

# DEMAND TRANSPARENCY AND ACCOUNTABILITY OUT OF POLICING REFORM

## PASS EIGHT PROVISIONS TO PROMOTE ACCOUNTABILITY AND REIMAGINE PUBLIC SAFETY, INCLUDING LIMITING POLICE USE OF FORCE LIKE THE POLICE EXERCISING ABSOLUTE CARE WITH EVERYONE OR PEACE ACT (H.R. 4359).

### IMPACT OF INADEQUATE STANDARDS

Approximately 1,000 people are shot and killed by police every year in the United States. The Washington Post has reported on this data in their Fatal Force database, for the last five years.<sup>1</sup> The federal government does not collect this data, despite enactment of the Death in Custody Reporting Act in 2014 requiring this data to be collected, disaggregated and published annually.

Amnesty International's 2015 Deadly Force Report found that all 50 states and the District of Columbia failed to meet international law and standards for the use of lethal force by police. Nine states and Washington, D.C. have not even enacted laws on use of lethal force by law enforcement officers. Nine other states' use of force laws authorize police use of deadly force to suppress a riot, compared to a mere eight states that require law enforcement to provide a warning before lethal force is used. Only three states require law enforcement to create no risk to the life of a bystander before using lethal force.

Congress must enact a federal standard to ensure that a person's right to survive a police encounter does not depend on the color of their skin or where they live. A more restrictive national legal standard is urgently needed to protect our right to be safe, the right to live, the right to be free from discrimination and the right to be equally protected by the law.

### DISPARATE IMPACT

When interacting with police everyone has a right to be safe, be free from discrimination, be equally protected before the law and survive the encounter.

Black people represent 12.7% of the US population, but 23% of the total police deaths in 2019. Black people are more than twice as likely to be killed by police compared to white people.

<sup>1</sup> <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>

### HUMAN RIGHTS OBLIGATIONS

One of a state's most fundamental duties, with which police officers must comply with, is to protect life. International law only allows police officers to use lethal force as a last resort in order to protect themselves or others from an imminent threat of death or serious injury. Furthermore, international law enforcement standards require that **force of any kind may be used only when there are no other means available**. If the force is unavoidable, it must be no more than is necessary and proportionate.

Police officers are rarely prosecuted and even more rarely convicted for killing people. In a case when a person is killed as a result of a law enforcement officer's unlawful use of lethal force, the family has the right to an effective remedy. Our current body of laws regarding police use of lethal force makes that incredibly rare. It is common sense to expect police to deescalate a situation by calming things down before resorting to force or deadly force, yet our laws largely do not reflect that. While enacting a use of force standard that would further limit force is very important, allowing law enforcement to be subject to lawsuit for violating people's rights, and lowering the intent standard so that a prosecutor need not prove law enforcement acted willfully but recklessly would go a long way to secure justice when people's civil rights and civil liberties are violated by police.

## LIMIT FORCE TO HELP SAVE LIVES

There are several areas that need reform that work in tandem to provide for greater accountability for police misconduct, see below. Amnesty International hopes to see all of these measures adopted in policing reform, though given our research and concomitant work on the state level to limit the use of force we remain steadfast in calling for the passage of any reform to include the PEACE Act (H.R. 4359), which would:

- Require officers to exhaust reasonable alternatives before resorting to the use of force, including the use of deadly force;
- Limit the use of deadly force by federal law enforcement to that which is necessary – as a last resort – to prevent imminent and serious injury or death;
- Require consideration of the actions of both the individual and the officer leading up to and at a use of force encounter. If a police officer's own gross negligence led to the need for force, the officer cannot claim their actions were justified;
- Require that States enact a substantially similar law in order to receive full federal grant dollars under the Edward Byrne JAG grant program as conditioned by the U.S. Attorney General;
- Direct the U.S. Attorney General to issue guidance in consultation with impacted communities, survivors of police use of force, and civil society organizations.

## RECOMMENDATION TO CONGRESS

Members of Congress should work to pass meaningful policing reform that includes the following eight priorities, including the Police Exercising Absolute Care with Everyone Act of 2019 or PEACE Act (H.R. 4359):

- Create a federal standard that the use of deadly force be reserved for only when necessary to protect life, as a last resort after exhausting reasonable alternatives, and call on states to implement this standard or risk losing federal funding; require the use of de-escalation techniques and that officers warn subjects before resorting to force, like in the PEACE Act (HR 4359), as included in the Justice in Policing Act;
- Prohibit racial and religious profiling with robust data collection on police-community encounters and law enforcement activities. Data should capture all demographic categories and be disaggregated;

- Prohibit neck- and chokeholds. Prohibit all maneuvers that restrict the flow of blood or oxygen to the brain, including neck holds, chokeholds, and similar excessive force, deeming the use of such force a federal civil rights violation;
- End militarization of police. Eliminate the federal 1033 program that facilitates the transfer of military equipment to law enforcement;
- Prohibit the use of no-knock warrants, especially for drug searches;
- Stop reckless behavior by police. Change the mens rea requirement of 18 U.S.C. Sec. 242 from willfulness to recklessness, permitting prosecutors to successfully hold law enforcement accountable for the deprivation of civil rights and civil liberties;
- Develop a national public database of police actions that is accessible to all and would cover all police agencies in the United States and its territories; and
- End the qualified immunity doctrine that prevents police from being held legally accountable when they violate people's Constitutional rights, and enact a similar mechanism for holding federal law enforcement officers accountable, too.

Together these eight proposals could advance meaningful accountability and address systemic racial bias imbedded in policing.

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