



## UNITED STATES COMMISSION ON CIVIL RIGHTS

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U.S. House of Representatives  
Committee on Education and Labor  
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Sent via email

Representative Virginia Foxx  
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Representative Patrick McHenry  
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August 6, 2020

Dear Chairman Scott, Ranking Member Foxx, Chairman Nadler, Ranking Member Jordan, Chairwoman Waters, and Ranking Member McHenry,

In light of the crucial national conversation now focused on racial justice in policing and in effective investment in non-law enforcement functions, I write to highlight some relevant recent reports the U.S. Commission on Civil Rights has published, and especially the findings and recommendations we made. The Commission is grateful that the House of Representatives has taken action to pass the George Floyd Justice in Policing Act, which incorporates many reforms we called for in our 2018 report on police use of force.<sup>1</sup> In addition to this important legislation, if there is to be a national

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<sup>1</sup> See generally George Floyd Justice in Policing Act of 2020, H.R. 7120, 116th Cong. (2020) <https://www.congress.gov/bill/116th-congress/house-bill/7120/text> (establishing a national database tracking police use of force and misconduct, §201, providing grants to assist in conducting pattern and practice investigations, §103, providing grants to establish civilian review boards, §104, increasing training for police in de-escalation and other means of reducing use of force, §114, and ending the use of racial profiling, §§301 *et seq.*) and H.R. Rep No. 116-434, at 41, 42, 49, 54-55, 58 (2020), <https://www.congress.gov/116/crpt/hrpt434/CRPT-116hrpt434.pdf> (citing 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>, in support of various provisions including the Commission's urging the Department of Justice to return to vigorous enforcement under its pattern and practice

movement towards more effectively reallocating resources towards communities, the recommendations in this letter can serve as a guide to community investment that promotes safer communities, educational equity, and racial justice.

## **Critical Mental Health Responses and Ensuring Congressional Oversight**

Provisions of the George Floyd Justice in Policing Act, H.R. 712, reflect the Commission's recommendations regarding investments in cultural competency and anti-bias training, training on de-escalation and alternatives to force, and the establishment of a national database on police use of force and police misconduct.<sup>2</sup> In addition to these timely reforms, the Commission has called for increased federal funding to support mental health training and effective intervention for police officers interacting with people with mental health challenges. A critical component of the Commission's study on police use of force revealed that many cases involving use of excessive force against individuals with disabilities occurred when "police were not responding to reports of a crime being committed. Police officers were often called because relatives, neighbors, or other bystanders were worried that a mentally fragile person was behaving erratically . . . . In 2016, 242 people with known mental illnesses were fatally shot by police; that number decreased to 236 in 2017."<sup>3</sup> As a result, we recommend increasing funding for mental health organizations to partner with police to de-escalate and intervene in mental health crises.<sup>4</sup>

Further, the Department of Justice's Community Relations Service (CRS) must be prioritized and fully funded, as called for in the George Floyd Justice in Policing Act (which appropriates an additional \$3.3 million to the office).<sup>5</sup> The Community Relations Service is the office within the Department of Justice that focuses on building

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authority, finding a lack of data regarding police use of force, and supporting the establishment of funding for state attorneys general to establish independent investigations processes); *see also* U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Supports Policing Reform Measures in the Justice in Policing Act of 2020*, Jun. 19, 2020, <https://www.usccr.gov/files/2020-06-19-USCCR-Supports-Justice-in-Policing-Act.pdf>.

<sup>2</sup> 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>, pp. 139-42 [hereinafter *Police Use of Force*].

<sup>3</sup> *Id.* at 49 (citing Wesley Lowery, Kimberly Kindy, Keith Alexander, Julie Tate, Jennifer Jenkins, and Steven Rich, *Distraught People, Deadly Results*, Wash. Post, Jun. 30, 2015, [http://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/?utm\\_term=.609046208b59](http://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/?utm_term=.609046208b59) and Julie Tate, Jennifer Jenkins, Steven Rich, John Muyskens, Kennedy Elliott, Ted Mellnik, and Aaron Williams, *Fatal Force*, Wash. Post, <https://www.washingtonpost.com/graphics/national/police-shootings-2017/>).

