

# BUILDING MOMENTUM FROM THE GROUND UP:

## A TOOLKIT FOR PROMOTING JUSTICE IN POLICING

June 2015



PolicyLink



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**WE ARE  
ALL 1 BULLET  
AWAY FROM  
BECOMING A  
# HASHTAG**

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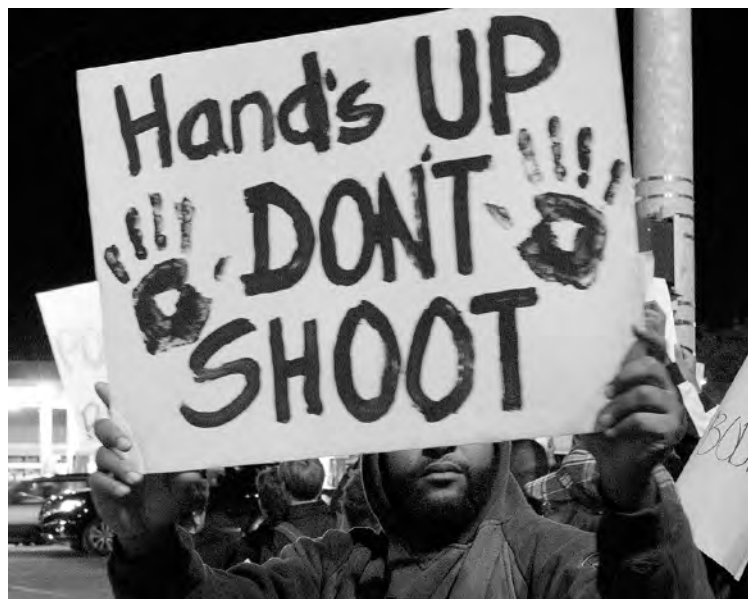
# INTRODUCTION

The killing of Eric Garner, Mike Brown, John Crawford III, and Ezell Ford over the span of four weeks last summer, and the subsequent failure to hold any officers involved responsible, spurred a national conversation about police violence and systemic racism. The conversation has intensified in the intervening months as additional incidents of police violence and misconduct continue to expose the systemic and widespread failures of our policing and criminal justice systems. Community members, often led by tenacious young leaders, planned direct actions, die-ins, walk-outs, and acts of civil disobedience to demand accountability and recognition that Black lives matter. From New York to Seattle, outraged elected officials walked out of city council meetings and state buildings with their hands up to express solidarity with, and commitment to, the movement for police and criminal justice reform.

Communities across the country that have lived for too long under the weight of discriminatory policing and mass incarceration are calling for a transformation of our policing and criminal justice systems. They are making it clear that it is time for policies to first and foremost reflect the concerns and solutions of communities most affected by flawed policing practices. Communities are demanding meaningful oversight of law enforcement, accountability, an end to the criminalization of communities of color, and state investments beyond federal-subsidized tanks and additional police.

While media attention waxes and wanes, the groundswell of anger and grief unearthed by the public killings of sons, daughters, fathers, mothers, and transgender sisters and brothers has started to translate into meaningful policy reform at the local, state and national level. Organizers, community leaders, advocates, elected officials, and law enforcement are thinking through how to address the endemic problem of police brutality and mass criminalization.

To support the efforts of community organizations and elected officials, the Center for Popular Democracy (CPD) and PolicyLink have created *Building Momentum from the Ground Up: A Toolkit for Promoting Justice in Policing*. The *Toolkit* is a direct response to organizers, elected officials, and community members from across the country seeking support and resources for campaigns



Ferguson protest in Memphis November 24, 2013.  
Photo by Chris Wieland.

aimed at transforming the policies and practices of local law enforcement. The *Toolkit* reflects the aspirations of many and is the product of conversations with base building organizations and local elected officials.

The *Toolkit* elevates fifteen policy reforms. Not all of the reforms included are ideal for all communities. Some, such as body cameras, are controversial. The aim of the *Toolkit* is not to suggest that these are the fifteen best or most important reforms. Instead, the *Toolkit* provides resources, information and sometimes precautions about reforms that have been enacted, as well as more visionary proposals.

The policy reforms are organized into five categories:

- ✓ Ending Mass Criminalization
- ✓ Safe and Just Police Interactions
- ✓ Community Control
- ✓ Independent Oversight
- ✓ Improving Police Department Practices

Each recommendation includes information about the policy, examples of successful implementation, best practices, sample legislation, and additional resources from think tanks, base building organizations, and government agencies.

The second section of the *Toolkit*, “Organizing 101,” provides resources and guiding questions for those attempting to develop campaigns around specific policy reforms.

The final section of the *Toolkit*, “Beyond Policy,” includes resources for developing community based alternatives to policing and suggestions on how to frame these reforms as part of a larger vision of change that goes beyond specific policy fixes and addresses the need for a government and society that invests in Black and Brown health, education, and wealth—not just criminalization and incarceration.

We hope that by providing resources and model policies, and by elevating the inspirational and transformational work underway, we can support organizers and elected officials in their continuing struggle for a fundamental reorientation of both the purpose and practice of policing in this country.

If you have any questions about this toolkit or want assistance or support for your policy campaign, please contact Marbre Stahly-Butts at [Mstahly-butts@populardemocracy.org](mailto:Mstahly-butts@populardemocracy.org). For additional information and updated versions of the toolkit please go to [justiceinpolicing.com](http://justiceinpolicing.com).



# POLICY REFORMS

## ENDING MASS CRIMINALIZATION

### POLICY 1: DECRIMINALIZATION

Police are the frontline enforcers of a criminal justice system that incentivizes incarceration. While much attention has been paid to police practices, there has been less focus on the foundation of police authority — the laws which give police and courts wide discretion to arrest and incarcerate people for offenses that have nothing to do with public safety.

From 1980 to 2008, the number of Americans incarcerated increased from 500,000 to 2.3 million. Nearly half of the people incarcerated in state facilities are there for nonviolent offenses. Black and Latina/o people make up nearly 60% of all incarcerated people, even though they only make up one quarter of the US population. This increase in incarceration is, in part, due to thousands of new laws at the federal, state, and local levels that allow police to arrest people for anything from breaches of minor school policies to violations of park rules. Michigan, for instance, has at least 3,102 crimes on the books and has created an average of 45 new crimes annually. California has created 1,000 new crimes in the last 25 years. Cities across the country have also enacted countless new municipal level violations. In New York City alone there are nearly 10,000 laws, violations, rules, and codes that police can enforce.

