

## **Personal Security Committee Report**

### ***Equal Justice: A Case for Transformational Police Reform***

#### **Introduction and Summary of Major Positions**

All Utahns have the right to personal security, including freedom from physical harm and psychological abuse, whether experienced within the family or within the community at large; and one of government's sacred constitutional obligations—*at every level*—is to protect and defend the public from threats to its safety and well-being. Under the Fourteenth Amendment to the United States Constitution that duty further requires and guarantees *equal* protection to every member of our society, without exception.

The State and its political subdivisions endeavor to provide that security through law enforcement and the criminal justice system, but the revelations of 2020 have made inescapable the fact that significant inequalities, injustices, and inefficiencies exist in our law and justice systems, and they will no longer be tolerated by the public.

In the shock and anguish following the deaths of George Floyd and Bernardo Palacios-Carbajal, the shooting of 13-year old Linden Cameron, who is autistic, during a mental health crisis, and the mauling of Jeffery Ryans, who is African American, by a police K-9 unit, calls for reform by public officials and private citizens across the state have been universal: Something *must* be done. The only question is: ***How do we go about it?***

The Governor, the Utah Legislature, the Salt Lake City Mayor and City Council, the Salt Lake Police Department, the Police Officer Standards and Training Agency, and others, have rushed to open investigations and implement initial procedural reforms to address some of the most obvious issues, but everyone understands much more is required.

Many options and approaches are being studied and considered--from ***procedural reform*** to ***structural change***, and the Utah Citizens' Counsel believes *both* are necessary to achieve true equal justice under law. As always, though, the devil is in the details; and, as recent legislative audits have revealed, much of the data needed to identify and assess the problems with specificity is not readily available due to diverse and siloed information systems and a lack of coordination and communication among the various geographic regions and levels of government, creating technical and administrative challenges and, in some instances, serious public safety concerns. The UCC, therefore:

- Endorses the recommendations of legislative auditors and urges lawmakers to create the structure and provide the funding to implement reforms with respect to law enforcement and criminal justice data collection, assimilation, reporting, communication, and transparency;
- Endorses the recommendations of the Governor, members of the Legislature, the Salt Lake City Mayor, City Council and Police Chief, to conduct a thorough assessment of police policies and practices, on a state and local basis, to identify equal justice issues, and fund and implement needed procedural and structural reforms.

The following report addresses *both* the need for and process of transformational reform.

## The Situation Confronting Utah Law Enforcement, Lawmakers, and the Public

Nationally, people of color are 2.5 times more likely to be killed by police than white people but are *less likely to be carrying a weapon*.<sup>1</sup> More than 1,000 *unarmed* people died as a result of police harm between 2013 and 2019; and about one third of them were black.<sup>2</sup> Only about 1% of police officers involved in those deaths were charged with a crime; and even fewer have been convicted.<sup>3</sup>

Although Utah has one of the lowest homicide rates in the nation, it has one of the highest homicide rates by police at 17% compared to 8% nationally.<sup>4</sup> Indeed, as of 2014, police homicides were second only to domestic violence as the leading cause of homicide in Utah;<sup>5</sup> and African Americans represented 10% of police homicides during the period from 2013-2019, even though they represented only 1.06% of Utah's population.<sup>6</sup> Furthermore, between 2017 and 2018, Salt Lake County's 3% African American population suffered 13% of its use-of-force actions and all three 2018 police fatalities.<sup>7</sup>

A profile of *incarcerated* Americans also shows a severe racial disparity for African Americans: 33% of the prisoners, but only 13% of the population.<sup>8</sup> According to the 2010 census, Utah's incarcerated, traced by race/ethnicity and projected as a percentage per 100,000 population, reveals even more serious discrepancies: Caucasians--367; Hispanic--832; African Americans--2,711.<sup>9</sup>

Despite sweeping juvenile justice reform in 2017, data released by Voices for Utah Children in July reflected that minorities are still over-represented in the juvenile justice system.<sup>10</sup> "Between 2014 and 2018, arrests of children in Utah dropped 26.2%, according to the report. 'That reduction, however, has not been equitable.'"<sup>11</sup> "White youths' proportion of overall arrests dropped from 70% in 2014 to 56% in 2018," while "the proportion of overall arrests for young people of color increased from 30% in 2014 to 44 % in 2018."<sup>12</sup>

Economic status intersects dramatically with race for individuals who are unable to "make bail," and are, therefore, jailed until trial, which can take months or even years.<sup>13</sup> The average bail for a felony is \$10,000; and many Americans are unable to cover even a \$400 emergency expense.<sup>14</sup>

In addition, the majority of hate crimes by aggressors are based on a perception of the victim's race, with the majority of such victims in the United States being African American.<sup>15</sup> Race is the primary category by far of reported hate crimes in Utah.<sup>16</sup>

The most common encounter with law enforcement for all Americans occurs in traffic stops; but African Americans are stopped *twice as often* for their population size as Caucasians--a form of harassment based on racial profiling known as "Driving While Black."<sup>17</sup> Utah Representative Sandra Hollins, the first African American woman elected to the Utah Legislature, gave this illustrative account of her Utah "Driving While Black" experience. She and her husband were pulled over by a white officer while driving on the freeway. He first accused them of speeding, and then asked "How could you afford a car like this?" and "Where'd you get the money?" They answered him, but the officer commented before walking away: "I just wanted to see if you had an attitude. If you had attitude I was going to give you a ticket."<sup>18</sup>

The killing of George Floyd on Memorial Day 2020, however, brought America to its knees, as the video of his death, at the hands of Minneapolis Police Officer Derek Chauvin, played on a seemingly endless loop on television and social media around the world. The response from all quarters was immediate and unequivocal. *This must never happen again.* But it has...

