

*Social Justice Committee, Policy & Legislative Analysis July Roundup
Senate Law & Public Safety Committee Hearing on Police Reform, New Jersey Legislative Black
Caucus Social Justice Bill Package & Full Senate Partial Bill Passage*

by: Sharon Price-Cates, Esq.



On July 30, 2020, the New Jersey Senate took time to celebrate the life, sacrifice and legacy of Congressman John R. Lewis, while also advancing some police reform-related bills. John Lewis's words, left for posterity in his last hours of life, resonate a clarion call. "Ordinary people with extraordinary vision can redeem the soul of America by getting into good trouble, necessary trouble. Voting and participating in the democratic process are key. The vote is the most powerful nonviolent change you have in a democratic society. You must use it because it is not guaranteed. You can lose it."

The New Jersey Senate honored the memory of John Lewis in passing a Senate Resolution sponsored by Senator Joseph Cryan (D-20, Union), joining other voices urging that the Edmund Pettus Bridge be renamed the John Lewis Bridge. In what has come to be known as "Bloody Sunday," on March 7, 1965, the then 26-year-old civil rights activist led some 600 people, in a non-violent march for voting rights long denied Black citizens. The marchers attempted to walk from Selma to Montgomery across the Edmund Pettus Bridge, named for a confederate general and purported grand dragon of the Klu Klux Klan. At the bridge in Selma, they were met with brutal police violence, on view through the media, for Americans and all the world to see. It shocked America's conscience. Remembering Selma, John Lewis described it as "the highest point in the movement."¹ Five months later, on August 6, 1965, President Lyndon B. Johnson signed into law the Voting Rights Act of 1965.

The U.S. House of Representatives on July 27, 2020, approved a proposal to rename legislation in John Lewis's honor that is intended to restore key provisions in Section 5 of the Voting Rights Act of 1965 overturned by the United States Supreme Court in *Shelby County v. Holder*, 570 U.S. 529 (2013). In part, Section 5 required certain state and local governments with a history of voting discrimination to obtain federal preclearance before changing voting laws and practices.

John Lewis made being a champion for equality and equal protection under the law his life's work, reminding all Americans that, "You cannot have equality for some, but not for all."²

The New Jersey Senate also advanced several social justice reform bills urged by the New Jersey Black Legislative Caucus, supported by the Latino Legislative Caucus, following the Senate Law and Public Safety Committee's special hearing on police reform. By unanimous vote, the Senate passed Senator Nia H. Gill's bill to deter and punish persons "weaponizing" the use of police by false 9-1-1 and police reports based on race and other protected status, making such conduct a form of bias intimidation under the criminal code. With the measure also approved - by unanimous vote - in the General Assembly, it is on route to the Governor.

Also by unanimous vote, and passed in the General Assembly, the Senate recognized the need to facilitate examination of potential systemic bias by requiring the Attorney General, in consultation with certain agencies, to collect, record, analyze and report certain prosecutorial and criminal justice data by demographics such as race. The data collection extends, for example, to warrants, arrests, criminal charges, indictments, pre-trial diversionary programs, dismissals or downgrading of charges and plea

¹ <https://youtu.be/DBCTUmTf4GE> Atlanta Journal - Constitution - Bloody Sunday/ Rep. John Lewis remembers the fatal day in Selma, video by Ryan Horne. 6 minutes.

² *Ibid.*

dispositions. Research has heightened awareness that implicit bias has the greatest potential to thrive where such discretionary, prosecutorial decision-making occurs.

The Senate also passed bills that require law enforcement agencies to establish minority recruitment programs and reporting requirements, the Department of Law and Public Safety to incorporate implicit bias in cultural diversity training materials for law enforcement officers and law enforcement agencies to develop diversity action plans. Senator Anthony Bucco sponsored a resolution, subsequently referred to the Senate Law and Public Safety Committee, to establish a task force to study ways to increase diversity within law enforcement.