<sup>4</sup> *See* USCCR, *Police Use of Force*; *see also* George Floyd Justice in Policing Act of 2020, §366(b)(3). While the Justice in Policing Act amends a section of the U.S. Code that allows the Attorney General to make grants for crisis intervention programs, the act itself does not provide for more funding. We note that forthcoming legislation, such as The BREATHE Act, would include grant programs for neighborhood mediation and crisis intervention programs, among others. Movement for Black Lives, *The BREATHE Act*, Jul. 2020, [https://breatheact.org/wp-content/uploads/2020/07/The-BREATHE-Act-PDF\\_FINAL3-1.pdf](https://breatheact.org/wp-content/uploads/2020/07/The-BREATHE-Act-PDF_FINAL3-1.pdf), p. 6.

<sup>5</sup> *See* George Floyd Justice in Policing Act of 2020, §116. *See* U.S. Commission on Civil Rights, *The U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights in the Fiscal Year 2019 Budget*, Mar. 16, 2018, <https://www.usccr.gov/press/2018/03-16-statement-2019-budget.pdf>, at 2; *see generally* U.S. Commission on Civil Rights, *U.S. Commission on Civil Rights Urges Congress to Prioritize Civil Rights Oversight and Legislation*, Dec. 7, 2018, <https://www.usccr.gov/press/2018/12-07-Priorities-for-116th-Congress.pdf>.

community trust and reducing excessive use of force, and is an integral part of promoting accountability of law enforcement agencies.<sup>6</sup>

We also emphasize the need for ongoing Congressional oversight of the activities of the Department of Justice's Civil Rights Division, whose Special Litigation Section handles the critical pattern and practice investigations that the Commission has encouraged vigorous use of. In November 2019, the Commission was alarmed to find that the Department of Justice Civil Rights Division resolved 25% fewer cases between FY 2016 and FY 2018, with the most significant case resolution drops in the Educational Opportunities, Housing, and Special Litigation Sections.<sup>7</sup>

In response, the Commission recommended that Congress appropriate funds to increase the staff capacity of federal civil rights offices in order for these offices to carry out their statutory responsibilities and maximize their capacity to protect the civil rights of all Americans.<sup>8</sup> We also recommended that Congress should hold at least annual public oversight hearings specific to each civil rights office to review and assess the effectiveness of civil rights office satisfaction of the jurisdictional charges Congress has given them.<sup>9</sup>

### **Equitable Education Funding**

In January 2018, the Commission found persistent and troubling inequities in the U.S. public school system, including the severe under-funding of schools serving primarily students of color.<sup>10</sup> In particular, the Commission found that more than 40 percent of Title I schools (schools with concentrations of low-income students) spend less per pupil than non-Title I schools at the same grade level.<sup>11</sup> Further, low-income students and students of color often are relegated to extremely low quality school facilities, where they lack equitable access to safe and sanitary buildings, and in addition often lack equitable access to teachers, instructional materials, and technology.<sup>12</sup>

The report included several recommendations to increase funding to schools, including increasing federal funding for public schools (to alleviate the inequity of property-tax based finance structures), investing in safe and equitable facilities for students, raising funding for schools to provide educational services to students with disabilities in integrated settings, and developing programs to monitor and evaluate school spending and how it impacts and enhances student achievement in order to close achievement

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<sup>6</sup> See USCCR, *Police Use of Force* at 139.

<sup>7</sup> *Id.* at 502.

<sup>8</sup> *Id.* at 509.

<sup>9</sup> *Id.*

<sup>10</sup> U.S. Commission on Civil Rights, *Public Education Funding Inequity: In an Era of Increasing Concentration of Poverty and Resegregation*, Jan. 2018, <https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf> at 47-48.

<sup>11</sup> See *id.* at 40-43.

