



Legislative Affairs
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Testimony of the New York Civil Liberties Union

before

**THE NEW YORK STATE SENATE AND ASSEMBLY STANDING
COMMITTEES ON MENTAL HEALTH**

regarding

Improving the Response to Mental Health Crises in Communities

and

Recommending “Daniel’s Law,” A.4697 (Bronson) / S.4814 (Brouk)

May 18, 2021

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony in support of the enactment of Daniel’s Law, legislation that would establish state and regional councils and regional response units for mental health emergencies and relating to certain powers of peace officers and police officers handling mental health emergencies.

The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices throughout the state and over 180,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including the right of every New Yorker to enjoy life, liberty, due process, and equal protection under law. This includes our work in pursuit of community safety, and our work to advance the rights of New Yorkers who struggle with mental health issues.

In March 2020, Daniel Prude was experiencing an acute mental health crisis when his family called 911 for help. He was naked in the street, and posed no risk to any other person. Yet, Rochester Police responded in force, handcuffed him, placed a hood over his head, and held him face down on the cold pavement until he stopped

breathing. Daniel Prude was a man experiencing an obvious mental health crisis, and he deserved care and dignity – but he was denied both. Instead, police killed him. We can, and we must, take steps to end the senseless killing of people like Daniel Prude.

New York must fundamentally transform the role of policing in our state – and we must start by ending our over-reliance on police as first responders in every crisis. When our friends or neighbors or fellow community members are experiencing a mental health crisis, they deserve to be treated with compassion, care, and understanding – not with threats of violence and jail. “Daniel’s Law” provides the legislature with an opportunity to meet this moment with a bold new vision for community safety that starts with removing police as the default solution to address mental health needs.

The Deadly Consequences of Policing Mental Health Crises

Unfortunately, Daniel Prude’s death is not an outlier. Studies show that up to one-half of people who become victims of police violence have a disability – and overwhelmingly, a mental health disability.¹ Tragically, for many New Yorkers, 911 has become the only option for people seeking help in a mental health crisis. And police often arrive at the scene armed with deadly weapons, a lack of mental health training, and an inability to deescalate the personal crisis.

In our society today, people with mental disabilities are among the most stigmatized and often feared. Despite research that clearly shows the mental health benefits of treatment, support, and housing, our federal, state, and local governments have not prioritized funding these resources. We have done far too little to fund and provide access to resources that can help reduce the incidence and severity of psychiatric disabilities.

As a result, millions of people with psychiatric disabilities live in the U.S. without receiving necessary treatment and support. When an individual’s symptoms become severe, or circumstances precipitate a crisis, they face few options. In most cities, police are the first to respond to the scene of someone in a mental health crisis, and many transport individuals to an emergency room, jail, or psychiatric hospital.

But police are not mental health counselors or social workers; they lack the comprehensive training and skills needed to provide the safe and appropriate response to those in distress.² Moreover, the presence of armed police officers too frequently

¹ Abigail Abrams, Black, Disabled, and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities, TIME, June 25, 2020, available at <https://time.com/5857438/police-violence-black-disabled/>. Ryan W. Miller and Grace Hauck, It’s working in Eugene, Olympia, Denver: More cities are sending civilian responders, not police, on mental health calls, USA TODAY, April 5, 2021, available at <https://www.usatoday.com/in-depth/news/nation/2021/04/05/george-floyd-daniel-prude-911-mental-health-response/6819744002/>.

² Police have limited options, all grounded in traditional policing models of command, control and coercion principles, when responding to a person in crisis. They may arrest the individual; refer the

escalates crisis situations. In worst-case scenarios, officers use force in response to a person in crisis, resulting in unnecessary and unjust serious bodily injury and death to those who simply need the care and support of trained health professionals (e.g. social workers and psychologists).³

In fact, people with untreated mental illness are 16 times more likely to be killed during a police encounter than others approached or stopped by an officer.⁴ The Washington Post’s database of fatal police shootings found that 20-25% of fatal police shootings killed a person with mental illness, and that approximately 92% of people killed by police while holding some sort of weapon (ranging from a toy weapon to a knife or a gun) were people with mental illness. Approximately 28% of those people with mental illness killed by police were Black or Latinx. However, those numbers apparently only represent those individuals “perceived to be mentally ill *at the time of the shooting.*” So, the real numbers and percentages may be much higher.⁵ One study found close to one-third of those killed by police were people with disabilities,⁶ and individual jurisdictions and other studies have reported numbers as high as 57%⁷ and 81%.⁸ In no other medical emergency do we expect the patient to have to communicate with, work with, and navigate help from a person carrying a gun.