Two weeks before, on July 15, 2020, the Senate Law & Public Safety Committee had convened a hearing on law enforcement reform at the State House Annex. Committee Chair Linda R. Greenstein (D-14 Mercer, Middlesex) amplified two themes she explained dominating her dialogues with experts, including community leaders, during these past few weeks: “the future of policing in New Jersey and in America; and the other, America’s long history of systemic racism that is evident in inequalities in wages, health care, housing, education, economic opportunity, and yes, the criminal justice system.” The Committee, additionally comprised of Vice-Chair Joseph Cryan (D-20 Union), Anthony M. Bucco (D-25 Morris, Somerset), Nia H. Gill (D-34 Essex, Passaic), Declan J. O’Scanlon (D-13 Monmouth) and Nicholas J. Sacco (D-32 Bergen, Hudson) received robust testimony towards identifying areas of reform ripe for legislative action and continuing dialogue with stakeholders on otherwise divergent opinions. Chair Greenstein set the stage for what she envisions as building trust and legitimacy in law enforcement by changing the culture of policing from a police as “warrior” to a police as “guardian” model; a key principle in the 2015 Barack Obama commissioned “President’s Task Force on 21st Century Policing.”

The Committee heard a full day of testimony from fourteen stakeholders,³ including the current and a former New Jersey State Attorney General, law enforcement leaders, union leadership, a mayor and civil rights-community advocates. Testimony included issues of public trust, transparency, use of force and de-escalation, body-worn cameras, police licensing and training, diversity and minority recruitment, civilian review boards, and “community policing.” While exploring numerous facets of law enforcement, the testimony evidenced a clear divide on a single issue: piercing the veil of secrecy on some police internal affairs disciplinary information. It is expected that additional testimony of the Attorney General will be requested.

As the chief state law enforcement officer the testimony of Attorney General Gurbir S. Grewal was center-stage. He first highlighted changes initiated in 2018, his “Excellence in Policing Initiative” in December 2019 to promote transparency, accountability and professionalism, along with community engagement to improve public safety reflected in the “21/21 Community Policing Project.” The Project includes “listening sessions” in all 21 counties. This is a strategy to build stronger relationships between law enforcement and the communities they serve. In his testimony, Grewal commended Newark and Camden as models for improving policing through increased community engagement.

Attorney General Grewal’s newest initiatives are informed by the national discourse and protests following the police killing of George Floyd in Minneapolis. Grewal characterized the aftermath of Floyd’s death as a “historical and moral moment” that “we simply cannot afford to let this moment pass,” taking note of an estimated — and unprecedented — 26 million persons [of all races, ages and backgrounds] in some 4,700 demonstrations across the country, including some 100 in New Jersey. For Grewal, the largest protest in history is evidence that the legitimacy of police authority is under suspicion and erosion of public trust is at “crisis levels.” Grewal expressed that although New Jersey has been in

³ Attorney General Gurbir S. Grewal, former Attorney General Peter Harvey, J. Scott Thompson (former Camden Police Chief), Wayne Blanchard (State Troopers Fraternal Association), Sean Lavin (Fraternal Order of Police, NJ State Council), Jiles Ship, (National Organization of Black Law Enforcement Executives), Richard Smith (NAACP New Jersey State Conference), Zellie A. Thomas (Black Lives Matter-Paterson), Rev. Charles Boyer (Exe. Dir. Salvation and Social Justice), City of Newark Mayor Ras Baraka, Patrick Colligan (NJ State PBA), Nadine Jones (Advancing the Blue and Black Partnership), Brook Lewis (NJ Institute for Social Justice) Senator Nellie Pou (D35, Paterson) as Chair New Jersey Legislative Latino Caucus.

the forefront of many policing efforts, it must bridge the gap in public trust as a vital part of promoting public safety. One such Grewal reform initiative is removing New Jersey from its “outlier status “ in not being among the majority of states that publicly disclose at least some police internal affairs disciplinary information.

Towards that end, Grewal discussed with the Committee his directive for public disclosure of the names of law enforcement officers fired, demoted, suspended/subject to “major discipline,” which means suspensions of more than five days. All law enforcement agencies in the state must publish this information annually. The first public disclosure is due no later than December 31, 2020. In a separate directive, Grewal required the State Police, Division of Criminal Justice and the Juvenile Justice Commission to make a broader disclosure; going back to 2000. The State police has been reporting anonymous summaries since 2000. Under prior policy names were not made public unless criminal charges were brought, or more recently, to other law enforcement agencies on request incident to the hiring process.⁴ To assist the Committee as it is exploring police reform, Grewal explained that he has been guided by four principles in changes he has advanced that are now on hold due to litigation: (1) Increased transparency in law enforcement disciplinary matters; (2) Protecting victims, witnesses and whistleblowers who would otherwise be reluctant to come forward (3) Protecting the integrity of on-going investigations; and (4) Not stigmatizing officers who may seek help for medical or mental health issues. Grewal also indicated, he will try to explore ways that help Newark in its efforts related to civilian police disciplinary review boards.

