



GETTING TO POLICE ACCOUNTABILITY: A BLUEPRINT FOR MISSISSIPPI

A GUIDE TO FIVE REFORMS THAT MISSISSIPPI SHOULD IMPLEMENT NOW.
PROMOTING TRANSPARENCY, ACCOUNTABILITY, & FAIR PRACTICES THAT
PROTECT PUBLIC SAFETY AND CIVIL RIGHTS.

Getting to Police Accountability: A BLUEPRINT FOR MISSISSIPPI

The national conversation on fair and just policing has more urgency now than ever. We have an opportunity to make progress in Mississippi that can strengthen public safety and enhance civil rights.

Policing varies tremendously throughout Mississippi, but the themes of reform remain constant: transparency, accountability, and improving the relationship between communities — particularly communities of color — and the law enforcement officers tasked with keeping us safe.

Unnecessary “Blue Lives Matter” legislation runs afoul to fair dispensation of justice. These proposals increase protections for law enforcement officers without increasing or even approaching balanced protections for citizens against abusive and intrusive police practices. In addition, they are a waste of taxpayers’ dollars and police work.

Police accountability in Mississippi is long overdue. These **five** policy reforms should be top priorities on the Legislature’s agenda for reforming police practices:



INDEPENDENT PROSECUTORS

when officers kill or seriously injure people.



BODY CAMERAS FOR POLICE

along with public access to footage and privacy protections.



WRITTEN CONSENT TO SEARCH

by requiring officers to receive explicit permission before conducting searches.



PROHIBIT POLICING FOR PROFIT

by stopping police from transforming everyday traffic stops into fishing expeditions and unfairly taking property through civil asset forfeiture.



REQUIRE RACIAL IMPACT STATEMENTS

be attached to all legislation pertaining to the criminal justice system before passage.



INDEPENDENT PROSECUTORS

when officers kill or seriously injure people.

The call for police accountability has reached a crescendo, as a national movement has risen in the aftermath of tragic incidents of fatal police violence captured on film. Americans have sadly come to learn the names of Michael Brown, Eric Garner, Walter Scott, Freddie Gray, and Sandra Bland, all killed by police officers. The names of hundreds of other people killed by police violence each year — disproportionately people of color, and especially Black men — go unknown.

Within days of each other in July 2016, Alton Sterling of Baton Rouge, La., and Philando Castile of Falcon Heights, Minn., were killed by police officers, and their deaths were recorded on video. Here in Mississippi, the death of Ronnie Shumpert and other deaths by law enforcement have sparked an outcry from communities about the need for transparency and accountability when an officer kills or seriously injures anyone. Mississippi’s system of investigating these kinds of incidents remains opaque and carries with it a significant conflict of interest or, at best, the perception of one.

Currently, when police use deadly force, the Mississippi Bureau of Investigation (MBI) conducts the investigation. However, unless the Attorney General decides to intercede, the prosecutor for the county where the shooting occurred typically receives MBI’s findings. Generally, the Attorney General does not intercede, and it is left to the county prosecutor to decide whether to seek an indictment and to present the case before secret grand jury.

The main problem with our existing process lies in the close working relationship between county prosecutors and the very law enforcement officers they are charged with investigating. As matter of course, prosecutors rely on local officers to serve as witnesses in prosecutors’ criminal cases, requiring mutual trust, cooperation, and partnership as colleagues. When local prosecutors investigate officers within the same departments they work with intimately on a daily basis, this sudden role-shifting creates a natural conflict of interest or, at a minimum, a perception of conflict. The decision of whether to bring evidence to a grand jury or to seek an indictment should lie with an independent prosecutor, rather than the local prosecutor, who works with local law enforcement agencies on a regular basis. The prosecution of any crime identified during the investigation should remain under the jurisdiction of the independent prosecutor.



Require the local prosecutor be recused when a police officer kills or seriously injures an individual and either the Attorney General or special prosecutor be appointed.



The President’s Task Force on 21st Century Policing — an in-depth analysis developed by law enforcement leaders, advocates, academics, and experts in law and criminal justice to develop methods of strengthening community policing and increasing mutual police-community trust — made two recommendations that specifically address this concern. Action Item 2.2.2 recommends, “Policies should also mandate external and independent criminal investigations in cases of police use of force resulting in death, officer-involved shootings resulting in injury or death, or in-custody death.” Action Item 2.2.3 recommends “policies that mandate the use of external and independent prosecutors in cases of police use of force resulting in death, officer-involved shootings resulting injury or death, or in-custody deaths.”



BODY CAMERAS FOR POLICE

along with public access to footage and privacy protections.

Many of the most distressing and now well-known killings of individuals by police officers, from the 2014 death of Eric Garner in Staten Island, N.Y. to the deaths of Alton Sterling and Philando Castile in the summer of 2016, have reached public consciousness only because bystanders filmed them. These events have demonstrated the importance of filming as a critical police accountability tool, when both bystanders and police officers have the cameras.