At a press conference at the Capitol on June 7, 2020, Jeanetta Williams, President of the NAACP Salt Lake Branch and NAACP Tri-State Conference of Idaho-Nevada-Utah, called for legislation to address police relationships with the community and outlined broad goals for community discussion to address long-standing concerns. In a newsletter shortly thereafter, the NAACP Salt Lake Branch announced a cooperative agreement with the Fraternal Order of Police “to work together to bridge the community divide.”<sup>19</sup> The newsletter goes on to say:

*“The NAACP supports having School Resource Officers in schools. We support training for Resource Officers. The NAACP is not calling for de-funding of police departments. What we are saying is that there should be more social workers who directly work with police departments and when police officers are called on domestic violence disturbances. It is social workers who should go out on those calls. The NAACP is asking that police officers be trained or [have] a degree in social work in order to better deescalate these situations....*

*“In addition, the NAACP considers racism a public health issue for the following reasons:*

- *Racism permeates our policies and institutions. It affects what people have and don’t have access to, and the amount and quality of services they get. This is the case with health care, as well as education, employment and benefits, housing and other areas – all of which affect health and well-being directly and indirectly.*
- *It affects the mental health because of its psychological toll on minorities’ sense of value and the need to reassert those rights and their place in society, which also impacts health overall.”<sup>20</sup>*

Williams and other community leaders then sat down with The Salt Lake Tribune, in a series of virtual meetings, to discuss what some of the solutions might look like, including:

- *more training for police officers and recruits*, including de-escalation training, implicit bias training, *training in the history of oppression of people of color in the United States, and cultural sensitivity training to help them better understand why people of color are frustrated and often fearful of police.*<sup>21</sup> Shawn Newell, Vice President of the NAACP Salt Lake Branch, pointed out the irony that Utah police recruits are currently only required to complete 832 hours (15 weeks) of training, while hair stylists must complete 1600 hours of training;<sup>22</sup>
- *increased restrictions on the use of force*, especially including but not limited to any maneuver that stops an individual from being able to breathe;<sup>23</sup>
- *collection of data on police encounters with the public*, having officers record the race or ethnicity of individuals they police by getting it off their driver’s licenses or other identification documents, and tracking and reporting that data, with the intent of identifying and eliminating racial profiling;<sup>24</sup>

- *creation of a national registry of officer misconduct and discipline*, available to all law enforcement agencies, to discourage the rehiring of officers with a history of misconduct complaints;<sup>25</sup>
- *improving the culture and diversity of police departments* so that they are more representative of the communities they serve;<sup>26</sup> and
- *improving the diversity of state and local leaders and civilian review boards*, who oversee and set policy for law enforcement agencies.<sup>27</sup>

Utah public officials listened and responded:

- Chokeholds were banned by Governor Gary Herbert (for the Highway Patrol) and by the Legislature (for Utah's 8,000 Utah police officers) in HB5001, sponsored by Representative Sandra Hollins;<sup>28</sup>
- The Police Officer Standards and Training (POST) agency proposed extending its 15 weeks of training with 12 more hours on anti-bias and 18 more on defensive skills.<sup>29</sup>
- Salt Lake City Police Chief Mike Brown formally banned chokeholds and firing tear gas into crowds;<sup>30</sup>
- Salt Lake City Mayor Erin Mendenhall and the Salt Lake City Council adopted new rules requiring police body cameras, enhanced de-escalation tactics and anti-bias training, mandated the addition of social workers to the police force, and created a Commission on Racial Equity in Policing to promote police-community ties, and direct financial investments in minority communities;<sup>31</sup>
- Salt Lake City adopted a police budget for the new fiscal year to fund the reforms already approved and to set aside funding to support additional reforms being discussed by city leaders and the new Commission on Racial Equity in Policing;<sup>32</sup> and
- The Salt Lake City Council is considering restrictions on the acquisition and use of military surplus equipment by Salt Lake City Police.<sup>33</sup>

In addition, following a public outcry over Salt Lake County District Attorney Sim Gill's determination that, under existing law, police officers were *legally justified* in shooting 22-year old Bernardo Palacios-Carbajal in the back while he was running away, Gill issued a detailed report, which was sent to lawmakers, the attorney general, the governor, and gubernatorial candidates, suggesting 22 specific policy reform ideas with respect to law enforcement's use of deadly force.<sup>34</sup> In his cover letter, Gill said: "*The use of deadly force by law enforcement has been under scrutiny for years...As the last two months of protests both here and across the country demonstrate, application of the current legal standards for officers' use of force has produced outcomes that are questioned, reasonably, by many in our communities. **When expectations of the community collide so strongly with what the law requires, a reexamination of what the law is, and a fulsome discussion of where it might go, is not just timely but crucial.***"<sup>35</sup>