As a result of the onslaught of new “crimes,” law enforcement priorities have shifted from the investigation of violent crimes to an emphasis on administrative and regulatory violations, including things like public consumption of alcohol, spitting or even wearing sagging pants. It is estimated that the average officer spends 90% of their time dealing with minor infractions that violate local administrative codes and only 10% of their time dealing with violent crimes. The new laws broadened officer discretion and increased targeting of low-income Black and Latina/o communities. More than 80% of those ticketed in New York City for low-level offenses are Black or Latina/o people. Similar discrepancies exist in



Millions March NYC, December 13, 2014. Photo by The All-Nite Images.



the enforcement of drug laws despite the fact that Black and Latina/o communities use drugs at similar rates as white communities. Moreover, nearly 50% of drug arrests are for marijuana-related offenses. One in every 15 Black men and one in every 36 Latino men are incarcerated in comparison to one in every 106 white men.

Police and prisons have become the government's answer to nearly every social problem in low income communities of color. The criminalization of poverty, mental illness, perceived anti-social behavior, and drug addiction has led to mass incarceration. Increased criminalization also worsens community members' interactions with police and leaves them vulnerable to the whims of law enforcement, who are often incentivized by quotas and political pressure to arrest and incarcerate as many people as possible. The key to transforming police and community relations is the decriminalization of behavior that does not pose a threat to public safety and an investment in alternative solutions to social and health issues.

### **IN PRACTICE**

A number of jurisdictions across the country have decriminalized marijuana—most recently Colorado, Washington, and Washington, D.C. In Washington, D.C. community organizations gathered sufficient signatures to place the issue on the November 2014 ballot and in February 2015, recreational marijuana use was decriminalized. Now the campaign is focused on ending discrimination through full legalization and refocusing police priorities on more important issues than marijuana use or possession of small amounts of marijuana.

In New York City, the prioritization of low-level offenses resulted in more people being arrested for marijuana possession in 2011 than the total number arrested for the offense between 1981 and 1995. Eighty four percent were Black or Latino, even though most marijuana users in New York are white. Grassroots advocacy and public pressure are changing the political climate around marijuana throughout the state. Organizations such as VOCAL NY and the Drug Policy Alliance have waged an advocacy, public education, and grassroots organizing campaign. In 2013, a coalition of grassroots organizations hosted a forum for the Brooklyn District Attorney candidates to discuss the connections between the failed war on drugs and mass incarceration and encouraged candidates to consider different approaches to dealing with drug addiction. A similar mayoral forum was hosted, and organizers were able to successfully change the public narrative so much so that both Republican and Democratic candidates publicly supported decriminalizing small amounts of marijuana. Most recently, Brooklyn's District Attorney said that his office would not prosecute low-level marijuana possessions. However, without legislation, there is no way to enforce non-prosecution or departmental de-prioritization. To guarantee the permanence and effectiveness of any reforms legislation must ultimately be passed. Advocacy groups across the state are now pushing New York to introduce a bill that would demote possession of small amounts of marijuana from a misdemeanor to a violation that comes with a fine.

Recently, in recognition of the financial and human costs of the criminalization of low level offenses, a number of city council members in New York City have called for changing some of the City's most common offenses from criminal to civil charges.

Similarly, in November 2014 voters in California passed Proposition 47, which reduces certain drug possession felonies to misdemeanors and reinvests the estimated \$150 million a year in savings to support school truancy and dropout prevention, victim services, mental health and drug abuse treatment, and other programs designed to expand alternatives to incarceration. The Proposition passed as a result of the efforts of a coalition of advocates, base building organizations, and policy makers from across the state.

**BEST PRACTICES:** Steps can be taken at the state, city, or county level to decriminalize formerly criminal behavior and reduce mass incarceration and abusive police conduct.

- ✓ When possible, municipalities should revise their municipal codes to reclassify current misdemeanors into civil infractions. Municipalities should also ensure that fines associated with civil infractions do not become excuses to incarcerate or financially exploit people. Some of the most common offenses criminalized throughout the 1980s and 1990s include: Consumption of Alcohol on Streets, Disorderly Conduct, Public Urination, Bicycle on Sidewalk, Trespassing (which can include being in a building without identification), Failure to comply with park signs, Unlawfully in parks after hours, Marijuana possession, Littering, Loitering, Panhandling, Transit Offenses (including sleeping on subway, taking up multiple seats, traveling between subway cars, dancing on subway), Loud Music, Truancy, and Spitting.
- ✓ Municipalities should change their city charters or local municipal laws to limit the administrative, health, park, and tax code offenses that police are responsible for enforcing.
- ✓ States – and where possible, cities – should reduce collateral consequences resulting from all minor offenses, so that individuals' employment, immigration, parenting, voting, and public housing statuses are not compromised.
- ✓ States should decriminalize marijuana and include provisions that allow possession of marijuana for persons of all ages, allow those who have already been convicted for possession of marijuana to clear their records, fix definitions of what constitutes sale of marijuana so that sharing is not legally seen as selling, and include racial impact analysis and data collection mandates to ensure that enforcement of any existing laws is not racially biased.
- ✓ Cities can also take steps to mitigate the harms of marijuana and other low-level offenses by encouraging police to deprioritize enforcement of these crimes and encouraging local district attorneys to stop prosecuting low-level offenses.
- ✓ Cities and states should reinvest a percentage of any savings resulting from criminal justice reforms in community-based efforts, prevention, intervention, treatment, education, and other programs that have been shown to promote healthier, stronger, and safer communities.

## SAMPLE LEGISLATION AND POLICY

For text of the proposed New York State Fairness and Equity Act, see: <http://open.nysenate.gov/legislation/api/1.0/pdf/bill/S7927-2013>.

*The Fairness and Equity Act was introduced in 2013. It proposes to: end the racially biased arrests of tens of thousands of New Yorkers by fixing the law regarding possession of small amounts of marijuana, create a process for those who have been convicted of public possession of small amounts of marijuana to clear their records, reduce collateral consequences resulting from marijuana possession arrests and non-criminal offenses, seal marijuana possession violations immediately upon conviction, and establish a process to utilize racial and ethnic impact statements for legislation proposing to modify New York's penal code.*

For text of California's Proposition 47, see: <http://vig.cdn.sos.ca.gov/2014/general/pdf/text-of-proposed-laws1.pdf#prop47>.

*Proposition 47 was a ballot measure that passed in 2014 in California. It reclassified six low-level property and drug offenses from felonies to misdemeanors. These offenses include shoplifting, theft, and check fraud under \$950, as well as personal use of most illegal drugs. State savings resulting from the measure are estimated to be at least \$150 million a year and will be used to support school truancy and dropout prevention, victim services, mental health and drug abuse treatment, and other programs designed to expand alternatives to incarceration.*

## RESOURCES

- For more information about marijuana decriminalization campaigns across the country see the Drug Policy Alliance's Website: <http://www.drugpolicy.org>.
- For more information about the disproportionate impact of marijuana enforcement see ACLU's "The War on Marijuana in Black and White": <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.
- For more information about over-criminalization: [http://www.manhattan-institute.org/html/ib\\_31.htm#VTL4eSHBzGc](http://www.manhattan-institute.org/html/ib_31.htm#VTL4eSHBzGc).
- For more information about the California campaign to change sentencing practices and invest in communities: <http://www.unitedforprop47.com>.
- For more information about VOCAL NY's campaign to decriminalize marijuana and other low-level offenses in New York: <http://www.vocal-ny.org>.

