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The Honorable Richard W. Sears, Chair
Senate Committee on Judiciary
Vermont Legislature
Statehouse
Montpelier, Vermont

RE: S.219 – An act relating to requiring law enforcement to comply with race data reporting requirements in order to receive State grant funding.

Dear Chair Sears and Members of the Committee:

My name is Bor Yang and I'm the Executive Director and Legal Counsel for the Vermont Human Rights Commission.

I'd like to thank Senator Baruth for sponsoring this bill and Senator Sears for taking it up. I know that a lot of hard work and meaningful discussions went into amending this bill to the draft that we have now. You have taken up these issues with the same urgency as the issues surrounding this pandemic and for that, I thank you.

There is no denying that the murder of George Floyd in Minneapolis jolted many Americans awake to the disparate treatment that African Americans have experienced at the hands of law enforcement. What is particularly compelling about this case is that Mr. Floyd was being arrested for allegedly using a \$20 counterfeit bill, that he didn't resist, that he didn't have any firearms on him, that many individuals at the scene, including Mr. Floyd himself, asked for his life to be spared, and that these officers ignored those pleas. Even more, everything was caught on video.

But I ask all of us today to consider for a second what would have happened if Mr. Floyd had resisted? Had his hands in his pockets? If he had been accused of robbing the grocery store? Would we still feel equally appalled by how these officers acted and failed to act in this instance? Would putting a knee on Mr. Floyd's neck while he cried, "I can't breathe" have been justified then?

For years, when African Americans have been killed, we as non-Black people have justified those killings in one way or another without question. We have failed to honor the dignity and humanity of the victim. We have criminalized those victims before they were charged and convicted. We often argued that they deserved what they received because they resisted. Until now, we never truly examined whether use of force in each of these instances was necessary or excessive and if the officers were motivated by hate or bias against the victims.

This is why this is a momentous occasion. Through this bill, this committee and this Legislature acknowledges that our criminal justice system is flawed and that our standards for use of force has perpetuated violence against African Americans as well as other people of color, persons with psychiatric disabilities, and people living in poverty. Today, we don't just honor the life of George Floyd but we also honor the thousands of others who were also murdered but whose deaths were not recorded. We honor the voices of Black and Brown people in Vermont and across the country who have been telling us for years that this was happening.

Before I turn to the bill itself, it is my obligation to share that this bill falls short of the systemic changes we need to see.

All across the country and right here in Vermont, people are calling for the police to be defunded. We have long over-relied on the police to respond to community issues that are beyond their capacity: mental illness, homelessness, community crisis and poverty. We need to invest resources to address these issues directly and to stop criminalizing our citizens.

Additionally, we need a civilian oversight board and/or independent entity outside the Attorney General's Office and the State's Attorney's Office to review police use of force. The State Police Advisory Commission serves in an advisory capacity and are all appointed by the Governor. They do not represent the people of Vermont. A civilian oversight board should be selected from community members such as the NAACP, Disability Rights Vermont, Migrant Justice, and other advocacy groups in addition to the Governor and Legislature. This board must represent the people who are most vulnerable to police use of force.

We owe a duty to investigate previous cases of police use of force because there are families in this state still waiting for justice. We cannot move forward without correcting our past wrongs.

I want to be clear that my comments here have nothing to do with how I feel about the Attorney General and his office. I have a lot of respect for TJ Donovan and the attorneys that I know work tirelessly in that office to ensure justice. This is about removing discretion from one individual. At the HRC where I serve as the Executive Director, we rarely see cases where someone has died. They are civil rights cases. And I don't make unilateral decisions. These decisions are reviewed by a Commission.

I would also like to add that this bill is missing an important cross-cultural component around use of force. Cultural competency is key to all forms of de-escalation. There are specific critical thinking skills that can give police officers tools to interact and communicate with people with psychiatric disabilities and non-white communities.

Take for example another disturbing incident from Minnesota: One morning in early February, an 81-year-old Asian-American grandmother is in her shed, in her backyard. The police get a report from a neighbor about a possible burglary suspect. They show up. They shouted warnings in English and when they received no response, they sent in their dog. That dog viciously bit her. Only when they took her into custody did they realize that she was 81, in her own shed, in her own yard and didn't speak English. She had no reason to believe they were even speaking to her.

Cultural competency means that officers recognize that we have community members whose primary language is not English. Cross-cultural competency means thinking of alternatives to sending in your dog: It may require knocking on the door, making louder noises, walking closer, throwing something to draw this person's attention, using an interpreter in that city.

I urge you today to not be swayed by arguments that law enforcement is doing implicit bias work, that they already have mechanisms in place for deescalating or have an oversight system, that this bill is unnecessary or confusing. It is not. And what they have been doing is not enough. The onus is on ALL OF US to ensure that every single person in Vermont is treated equally and fairly by law enforcement and that they receive the same protection and services regardless of their race, color, national origin, disability, gender identity or socioeconomic status.

Representative Colston asked me a theoretical question the other day, "How do we engage racism through our heart and not through our head?" I didn't have an answer. I know what I try to do in my trainings. And that is tell stories. The story of how George Floyd was murdered is today. And the opportunity to engage with our hearts is upon us now.

I would like to turn to S.219 at this time:

1. **Page 1, Lines 12-18:** The Human Rights Commission supports the requirement that all state grants be conditioned on compliance with race data reporting. We'd like to see a requirement that grants are conditioned on the entity's overall compliance with the Fair and Impartial Policing Policy statute.
2. **Page 3, lines 13-19,** We recommend that collected data should also be reported to the Executive Director of Racial Equity – not just in the event the chosen vendor is unable to receive data.
3. **Page 5 and remainder of draft:** We support the language that use of deadly force should only be employed when "necessary."

But we ask that ALL use of force follow the same "necessary" standard:

- 1) To eliminate confusion for officers; and
- 2) Because reasonable use of force may in fact lead to substantial harm or even death if the victim is particularly vulnerable (i.e. in the story that I mentioned about the grandmother. If the standard had been "necessary" in that case, the police officers may not have sent in their dog.")

4. **Page 5, Lines 11-13:** In reviewing the definition for "Totality of the Circumstances," I would suggest that we also include both words and conduct of the subject. This means that officers need to consider when a subject is crying for help, stating he can't breathe or is having a panic attack.
5. **Page 6 of 13. Lines 8-13.** We recommend deleting everything the language starting on line 11 starting with....rather than with the benefit of hindsight, and that the totality of the

circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

This language is unnecessarily redundant, as it is already accounted for in the language above. It encourages the person charged with interpreting this statute to infer that the Legislature really wants there to be deference to law enforcement. And I think the Legislature is truly seeking a fair and impartial review of an incident without deference to anyone.

6. We support the inclusion of “improper restraints” by police officers as a Category B conduct that is punishable under our criminal statutes.
7. We also support equipping all officers with video-recording devices. However, we know that sometimes officers do not turn these on or fully utilize them during an incident. We recommend that the Fair and Impartial Policing Policy statute be amended to ensure that failure to use video-recording devices violates the statute and policies.

While the HRC believes that this bill needs to be stronger and the recommendations made herein should be incorporated, we also believe that the time is now to pass this bill. We urge you to move forward.

Thank you for this opportunity.

Sincerely,



Bor Yang
Executive Director