“The laws justifying deadly force in Utah are more generous to law enforcement officers than to other members of our community. That was a policy decision made years ago, when Utah lawmakers determined that Utah’s use-of-force statute would permit an absolute defense and bar to prosecution of law enforcement officers whenever an officer, having used deadly force, reasonably believed the subject posed a serious threat to the officer or to any other individual,” Gill explains.<sup>36</sup> In other words, the officer's self-reported mindset is the reference point in determining justifiability without reference to the context, while other individuals can claim self-defense only if there is a reasonable belief that the other person’s “imminent use of force” could cause death or serious injury.<sup>37</sup>

Gill then suggested, among other things, that the laws might be amended:

- to allow prosecutors and courts to consider whether “less-than-lethal force was reasonably available and would have been effective, rather than deadly force;”<sup>38</sup>
- to prohibit the use of deadly force when individuals pose a danger only to themselves;<sup>39</sup> and
- to require law enforcement to de-escalate or not escalate whenever reasonably possible, and make a justification defense unavailable if the officer escalates the situation,<sup>40</sup> saying that “[m]any law enforcement uses of deadly force involve mentally ill suspects who are threatening harm to themselves, are alone in a location without reasonable possibility of escape, or are threatening harm to third parties with unlikely or unavailable means...In those cases, both common sense and human empathy dictate that de-escalation and self-restraint should be used whenever possible.”<sup>41</sup>

Utah’s tragic summer and fall of 2020 continued, however:

- In mid-July, United States District Judge Robert Shelby dismissed a lawsuit brought by the family of Patrick Harmon, finding police officer Clinton Fox “legally objectively reasonable” in shooting Harmon three times in August 2017. Without expressing an opinion on broader legal issues, he pointed out that the decision “comes in the midst of an important national conversation concerning race and policing,” noting that the deaths of George Floyd and other black Americans have prompted widespread dissent against police brutality and calls to reconsider qualified immunity laws.<sup>42</sup>
- On August 11, 2020, the *Salt Lake Tribune* reported the brutal mauling of Jeffery Ryans, a 36-year old black man, by a Salt Lake Police dog and his handler, Officer Nickolas Pearce, while Ryans was kneeling on the ground with his hands in the air.<sup>43</sup> Neither the Police Chief, nor the Mayor, nor the District Attorney were aware of the incident, however, until the *Salt Lake Tribune* published the bodycam footage, prompting Salt Lake City Police Chief Mike Brown to order a review of cases in which police dogs have been used during an arrest.<sup>44</sup> Following that review, Chief Brown announced that of the 27 cases where a police dog bit someone since 2018, he was referring 18 to the District Attorney to be screened for charges against the officers.<sup>45</sup> “The civilian review board then

found that city leaders did not know about the Jeffery Ryans incident because Officer Pearce’s supervising lieutenant never reported it to upper management, as required by policy.”<sup>46</sup> Mayor Mendenhall subsequently announced policy changes “to ensure that no use of force goes unreported up the proper chain of command again,” saying “[t]he culture of an organization is shaped by the worst behavior a leader is willing to tolerate.”<sup>47</sup> Chief Brown then suspended indefinitely the Salt Lake City Police Department’s use of police dogs on suspects, as officials review cases going back further than 2018.<sup>48</sup>

- Then just two hours before Salt Lake City’s new use-of-force policy took effect on September 31, 2020, requiring police officers to try de-escalation first when responding to most cases, 13-year old Linden Cameron, who is autistic, was shot multiple times by police, who chased him as he ran away from them during a mental health crisis.<sup>49</sup> His mother had simply called 911 *requesting a crisis intervention team* for her son.<sup>50</sup>

This latest incident prompted an outcry from the Utah Disability Law Center, which said the shooting showed that the system is broken, and provided a 16-point outline [of suggestions] to fix it.<sup>51</sup> “One of those points calls for the creation of more robust crisis intervention teams, which are comprised of officers who receive intensive mental health training.”<sup>52</sup> “*The simple fact that Linden’s mother had nowhere else to turn but to the police, the Disability Law Center wrote, was ‘a failure in leadership to ensure the health and safety of all Utahns.’*”<sup>53</sup> Mayor Mendenhall promised a swift investigation, and called the shooting “a tragedy.”<sup>54</sup> Chief Brown told reporters: “We are having a mental health crisis... and are devoid of resources to deal with it.”<sup>55</sup> The *Salt Lake Tribune* reported, based on its own investigation, that “[i]n the past seven years, Salt Lake City police officers have responded to 42,000 such calls, which does not include incidents where it was not known that a person was suffering from a mental health episode.”<sup>56</sup> Salt Lake City’s small Crisis Intervention Team(CIT), however, only works five days a week, during normal business hours; and “most officers don’t want to be social workers, and shouldn’t have to be,” according to Sherri Whitmer, CIT Utah President.<sup>57</sup>