## POLICY 2: MUNICIPAL COURT REFORMS

Under most state law, courts can issue bench warrants for the arrest of anyone who does not appear for a court date after being ticketed for a violation or given a summonses. As a result, too many individuals serve jail time for parking infractions or park code violations. Incarceration is not an appropriate response to the failure to pay a fine or appear in court for a minor or civil offense. Yet municipalities across the country use these fines, as well as the additional court fees and fines that pile up when people are unable to pay the original penalty, to supplement city and county budgets.

The Department of Justice’s report on the Ferguson Police Department exposed the depth of the St. Louis County municipal court system and found “overwhelming evidence of minor municipal code violations resulting in multiple arrests, jail time, and payments that exceed the cost of the original ticket many times over.” However, this practice is not unique to St. Louis County. It is estimated that over one million people in NYC, for example, have outstanding bench warrants.

Warrants have crippling consequences for communities. An outstanding bench warrant makes it impossible for individuals to get jobs or housing that require a background check. The overuse of warrants also leaves many community members fearful and vulnerable in interactions with law enforcement, because they are under the constant risk of arrest and incarceration.

### IN PRACTICE

Bench warrants are used throughout the country when someone misses a court date. The practice is especially devastating for low-income individuals who are unable to pay fines and has a disproportionate impact on Black and Brown people, who are often targeted by police. In recognition of the discriminatory and crippling impact of bench warrants, many community organizations support the adoption of a range of policies to mitigate the effect on community members. These policies include: allowing individuals to attain background checks even with an outstanding bench warrant, instituting regular times where people can appear in court so that individuals do not spend significant time in jail waiting to appear before a judge over a bench warrant, eliminating bench warrants all together, and ensuring that individuals are not jailed multiple times for the same ticket or offense. A number of jurisdictions, from Baton Rouge to Atlanta, have offered amnesty for existing bench warrants. However, these amnesty programs



Protest in Milwaukee, WI on November 25, 2014.  
Photo by Light Brigading.



have been limited in that they often require a one-time payment and do not address the underlying issues of criminalizing poverty and inappropriately using incarceration as a strategy for generating revenue.

In St. Louis, Missourians Organizing for Reform and Empowerment (MORE), Arch City Defenders, the Organization for Black Struggle (OBS), and others have been involved in a multiple year campaign to end the abusive municipal court practices in St. Louis County. The campaign has included the publishing of reports about the practice, direct actions targeting city and court leadership and a public education strategy. The campaign in St. Louis aims to provide relief to people who have outstanding bench warrants and municipal ordinance violation tickets, and to prevent the issuance of future bench warrants by addressing the structural racism and profit motive of the St. Louis County municipal courts. In response to increasing pressure, St. Louis County cancelled more than 220,000 arrest warrants for those with moving violations and at the state level both chambers of the Missouri Legislature passed a revenue bill, which caps the amount of general operating revenue from traffic tickets a municipality can collect at 12.5 percent, down from 30 percent.

**BEST PRACTICES:** Both city councils and municipal courts can lessen the devastating impact of bench warrants. City councils can make changes to the municipal code limiting the penalties for different municipal offenses and municipal courts can issue rules dictating how judges deal with cases.

- ✓ Any amnesty on bench warrants should include an elimination of all outstanding fines and permanently cancel any warrants associated with those offenses. Additionally, any amnesty should pardon all pending cases and recall any warrants associated with those cases.
- ✓ Municipalities should eliminate the “Failure to Appear” charge, which often is the municipal code violation that allows for bench warrants to be issued and results in unnecessary arrests.
- ✓ Municipal courts should eliminate additional fees and fines for missed court appearances.
- ✓ Municipalities should use less costly and more humane practices that have been proven to increase the likelihood that a defendant will appear in court—such as a reminder phone call or free transportation.
- ✓ Municipal courts, municipalities, and states should provide alternatives to monetary payment for fines including community service, as suggested by advocates in St. Louis.
- ✓ Municipalities or states should provide public defenders to indigent people who are facing charges in municipal court.
- ✓ Fines should be determined based on the income of the person fined and never imposed on individuals who are not deemed legally financially responsible (such as minors, people with severe medical or physical disabilities, etc.)

- ✓ States and city officials should end the practice of suspending people's licenses for failure to pay minor traffic violation fines or child support.
- ✓ Municipal courts should limit the violations that require court appearances to the extent possible under state law.
- ✓ Municipalities and states should enforce a cap on the amount of municipal revenue that can be generated from traffic tickets and other offenses.
- ✓ Municipal courts should be consolidated into regional courts to discourage the practice of using municipal courts to fund bankrupt municipalities.
- ✓ A percentage of municipal court revenue should be reinvested in communities and community based programs.

## RESOURCES

- For more information about the Department of Justice findings on the St. Louis County Municipal Courts: [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf)
- For more information about the St. Louis campaign to end municipal court abuses see Missourians Organizing for Reform and Empowerment's report "Transforming St. Louis County's Racist Municipal Courts.": [https://d3n8a8pro7vhmx.cloudfront.net/organizemo/pages/269/attachments/original/1422885660/Transforming\\_St.\\_Louis\\_County's\\_Racist\\_Municipal\\_Courts.pdf?1422885660](https://d3n8a8pro7vhmx.cloudfront.net/organizemo/pages/269/attachments/original/1422885660/Transforming_St._Louis_County's_Racist_Municipal_Courts.pdf?1422885660)
- For more information on municipal reforms enacted in St. Louis: [http://mediad.publicbroadcasting.net/p/kwmu/files/MondaySept\\_8\\_2014\\_CCAnnouncement.pdf](http://mediad.publicbroadcasting.net/p/kwmu/files/MondaySept_8_2014_CCAnnouncement.pdf)
- For more information on alternatives to monetary payment of fines including Timebanking, which is a network of people engaged in a reciprocal exchange of services, skills, and goods through a web in which the currency is an hour of time instead of money: <http://timebanks.org/> and <http://danecountytimebank.org/projects/dctb-youth-court-community-justice>
- For more information about alternatives to pre-trial detention and strategies that increase rates of court appearances and compliance: <http://www.vera.org/sites/default/files/resources/downloads/aap.pdf>
- For more information on "structured fines" or fines based on ability to pay: <https://www.ncjrs.gov/pdffiles/156242.pdf>

