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ACLU of Utah Response to Salt Lake County District Attorney's Policy Reform Ideas for Law Enforcement Use of Deadly Force

Within days after his office declined to file charges against the two Salt Lake City police officers who shot and killed Bernardo Palacios-Carbajal, Salt Lake County District Attorney (DA) Sim Gill [released a 15-page document containing 22 proposed reforms](#) to "re-examine" and "re-set" use of force policies for local law enforcement.

We firmly believe that Mr. Palacios-Carbajal should be alive today and that justice would have been better served if the circumstances of his killing were examined and weighed by a jury selected from the community. We further believe that these tragic circumstances have uncovered the fact that the current flawed laws limiting oversight and accountability for police who use deadly force require immediate reform. To change the factors and outcomes of incidents like the killing of Mr. Palacios-Carbajal, we need to change the entire system.

After reviewing the District Attorney's proposals around the proper use of force by law enforcement in Utah, we think that they reflect a comprehensive and well-documented approach that begins to level the playing field between officers and the public they are sworn to protect. These 22 reforms, if adopted, would start a decisive move away from the current model of unquestioned leniency for uses of force by police and a toward a new approach based on respect for the civil rights of everyone. We recognize how these reforms are evidence of how unrelenting protests and criticism against racially biased policing have shifted this critical discussion. The increased scrutiny of the systemic causes of violence by police officers, often against Black, Brown, and Indigenous people, has revealed just how overdue an overhaul of these use of force laws has become. We insist that reforms that are passed and any progress made must be attributed to the Black and Brown grassroots community activists who have been calling for change for many years leading to the recent surge in protests. We are hopeful that District Attorney Sim Gill will continue to listen.

We believe the District Attorney's proposed reforms represent a strong starting position around law enforcement use of force based on the following reasons:

First, the majority of Gill's proposed reforms focus on changing the current policies, procedures, and laws that allow a permissive environment of deadly force against members of the public. We appreciate the deviation from the harmful norm of blaming abuses of police power on victims, on societal trends like mental illness and substance abuse, or on the media. This is a positive acknowledgement that failed policies play a key role in allowing and perpetuating violence by police officers against people they encounter.

Second, the first 18 reforms envision changes to Utah statutes that currently place use of force incidents, including deadly force, effectively outside the reach of legal consequences in most cases. These proposed changes include amending the justifiable use of deadly force to require "imminent danger" (#6), making internal investigations of officer misconduct public documents (#13), and overturning *H.B. 415* to return local control to communities to set the power and scope of civilian police review boards (#18). While many of these changes will require action by the Utah Legislature, we note with optimism that criminal justice reform

has seen progress in recent legislative sessions. These reforms are much needed to ensure that the criminal legal system does not continue to be an emblem of systemic discrimination. We hope that this momentum continues, and that DA Gill continues to vocally support these reforms even when public scrutiny of his own office no longer dominates media headlines.

Third, many of these reforms appear to be gleaned from facts in actual cases where the District Attorney's office declined to file charges, rather than hypothetical situations. For example, the mention of a "butter knife" appears to refer to the fatal shooting of Jason Robert Whittle in his parents' driveway in October 2018. Whittle was threatening his mother with a butter knife when he was shot in the head by an officer with Unified Police who refused to provide a statement or explanation for the subsequent investigation and was not charged. Mr. Whittle's father later told the *Deseret News* that the situation could have "easily been defused" if the offices had taken a little more time." The proposed reforms requiring de-escalation and disallowing deadly force when a person does not have the means to carry out threats would prevent officers in the future from automatically claiming a statutory defense of justification in similar circumstances. Having reviewed dozens of fatal police shootings in Utah during the last three years, the ACLU of Utah agrees that escalation, lack of de-escalation, and a hasty resort to deadly force by police officers contributes to many killings. Nonetheless, the individuals like Mr. Whittle whose lives were taken in incidents involving police officers should still be alive today. As we look towards reform, we must acknowledge the tragedies that prompted them.

Finally, we support the overall goal of the District Attorney's reforms to "re-set the balance of justice" while building a new policy framework to limit the use of deadly force by law enforcement. We believe these proposed reforms must serve as a starting point, and by adding incentives and consequences to new policies we can reduce the fatal toll of police encounters. We also must recognize that for many communities, the criminal legal system never provided justice—an exclusion that must be addressed. We urge that agencies in the state, the District Attorney's office included, take steps to ensure that every Utahn has access to justice.

We think that it should be noted that the majority of these proposed reforms focus on the situation during or immediately after an officer uses violence. While this is a vital discussion, we believe that it is but one component of the larger goal of remedying the persistent and justified distrust and fear that marginalized communities feel towards the police. This dynamic has been created, earned and reinforced by law enforcement and the criminal legal system, two institutions that were never designed historically to protect communities of color. These long-standing grievances, which deepen with each new video of violent, racist, and lawless behavior by law enforcement, cannot be ignored when discussing why individuals are motivated to flee or resist when police arrive on the scene—a contributing factor to deadly outcomes. Reform should not stop with preventing the killings of Black, Brown, and Indigenous individuals by police officers. We urge the District Attorney's office to also re-evaluate measures his office and County agencies can adopt to earn the trust of these communities. It is not possible to call for justice without acknowledging injustices faced. We hope the District Attorney's proposed reforms are only the first of many steps by his office.

Another goal should be the reexamination of law enforcement practices across the board. For example, the continued collaboration by county jails—including Salt Lake County Jail—with ICE to detain and deport community members poisons the relationship between immigrant communities and the police by permitting its jails to serve as a pipeline into the unjust deportation system that separates many families. Knowing their local police could turn them over to ICE after any arrest makes many immigrants fear any encounter with law enforcement—including reporting crimes or serving as a witness. It is difficult for communities to trust an agency that lends its resources to identify, detain, and transport members of the very community it swore to protect into an inhumane and unconstitutional detention and deportation system.

The proposed reforms identify many of the shortcomings that have long existed. When a record 19 people died from police shootings in Utah in 2018, the ACLU of Utah [investigated the causes](#). When we questioned law enforcement officials, they either blamed the deaths on the increasingly aggressive behavior of the

people killed or said they did not know the reason. But when we spoke to activists from Utah Against Police Brutality, they had a much clearer answer that mirrors the increased oversight and accountability proposed by the District Attorney's office.

Utah Against Police Brutality (UAPB) has organized protests over several of 2018's officer-involved shootings. UAPB member Jacob Jensen explained that more accountability is needed to alter law enforcement behavior. "You won't change anything if you lacquer on a layer of de-escalation training to a system that says, 'Here's a gun, go solve a problem.'" Jensen explained his point with an analogy: Imagine if all restaurants were required to have food-handling permits, he says, but no restaurant was ever inspected or shut down for bad hygiene. Without accountability, the permit is useless because the restaurants lack an incentive to stay clean. The same is true with police departments, he says: Without real accountability, de-escalation training and medals won't change ingrained behavior.

- From ["The Deadliest Year" \(Spring 2019 ACLU of Utah Liberty Reporter\)](#)

We believe current use of force policies fail the public by allowing law enforcement to justify an overuse of deadly force, which disproportionately happens against Black, Brown, and Indigenous people in Utah. Until we establish better legal and policy systems for police accountability, we cannot have equal justice under the law. The reforms proposed by the District Attorney recognize that our current system is imbalanced in favor of the police and fails to deliver justice. We applaud the District Attorney's willingness to listen to the voices of Black and Brown community organizations that have long demanded these types of changes and issuance of these proposed reforms. We hope reforms do not end there. We stand ready to collaborate on pursuing these and other necessary changes.

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