



## **U.S. Commission on Civil Rights Urges All Law Enforcement to Follow Constitutional Policing Practices in Response to the Recent Demonstrations**

**June 5, 2020**

The U.S. Commission on Civil Rights unanimously urges the Administration and the Department of Justice to advocate that all policing forces used by federal, state, and local governments, in response to the recent protests sparked by the alleged killing of George Floyd by a Minneapolis police officer, abide by constitutional policing practices that ensure against bias and promote non-discriminatory accountability and enforcement.

As the Commission stated in our report “Police Use of Force: An Examination of Modern Policing Practices,” “[t]he relationship between law enforcement and many communities in the U.S. is fraught and challenging, particularly for those who experience violent crimes coupled with intensive police presence and surveillance.”<sup>1</sup>

This is especially true in the context of a national protest response to widely disseminated videotape involving a police use of force resulting in the killing of an unarmed and handcuffed African-American man.<sup>2</sup> Where peaceful protest is aimed at law enforcement itself, the stakes could not be higher. And where marginalized communities are at the forefront of many of these peaceful demonstrations, overreaction<sup>3</sup> to provocation and undertraining can result in potential civil rights violations<sup>3</sup> and worse, have deadly consequences.

It is, therefore, vitally important that law enforcement at all levels, including National Guard or other troops brought in to provide support or perform law enforcement duties, be trained to observe principles of constitutional policing. If they are not trained in the principles of constitutional policing, or cannot be supervised to prevent them from

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<sup>1</sup> U.S. Comm’n 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> at p. 1.

<sup>2</sup> George Floyd was allegedly killed by a Minneapolis police officer who knelt on his neck for more than 8 minutes, despite Floyd saying that he “can’t breathe” and that the officer was “killing me.” Fox News Live, “Trey Gowdy: George Floyd Killing Should Have Been Rated ‘Murder One,’” May 31, 2020, <https://grabien.com/story.php?id=291179>. Breonna Taylor, an EMT, was in her apartment when police executing a “no knock” warrant on the wrong apartment shot her to death in her bed. Richard A. Oppel, Jr., “Here’s What You Need to Know about Breonna Taylor’s Death,” The New York Times, May 30, 2020, <https://www.nytimes.com/article/breonna-taylor-police.html>.<sup>[SEP]</sup>

<sup>3</sup> Kate Brumback, “6 Atlanta officers charged after students pulled from car,” AP News, June 2, 2020, <https://apnews.com/878c149e1107abfcabe762a1c9915ba0>.

interfering with protected speech activity, they cannot and should not be utilized in any circumstance.

The principles most applicable to today's situation include:

Every community resident should be able to demonstrate peaceably 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.

Officers should be trained in de-escalation tactics and alternatives to use of force. Tactical training should include strategies to create time, space, and distance, to reduce the likelihood that force will be necessary and should occur in realistic conditions appropriate to the department's location.

If law enforcement uses body-worn cameras, then they should have clear policies in place that address, at a minimum:<sup>4</sup>

- Clearly defined penalties should attach for the misuse of camera footage and violations of body-worn camera policies.
- Officers should not be given any knowledge of the contents and should not be given the right to view footage before making a report of the incident.
- The public should be allowed to obtain footage of use of force incidents after investigations are complete.
- Body-worn camera policies should also address privacy concerns raised by the large amounts of data recorded by those cameras containing potentially sensitive information deserving of individual policies. These policies should include but not be limited to footage not depicting use of force, detention, an incident subject to complaint, or that has no evidentiary, exculpatory, or training value.

Tens of thousands of Americans have taken to the streets in protest over the past week. It is undeniable and unfortunate that violence and looting took place during several marches, and there were also reports that persons unconnected with the protests were using the protests as an excuse to commit crimes that which required intervention by law enforcement.<sup>5</sup> Peaceful protestors were injured by law enforcement during several marches,<sup>6</sup> guns with rubber bullets were pointed and discharged by law enforcement at

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<sup>4</sup> We commend the actions of Louisville, Kentucky Mayor Greg Fischer who terminated the Chief of Police when one of his officers killed David McAtee, a restaurant owner – ironically, who used to offer food from his restaurant to police officers – and had not turned on his body-worn camera. Metro Louisville, “Mayor: No Body Camera Footage of Shooting And Police Chief Fired,” WFPL, June 1, 2020, <https://wfpl.org/mayor-no-body-camera-footage-of-shooting-and-police-chief-fired/><sup>[1]</sup><sup>[SEP]</sup>