## POLICY 3: IMMIGRATION DETAINER POLICIES

Federal immigration policies also impact how communities are policed. The Obama administration detains and deports more than 400,000 people every year, separating countless families, funneling thousands of children into the foster care system, and hurting local economies that rely on immigrant labor. Federal immigration enforcement increasingly relies on local law enforcement—personnel, jails, and local police budgets are used to carry out punitive and overzealous enforcement programs. The centerpiece of the US Immigration and Customs Enforcement (ICE) detention and deportation infrastructure is something known as an “ICE detainer” or “ICE hold.” An ICE hold is a request from ICE to a local law enforcement agency to detain an individual for up to 48 hours, so that federal authorities can come take the person into custody. ICE issues these requests to hold all types of people with outstanding immigration issues, from recent immigrants to long-time permanent residents with green cards. Many localities are unaware that an ICE hold is merely a request, not an order, and that it is up to the discretion of each local law enforcement agency whether or not to honor an ICE hold request. Increasingly, state and local policy makers are recognizing that using local resources to enforce federal immigration law is bad policy. When local police participate in the enforcement of our broken federal immigration law, it incentivizes racial profiling, sows distrust for police in communities and deters immigrant residents from accessing vital health and educational services, reporting crimes, and participating in civic life. Not only is it expensive to incarcerate people on ICE’s behalf, it also diverts law enforcement personnel time that should be spent responding to the public safety needs of the community.



Protest on January 12, 2015, Washington, DC. Photo by Justin Norman.

### IN PRACTICE

A recent wave of court decisions have held that localities that hold individuals on immigration detainers without a finding of probable cause are risking Fourth Amendment liability. This has helped to build momentum against detainer compliance around the country, and as of today over 250 jurisdictions have passed laws or policies limiting the circumstances in which local law enforcement will honor detainer requests. In addition to the many city and county level policies, the states of California, Connecticut, Rhode Island, and Maryland also have laws or policies

limiting detainer compliance at the state level. Different jurisdictions take different approaches to drafting detainer policies. The earliest policies made compliance with detainers contingent on reimbursement by ICE. Although this framework is not ideal, in practice, it has resulted in an end to all detainer compliance in Cook County, IL, and Santa Clara, CA. In New York City, a new detainer law in 2014 effectively put an end to all detainer compliance by requiring that detainers be accompanied by judicial warrants. The New York City policy also prevented ICE from having access to the city jail. State level policies tend to be more permissive than local policies. The legislation in California and Connecticut contained many exceptions for individuals with old criminal convictions. In light of the recent court cases, those states are currently considering amending their laws.

**BEST PRACTICES:** Cities, counties, and states can pass legislation or enact administrative policy severing ties between local law enforcement and ICE in order to protect their communities from aggressive and cruel immigration policies.

- ✓ Detainer policies should prohibit local law enforcement from handing any individual over to ICE, or holding any individual on ICE's behalf, solely on the basis of a suspected immigration violation.
- ✓ Detainer policies should prohibit local law enforcement from sharing information – such as addresses, names of family members, employment information, or release date – about individuals in their custody with immigration authorities. This is especially crucial since the President announced changes to his immigration enforcement tactics, which will rely heavily on local law enforcement agencies sharing release dates of immigrants in their custody with federal immigration authorities.
- ✓ If a detainer policy contains any exceptions to the prohibitions on honoring requests by ICE to hold individuals, those exceptions should only apply when ICE also presents a warrant for arrest issued by an Article III judge.
- ✓ Detainer policies should prohibit immigration authorities from interviewing or otherwise having access to any individuals in police custody for the purposes of investigating potential violations of immigration law.
- ✓ Localities can reinforce their detainer policies by requiring that, wherever the policy does permit the local law enforcement agency to comply with a detainer request, ICE must reimburse the locality for the cost of detaining the individual.

### **SAMPLE LEGISLATION**

New York City, NY, Ordinance (Dept. of Corrections and Police Dept.)(2014):

- ✓ <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1935438&GUID=0F-5303CD-D849-4451-A082-6C9997FC782D&Options=ID|Text|&Search=detainer>



✓ <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1935437&GUID=0A456911-54A6-41E5-8C5A-1D3B231D56AA&Options=ID|Text|&Search=detainer>

Cook County, IL, Ordinance (2011):

✓ [http://www.ilrc.org/files/documents/07\\_-\\_cook\\_county\\_ordinance.pdf](http://www.ilrc.org/files/documents/07_-_cook_county_ordinance.pdf)

King County, WA, Ordinance (2014):

✓ [www.ilrc.org/files/documents/king\\_co\\_ice\\_detainers\\_ordinance\\_-\\_amended\\_9-2-14.pdf](http://www.ilrc.org/files/documents/king_co_ice_detainers_ordinance_-_amended_9-2-14.pdf)

California Trust Act (2013):

✓ [http://www.ilrc.org/files/documents/04\\_-\\_california\\_trust\\_act\\_o.pdf](http://www.ilrc.org/files/documents/04_-_california_trust_act_o.pdf)

## RESOURCES

➤ For a map of current immigration detainer policies around the country and links to the text of individual policies see: <http://www.ilrc.org/enforcement>

National March Against Police Violence in Washington, DC, December 13, 2014. Photo by fuseboxradio.



## POLICY 4: DIVERSION PROGRAMS

Historically, incarceration has been used as a one-size-fits-all solution for every person who is arrested by the police. This over-reliance on incarceration has meant that millions of people have had critical underlying issues, such as addiction or mental health concerns, go unaddressed. Many of these people are accused of low-level offenses and are stuck in a cycle of recidivism, repeatedly arrested and incarcerated as their issues worsen.

Diversion programs are one sensible and compassionate solution to this problem. Police diversion programs allow law enforcement to use discretion to identify and divert people who meet certain criteria, often before they are even booked in the system. These programs give cities the opportunity to save on prosecution and incarceration costs, lower recidivism, and improve the lives of residents. They also give police the chance to help those in need of services rather than rely on harsh punishments. By choosing a pragmatic and compassionate approach over criminalization, cities can begin to see a decline in crime rates and increased community health.

Police diversion makes sense where law enforcement is being used to address issues that stem from unmet public health or economic opportunity needs. Ultimately, a healthy society should not rely on the police to play this function. If police are called to respond to a situation that is technically a law violation, but stems from unmet service needs, those needs should be met through community-based diversion rather than through criminalization, which is more expensive and more destructive.

### IN PRACTICE

In Seattle, the Law Enforcement Assisted Diversion Program (LEAD) has reduced recidivism by 34-58% and assisted hundreds of people in need of help, providing program participants everything from housing and addiction treatment to yoga and art supplies in order to prevent recidivism. Similarly, in Brooklyn, the Center for Court Innovation's Red Hook Community Justice Center has an on-site clinic as well as programs for youth participants. The Center has reduced the use of jail in misdemeanor cases by 50%.

**BEST PRACTICES:** Local legislators can support programs that divert people from the criminal justice system to more sensible and humane alternatives by allocating funds to support diversion programs.