The State Troopers Fraternal Association, the exclusive labor negotiations agent for State police troopers, had released an open letter on June 19, 2020, opposing Attorney General Grewal’s call for retroactive disclosure back to 2000 and any release unrelated to findings of excessive force or racially biased incidents. Association president Wayne Blanchard testifying before the Committee, discussed the open letter, the union’s obligation to defend the rights of its members and the two-decades-long progress by the State Police since the Department of Justice Consent Decree, related to racially biased — unconstitutional — stops, searches and arrests. While expressing condemnation of the police conduct resulting in the death of George Floyd, Blanchard testified that the oversight of the State Police by the Office of Law Enforcement Professional Standards and early warning systems in place to detect potential trooper misconduct is working. Blanchard also testified that the Legislature had already passed, and the Governor signed into law on July 1, 2020, A-744 permitting access to IAB files in the police hiring process to address the potential of “bad actors” moving from one police force to another. Blanchard opined that the collection of stop, search and arrest data based on race, gender and age, along with reviews of mobile dash and body worn camera footage, are working to further transparency.

Sean Lavin, on behalf of the Fraternal Order of Police, New Jersey Labor Council, also opposed and questioned the purpose of going back twenty years on release of names. Lavin asserted concerns that as a matter of due process, there is a potential for names to be released where the disciplinary appeals process has not been exhausted, for example, he stated cases going to arbitration or the Office of Administrative Law. Lavin also opined that the “Guardian Tracking” system, which all local police departments are required to report to county prosecutors provides transparency, along with mandated completion of Use of Force Reports.

Attorney General Grewal informed the Committee that he has been “sued five times in five days” over the name release directives. Yet, Grewal was unequivocal in his testimony that, “we will not protect the few to the detriment of the many,” explaining that “New Jersey has nothing to hide” and must show that the majority of law enforcement officers have not violated the public trust. According to Grewal, a continued policy of complete secrecy is “bad for public trust and bad for public safety.” Grewal shared with the Committee that he is “surprised and disappointed” by the reaction of law enforcement. But as a

⁴ Note that under P.L. 2020, c. 52 effective first day of fourth month after enactment [July 1, 2020] but the law permits the Attorney General to take administrative measures in advance of the effective date. The police IAB file to the receiving agency remain confidential. [A-744 2R] N.J.S.A. 52:17B-247.

result of this policy change, Grewal also told the Committee that he is re-assessing the State's position in a well-publicized case in Neptune where a police officer [Philip Seidle] shot and killed his wife. The State and the Monmouth County Prosecutor's Office have blocked the release of the 700 pages of IAB files.

Other highlights of the Attorney General's testimony is the department's work to create a state-wide Use of Force (UOF) data base, revising the 20-year-old UOF policy and banning chokeholds, except in limited circumstances of imminent threat to life. Grewal also supports police licensing, which to implement requires legislative action. The Police Training Commission (PTC) is in the process of studying this issue and reviewing states that have police licensing schemes.

Former Attorney General Peter Harvey, now the federal Monitor for the Newark Police Department incident a Department of Justice Consent Decree to resolve claims of unconstitutional police practices, supports Attorney General Grewal's general approach, including moving the needle on the IAB disclosure issue. Commending Newark [and Camden] as national models in their police reform efforts Harvey noted a need to specifically identify what an entity actually means when using the general term "community policing." Harvey uses the term "community engagement" instead, such as in Newark where as policies were being drafted and considered there was deliberate policy and practice seeking input, comments and meetings with the community. It was also guided by metrics down to the command level to ensure accountability precinct-by-precinct.

Harvey discussed police training and policies, pointing to assistance that helped Newark create and implement fifteen policies, including bias free policing, use of force and de-escalation. Harvey viewed it as equally important to account for who is conducting training and the diversity. He also testified to the importance of data systems in tracking police discipline, opining that the data base should also include indictments and officer civil liability related to the use of force. Harvey urged the need for annual de-escalation training and more involvement by county prosecutors to assist small police departments, which may not have adequate IAB capability.

With respect to initial hiring criteria, Harvey advocated for a minimum two-year college requirement to be a police officer, explaining that the question of maturity and judgment is so important given the vast authority inherent in police work implicating the deprivation of liberty and life. Harvey supports a police licensing system, suggesting that it should have an interim licensing aspect and probationary period to provide an appropriate period for assessment of performance. Harvey also noted the importance of looking to independent bodies for expert assistance as well, pointing by way of example to Newark's consulting with the Rutgers Center on Policing.

