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May 18, 2023

James E. White, Chief
Detroit Police Department
1301 Third Street, suite 75-751
Detroit, Michigan 48226

Re: The Killing of Porter Burks

Dear Chief White:

On October 13, 2022, the ACLU of Michigan wrote and expressed alarm and concern about the killing of Porter Burks. Included in that letter was a Freedom of Information Act request for records related to how the Detroit Police Department deals with persons with mental illness, the use of force, and other matters of relevance to events leading up to the killing of Mr. Burks.

After a substantial delay, at least some of the requested records were produced, but we continue to wait for, among other things, records that contain information about personnel with specialized training and/or mental health professional credentials. These records are most important to us because we believe neither policy revisions nor improvements in training will be sufficient to ensure that tragedies like the killing of Porter Burks will not recur. We believe police officers who are not also mental health professionals are not the best persons to respond to mental health emergencies. Our expectation is that the records yet to be produced will disclose whether or to what extent mental health professionals are employed by the Detroit Police Department.

Our previous letter raises several issues that include, whether in their dealings with Mr. Burks, officers devoted sufficient effort to de-escalation, and whether they were sufficiently patient with this young man who admitted his own fatigue. There were also questions about whether devices such as shields might have allowed greater patience when negotiating with a man bearing a bladed weapon. The records produced to date in response to those concerns prompt the following reactions:

1. Directive No. 201.5 (Mentally Ill and Homeless Persons) provides that persons who are mentally ill may be taken into “protective custody.” Section 201.5-2.5 provides suggestions for how a mentally ill person might be taken into custody, but we believe that section should explain in greater detail the distinctions between encounters with mentally ill persons and arrests of persons suspected of crimes. For example, during an arrest, escalating degrees of engagement and force may be required to accomplish the objective of placing a suspect in custody. Officers should be assured that it is acceptable

- for them to forgo taking mentally ill persons into custody if there are risks to the physical or psychological health of persons involved.
2. Section 201.5-2.5 provides a helpful list of suggested responses/reactions to persons who may be mentally ill. We urge that the option of “waiting out” the person be added to that list. Waiting out a mentally ill person should not only be regarded as acceptable, but it should also be encouraged as a method of avoiding tense and potentially violent encounters. Officers should be taught that mentally ill persons can be observed and monitored from a distance until physical fatigue overcomes them, or other developments make it possible for them to be peacefully taken into custody. The limits of physical stamina may eventually contribute to the calming of the individual and the evolution of circumstances conducive to peaceful resolution of the crisis.
 3. Implicit in Directive 201.5 is a presumption that officers have made or are capable of making mental health assessments. Notwithstanding the suggestions found in 201.5-2.3 and 201.5-2.4 for how to make these evaluations, this is a task best performed by mental health professionals. Personnel with mental health training should accompany officers when they anticipate encounters with persons with mental health issues. We agree with the statement in 201.5-2.2(3): “Mental illness is often difficult for even the trained professional to define in a given individual.” We disagree with 201.5-2.2(2) that provides: “The supervisory officer shall determine if the individual is a ‘person requiring treatment.’” If it is difficult for even professionals to assess mental illness, then certainly such an evaluation should not be made by officers lacking requisite professional credentials. If personnel with such training are not currently employed by the Detroit Police Department, we believe such individuals should be hired.
 4. Section 201.5-3 directs that citizens who call to ask for mental health assistance be given an emergency health service number to call. To ensure that they receive assistance, we suggest that the callers be connected without the need for them to hang up and make another call.
 5. Directive 201.5 concerns “mentally ill and homeless persons.” The issues related to the mentally ill as well as those related to homeless persons are respectively serious enough to warrant separate policies for each group rather than combining them. In addition, the logic for the combined policies is somewhat puzzling. The directive states: “While all homeless persons are not mentally ill, it is evident that many persons who are homeless suffer from varying degrees of mental illness and/or substance abuse.” While it is true that a significant segment of the homeless population has mental health challenges, the policy acknowledges that the numbers of persons in this group who struggle with addiction to narcotics and alcoholism are also significant. However, this does not mean policies related to substance dependency should be automatically linked to homelessness, or vice versa.
 6. Directive 304.2 (Use of Force) states the following in its statement of policy:

*Research indicates that one of the most common factors found in both police excessive or unjustified use of force, and officer injuries and fatalities during force encounters, is an officer's perceived compulsion to press forward rather than to disengage (e.g., "back off") and explore other options. The most appropriate response choice to a situation often involves de-escalation, **disengagement**, area containment, surveillance, **waiting out a subject**, summoning reinforcements, or calling in specialized commands.* (emphasis added.)

It is commendable that disengagement and waiting out a subject are specified as options for officers, and as noted above we believe they should be similarly specified in the policy governing encounters with mentally ill persons. We also believe that, as indicated, officers' impulse to "press forward" versus disengage, should be further addressed by explanations that disengagement is not limited to physical self-restraint or withdrawal. In the encounter with Porter Burks, officers stood down and did not physically advance or engage, but they maintained a verbal exchange that in substance if not in tone was aggressive and commanding. This type of approach can intimidate and antagonize. It is quite possible that if instead of attempting to compel Mr. Burks to remain in dialogue, the officers had instead taken his cue and encouraged him to sit and rest as they promised to stop talking, he may never have decided to charge.

7. The term 'imminent threat' is defined by Section 304.2-3.10, and effectively leaves to the officers' discretion judgments based on conditions they observe or experience in the moment. But the section shapes the officers' notions about imminent threats nonetheless by stating that an imminent threat can exist "even if [a subject] is not at that very moment pointing a weapon at the officer. For example, he/she has a weapon within reach or is running for cover carrying a weapon or running to a place where the officer has reason to believe a weapon is available...". This language can reasonably be interpreted to mean that mere possession of a weapon can pose an imminent threat regardless of the context. By that standard Porter Burks' mere possession of a knife rendered him an eligible target for use of force.
8. We urge the adoption of guidelines and training for responses to bladed weapons if such do not already exist. These guidelines and training programs should be developed by appropriately credentialed experts whose work is informed by credible data and studies. There is significant anecdotal information about the risks of confronting a person holding a knife, and much of it is contradictory. For example, there are assertions that a person can cover specific distances (e.g., 120 feet) at certain speeds while bearing a knife, while others note that mobility and agility vary, and there can be no reliable "rule" on this issue. Scientific information should be made available about this topic as well as strategies that can save the lives of both the officers and persons who wield bladed weapons. We are not law enforcement professionals, but logic suggests to us that the use of barricades and shields can increase officers' confidence that they will be safe without having to use firearms. There may be yet other approaches that can both save lives and minimize if not eliminate the use of firearms in response to knives.

It should be apparent from the foregoing comments that the ACLU of Michigan favors the diversification of the skill sets and training of law enforcement personnel. Specifically, encounters with persons with mental health challenges will likely have best results if mental health specialists are present, in the same way that the presence of drug treatment specialists will increase chances of success when dealing with individuals who have bad experiences with narcotics. Time and experience have discredited the idea that a law enforcement agency is effective if it employs only officers who graduate from academies where they learn to function within a paramilitary structure. Nevertheless, to the extent that police departments continue to staff their agencies with officers who fit the traditional profile, they will benefit from critical review of incidents involving use of force. For example, with respect to the Porter Burks killing, the evaluation of that incident should involve more than the usual liability questions about whether the officers believed themselves to be in danger, the perceived necessity of force, etc. There should be a deeper inquiry into the ethics of using a firearm against any person not similarly armed, as well as honest reflection on the degree to which the victim's racial identity might have influenced the decision to shoot.

Our hope is that these preliminary comments are in some way helpful. We would like to provide further observations after the balance of records we requested are produced. Anything you might do to accelerate production will be much appreciated. Thank you for considering our ideas. Please do not hesitate to contact us if you have questions or need additional information.

Sincerely,

Mark P. Fancher

Mark P. Fancher
Staff Attorney – Racial Justice Project