- ✓ Ideally, local legislators should not adopt legislation around this issue, because any written rules limit the ability for case-by-case discretion. Instead, legislators can be helpful by funding and/or periodically evaluating diversion programs.
- ✓ Instead of enacting legislation, those wishing to implement such a program should discuss and engage stakeholders such as the police chief, sheriff, district attorney, county and city

councils, mayor, lead public defender, neighborhood public safety groups, harm reduction based social service providers, and others. A Memorandum of Understanding setting out guidelines and rules for the diversion program can then be created and agreed to by the relevant stakeholders.

- ✓ Community services could include mental health, addiction services, trauma-focused psychotherapy, housing and job assistance, healthcare, and other important services. Services should be provided in a harm reduction (not an abstinence-based or zero tolerance) paradigm.
- ✓ Data is important. Diversion programs must measure and record information at every step of the process to accurately assess the program's success.
- ✓ Evaluations should include recidivism, individual health outcomes, and specific indicators of community health.
- ✓ Community organizations and service professionals can partner with the city to provide relevant services and assist with the programmatic needs of the diversion program.
- ✓ Police departments need to clearly state and train officers on operation protocols, including clarity around decision-making power. These protocols should be structured and easily reviewable. Furthermore, monitoring and oversight, preferably done by an independent department or organization, are necessary when providing police this type of discretion.
- ✓ Money saved through enacting diversion programs should be reinvested in community based initiatives that reduce crime, such as mental and other health services, education, housing services, and job assistance.

## RESOURCES

- For more on the various types of diversion programs, please check out the Center for Health and Justice's National Survey of Criminal Justice Diversion: <http://www.napsa.org/diversion/library/No%20Entry-%20A%20National%20Survey%20of%20Criminal%20Justice%20Diversion%20Programs%20and%20Initiatives%20-%20CHJ%202014.pdf>.
- For more on the LEAD program in Seattle: <http://leadkingcounty.org>.
- For a copy of the MOU establishing the LEAD program in Seattle: <http://www.scribd.com/doc/267032932/Seattle-Diversion-Program-MOU>
- For more on Red Hook Community Justice Center: <http://www.courtinnovation.org/project/red-hook-community-justice-center>
- For other innovative programs see the Center for Court Innovation's website: <http://www.courtinnovation.org>

## POLICY 5: RACIAL IMPACT TOOL FOR ALL CRIMINAL JUSTICE LEGISLATION

Many policies in this country unfairly disadvantage people of color and result in large swaths of Black and Brown communities being harassed, arrested, and shipped off to prison. While we no longer have laws that explicitly target or discriminate against Black and Brown people, many laws which seem neutral have negative effects on Black and Brown communities. Each new law and policy can compound the problem of racism in our criminal justice system and harm communities of color. Too often, elected officials and policy makers make decisions that end up having severe negative consequences for Black and Brown communities.

The only way to end the systemic racism that has existed for generations is to stop passing laws and regulations that unfairly impact Black and Brown communities. In order to ensure racial equity, policy makers and government officials must consider the disproportionate racial impact that may result from any legislation. Leaders and officials must make themselves aware of the effects of their choices.

Like financial or environmental impact assessments, racial impact tools provide policymakers with critical information and force them to confront the real life effects of policies they pass. Before legislation or ordinances are enacted, elected officials should require an assessment of the potential impact on people of color. This is especially critical in criminal justice legislation, where racially biased policing and incarceration have destroyed lives and crippled communities across the country. By using racial impact tools, decision makers and communities have the opportunity to proactively eliminate disproportionate effects on people of color and start to chip away at systemic racism.

### IN PRACTICE

A number of cities throughout the country have used racial impact tools to assess the impact of existing or potential policies. The information provided by racial impact tools can be powerful advocacy





and organizing resources. Philadelphia ended zero-tolerance discipline policies after seeing the disproportionate effect on students of color. Similarly, Seattle ended the use of criminal background checks in employment decisions after assessing the unfair impact that such policies had on men of color. Seattle also uses a racial equity tool in budget, policy, and program decisions. Minneapolis has recently created the Office of Equitable Outcomes to ensure the most equitable outcomes in every city department or division. In Madison, assessing racial impact has resulted in more inclusion of people of color in government. While there are no prominent examples, racial impact assessments can and should be used within police departments to evaluate the impact of different policing policies.

**BEST PRACTICES:** Racial impact tools, which reveal the impact of existing and potential legislation or regulations on communities of color, can be used to assess local, state, or federal legislation but have most commonly been used on the local level.

- ✓ These tools are most useful in jurisdictions that have an office or department of racial equity. The department's role is to ensure that policy decisions are assessed thoroughly for racial impact. The department can also ensure that internal government operations, such as hiring and contracting, are racially equitable.
- ✓ Jurisdictions must decide on common language to discuss racial equity and must define and provide examples of various forms of racism and inequity, including individual, institutional, and structural racism, as well as implicit and explicit bias. Government officials and staff should receive trainings on common language and on forms of racism or racial inequity.
- ✓ It is not enough to simply address racial inequity within city hall or the state capitol. Government officials must consult and include community organizations working directly with impacted racial or ethnic groups, as well as experts on racial equity. These partners should be involved at all steps of the process, including creating common language, assessing racial impact, and developing remedies to racially unequal policies.
- ✓ Being data-driven is important. Data about the racial impact of policies must be used to set baselines and goals, measure progress, and evaluate success of individual policies and programs. However, data alone is not enough – people's lived experiences and individual evaluations must also be taken into account when assessing impact.

### **SAMPLE ASSESSMENT TOOLS**

- Seattle Race and Social Justice Initiative's Racial Equity Toolkit: [http://www.seattle.gov/Documents/Departments/RSJI/RacialEquityToolkit\\_FINAL\\_August2012.pdf](http://www.seattle.gov/Documents/Departments/RSJI/RacialEquityToolkit_FINAL_August2012.pdf)
- Race Forward's Racial Equity Impact Assessments for Economic Policies and Budgets Toolkit: <https://www.raceforward.org/practice/tools/racial-equity-impact-assessments-economic-policies-and-budgets>

- Race Forward's Racial Equity Impact Assessment Toolkit: <https://www.raceforward.org/practice/tools/racial-equity-impact-assessment-toolkit>

## RESOURCES

- For more information on how your jurisdiction can address racial inequity and implement Racial Impact Tools, please contact the [Local and Regional Government Alliance on Race and Equity](#)
- For more information on how cities use Racial Impact Tools, [Seattle's Race and Justice Initiative](#) program is a great example of how a city integrates racial equity into their operations and processes.

Rally to reclaim Martin Luther King Day Day in Silver Spring, Maryland, January 24, 2014. Photo by Stephen Melkisetian.