The Committee also heard testimony about police reform in Camden, once characterized as among the most dangerous cities in the nation. John Scott Thompson, City of Camden/Camden County Police Chief from 2008-2019 testified to his experience of dismantling, then rebuilding, policing in Camden. Thompson, from 2015-2019, also served as the president of the Police Executive Research Forum, a Washington D.C. based non-profit independent research "think tank" focusing on critical issues in policing. According to Thompson, the progress in Camden over the last seven years is reflected in substantial reduction in murder and crime rates. He testified that public safety improved using principles of 21st Century Policing emphasizing police as "guardians," not "warriors." Thompson also cautioned against measuring police performance by the number of tickets, arrests generated, pointing to the abuses in Ferguson Missouri and here in New Jersey, where the New Jersey Supreme Court Report on Municipal Courts documented patterns of use of police as municipal "revenue generators." The broader challenge in the Report is municipal judges' misuse of the contempt rules where such revenue from the ticket violations all go to the municipal coffers.

Thompson too, spoke of the post-George Floyd tragedy as a "watershed moment for policing" nationally and cautioning law enforcement against being "defensive, debating or discounting" the public's expression of perceived grievances. Instead, Thompson viewed it as an opportunity to consider meaningful change using a "new playbook," and "novel approaches." For example, Thompson

recommended statewide implementation of the de-escalation model adopted in Camden under a system called Integrating Communications, Assessment and Tactics (“ICAT”). Sanctity of life is a critical principle under the model. Use of force is a last resort, while focusing on police de-escalation strategies is emphasized. Thompson explained that lives are saved; both officers and persons with whom they encounter in crisis situations. Thompson opined, just because officers can use force does not mean that they should, also noting the collaboration in shaping Camden’s use of force policy with the help of the NYU Law School Policing Project, ACLU, Fraternal Order of Police and community inclusion.

Adding to the local government perspective, Newark Mayor Ras Baraka began his testimony by explaining that Newark is not against police; the residents want safe neighborhoods. Baraka explained, what they do not want is unarmed people, not resisting arrest, being subject to police brutality. Baraka credited the Department of Justice Consent Decree, which went into effect just as he became mayor, with helping to change Newark’s police culture through training and new policies created with community participation. But, Baraka made clear that the philosophy unpinning Newark’s progress is that law enforcement is only one part of a comprehensive strategy to improve public safety. Other programs, some considered national models, round out the work to provide transparency and build trust include Newark’s Street Academy for ages 16-24. It identifies high risk youth, typically, who have not completed high school, or are without employment, for mentoring services and G.E.D. preparation. A stipend is provided during the program, which also requires community service as a condition of participation. A Crisis Intervention program is also in place with victim outreach. Also, accountability systems are in place requiring police officers to report their community [non enforcement] related activities and contacts.

The Newark Community Street Team and Citizen and Clergy Academy also works with the police department. According to Baraka, those relationships enable the police to focus on intelligence and those areas where crime is occurring and not a drag net approach of arresting volumes of people. Baraka testified that Newark’s work with the Rutgers School of Criminal Justice has helped Newark with data driven and informed decision-making practices. The implementation of civilian disciplinary review boards is also an important element in the overall strategy, which Baraka indicated is currently pending in litigation in the New Jersey Supreme Court. Baraka also urged the Committee to support bill S685/A3386, which would permit Newark to have a five-year residency requirement for law enforcement. Under current law there is a one-year requirement. Baraka explained his view that the extended residency would increase officers’ stake and investment in the Newark community.

Richard Smith, President of the New Jersey NAACP State Conference, testified in support of Attorney General Grewal’s 3-prong efforts towards greater transparency, accountability and professionalism. However, Smith also expressed that there must be “a commitment to real change” and “not symbolism,” making it necessary for the Legislature to codify into law Attorney General Grewal’s directive. Additionally, Smith urged that action is needed to stop planned public expenditure of \$161 million for youth prisons. He opined that an investment on the front end, in education is the better course. Alluding to the disparate discretionary decisions that often place Black youth in the criminal justice system rather diversionary mechanisms, Smith stated that, “White children get station house adjustment, while Black children get the long ride.”

While additional individuals testified on the key issues, agreement and points of divergence are primarily reflected in the testimony of the above-noted stakeholders. Transcribed hearing transcripts are usually made available on Legislative website, in addition to the archived video of the hearings.