Officer-worn cameras, one of the most frequently discussed options for reining in police violence, can only be an effective accountability tool if used correctly and governed by policies that ensure fairness. Deployment of body cameras can reduce both officers’ use of force and civilian complaints of misconduct, the early research shows. Use of body cameras in Mississippi with appropriate policies governing their use would allow Mississippians to more effectively hold the police accountable for misconduct and protect officers from false misconduct allegations.

However, officer-worn cameras also raise the specter of expanded law enforcement surveillance into our everyday lives. The ACLU of MS supports the deployment of body-worn cameras only with strong protections in place to ensure public access to camera footage and mitigate the potential harms of mass surveillance.

Any use of body cameras must come with clear policies that:

- Ensure that police recordings continue to be subject to the Public Records Act and other transparency rules with applicable exclusions.

- Limit officer discretion on when cameras can and cannot record.
- Create strong disincentives to prevent the manipulation of footage or failure to record interactions.
- Require clear public notice of filming.
- Limit the surveillance capacity of cameras to what officers could otherwise see or hear.
- Control access to body camera footage and prevent unintended or malicious dissemination.
- Prevent officers from reviewing footage before filing initial arrest or incident reports.
- Limit retention of body camera footage.

Pass legislation establishing policies governing the use of police body cameras in departments across the state that protect the public's access and the public's privacy.

The President's Task Force on 21st Century Policing extensively discussed the role of officer-worn cameras and recommended "law enforcement agencies adopt model policies and best practices for technology-based community engagement that increases community trust and access."



WRITTEN CONSENT TO SEARCH

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Police search thousands of cars each year at Mississippi traffic stops, usually looking for guns or drugs, through a simple request for a driver to consent. Consent is often given on an isolated roadside in a one-on-one encounter with an armed law enforcement officer – an inherently coercive setting. Many Mississippians are unaware that they have a constitutional right to refuse a vehicular search. The Fourth Amendment of the U.S. Constitution protects individuals from unreasonable searches and seizures. Unless an officer has probable cause to believe that a crime has been committed, the officer generally is not allowed to search an individual's vehicle unless the individual has voluntarily consented to the search.

Currently, an officer only has to receive verbal consent in order to conduct the search. In some cases, if an officer finds contraband during a vehicular search, an individual who verbally consented to a search might later claim to have not consented, in a bid to rule the contraband inadmissible. In other cases, the individual might argue that they

did consent but their consent was not voluntary, so all items found during the search should be inadmissible. In the absence of a written document demonstrating a driver did, in fact, consent to the search, prosecutors face “he said/she said” arguments. If an officer fails to get consent to search, judges can bar evidence at trial.



Require law enforcement officers to get written permission before a vehicular search is conducted.



We recommend that section §99-1 of the Mississippi Code of 1972 be amended to include provision §99-1-31, which requires written consent of the driver before a vehicular search is conducted. The more knowledge motorists receive regarding their constitutional rights, including information on refusing consent to search, the more individuals are empowered to stand up for their own rights. In addition, requiring written consent encourages law enforcement to focus searches on vehicles actually involved in crime and simplifies prosecution. This, in part, improves public safety by focusing law enforcement priorities and conserves resources.



PROHIBIT POLICING FOR PROFIT

by stopping police from transforming everyday traffic stops into fishing expeditions and unfairly taking property through civil asset forfeiture.

Police in Mississippi can legally seize any property that they claim is related to criminal activity. Police need only to prove the item’s relationship to criminal activity by a preponderance of the evidence standard, which is far lower than the “beyond a reasonable doubt” standard needed for a criminal conviction. Prosecutors can then legally sell property as seized assets, even if the owner is never convicted of criminal charges. In fact, criminal charges never even have to be filed. This practice, civil asset forfeiture, distorts the priorities of policing and forces a “guilty until proven innocent” mindset regarding the seizure of people’s belongings.

After a police seizure, if a property owner wants to get her property back, she has to prove that the police wrongfully took it, in effect deeming the property owner guilty until proven innocent. To assert this “innocent owner” defense, the property owner must prove her complete ignorance of the alleged criminal activity, prove no involvement with the alleged criminal activity, and demonstrate she took all reasonable steps to prevent the alleged criminal activity.

Property owners have no right to an attorney in these cases and are often left to navigate the complicated court system by themselves. The high cost of attempting to reclaim one's property frequently prevents many from even trying, meaning that even improper seizures frequently stand unchallenged. In some cases, the cost of retrieving one's property exceeds the value of the property itself, leading some property owners to give up on trying to reclaim their seized items. Clearly the deck is stacked against property owners.