### ***Legislative Audit Reports.***

On October 13, 2020, the *Salt Lake Tribune* reported the release of two significant legislative audits critical of the criminal justice system. The first found that passage of the Justice Reinvestment Initiative in 2014, designed to decrease the number of people sent to prison and decrease recidivism, had achieved just one of its goals: The number of people in prison--particularly low-level drug offenders--had gone down; but recidivism rates among those offenders had gone up.<sup>58</sup> “When lawmakers lowered the penalties for certain drug crimes, it led to more people receiving community supervision rather than prison time. But auditors say the state didn’t make that supervision count, failing to put in place procedures to ‘ensure oversight and accountability’ and only partially improved drug and mental health treatment.... Sheriffs expressed concerns that their jails had become de facto mental health facilities, as low-level

offenders were locked up because there were no beds available at mental health centers.”<sup>59</sup> According to auditors, data wasn’t good enough to say how many offenders completed their treatment programs, so auditors were unable to say whether state money had been well spent. “Auditors suggested that if the Legislature wants that data, it should create a government body that develops statewide reporting standards and gathers that data,” finding that criminal justice data in Utah, *as a whole*, “is incomplete because of ‘silos’ across the system.”<sup>60</sup>

The second audit, issued the same day, found serious and substantial issues with the way Utah’s entire criminal justice system shares data with police, prosecutors, judges, and others, and that much of the data needed to identify and assess the problems with specificity is not readily available due to diverse and siloed information systems and a lack of coordination and communication among the various geographic regions and levels of government, creating technical and administrative challenges and, in some instances, serious public safety concerns.<sup>61</sup> Because of under-reporting of warrants to the national data base “‘the vast majority of individuals wanted on felony and severe misdemeanor offenses in the State of Utah could evade the consequences of their behavior by simply crossing state lines,’ auditors wrote.”<sup>62</sup> In addition, auditors found that Utah does not have a unified criminal justice information system because the system is decentralized among 130 local law enforcement agencies, 24 county jails, 29 county prosecutors’ offices and various state agencies, like the Department of Corrections, Board of Pardons and Parole and the Department of Safety. “When information is not shared between criminal justice agencies, operational effectiveness suffers, policies lack precision, and accountability weakens,” auditors observed.<sup>63</sup>

In a legislative audit subcommittee meeting, the head of the Department of Corrections said he was overjoyed with the findings and recommendations. Senator Karen Mayne said passing legislation to revamp the way Utah’s criminal justice agencies share information would take a lot of work: “This is a huge overhaul, but I think we have the ability to put the pieces together.”<sup>64</sup>

The Utah Citizens’ Counsel joins state and local officials and the public in:

- endorsing the recommendations of legislative auditors and urging lawmakers to create the structure and provide the funding to implement recommendations with respect to law enforcement and criminal justice data collection, assimilation, reporting, communication and transparency; and
- endorsing the recommendations of the Governor, members of the Legislature, the Salt Lake City Mayor, City Council and Salt Lake City Police Chief, to conduct a thorough assessment of police policies and practices, on a state and local basis, to identify equal justice issues, and fund and implement needed procedural and structural reforms.

The road ahead will not be easy; but the UCC offers the following roadmap to guide the process.

## The Roadmap to Transformational Reform

### ***Procedural Reform.***

In the midst of similar violent unrest in 2014 and 2015, President Barack Obama convened a presidential Task Force on 21<sup>st</sup> Century Policing.<sup>65</sup> The 11-member task force “included civil rights attorneys, community activists, academics and police professionals, who came together to develop specific recommendations and concrete steps for improving law enforcement and the relationship between the police and the community.”<sup>66</sup> The Task Force’s final report<sup>67</sup> in May 2015 “outlined specific improvements that can make policing more just, safe, effective and constitutional--and work better for everyone.”<sup>68</sup> “The report addressed six ‘pillars,’” the first of which is “building trust and legitimacy--in recognition that they are not just prerequisites for police reform but for policing itself.”<sup>69</sup>

The Task Force recommended that police departments have clear, specific policies on when officers can and cannot use force.<sup>70</sup> Officers need “*real-world training* on when force is appropriate.”<sup>71</sup> The report emphasizes the importance of *community policing* as a principle that “should be infused throughout the culture” of police departments, “with law enforcement, whenever possible, *focusing on positive and productive nonenforcement interactions with community members.*”<sup>72</sup>

Reflecting on the work of the Task Force five years after the release of the Report, four Task Force members—law enforcement professionals all--mused that “[l]iving in a world where communities and the police are at odds is not a preordained reality. Our inheritance of racial inequality is not our destiny.... We need one another, and the rest of the world needs an America that exemplifies freedom and the best of democratic values. The police will play a critical role in America’s future. Rather than a ‘Thin Blue Line,’ we must begin to see ourselves as a thread woven throughout the communities we serve and that hold together the fabric of democracy.... We cannot lose focus once the streets become quiet, demonstrations subside and we get the sense that things are back to ‘normal.’ We must recognize that ‘normal’ is the problem. People are demanding a ‘new normal’—where equality and justice are real for all.”<sup>73</sup>

During that same turbulent 2015 time period, the *Atlantic* released an article by Ta-Nehisi Coates, in which he articulates *the over-arching challenge of criminal justice reform that provides equal justice for all*, and illustrates not only the problem but also the solution:

*“There is a tendency, when examining police shootings, to focus on tactics at the expense of strategy. One interrogates the actions of the officer in the moment trying to discuss their mind-state. We ask ourselves, ‘Were they justified in shooting?’ But, in this time of heightened concern around policing, a more essential question might be, ‘Were we justified in sending them?’ At some point, Americans decided that the best answer to every social ill lay in the*



*power of the criminal justice system. Vexing social problems--homelessness, drug use, the inability to support one's children, mental illness--are presently solved by sending in men and women who specialize in inspiring fear and ensuring compliance. Fear and compliance have their place, but it can't be every place....*

*"When Walter Scott fled from the North Charleston police, he was not merely fleeing Michael Thomas Slager, he was attempting to flee incarceration. He was doing this because we have decided that the criminal justice system is the best tool for dealing with men who can't, or won't support their children at a level that we deem satisfactory. **Peel back the layers of most of the recent police shootings that have captured attention and you will find a broad societal problem that we have looked at, thrown our hands up, and said to the criminal justice system, 'You deal with this....***

*"**There is, of course, another way.** Was Walter Scott's malfunctioning third-brake light really worth a police encounter? Should the state repeatedly incarcerate him for not paying child support? Do we really want people trained to fight crime dealing with someone who's ceased taking medication? Does the presence of a gun really improve the chance of peacefully resolving a drug episode? In this sense, the police—and the idea of police reform—are a symptom of something larger...."*

*"There are many problems with expecting people trained in crime-fighting to be social workers. In the black community, there is a problem of **legitimacy.**"<sup>74</sup>*

Coates points out that "for *most* [white] Americans, the police—and the criminal justice system—are figures of *authority*. The badge does not merely represent rule via lethal force, but rule through *consent and legitimacy rooted in nobility.*"<sup>75</sup> "In contrast, "African Americans, for most of our history, have lived under the *power* of the criminal justice system, *not its authority*. The dominant feature in the relationship between African Americans and their country is *plunder*, and plunder has made police *authority* an impossibility, and police *power* a necessity...."<sup>76</sup> "When African American parents give their children 'The Talk,' they do not urge them to make no sudden movements in the presence of police out of a profound respect for the democratic ideal, but out of the knowledge that police can, and will, kill them."<sup>77</sup>

**This is the kind of history and cultural sensitivity training that police officers *must* be trained to understand! They must be aware of what a person of color is likely *thinking* and *feeling*, when approached by police. It is altogether different than what white citizens generally have in their minds under similar circumstances. Furthermore, such knowledge, understanding and empathy hold the key to de-escalating potentially lethal encounters, enhancing the chance that both the police and the public will get home safely.**

“The problem of restoring police *authority*,” says Coates, “is not really a problem of police authority, but a problem of *democratic authority*. It is what happens when you decide to solve your problems with a hammer. To ask, at this late date, why the police seem to have lost their minds is to ask why our hammers are so bad at installing air conditioners. More, it is to ignore the state of the house all around us. **A reform that begins with the officer on the beat is not reform at all. It is avoidance. It’s a continuance of American preference for considering the actions of bad individuals, as opposed to the function and intention of systems.**”<sup>78</sup>

### ***Structural Reform.***

That notion of *structural change* is at the heart of a brilliant article by Monica C. Bell, the Climenko Fellow and Lecturer on Law at Harvard Law School, and a Ph.D. Candidate in Sociology and Social Policy at Harvard University, in an article entitled “Police Reform and the Dismantling of Legal Estrangement,” published in the 2017 Issue of *The Yale Law Journal*.<sup>79</sup> In the article, Bell observes that some scholars diagnose the problem of policing as one of “*illegitimacy*, i.e., that people lack confidence in the police and are, therefore, unlikely to comply or cooperate with them.”<sup>80</sup> In response, they focus on “*procedural justice* and emphasize a police officer’s duty to treat people with dignity and respect, behave in a neutral and unbiased way, and exhibit an intent to help and give them voice to express themselves and their needs--largely in the context of police stops.”<sup>81</sup>

Bell’s article argues, however, that *legitimacy theory* offers an incomplete diagnosis of the policy crisis, and, thus, deemphasizes *deeply structural*, group-centered approaches to the problem of policing.<sup>82</sup> Instead, she “seeks to expand the predominant understanding of police mistrust among African Americans and the poor, suggesting that the concept of *legal estrangement* offers a better lens through which...policymakers can understand and respond to the current problems of policing.”<sup>83</sup> **A legal estrangement analysis focuses on the detachment and alienation of people of color and their sense that law operates to exclude them from society.<sup>84</sup> It, therefore, points to structural approaches to reforming policing.<sup>85</sup>**

In so doing, Bell acknowledges that “the structural factors believed to contribute most fundamentally to cynicism, such as *concentrated poverty*, *segregation* and *residential instability*”--the problems of America’s broken opportunity structure--cannot be fully dismantled without fundamental shifts in economic distribution and eradication of racial discrimination.<sup>86</sup> She argues that this “‘root causes’ mentality,” however, “encourages policy makers to ignore ways that policy practices and policy *directly* and *actively* contribute to legal estrangement and its concomitant racial and socioeconomic conditions.”<sup>87</sup>