<sup>12</sup> See *id.* at 9, 47-48.

gaps.<sup>13</sup> The report also recommended investing in equitable and affordable housing to decrease racial segregation and concentration of poverty.<sup>14</sup>

We are glad to see that Congress has already begun to heed our 2018 call with the Rebuild America’s School Act, which allocates funding for the improvement of school facilities in high-poverty districts.<sup>15</sup>

## **Dismantling the School to Prison Pipeline**

In July 2019, the Commission found that schools disproportionately impose discipline on students of color with disabilities in ways that exclude these students from classrooms.<sup>16</sup> This exclusionary discipline impacts students’ sense of belonging and has negative effects on their broader academic success.<sup>17</sup> The report found that students of color were substantially more likely than their white peers to receive harsher discipline for similar offenses, and that students of color with disabilities were more likely than their white peers with disabilities to be expelled without educational services.<sup>18</sup> The report also found that Latinx, Asian, and Black students were more likely than white students to attend a school with a law enforcement officer but not a counselor.<sup>19</sup> The report noted that in New York City, the largest public school system in the country, schools have approximately six officers and three counselors for every 1,000 students.<sup>20</sup>

The Commission recommended that Congress provide more funding for schools to provide training and guidance to teachers and school administrators to ensure nondiscriminatory discipline.<sup>21</sup> Additionally, Congress should allocate resources to provide more funding to schools and states to hire, train, and retain counselors and social workers instead of law enforcement officers.<sup>22</sup>

## **Effective Reentry for Formerly Incarcerated Individuals**

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<sup>13</sup> See *id.* at 105-06.

<sup>14</sup> See *id.* at 107.

<sup>15</sup> Rebuild America’s Schools Act of 2019, H.R. 865, 116th Cong. (2019) <https://www.congress.gov/bill/116th-congress/house-bill/865/text> (creating grants and tax credit bond programs for high-poverty schools to improve facilities, §201 et al, developing a national database on the condition of public school facilities, § 102, and expanding access to high-speed broadband needed for digital learning, §301). The Rebuild America’s Schools Act was incorporated into the Moving Forward Act, H.R. 2, 116th Cong. §§70101 et al. (2020), <https://transportation.house.gov/imo/media/doc/BILLS-116HR2-RCP116-54.pdf>.

<sup>16</sup> U.S. Commission on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, Jul. 2019, <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf> [hereinafter *Beyond Suspensions*] at 63-74.

<sup>17</sup> See *id.* at 74-80.

<sup>18</sup> See *id.* at 122.

<sup>19</sup> See *id.* at 43-45, 50-51 (According to the Civil Rights Data Collection, 1.6 million students attend a school with a Sworn Law Enforcement Office (SLEO) but not a school counselor, and by the 2015-16 academic year (the last year data are available), schools reported having 27,000 school resource officers, compared to 23,000 social workers; students of color in particular are between 20 and 40 percent more likely to be among the students lacking basic access to a school counselor).

<sup>20</sup> See *id.* at 50.

<sup>21</sup> See *id.* at 167.

<sup>22</sup> See *id.* at 167-68.

In June 2019, the Commission examined the collateral consequences imposed on people with criminal records,<sup>23</sup> which are pervasive and broad-ranging restrictions on the rights and privileges of people with criminal convictions that exacerbate punishment beyond a conviction and sentence.<sup>24</sup> They include restrictions on accessing public benefits (including housing and student loans), suspensions on driver's licenses, and employment barriers.<sup>25</sup> Far from functioning as deterrents or improving public safety, collateral consequences severely impede a person's ability to work and function in the community and access needed resources, increasing the chances of recidivism.<sup>26</sup>

The Commission issued a number of recommendations for ensuring more effective reentry for formerly incarcerated individuals. In particular, the Commission recommended allocating resources to assist incarcerated persons reintegrating into their communities, lifting restrictions on public benefits (such as SNAP and TANF), and lifting some restrictions on public housing and student loans.<sup>27</sup> Additionally, the Commission recommended increasing funding for in-prison college programs and job-skills training programs both in prison and in the community.<sup>28</sup> Resources should also be allocated to expand state programs and opportunities for criminal records to be sealed or expunged, helping to remove a significant barrier to employment for those with a criminal conviction.<sup>29</sup>

