221-27 of Title II; and §§ 361, 364, 365, 372, 373, 382, and 3051 of Title III. The Commission takes no position on other provisions of the proposed act. Justice in Policing Act of 2020, H.R. 7120, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/7120>.

² See generally Justice in Policing Act of 2020, H.R. 7120, 116th Cong. (2020).

³ See *id.* at 139.

⁴ See U.S. Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices*, Nov. 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>, p. 137 [hereinafter *Police Use of Force*].

⁵ See *id.* at 60.

⁶ See *id.*

The Act removes qualified immunity as a defense to constitutional violations by the police. The Commission took note in 2018 that “in practice, qualified immunity provides a near-absolute defense to all but the most outrageous conduct,” shielding police “not only from liability, but meaningful scrutiny as well.”⁷ The Supreme Court determined this week that it will not reconsider qualified immunity in the coming term, despite the urging of numerous civil rights groups and advocates across the political spectrum.⁸ This leaves the responsibility to Congress to adopt legislation to address qualified immunity and remove this impediment to accountability. By removing qualified immunity as a defense as proposed in the Act, Congress accords our constitutional rights with the respect they deserve, and it increases transparency and accountability for the police.

The Act appropriately increases independent oversight of the police, particularly through the use of Civilian Review Boards. In our 2018 report, the Commission noted that Civilian Review Boards can be powerful tools in furtherance of police reform, but that to do so they must be vested with sufficient authority, subpoena power, and independence to have any effect.⁹ The Commission is therefore encouraged by the steps taken to define and fund Civilian Review Boards. However, the Commission notes the wide discretion left to the Attorney General, and urges lawmakers to consider further measures for guidance and oversight in order to ensure meaningful accountability.

The Commission also supports the Act’s provisions regarding the use of body-worn cameras, particularly those requirements imposed on federal uniformed officers. The Commission notes that the Act allows for greater discretion in the body-worn camera policies required for state and local law enforcement. We encourage these departments to adopt robust policies along the same lines as those required of federal law enforcement in this Act. Specifically, subjects in the footage should be, at minimum, allowed the same access to video that federal law enforcement agencies are required to provide.¹⁰ Moreover, the Commission continues to recommend that penalties be imposed for the violation of policies regarding misuse of body-worn cameras.¹¹

Finally, the Commission offers support for the Act’s training requirements to cover unconscious bias, racial profiling, and duty to intervene, and further agrees that grant funding should be made contingent upon participation in such trainings. In addition, we support the incentives provided for training covering de-escalation, implicit bias, crisis intervention, and adolescent development. We further encourage Congress to expand these incentives to include training covering alternatives to force, safe interactions with

⁷ *Id.* at 82 (citing Evan Bernick, Institute for Justice, Briefing Transcript at 118-19).

⁸ *Baxter v. Bracey*, 590 U.S. ____ (2020) (Thomas, J., dissenting in denial of certiorari), https://www.supremecourt.gov/orders/courtorders/061520zor_f2bh.pdf; Brief of Cross-Ideological Groups Dedicated to Ensuring Official Accountability, Restoring the Public’s Trust in Law Enforcement, and Promoting the Rule Of Law as Amici Curiae, *Baxter v. Bracey*, No. 18-1287 (2020), [supremecourt.gov/DocketPDF/18/18-1287/101646/20190531162059735_FINAL%20Crossideological%20Brief%20Baxter%205.31.2019.pdf](https://www.supremecourt.gov/DocketPDF/18/18-1287/101646/20190531162059735_FINAL%20Crossideological%20Brief%20Baxter%205.31.2019.pdf).

⁹ *See generally id.* at 74-78.

¹⁰ Justice in Policing Act of 2020 § 382.

¹¹ *Police Use of Force*, p. 141.

LGBTQ communities, and individuals' First Amendment right to film the police, as recommended in the 2018 report.¹²

The Justice in Policing Act represents an important step towards ensuring a safe society for all. The Commission welcomes this step, and encourages Congress to take the next one.

Chair Catherine E. Lhamon stated: "Our nation's communities need urgent reforms that will, as this legislation does, provide important civil rights safeguards to stem the tide of police violence that the Commission has reported on for decades."

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¹² *Id.* at 140.