Instead, Bell suggests using a variety of strategies to address structures that contribute to legal estrangement, such as reorganizing police departments, shrinking and refining the footprint of

police, better compensating police, democratizing the police, and raising the stakes of Fourth Amendment jurisprudence.<sup>88</sup>

***Transformational Change.***

Illustrative of such a structural approach is Berkeley, California’s bold vision for policing’s future.<sup>89</sup> In a remarkable move, City Council members passed several public safety reforms in a single omnibus bill, that included the creation of **a new traffic enforcement agency, separate from the police department**; a new **network of first responders**; a deep **commitment to public safety data collection, dissemination and transparency**; and **significant budget reductions**.<sup>90</sup> In an article for *Governing Magazine*, Ryan Kost of the San Francisco Chronicle, explains what a traffic stop might look like, what happens when you call 911, and what police would do without the responsibility of handling traffic enforcement, homelessness, substance abuse and mental health crises, better handled by unarmed professionals, who can help community members get the help they need in a crisis. **As envisioned, this new model will allow police officers to focus on the most critical threats to public safety, rather than minor traffic infractions that now take up 15-20% of their time, and relieve them of the burden of mental health and homelessness calls, which constitute more than 40% of their calls.**<sup>91</sup> **In addition, it will allow them the time for community engagement and relationship building.**<sup>92</sup>

City Council Member Ben Bartlett acknowledges that this new vision constitutes a “titanic” shift in the focus of policing and that Berkeley is trying to do something unprecedented, but city officials are clearly excited. “Essentially,” Bartlett says, “the vision for policing in Berkeley--and hopefully the rest of the country--is one of an elite cadre of licensed professional investigators who solve crimes.” “They wouldn’t feel like an occupying army and they wouldn’t feel like they are stuck in the dregs.”<sup>93</sup> “I think it will lead to a happier force and better outcomes for the community.”<sup>94</sup>

The Utah Citizens’ Counsel believes such a bold vision is exactly what Utah policymakers should be considering and urges them to envision, fund, and implement their own bold design for equal justice under law in Utah. It would be our privilege to partner with you in that important and potentially transformational effort.

## Endnotes for Personal Security Report

<sup>1</sup> Willem Roper, “Black Americans 2.5X More Likely Than Whites to be Killed by Police,” *Statista*, June 2, 2020, accessed July 11, 2020, <https://www.statista.com/chart/21872/map-of-police-violence-against-black-americans/>.

<sup>2</sup> Diedre McPhillips, “Deaths From Police Harm Disproportionately Affect People of Color,” *U.S. News*, June 3, 2020, accessed August 25, 2020, <https://www.usnews.com/news/articles/2020-06-03/data-show-deaths-from-police-violence-disproportionately-affect-people-of-color/>.

<sup>3</sup> Ibid.

<sup>4</sup> Carolyn Crist, “Police-involved Deaths Vary by Race and Place,” *Reuters*, July 31, 2018, accessed July 14, 2020, <https://www.Reuters.com/articles/us-health-race-police-deaths/police-involved-death-vary-by-race-and-place/>.

<sup>5</sup> Erin Alberty, “Killings by Utah Police Outpacing Gang, Drug, Child-Abuse Homicides,” *Salt Lake Tribune*, 3, November 24, 2014, accessed June 15, 2020, <https://archive.sltrib.com/article.php?id=1842489&titype+CMSID>.

<sup>6</sup> Mohammed Haddad, “Mapping US Police Killings of Black Americans,” *Aljazeera*, May 31, 2020, accessed June 15, 2020, <https://www.aljazeera.com/indepth/interactive/2020/05/mapping-police-killings-black-americans/>.

<sup>7</sup> Ibid.

<sup>8</sup> Data reflect that this disparity is largely due to differences in the treatment of drug offenses. Michelle Alexander, for example, identifies the sentencing disparity for crack cocaine vs. powder cocaine as a key technique, reflecting how prison sentencing reflects a new “Jim Crow” era. Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012).

<sup>9</sup> “Utah Profile,” *Prison Policy Initiative*, accessed 7/11/2020, <https://www.prisonpolicy.org/profiles/UT.html>.

<sup>10</sup> Jessica Miller, “Juvenile Justice Reform Mostly Helped White Kids in Utah, Not Racial Minorities,” *Salt Lake Tribune*, July 30, 2020, accessed August 30, 2020, <https://www.sltrib.com/news/2020/07/30/juvenile-justice-reform/>.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Bernadette Rabuy, “Detaining the Poor: New Report Finds that People Detained Pretrial Are Too Poor to Afford Money Bail,” *Prison Policy Initiative*, May 10, 2016, <https://www.prisonpolicy.org/factsheets.html>.

<sup>14</sup> Ibid.

<sup>15</sup> “2018 Hate Crime Statistics,” *Federal Bureau of Investigation*, accessed June 29, 2020, <https://ucr.fbi.gov/hate-crime/2018/topic-pages/victims>.