### **Moving Away from Legal Financial Obligations**

In September 2017, the Commission found that many jurisdictions use fines and fees for low-level offenses (such as minor traffic infractions, having mismatched curtains, and failing to paint a house's foundation or fence a certain color) to raise revenue for the municipalities.<sup>30</sup> As a result, these practices lead to significant debt and incarceration for the people targeted, primarily Black and brown residents, which exacerbates racial inequality and economic distress.<sup>31</sup> Further, the Commission found that if a jurisdiction's primary goal is to generate revenue rather than promote public safety, there is an incentive for law enforcement to issue as many citations as possible for minor offenses, contrary to both public safety and the pursuit of justice.<sup>32</sup>

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<sup>23</sup> U.S. Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, Jun. 2019, <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>.

<sup>24</sup> *See id.* at 9.

<sup>25</sup> *See id.* at 10-12.

<sup>26</sup> *See id.* at 35-37; *see also* Stephen Slivinski, *Turning Shackles into Bootstraps, Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform*, Center for the Study of Economic Liberty at Arizona State University Policy Report No. 2016-01, Nov. 7, 2016, p. 4 (finding that states with a high number of collateral consequences experienced a more than 9% increase over 3 years, compared to the 2.6% national average and 4.2% decline in low burden states with less collateral consequences).

<sup>27</sup> *See id.* at 135.

<sup>28</sup> *See id.* at 136-37.

<sup>29</sup> *See id.* at 137.

<sup>30</sup> U.S. Commission on Civil Rights, *Targeted Fines and Fees Against Low-Income Communities of Color: Civil Rights and Constitutional Implications*, Sep. 2017, [https://www.usccr.gov/pubs/2017/Statutory\\_Enforcement\\_Report2017.pdf](https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf) at 7-11.

<sup>31</sup> *See id.* at 25-29, 33.

<sup>32</sup> *See id.* at 12.

The Commission made several recommendations for redirecting funding, including directing resources to fund courts so that municipalities do not have to depend on fines and fees to raise revenue.<sup>33</sup> Further, resources should be allocated to create fines and fees alternatives available to indigent persons, such as community service or counseling, that build the capacity for people to return to their community in productive ways.<sup>34</sup> In these alternatives, resources should also be allocated to establish programs that facilitate participation (such as transportation or child-care).<sup>35</sup> Funding should also be redirected to public counsel, which should be provided for free to indigent persons at the imposition of a fine.<sup>36</sup> Finally, resources should be allocated for municipalities to develop tools that can accurately assess a person's ability to pay a fine or fee.<sup>37</sup>

We are glad to see that Congress is moving forward with efforts to address the concerns raised in our 2017 report, particularly with the State Justice Improvement Act, which would enable the State Justice Institute to provide additional training and technical assistance for state and local courts.<sup>38</sup>

## Conclusion

Congress has an opportunity, amid the national conversation about police reform, to support and lead a national shift in investment from law enforcement agencies that have been increasingly asked to perform non-law enforcement functions. I hope that the findings and recommendations highlighted here, as well as the reports they draw from, will function as a helpful part of Congressional deliberation on these critical civil rights issues. Targeting Congressional appropriations to support community-based programs and education would not only relieve the burden placed on law enforcement officers to do non-law enforcement tasks, but would promote more equitable education in our nation's schools, enhance public safety, and be another step in the struggle towards racial justice.

Sincerely,



Catherine E. Lhamon  
Chair

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<sup>33</sup> See *id.* at 75-76.

<sup>34</sup> See *id.* at 75.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.* at 76.

<sup>37</sup> See *id.*

<sup>38</sup> State Justice Improvement Act, H.R. 6061, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6061/text>; State Justice Improvement Act, S. 3375, 116th Cong. (2020), <https://www.congress.gov/bill/116th-congress/senate-bill/3375>.