<sup>5</sup> KDKA CBS Pittsburgh, ‘Hijacked’: Pittsburgh Police Looking For Photos And Videos To Identify People Accused Of Turning Peaceful Protests Violent,” June 2, 2020, <https://pittsburgh.cbslocal.com/2020/06/01/pittsburgh-police-investigating-protests-turned-riots/><sup>[1]</sup><sup>[SEP]</sup>

<sup>6</sup> Mark Berman and Emily Wax-Thibodeaux, “Police keep using force against peaceful protestors, prompting sustained criticism about tactics and training,” The Washington Post, June 4, 2020,

reporters while on the air,<sup>7</sup> and officers were also injured during the protests.<sup>8</sup> In contrast, there are numerous reports of individuals peaceably demonstrating and attempting to stop violent or unlawful acts by others during these demonstrations—to both work with law enforcement to stop these activities and to protect themselves from becoming victims of police violence.<sup>9</sup> Neither property crimes nor acts of provocation or violence can be condoned; however, law enforcement must be trained not to indiscriminately engage in the use of force that targets law-abiding individuals or groups exercising protected First Amendment activities.

De-escalation worked this week in many communities around this county. Some police chiefs, such as the chiefs in Santa Cruz, California<sup>10</sup> and Camden, New Jersey,<sup>11</sup> demonstrated leadership by partnering with demonstrators to assist peaceful protestors to accomplish their right to seek redress of grievances through lawful assembly. This lack of threat-filled action can and does work in many circumstances.

As we found in our report, “[c]itizens are more likely to aid in crime reduction and partner with police if they believe that law enforcement is engaging in equitable treatment and is impartial towards all.”<sup>12</sup> A commitment to constitutional policing is part of that equitable treatment.

In a separate statement today, the Commission urges the Department of Justice to engage in pattern and practice investigations of the police departments involved in the killings of George Floyd, Ahmaud Aubrey, and Breonna Taylor. These incidents have formed the mobilizing predicate for the demonstrations and assemblies of the past week. The vast majority of people assembling throughout our communities this past week are engaging in protected activities and their civil liberties and their civil rights cannot be dismissed, disrupted, or denied by law enforcement. In performing their duties, it is vitally important that any federal, state, or local entities charged with law enforcement duties do so while observing constitutional principles and practices.

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[https://www.washingtonpost.com/national/police-keep-using-force-against-peaceful-protesters-prompting-sustained-criticism-about-tactics-and-training/2020/06/03/5d2f51d4-a5cf-11ea-bb20-ebf0921f3bbd\\_story.html](https://www.washingtonpost.com/national/police-keep-using-force-against-peaceful-protesters-prompting-sustained-criticism-about-tactics-and-training/2020/06/03/5d2f51d4-a5cf-11ea-bb20-ebf0921f3bbd_story.html).

<sup>7</sup> Alex Ward, “Directly at us’: Louisville law enforcement shoots reporters with pepper bullets,” Vox, May 30, 2020, <https://www.vox.com/2020/5/30/21275594/george-floyd-protest-louisville-reporter-shot>.

<sup>8</sup> John Bowden, “Police officers shot, hit by car in multiple incidents amid George Floyd protests,” The Hill, June 2, 2020, <https://thehill.com/homenews/state-watch/500604-police-officers-injured-in-multiple-incidents-amid-george-floyd-protests>.

<sup>9</sup> “But from Baltimore to Sacramento, black protesters also were filmed protecting storefronts and placing their bodies before police barricades to preserve principles of nonviolence, and to prevent backlash disproportionately aimed at them.” Isaac Stanley-Becker, “White instigators to blame for mayhem in some protests, local officials say,” The Washington Post, June 2, 2020, [https://www.washingtonpost.com/national/protests-white-instigators/2020/06/01/b916bd98-a426-11ea-bb20-ebf0921f3bbd\\_story.html](https://www.washingtonpost.com/national/protests-white-instigators/2020/06/01/b916bd98-a426-11ea-bb20-ebf0921f3bbd_story.html).

<sup>10</sup> Melissa Gomez, “Santa Cruz police chief took a knee during a George Floyd protest. Other police soon followed,” Los Angeles Times, June 2, 2020, <https://www.latimes.com/california/story/2020-06-02/santa-cruz-police-chief-kneeling-george-floyd-protest>.

<sup>11</sup> Ankita Rao, “Police Marching with protesters: how some cities got it right and others didn’t,” June 2, 2020, [theguardian.com/us-news/2020/jun/02/police-marching-with-protesters-george-floyd-reform](https://www.theguardian.com/us-news/2020/jun/02/police-marching-with-protesters-george-floyd-reform).

<sup>12</sup> U.S. Comm’n on Civil Rights, note 1, p. 2.

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*The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7<sup>th</sup> decade, a continuing legacy of influence in civil rights.*

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