



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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Sent by email
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Governor Andrew M. Cuomo
The Executive Chamber
State Capitol
Albany, New York 12224

Mayor Bill de Blasio
New York City
City Hall
New York, New York 10007

Re: Police Reform in the Wake of Eric Garner

Dear Governor Cuomo and Mayor de Blasio:

Across the state, New Yorkers are coming together to protest the failure of our criminal justice system in the cases of Michael Brown and Eric Garner. We feel this pain collectively as Americans, and poignantly as New Yorkers. Several weeks ago, we marched with hundreds of supporters in the streets of New York City to demand justice for the police killing of Ramarley Graham. Before him, Nicholas Heyward, Amadou Diallo, Malcolm Ferguson, Patrick Dorismonde, Ousmane Zongo, Timothy Stansbury, Sean Bell, Tamon Robinson and Kimani Grey all died at the hands of NYPD officers. The list is not complete, but represents a heart-wrenchingly long history of violence; 2014 marks the 50th anniversary of the NYPD killing of 15-year-old James Powell in Harlem.

Elsewhere in the state, marchers express solidarity with Garner and Brown, and demand justice for their own neighbors, including Kenneth Chamberlain in White Plains and Danroy “DJ” Henry in Tarrytown.

The protests are a response to excessive and abusive policing practices directed at individuals and communities of color which have had devastating – even fatal – consequences and have fueled an atmosphere of confrontation and intimidation rather than protection and respect. For more than two decades, law enforcement has focused on large numbers of stop-and-frisks, misdemeanor and non-criminal arrests and summonses, low level marijuana offenses and other

minor violations at the expense of constructive community engagement and trust. Urban areas from Wyandanch to Buffalo are negatively impacted by aggressive, discriminatory tactics and their collateral consequences. No New Yorker should have to experience unreasonable stops and searches, discriminatory ticketing, arrests for minor violations and hostile interactions with police so they can live in safety and security.

What, then, should be done? A broad set of reforms are necessary, focused on two overarching strategies: de-escalation of policing practices and meaningful accountability for wrongdoing.

De-escalation requires three key areas of reform:

- Less aggressive police responses to low-level offenses,
- Re-training police officers to modify their all-too-common behavior when they engage in street encounters, and
- Decriminalizing behavior that poses no serious risk to public safety or to public order.

In pursuit of a de-escalation strategy, the NYPD should employ community policing that will seek to de-escalate police/community encounters and strengthen the relationship between officers and all communities. It should include:

- Regular deployment of officers to patrol communities where they will develop strong familiarity with their community and build relationships with community members;
- A mandate for de-escalation that police officers must be guided by and trained in;
- A use of force policy that includes a prohibition against use of lethal force absent threat of serious harm or life endangerment (with provision for clear penalties and retraining for violations);
- An early warning system to identify officers with multiple complaints who require retraining and close supervision; and
- The required utilization of alternatives to summonses and arrests for minor offenses (including formal and informal warnings), and setting low-level marijuana enforcement as the lowest law enforcement priority (and setting a goal to substantially reduce marijuana arrests and summonses).

Meaningful accountability for officers who perpetrate abuse is essential. One reason for the current lack of accountability is that police discipline is concentrated in the hands of the police. During the Bloomberg administration, for example, the number of complaints substantiated by the Civilian Complaint Review Board and subsequently dismissed by the NYPD grew to more than 25 percent. Prosecutors with close ties to law enforcement continually fail to obtain indictments for fatalities, even homicides, perpetrated by police officers. A lack of transparency means lawmakers and the public don't get the information they need to assess police tactics.

The consensus among experts and the cry on the streets is that our criminal justice system is broken. But we have an opportunity to repair it.

Based on decades working to reform police abuses, the NYCLU, in collaboration with grassroots groups and other allies, has developed the following more specific legislative and policy platform that can bring real change to our state. If followed, these recommendations can end some of the worst abuses of Broken Windows policing and bring accountability to officers who abuse their authority.

REDUCE ABUSIVE ENFORCEMENT OF LOW-LEVEL OFFENSES (BROKEN WINDOWS)

Reform the Penal Law to Decriminalize Behavior that Should Not be the Subject of Policing

Hundreds of thousands of police-civilian interactions occur only because New York State and New York City have chosen to regulate certain behavior through police enforcement and penal sanctions. Now is the time to reconsider this approach for certain behavior, including possession of minor amounts of marijuana, open containers, riding bikes on sidewalks, public urination and parks curfews.

As a useful start, New York City has recently taken important steps to end the practice of arresting people for possessing small amounts of marijuana. Decriminalization of a range of behaviors would have the added benefit of relieving New Yorkers of the collateral consequences of arrest or conviction, such as ineligibility for public housing and student financial aid, lost job opportunities, and jeopardizing child custody and immigration status.