# SAFE AND JUST POLICE INTERACTIONS

## POLICY 6: BANS ON BIAS BASED POLICING

Anti-profiling measures prohibit officers from stopping or targeting people based on their race, religion, or national origin. Bias-based profiling by law enforcement is not only racially discriminatory, it also erodes trust between communities and police, unnecessarily involves victims of profiling in the criminal justice system, and can have dangerous, even deadly consequences (as seen in the case of Eric Garner in Staten Island.) Moreover, there is no evidence that bias based profiling is an effective law enforcement strategy. According to a report released by the New York Attorney General in 2013, just 0.1% of stop-and frisks resulted in conviction for a violent crime or possession of a weapon.

Bias-based profiling is a daily reality for young people, communities of color, low-income communities, and LGBTQ communities. According to the NAACP's extensive study on racial profiling, "Born Suspect," not a single state in the country has anti-profiling legislation that is strong enough to be considered a model. An enforceable ban against bias-biased profiling can help curb police harassment and limit the amount of unnecessary contact Black and Brown community members have with law enforcement and the criminal justice system.

### IN PRACTICE:

For decades in New York City, discriminatory profiling was the cornerstone of the New York Police Department's (NYPD) stop-and-frisk practices. Overwhelming numbers of Black and Brown residents were stopped and harassed with no cause. Although young Black and Latino men made up only 4.7% of New York City's population they accounted for 41.6% of those stopped in 2011. Racial disparity rates for women stopped by the NYPD equaled that of men—on average over 80% of women stopped by the NYPD were Black or Brown. Additionally, according to researchers at CUNY Graduate Center, LBGQT youth were more likely to report negative interactions with police than their heterosexual peers, and more than twice as likely to report sexual harassment by police.



Protest against the failure to indict Officer Darren Wilson, Washington, DC, on November 25, 2014. Photo by Stephen Melkisetian.

After years of organizing and advocating, Communities United for Police Reform led a coalition of community-based, policy, legal, research, faith-based, labor and other organizations in a public education, political advocacy and grassroots organizing campaign aimed at ending Broken Windows<sup>1</sup> policing in New York City. Through a combination of public education, political advocacy and legal strategy, the coalition worked to change the narrative and laws around policing in New York City. The coalition mobilized the membership of dozens of community-based organizations and created public education materials, including videos and testimonials featuring the stories of those most impacted by the practice. In 2013 they were able to pass a local law that outlawed targeting on the basis of characteristics such as immigration status, age, housing status, disability, sexual orientation, gender and gender identity or expression in addition to race, religion, and national origin. The New York City legislation established an enforceable ban on profiling and a “private right of action” so that individuals who are targeted can sue the NYPD. It also allows New Yorkers to bring both intentional discrimination and disparate impact claims—meaning that lawsuits could be brought based on NYPD practices that unfairly impact protected groups.

**BEST PRACTICES:** Profiling bans can be enacted at the state, county, or local level and can be passed on their own or incorporated into state or local human or civil rights laws. In some states it may require a state law in order to create a private right of action, which gives individuals the ability to take the police to court when they are profiled.

- ✓ Profiling bans should include a broad scope of protected categories including: immigration status, age, housing status, sexual orientation, gender, gender identity/gender expression, disability, and HIV status, in addition to race, religion and national origin.
- ✓ Effective bans must include meaningful enforcement mechanisms including: a private right of action allowing individuals who have been profiled to seek relief in court, recourse to existing enforcement bodies and mechanisms (i.e. local Human Rights Commission), and attorney fees.
- ✓ Profiling bans should hold local law enforcement responsible for both intentional discrimination as well as unintentional practices that unfairly impact specific communities (known as “disparate impact”). Bans should allow those profiled to bring claims both after incidents of intentional discrimination and when practices have a disproportionate impact on protected communities. Disparate impact prohibitions should not be phrased in terms of actions “based on” or “because of” race, which is hard to prove, but should prohibit practices that have a disparate and unwarranted impact on protected classes.
- ✓ Effective bans must create and adequately fund systems for collecting and monitoring community complaints. Ideally, these complaints will be incorporated into officer and

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1. For more information on Broken Windows Policing in New York City see: <https://www.youtube.com/watch?v=iXl1QJRqPD8>



department-level performance evaluations so that law enforcement agents and agencies are held accountable for compliance with anti-profiling measures.

- ✓ Police departments should adopt department policies on both intentional profiling and avoiding disparate impact.

### **SAMPLE LEGISLATION AND POLICY**

New York City, Community Safety Act (2013): <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1444267&GUID=BCB20F20-50EF-4E9B-8919-C51E15182DBF&Options=ID|Text|&Search=1080>

### **RESOURCES**

- For more information about the history of racial profiling, national statistics and model language see the National Association for the Advancement of Colored People's (NAACP) report "Born Suspect": [http://action.naacp.org/page/-/Criminal%20Justice/Born\\_Suspect\\_Report\\_final\\_web.pdf](http://action.naacp.org/page/-/Criminal%20Justice/Born_Suspect_Report_final_web.pdf)
- For more information about the New York City-based Communities United for Police Reform organizing and advocacy strategy: <http://changethenypd.org>
- For more information about the impact of bias profiling on communities see Vera Institute of Justice's study, "Coming of Age with Stop and Frisk": <http://www.vera.org/project/stop-question-and-frisk-study>

## POLICY 7: CONSENT TO SEARCH

The Fourth Amendment of the U.S. Constitution gives all Americans protections from unreasonable or unjustified searches. People stopped by the police have a constitutional right to deny requests to be searched, if the officer lacks legal cause. However, many people stopped by law enforcement don't know they have the right to refuse a search and are never asked for consent, when consent is required. Unjustified searches by law enforcement result in unnecessary arrests for low-level non-violent offenses—such as marijuana possession or loitering for the purposes of prostitution based on possession of condoms. Additionally, there are huge racial disparities in who is exposed to these searches. For instance in Chicago, Black and Latina/o motorists in 2013 were four times more likely than white motorists to have their vehicles searched during traffic stops, even though officers found contraband in the vehicles of white motorists twice as often. In North Carolina, Black motorists were twice as likely as white motorists to be searched during a stop.

Often people are misled into “consenting.” Officers will order (or “ask”) people to empty their pockets or open up their bags, without telling them that they have the right to refuse. These searches lead to negative interactions with police and unnecessarily funnel community members through the criminal justice system. Arrests—resulting from unlawful or coercive stop-and-frisk practices—and the convictions or pleas that often follow can have devastating consequences, including the loss of jobs and hiring prospects, inability to get student loans, housing evictions, and lengthy and costly court procedures. Consent to search legislation can mitigate the harms of these searches and reduce people's exposure to incarceration by ensuring that those stopped

Black Lives Matter march in Portland, Maine, on December 7, 2014. Photo by sunlightrunes.



by police are made aware that they have the right to refuse a search—similar to how police are required to tell those under arrest that they have the right to remain silent.<sup>2</sup>

### **IN PRACTICE**

Across the country people are searched without any legal justification because they supposedly “consented” to a search. This practice results in thousands of unnecessary arrests and countless intrusive encounters between communities and law enforcement. The practice is also disproportionately used against Black and Brown community members. In recognition of the racially discriminatory impact and the devastating consequences of searches resulting from “consent,” a number of states have passed legislation that require law enforcement to get written or recorded proof that they advised community members of their right to refuse a search. Key to successful advocacy campaigns aimed at ending “consent” searches is the availability of data showing racial disparities in searches and the reality that those profiled—mostly Black and Latina/o community members—are often less likely than others to have contraband. The problem of consensual searches was highlighted by the Presidential Task Force on 21st Century Policing, which recommended that law enforcement be required to obtain written or recorded proof that they advised those searched of their right to refuse.