Typically, the county prosecutor's office and police department receive the proceeds from the sale of seized items. Although departments are forbidden from using proceeds toward salaries and payroll, they can use the income for business junkets, computers and technology needs, and overtime. In Mississippi, a law enforcement agency working alone is permitted to retain 80% of the forfeiture proceeds, with the remaining 20% deposited in the General Fund. When multiple agencies collaborate in the underlying criminal case, law enforcement agencies may retain 100% of proceeds. There being a perverse incentive for law enforcement to generate revenue rather than keep the community safe is troubling enough, but the issue is further compounded by the lack of transparency.

In Mississippi, agencies are not required to report what is seized, how much money is seized, from whom assets are seized, or how the agency spends the forfeiture proceeds. Thus, even though the \$4.1 million police station, a law enforcement training facility, and several police vehicles in Richland, MS were fully funded by the small town police department's forfeiture proceeds, and a sign in the window states that the building was "tearfully donated by drug dealers," there is no way of knowing how many people who were never convicted of a crime – much less, charged with a crime – forcefully had their property taken to fund the police department.

Civil asset forfeiture laws create a perverse incentive for law enforcement officers to seize property without due process: the proceeds of such seizures end up directly in the budgets of those officers' departments. These seizures can help balance department budgets or equip underfunded departments with technology they could not otherwise afford. In other words, civil asset forfeiture can easily lead to policing for profit.

The Asset Forfeiture Task Force should consider agencies be more transparent with forfeiture practices and provide more due process protections so that innocent motorists are not subjected to for-profit policing.

Nebraska banned civil asset forfeiture just months ago, in April 2016. New Mexico banned civil asset forfeiture in 2015. It's been banned in North Carolina since 2000. Ending civil asset forfeiture draws support from across political and ideological

spectrums, with even the head of the Fraternal Order of Police testifying to Congress that the practice should be reined in.

Civil asset forfeiture violates civil rights and preys on those with the least resources available to defend themselves. Our recommendation is to end the practice outright. However, as an intermediate step until the abolition of civil asset forfeiture, these potential reforms could alleviate some of the worst injustices:

- Limit seizures only to items that are themselves illegal or shown to be direct proceeds from crimes.
- Place the burden on the government to establish through clear and convincing evidence that the seized items were proceeds from a criminal venture.
- Require robust public reporting on property seized and income for the department, as well as detailed records of what departments purchase using that funding.
- Deposit funds from the sale of seized items to the general State treasury rather than to the very prosecutors and police departments that have discretion over making seizures, eliminating a major incentive for taking personal property.



REQUIRE RACIAL IMPACT STATEMENTS

be attached to all legislation pertaining to the criminal justice system before passage.

Before policy decisions are made, lawmakers should determine the effects these policies have on Mississippi's growing minority population. When racial impact is not consciously addressed, racial inequality is often unconsciously replicated. The persistence of deep racial disparities and divisions across society is evidence of institutional racism.

Many measures that appear to be race-neutral can, in practice, have disproportionate, harmful consequences on racial and ethnic minorities. For example, in Mississippi as in other states, Black people are arrested and incarcerated at a higher rate than White people and at a disproportionate rate relative to the Black population of Mississippi. (The Magnolia State incarcerates blacks at 3.5 times the rate of whites. African Americans account for 37% of the state's population, but 61.4% of its prisoners.) Many studies have reported that certain aspects of the criminal justice system, such as drug

sentencing guidelines and death penalty sentences, have a disproportionate effect on people of color.



Establishing a system that assesses the racial and ethnic impact of proposed legislation or ballot initiatives will allow measures that will have a disproportionately harmful effect on people of color be identified before implementation.



Although the laws do not explicitly treat racial or ethnic minorities differently, the differential impact of laws on minorities can be just as devastating as if the effects were intended. Because the differential racial impact only becomes apparent once the law is implemented and not at the time it is written, there is no systematic way to examine how different racial and ethnic groups will likely be affected by a proposed action or decision.

Establishing a system that assesses the racial and ethnic impact of proposed legislation or ballot initiatives will allow measures that will have a disproportionately harmful effect on racial and ethnic minorities to be identified before they are implemented. Racial impact analysis is best conducted during the decision-making process. Being conscious of adverse impacts opens the door for new possibilities for equitable change for all. In an effort to improve our criminal justice system, we must examine how decisions are made throughout the system by every decision-maker. Similar racial impact statement initiatives have had positive effects in other states, and have helped to reduce racial injustice in sentencing, probation, and parole policies.



CONCLUSION

Adopting these five reforms would put Mississippi well on its way toward ensuring police departments operate with the guiding principles of respect, transparency, and accountability. A range of other reforms could further bolster community safety and civil rights. These five planks, in particular, are among the most fundamental to strengthening public safety and establishing a culture of policing in Mississippi that fosters trust and cooperation between law enforcement agencies and the communities they serve. Laws that require special prosecutors for police-involved shootings, police transparency and accountability, and racial impact analysis are criminal justice reforms that make Mississippi better.