The Need for a Public Health Model in Crisis Response

New Yorkers, and people across this nation, want a true reimagining of what constitutes public safety and the role of law enforcement in promoting safety – particularly with respect to people in a health crisis. To that end, other cities and

person to mental health services or transport the person for an involuntary psychiatric evaluation; resolve the situation informally, for example, asking the individual to leave the scene; or if the individual is a crime victim, take a report and perhaps provide assistance.

³ People with intellectual and developmental disabilities and people with substance abuse challenges face similar risks.

⁴ See, e.g. *Policing and the Mentally Ill*, Chappell, D. (referenced in Treatment Advocacy Center's *Overlooked in the Undercounted*, <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>).

⁵ Washington Post *Fatal Force Database*, updated as of March 28, 2021, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

⁶ David M. Perry and Lawrence Carter-Long, *The Ruderman White Paper on Media Coverage of Law Enforcement Use of Force and Disability*, Ruderman Family Foundation (March 2016); see also Kate Mather and James Queally, “More than a third of people shot by L.A. police last year were mentally ill, LAPD report finds,” Los Angeles Times, March 1, 2016, <http://www.latimes.com/local/lanow/la-me-ln-lapd-use-of-force-report-20160301-story.html>.

⁷ Alex Emslie and Rachael Bale: *Half of those Killed by SFPD are Mentally Ill*, KQED, Sept. 30, 2014, available at: <https://www.kqed.org/news/147854/half-of-those-killed-by-san-francisco-police-are-mentally-ill>

⁸ See *The Ruderman White Paper On Media Coverage Of Law Enforcement Use of Force and Disability*, March 2016, https://rudermanfoundation.org/wp-content/uploads/2017/08/MediaStudy-PoliceDisability_final-final.pdf. Studies range from 27% (a low number focusing only on mental illness) to 81% (a high number lumping together mental illness and substance abuse).

states have begun to create systems that treat mental health crises as a public *health* concern rather than an inherent problem for the criminal justice system to solve.

Programs replacing police with social workers, mental health counselors, and medical staff have been in operation for at least a year in Austin, Texas; Eugene, Oregon; Olympia, Washington; and Edmonton, Canada.⁹ These programs all focus on providing more appropriate services and reducing government spending. Other cities have recently begun or approved crisis response programs of their own.¹⁰

A report¹¹ by the Albany Government Law Center notes that, while the programs vary in design, there are certain critical takeaways for local governments attempting to reform and implement a crisis response program. The following elements are key to a successful crisis intervention model:

- (i) “include stakeholders in the program design process,
- (ii) aim to build trust within the police department and community,
- (iii) have a designated place within the 911 and emergency-response processes,
- (iv) have adequate funding with access to mid-year increases if necessary,

⁹ See *Alternatives to Police as First Responders: Crisis Response Programs*, Matt DeLaus, Albany Law School, November 16, 2020, available at https://www.albanylaw.edu/centers/government-law-center/policing/explainers/Pages/Alternatives-to-Police-as-First-Responders-Crisis-Response-Programs.aspx#_bookmark3 (“Albany Government Law Center explainer”). “Eugene’s program has operated since 1989, and in 2019 responded to 20% (24,000) of all 911 calls, with a police backup request rate of 0.625% (160).”

¹⁰ *Id.* Noting:

Cities with non-police crisis response programs in operation less than a year include Portland, Oregon, and Denver, Colorado. See <https://www.usatoday.com/story/news/nation/2020/06/22/defund-police-what-means-black-lives-matter/3218862001/>. Oakland, California, decided to fund a crisis response program, but it is not yet in operation. See <https://www.kron4.com/news/bay-area/mobile-response-unit-coming-to-oakland-to-help-with-non-violent-911-calls>. Local governments that have decided to fund a crisis response program since George Floyd’s killing include Los Angeles, California (<https://www.cnn.com/2020/10/14/us/los-angeles-unarmed-crisis-response-teams-911-calls/index.html>); Miami-Dade County, Florida (http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2020/201239_Analysis.pdf); <http://www.miamidade.gov/govaction/legistarfiles/Matters/Y2020/201239.pdf>); Philadelphia, Pennsylvania (<https://philadelphia.pa.networkofcare.org/mh/news-article-detail.aspx?id=116033>); Rochester, New York (<https://www.rochesterfirst.com/news/local-news/watch-live-mayor-warren-to-announce-crisis-intervention-program/>); Salt Lake City, Utah; Albuquerque, New Mexico; Hartford, Connecticut; Durham, North Carolina (<https://www.prainc.com/wp-content/uploads/2020/08/PoliceReformAcrossUS508.pdf> at 2-4); and San Francisco, California (<https://www.usatoday.com/story/news/nation/2020/06/22/defund-police-what-means-black-lives-matter/3218862001/>). Many other locales are exploring the possibility. See, e.g., <https://www.prainc.com/wp-content/uploads/2020/08/PoliceReformAcrossUS508.pdf>.”