**BEST PRACTICES:** Consent to search legislation, which requires police to make people aware of their right to refuse a search and document it, can normally be passed at the local or state level. It can also be implemented administratively.

- ✓ Consent to search legislation should include a requirement that police officers obtain and document proof of voluntary and informed consent in either written or video or audio taped form. It should also require officers to inform individuals that there are no negative consequences to refusing a search request.
- ✓ Consent to search legislation should apply to both vehicle and pedestrian stops.
- ✓ Consent to search legislation can also include the requirement of a consent form including a tear off sheet with the officer’s name, rank, command and a phone number for how those stopped can file complaints. Research indicates that when officers are forced to share identifying information with those they stop they are less likely to engage in abusive or disrespectful behavior.
- ✓ One key to effective implementation of consent to search legislation is changing the training and patrol guide of local police departments. Police departments that offer training about when a search is lawful and discourage officers from coercing residents into consenting to searches, by making them aware of their rights, are less likely to engage in problematic consent searches.

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2. For more information on consent to searches, see Interim Report of The President’s Task Force on 21st Century Policing recommendation 2.10

- ✓ Consent to search legislation should prohibit departments from assigning gender based on anatomical features and require that officers address, interact with, search and place individuals in a manner that is consistent with their gender identity and expression.
- ✓ Effective consent to search legislation should mandate meaningful consent including a provision accommodating non-English speakers and people with cognitive and other relevant disabilities.
- ✓ Effective consent to search legislation should include consequences for officers and departments who do not obtain objective proof of consent. One possibility is including language that makes clear that if consent is not obtained, when legally required, any evidence found in the search cannot be used in a criminal proceeding or that there will be a presumption that the search was unconstitutional—making it difficult for prosecutors to use the evidence.
- ✓ Effective legislation may also require that the officer articulate the reason they asked to search the person. Some jurisdictions, such as Fayetteville, North Carolina, require a justification for the consent search and have banned the use of justifications that correlate with race such as: “nervousness”, “presence in a high crime area” or “prior criminal record.”
- ✓ Even with safeguards, consensual searches are often abused and have a racially discriminatory impact. If possible police should be banned from conducting searches based on consent and should be limited to conducting searches based on probable cause, a warrant or one of the legally established exceptions to a warrant.

### **SAMPLE LEGISLATION AND POLICY**

Rhode Island Ban on Consent to Search (2004): <http://webserver.rilin.state.ri.us/PublicLaws/law04/law04356.htm> \*See Section 31-21.2-5

Colorado Consent to Search Legislation (2010): [http://www.leg.state.co.us/CLICS/CLICS2010A/csl.nsf/fsbillcont3/34BDAFC4BDBE212B872576A8002BC0D3?Open&file=1201\\_enr.pdf](http://www.leg.state.co.us/CLICS/CLICS2010A/csl.nsf/fsbillcont3/34BDAFC4BDBE212B872576A8002BC0D3?Open&file=1201_enr.pdf)

The proposed New York City “Right to Know Act”: <http://changethenypd.org/right-know-act>

Cincinnati Police Department Consent to Search Procedure Manual: <http://www.cincinnati-oh.gov/police/permits-auctions-references/police-department-procedure-manual>

### **RESOURCES**

- For more information on the history, problems and discriminatory impact of consent searches see the American Civil Liberties Union of Illinois campaign to end consent searches in Illinois: <http://www.aclu-il.org/racial-disparity-in-consent-searches-and-dog-sniff-searches>.



# COMMUNITY CONTROL

## POLICY 8: COMMUNITY OVERSIGHT

More than 100 jurisdictions across the country have some type of civilian oversight commission or board, but few communities feel they have true control over their police departments. In recognition of the reality that community oversight is fundamental to the legitimacy of local law enforcement, many communities have renewed their call for meaningful community oversight. Traditionally, civilian or community oversight boards provide communities a say in the disciplining of officers accused of misconduct against community members. However, a number of jurisdictions, including Seattle, San Francisco, St. Louis and Newark, have started to advocate for review boards with a wider scope—including the power to investigate departmental practices, impact hiring decisions, and help identify policing priorities. Seattle’s Community Police Commission includes both the power to investigate individual cases and address systematic issues. Whatever the scope of the commission or board, community oversight is only meaningful if boards are independent, actually represent impacted communities, have adequate funding, and have full investigatory and disciplinary power.



Signs showing the eyes of Eric Garner held during Millions March, NYC, December 13, 2014. Photo by The All-Nite Images.

### IN PRACTICE

The Los Angeles Sheriff’s Department is the fourth largest local policing agency in the country, operates in nearly 90 municipalities and oversees all LA County Jails, which have an average daily population of nearly 22,000 people. Organizers and advocates have been working to end widespread abuse, corruption and discrimination within the Department for decades. In 2002, the Department of Justice pressured Los Angeles officials into issuing some reforms to address the heinous mistreatment of those incarcerated in LA County Jails, but little changed. Over a decade later, ACLU began a lawsuit accusing the Sheriff’s Department of using excessive force in jails. The levels of abuse documented in county jails were horrific, and very few were paying any attention. The report galvanized an art project, which powerfully expressed the cruelty of the Sheriff’s department and galvanized community members and local artists. From the art project a coalition of organizers and community members was created called “Dignity and Power Now/ The Coalition to End Sheriff’s Violence in LA Jails.”

Over the course of two and a half years, the coalition published a comprehensive community-based research report and engaged in direct action to push for an appointed civilian oversight body with subpoena power and the ability to track violence in jails. They held a series of workshops and focus groups across the county to get a sense of what residents wanted out of an oversight board, organized those most impacted by the lack of oversight to lead the campaign, and corralled a group of UCLA law students and lawyers to research best practices and do other legal and policy research based on community priorities.

After years of organizing and advocacy Dignity and Power Now garnered the support of the County Supervisors on the issue of civilian oversight. In December 2014 the Board of Supervisors voted to create a civilian oversight system. The campaign demanding oversight of sheriffs is unique and important, because across the country sheriffs have been involved in countless acts of misconduct and police thousands of towns and unincorporated areas and control county jails. By insisting on oversight of the sheriffs the campaign will have an impact in numerous cities and jails across Los Angeles County.