<sup>16</sup> “2017 Hate Crime Statistics,” *Federal Bureau of Investigation*, accessed July 11, 2020, <https://ucr.fbi.gov/hate-crime/2017/tables/table-13-state-cuts/utah.xls>.

<sup>17</sup> John Sides, “What data on 20 million traffic stops can tell us about “driving while black,” *Washington Post*, July 17, 2018, accessed July 11, 2020, <https://www.washingtonpost.com/news/monkey-cage/wp2018/07/17/what-data-on-20-million-traffic-stops-tell-us-about-driving-while-black/>; See also, Sharon LaFraniere and Andrew W. Lehren, “The Disproportionate Risks of Driving While Black,” *New York Times*, October 24, 2015, accessed July 11, 2020, <https://www.nytimes.com/2015/10/25/us/racial-disparity-traffic-stops-driving-black.html>; Neil Gross, “It is Possible to Reform the Police,” *New York Times*, September 8, 2020, accessed September 20, 2020, <https://www.nytimes.com/2020/09/08/opinion/police-reform-biden.html>.

<sup>18</sup> Courtney Tanner, “Here’s What These Utah Minority Leaders Suggest to Address Racism Within Policing,” *Salt Lake Tribune*, June 25, 2020, accessed July 4, 2020, <https://www.sltrib.com/news/2020/06/24/heres-what-these-utah-minority-leaders-suggest-to-address-racism-within-policing/>.

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- <sup>19</sup> Salt Lake Branch NAACP Newsletter (undated), Summer 2020, 2.
- <sup>20</sup> Ibid.
- <sup>21</sup> Courtney Tanner, “Minority Leaders Offer Ways to Address Racism in Policing,” *Salt Lake Tribune*, June 25, 2020, A7.
- <sup>22</sup> Ibid.
- <sup>23</sup> Ibid.
- <sup>24</sup> Ibid. Profiling has been a serious problem since policing began, Representative Sandra Hollins pointed out. National data consistently reflect that people of color are pulled over, frisked and questioned at much higher rates than white individuals.
- <sup>25</sup> Ibid.
- <sup>26</sup> Ibid.
- <sup>27</sup> Ibid.
- <sup>28</sup> Bethany Rodgers and Taylor Stevens, “Utah Lawmakers Ban Knee-on-neck Chokeholds,” *Salt Lake Tribune*, June 19, 2020, accessed July 4, 2020, <https://www.sltrib.com/news/politics/2020/06/18/knee-on-neck-chokehold/>.
- <sup>29</sup> Pat Reavy, “Utah Academy to Require More Bias, Defensive Tactics Training for New Police Officers,” *Deseret News*, June 24, 2020, accessed July 13, 2020, <https://www.deseret.com/utah/2020/6/24/21302064/utah-agency-require-more-bias-defensive-training-for-officers/>; Nate Carlisle, “Utah Police Academy Calls For More Anti-Bias Training and Lessons in Fighting with Hands, Not Weapons,” *Salt Lake Tribune*, June 17, 2020, accessed June 18, 2020, <https://www.sltrib.com/news/politics/2020/06/17/utah-police-academy-calls-for-more-anti-bias-training-and-lessons-in-fighting-with-hands-not-weapons/>.
- <sup>30</sup> Sophia Eppolito, “Salt Lake City: Police Latest Agency to Ban Chokeholds,” *US News*, June 10, 2020, accessed June 14, 2020, <https://www.usnews.com/news/best-states-utah-articles/2020-6-10/salt-lake-city-police-latest-agency-to-ban-chokeholds/>.
- <sup>31</sup> Ibid.
- <sup>32</sup> Katie McKellar, “Despite Calls to ‘defund,’ Salt Lake City Approves Police Budget—But With Controls,” *Deseret News*, June 16, 2020, accessed June 17, 2020, <https://www.deseret.com/utah/2020/6/16/21293829/utah=salt-lake-city-police-budget-approval/>.
- <sup>33</sup> Leia Larsen, “SLC Council Considers Restricting Military Surplus Equipment for Police,” *Salt Lake Tribune*, September 17, 2020, A6.
- <sup>34</sup> Jessica Miller, “Salt Lake County District Attorney Sim Gill Suggests 22 Ways to Change Utah’s Use-of-Force Laws,” *Salt Lake Tribune*, July 13, 2020, accessed July 14, 2020, <https://www.sltrib.com/news/2020/07/13/salt-lake-county-district/>.
- <sup>35</sup> Ibid.
- <sup>36</sup> Sim Gill, “Policy Reform Ideas for Law Enforcement Use of Deadly Force,” Salt Lake District Attorney, July 13, 2020.
- <sup>37</sup> Jessica Miller, “Salt Lake County District Attorney Sim Gill Suggest 22 Ways to Change Utah’s Use of Force Laws.”
- <sup>38</sup> Ibid.
- <sup>39</sup> Ibid.
- <sup>40</sup> Ibid.
- <sup>41</sup> Ibid.
- <sup>42</sup> Annie Knox, “Judge Dismisses Lawsuit in 2017 Salt Lake City Police Killing of Black Man,” *Deseret News*, July 13, 2020, accessed July 14, 2020, <https://deseret.com/utah/2020/7/13/21322755/judge-tosses-lawsuit-in-2017-salt-lake-police-killing-of-black-man/>.
- <sup>43</sup> Jessica Miller, “Salt Lake City Police Dog Ordered to Attack a Black Man on his Knees with His Hands in the Air,” *Salt Lake Tribune*, August 11, 2018, accessed August 12, 2020, <https://www.sltrib.com/news/2020/08/11/salt-lake-city-police-dog/>.
- <sup>44</sup> Jessica Miller, “SLC Finds a ‘Pattern of Abuse’ When Police Use Dogs in Arrests,” *Salt Lake Tribune*, September 26, 2020, A1, A6.