¹¹ *Id.*

- (v) have a capable host organization/agency and be appropriately administratively housed,
- (vi) properly train employees, 911 call-takers, and other first responders,
- (vii) use past and current call data to inform operations, and
- (viii) have the ability to transfer or refer clients to other service providers.” *Id.*

Daniel’s Law embraces these key elements of a successful crisis intervention model: the creation of a new agency home for crisis intervention, driven by the goal of increasing care and reducing contacts with the criminal system; a consistent and care-informed approach to training for all providers beginning with dispatch; an emphasis on community-based service providers to steer clients to needed services; and the collection of data to continually inform and improve crisis intervention.

New York Legislators Must Pass Daniel’s Law

With “Daniel’s Law,” the legislature has an opportunity to rise to this moment with a bold new vision for community safety that starts with removing police as the default solution to serving individuals with mental health needs. And Daniel’s Law creates an architecture for crisis response that builds on community care in both its goals and its structure.

A mental health crisis is treated as a public health issue, not a public safety threat. Under Daniel’s Law, professionals who have experience working with individuals with mental health and drug use problems, and those with disabilities will set the rules for responding to a mental health crisis. They will make up both regional and state councils that develop training and protocols for all calls to dispatch and all responses to mental health emergencies. And these protocols and training will be fully integrated into existing 911 and other emergency dispatch services, existing EMT response, local mental health providers, and local police response.

Importantly, Daniel’s Law will ensure that police play the proper role of responding to public safety issues, while leaving public health matters to trained crisis professionals. Current state law allows police to intervene any time someone poses any “mental hygiene risk” to themselves – even when there is no public safety risk. Daniel’s Law changes this, so that police may only respond to a situation when there’s a risk to another person’s safety. Law enforcement officers would no longer be the default first responders to any New Yorker in crisis – creating the space for a person to be connected with community-based services and care, rather than the criminal system.

Crisis response centers on consensual, community-informed care and deescalating crisis. Daniel’s Law will create a statewide council of mental health experts, and the law requires each member to be dedicated to the goals of de-escalation, trauma-informed, culturally-competent care, and avoiding contacts with

the criminal system. The transformative vision is baked into the council's make-up. Members must also have direct or peer lived experience with mental health, disability, or drug addiction.

Daniel's Law also sets up regional mental health councils for 18 regions of the state (mapping on to existing emergency response regions), which will be responsible for licensing and training local mental health response units that can be dispatched instead of – not just alongside – police.

Daniel's Law is a first step – it will fix state law so we can build a meaningful mental health response system outside of the police. But it's not the end – we will all have to fight for funding and staffing for these units in every city and town in New York.

Mental health professionals are the first responders to mental health crises. Daniel's Law creates a system for those already practicing trauma-informed mental health work in their communities to serve as local responders. Local mental health response units will be trained and designed to respond to people in crisis, deescalate these situations, and connect people with the care they need. And these mobile teams will respond without law enforcement accompaniment unless the crisis team determines that special circumstances require law enforcement assistance.

It is critical to note that no crisis intervention approach will work without financial investment in community-based services and care. New Yorkers in crisis deserve the care and support of trained, community-based, culturally competent and gender competent health professionals. And they require a well-funded system of respite care centers, mental health urgent care centers, and drop-in centers and safe havens for people with mental health concerns. These services must be easy to access, open to the public 24/7, and prioritize serving those neighborhoods that struggle most with crises. A service delivery system of this sort is needed to provide people with mental health conditions with resources and support to prevent crisis situations from emerging in the first place. We must prioritize the development of—and investment in—community-based organizations that improve overall quality of life will subsequently improve mental health.

While Daniel's Law is just one piece of transforming our state response to New Yorkers in crisis, it empowers those with trauma-informed, culturally-competent expertise to lead the way.

Conclusion

New York must fundamentally transform the role of policing in our state – and we must start by ending our over-reliance on police as first responders in every crisis. When our friends, neighbors, or community members are experiencing a mental health crisis, they deserve to be treated with compassion, care, and understanding – not cops and the threat of jail.

Daniel's Law builds on crisis intervention models that have successfully reduced police-based response to people experiencing mental health or drug use. No New Yorker should die at the hands of the police because they have a disability, struggle with their mental health, or have used drugs. Daniel's Law promises a future where that is possible. The New York Civil Liberties Union calls for its prompt passage.