Get the Police Out of the Business of Enforcing School Rules

The growing presence of police officers in public schools creates even more opportunities for young people of color to be swept into the criminal justice system. Relying on arrests in schools, to the detriment of school climate and positive, educational alternatives, does not make schools safer. Instead, it removes children from classrooms for “offenses” like talking back, writing on a desk or refusing to put a cafeteria tray away. This system introduces children to the system, breeds hostility toward police and limits educational opportunities.

Children arrested in schools are four times more likely to drop out than those who are not. The state must adopt limits on police authority in schools, ensuring students are not arrested for minor incidents. Police should be prohibited from using physical force and restraints against schoolchildren under all but the most serious circumstances.

Bar Custodial Arrests for Minor Offenses

New York State's Criminal Procedure Law permits police officers to issue a summons or appearance ticket, rather than taking an individual into custody, for alleged violations and misdemeanors. Though there is no reliable public data on when arrests are made as opposed to citations, we are concerned this broad discretion invites discrimination. It undoubtedly leads to escalated street encounters, unnecessary arrests, increased contact with the system and huge costs to our state. At least four states (Ohio, Minnesota, Virginia and Tennessee) have enacted laws *mandating* police officers cite and release people suspected of minor crimes (unless there are exigent circumstances, specifically safety concerns, problems identifying the person or outstanding warrants). New York should do the same, prohibiting custodial arrests for non-criminal violations, minor misdemeanors and other situations where arrests are unnecessary flashpoints of confrontation.

Require Police Officers to Identify Themselves and Reform "Consent" Searches

Pending before the New York City Council is the Right to Know Act, a legislative package which aims to protect New Yorkers' civil rights while promoting transparency and accountability in everyday interactions between the NYPD and the public. While the bills have only been introduced in New York City, there is no reason they could not be adopted to apply to jurisdictions statewide.

The Right to Know Act includes two legislative measures. The first requires officers to identify themselves to the subjects of law enforcement activity and explain why they are being stopped. By putting the burden on the officer to identify himself in an encounter, this law will reduce hostile street incidents. Similar laws exist in Colorado, Minnesota and Arkansas.

The second measure protects New Yorkers against coercive "consent" searches. It requires officers to explain that a person has the right to refuse a search when there is no legal justification for the search, and to obtain objective proof that the person gave informed and voluntary consent. Similar laws exist in Colorado, Arkansas and West Virginia.

IMPROVE POLICE ACCOUNTABILITY

The failure to bring criminal charges in the killing of Eric Garner and the secrecy of the grand jury process have seriously undermined public faith in the criminal justice system. Legislation has already been advanced that would authorize the Attorney General to investigate certain allegations of criminal wrongdoing involving the police; there have also been proposals for greater transparency in grand jury proceedings regarding police killings of civilians. These initiatives have merit, and should be addressed in the context of formal public hearings held statewide.

The following are additional legislative proposals that seek to bring greater accountability for the use, and misuse, of police authority.

Increase Transparency

Between 2002 through 2013 more than *six million* summonses were issued for low-level violations, yet in 2013 the NYPD failed to record race data on 96 percent of summonses. This glaring omission deprives the public and policymakers of the opportunity to examine the impact of these quality-of-life summonses on vulnerable communities.

From data recorded in prior years, we can estimate that nearly 81 percent of summonses are issued to black and Latino people — a disproportionate impact similar to that of stop-and-frisk. But sound public policy cannot be made without reliable information. The state must require police departments to capture and report demographic information for summons recipients. In addition, the reports should include the number of arrests made for non-criminal violations and misdemeanors, and each time a police officer uses physical force in enforcing a violation or misdemeanor.

Reform Police Discipline Mechanisms

In New York State, police department heads usually have exclusive control over disciplining police officers found to have engaged in misconduct against civilians. Even where there is civilian oversight, that body's recommendations for discipline can be rejected or lessened by department leaders. We must have more accountability and better oversight over how officers are disciplined when they abuse their power or break the law.

New York should remove the final authority over disciplining officers from police departments and transfer that authority to an independent entity that has civilian input and oversight. Officer discipline is too important to be entrusted to agencies that are not accountable to all communities, especially those most affected by police abuse and misconduct.

We also call on the governor to veto S7801/A9853 passed in the 2014 legislative session. Under the terms of this legislation, the rules governing disciplinary proceedings and sanctions would be subject to the terms of a mandatory collective bargaining process between a municipality and the union representing the police. This bill, if signed into law, would make the public interest secondary to the narrow self-interests of police officers, as pressed by their collective bargaining representatives. We urged a veto at the end of the 2014 session — the imperative is even greater now.

The NYCLU is looking to elected officials across the state to bring real reform to police practices. The social costs of Broken Windows policing are simply too high to continue down this path.

Sincerely,

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