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- <sup>45</sup> Ibid.
- <sup>46</sup> Ibid., A6
- <sup>47</sup> Ibid.
- <sup>48</sup> Ibid.
- <sup>49</sup> Paighthen Harkins, Jessica Miller and Libby Seline, “Shooting of Autistic Boy Spurs Calls for Deploying Specialists,” *Salt Lake Tribune*, October 4, 2020, B1-2.
- <sup>50</sup> Ibid.
- <sup>51</sup> Ibid.
- <sup>52</sup> Ibid.
- <sup>53</sup> Ibid.
- <sup>54</sup> Ibid.
- <sup>55</sup> KUTV2, 10:00 o’clock News, October 3, 2020.
- <sup>56</sup> “Shooting of Autistic Boy Spurs Calls for Deploying Specialists,” B2.
- <sup>57</sup> Ibid.
- <sup>58</sup> Jessica Miller, “Utah’s Criminal Justice Reform Failed to Cut Recidivism, State Audit Finds,” *Salt Lake Tribune*, October 14, 2020, A1, A4.
- <sup>59</sup> Ibid.
- <sup>60</sup> Ibid.
- <sup>61</sup> Paighthen Harkins, “Criminal Justice Agencies Dinged for Poor Data Flow,” *Salt Lake Tribune*, October 14, 2020, B1, B3.
- <sup>62</sup> Ibid. In 2016, fewer than 1% of the state’s nearly 194,000 warrants – about 1600 – were reported to the National Crime Information Center, the Bureau of Justice Statistics reported.”
- <sup>63</sup> Ibid.
- <sup>64</sup> Ibid.
- <sup>65</sup> Charles H. Ramsey, et al., “There is a Playbook for Police Reform,” *New York Times*, June 4, 2020, accessed October 7, 2020, <https://www.nytimes.com/2020/06/04/opinion/police-reform-obama-task-force.html>, 2.
- <sup>66</sup> Ibid.
- <sup>67</sup> “President’s Task Force on 21<sup>st</sup> Century Policing, 2015,” *Final Report of the President’s Task Force on 21<sup>st</sup> Century Policing*,” Washington, DC Office of Community-Oriented Policing Services, accessed October 7, 2020, <https://www.justice.gov/archives/opa/blog/president-s-task-force-21st-century-policing-recommendations/>. See also the Task Force Implementation Guide (2015), accessed November 8, 2020, <https://cops.usdoj.gov/RIC/Publications/cops-p341-pub.pdf>.
- <sup>68</sup> “There is a Playbook for Police Reform,” 2.
- <sup>69</sup> Ibid.
- <sup>70</sup> Ibid.
- <sup>71</sup> Ibid.
- <sup>72</sup> Ibid.
- <sup>73</sup> Ibid., 3.
- <sup>74</sup> Ta-Nehisi Coates, “The Myth of Police Reform,” *The Atlantic*, April 15, 2015, accessed October 7, 2020, <https://www.theatlantic.com/politics/archive/2015/04/the-myth-of-police-reform/39007/>, 1-2.
- <sup>75</sup> Ibid., 3.
- <sup>76</sup> Ibid., 4.
- <sup>77</sup> Ibid.
- <sup>78</sup> Ibid.
- <sup>79</sup> Monica C. Bell, “Police Reform and the Dismantling of Legal Estrangement,” *Yale Law Journal*, 2017, 2054-2150.
- <sup>80</sup> Ibid., 2054.
- <sup>81</sup> Ibid.
- <sup>82</sup> Ibid.
- <sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid., 2127.

<sup>87</sup> “For example, some scholars have argued that police practices directly contribute to persistent residential segregation. Police contact can negatively influence the prison reentry process, making it difficult for returning citizens to maintain employment and familial relationships. Multiple experiences with arrest of a parent can result in court dates for children that keep them out of school and siphon them into the criminal justice apparatus,” interrupting their education and ultimately placing them “at risk for incarceration and its related perils.” Ibid.

<sup>88</sup> Ibid, 2128-2149.

<sup>89</sup> Ryan Kost, “Berkeley’s Bold Vision for the Future of Policing,” *Governing Magazine*, August 17, 2020, accessed September 7, 2020, <https://www.governing.com/next/Berkeley-Bold-Vision-for-the-Future-of-Policing.html?ut>.

<sup>90</sup> Ibid.

<sup>91</sup> “In Sacramento, noncriminal traffic stops, medical and proactive incidents have, so far this year, accounted for 80% of how officers spend their time. Violent crime accounts for only 4%.” Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.