San Francisco has one of the strongest civilian oversight boards in the country with significant disciplinary power. In their model, the Citizen Police Commission determines all disciplinary action beyond 10-day suspensions and is the appellate body for all officer appeals. Additionally, San Francisco uses a model that does not rely on internal divisions within the police department to conduct investigations. Typically, allegations of excessive force, civilian harassment, and other infractions by police while on duty are investigated by the Office of Civilian Complaints, rather than a unit within the police department. Many civilian oversight boards are forced to rely on the investigations of internal departments or units, which can limit their access to information. In San Francisco, the Office of Citizen Complaints (OCC) receives complaints from community members and has the power to investigate any allegations brought forth by residents.

Seattle's Community Police Commission (CPC) is an example of a hybrid oversight commission and civilian review board. It was established in 2013 as part of a consent decree with the Department of Justice. The fifteen member commission represents diverse community interests, including two police union representatives. The CPC provides system oversight for the civilian-led accountability process conducted by an independent civilian Auditor and a civilian Director of the Office of Police Accountability. In addition to its role overseeing the accountability system, the CPC, which includes police reform advocates, comments on police policies that affect community trust and fairness, and works with the Seattle Police Department training section to revise training curriculum in key areas, including bias-free policing, stops and detentions, crisis intervention training, and use of force.

**BEST PRACTICES:** Community oversight boards or commissions, which give communities a say in the discipline of officers, can be enacted at the county or municipal level. Due to state law, some communities may not be able to create a board with subpoena or disciplinary power without changing state law and/or the city or county charter.

- ✓ The commission or board should have full investigative powers—including the power to subpoena or compel testimony and documents.
- ✓ Local law enforcement and any other oversight bodies should be mandated to give complete access to internal affairs and relevant files to the commission or board.
- ✓ The commission or board must be fully funded and staffed—including an investigative staff.
- ✓ The commission or board should reflect the communities most impacted by police surveillance, abuse, and brutality. Legislation should mandate a majority of the board be made up of community members appointed or elected in a democratic way. Additionally, many communities have chosen to push for boards without membership from any law enforcement or former law enforcement, in order to avoid conflicts of interest.
- ✓ The commission or board may also require that all policies affecting community trust and fairness be submitted to the board for review and comment before passage.
- ✓ The commission or board should have a meaningful say in the discipline of officers. Ideally, these boards would have final say in discipline but this may be complicated by state or local law or by contracts between the city and law enforcement unions.
- ✓ The commission/board should make its disciplinary recommendations public regardless of barriers to disciplinary action due to state and local laws. This allows for public knowledge of any discrepancies between the commission/board's recommendations and the departments actions, allowing for more transparency and public scrutiny.
- ✓ Community oversight boards or commissions should accept anonymous complaints as well as complaints by third parties (including organizations) on behalf of individuals.

### **SAMPLE LEGISLATION AND POLICY**

San Francisco Office of Citizen Complaints: <http://nacole.org/wp-content/uploads/1-San-Fran-cisco-City-Charter-Section-4.127.pdf>

Executive Order by Mayor Ras Baraka of Newark, New Jersey for the establishment of a Civilian Oversight Board: [http://www.ci.newark.nj.us/wp-content/uploads/2015/02/ExecutiveOrder-CivilianComplaintReviewBoardwithRules\\_FINAL.pdf](http://www.ci.newark.nj.us/wp-content/uploads/2015/02/ExecutiveOrder-CivilianComplaintReviewBoardwithRules_FINAL.pdf)

Los Angeles Charter and Administrative Code relating to the Los Angeles Board of Police Commissioners: [http://www.amlegal.com/nxt/gateway.dll/California/laac/administrative-code?f-templates\\$fn=default.htm\\$3.0\\$vid=amlegal:losangeles\\_ca\\_mc](http://www.amlegal.com/nxt/gateway.dll/California/laac/administrative-code?f-templates$fn=default.htm$3.0$vid=amlegal:losangeles_ca_mc)

\*See Article V, Section 573

## RESOURCES

- For information about effective models of community oversight and recommendations on best practices see “We The Protestors” Policy Brief on the topic: <http://www.scribd.com/doc/254134795/Policy-Brief-2-Community-Oversight-of-Police>.
- For more information about scope and powers of the Los Angeles Board of Police Commissioners see their website: [http://www.lapdonline.org/police\\_commission/content\\_basic\\_view/900](http://www.lapdonline.org/police_commission/content_basic_view/900).
- For background and information about the Seattle Community Police Commission see: [www.seattle.gov/policecommission](http://www.seattle.gov/policecommission).
- For a detailed description of oversight agencies across the country see: <https://nacole.org/nacole-resources/detailed-oversight-agency-profiles>.
- For more information about the Dignity and Power Now Campaign to enact meaningful oversight of the LA Sheriff’s Department see: <http://dignityandpowernow.org>.

Protesters outside the Ferguson, MO police station. Photo by Sarah-Ji, [www.sarah-ji.com](http://www.sarah-ji.com).





## POLICY 9: DATA REPORTING

Data about law enforcement activity can be a powerful and effective tool in reforming policing and criminal justice practices. Collected data consistently shows that people of color are stopped more often and face more serious consequences—such as arrests, searches, or fines. Improved data collection and reporting policies are essential to understanding the severity and impact of discriminatory policing and making the case for reform to a variety of audiences. Comprehensive data allows states and localities to identify the scope of profiling, disparate enforcement, use of force and deaths resulting from police encounters/custody. As affirmed by the Presidential Task Force on 21st Century Policing, transparent data collection is also key to increasing community trust and police accountability. By creating and funding ongoing data collection programs, states can reward agencies that are reducing discrimination, identify departments and individual officers most involved in profiling, incentivize the development of new, non-discriminatory approaches to policing and even drive collaboration between police departments and the communities they serve.<sup>3</sup> Essential to effective data collection is the funding and creation of accurate systems for collecting, organizing, and sharing the information collected.

### IN PRACTICE

After a series of police-involved shootings of people of color in Durham, North Carolina, a coalition of ministers, lawyers, community leaders, and organizers formed to address police brutality and profiling. The coalition worked closely with lawyers and advocates to use state data from 2002 to 2013 to show that Durham police searched Black male motorists at more than twice the rate of white males, despite the reality that Black men were not more likely to be in possession of drugs or other illicit materials. The city, which did not respond adequately to demonstrations, did respond to the data. Soon after, Durham began to require that officers make individuals aware of their right to refuse a search and obtain written consent. Similar policy changes were spurred by data collected in Kalamazoo, Michigan and in a host of other localities including New York City. Data collection is also being used in places around the country by public defenders to show discriminatory practices and by police chiefs to discuss search patterns with individual officers.

3. For more information on the importance of data collection, see Interim Report of The President's Task Force on 21st Century Policing recommendations 2.2 and 2.6



Street art in Washington, DC in December 2014. Photo by Ted Eytan.

In light of ineffective or non-existent data collection practices some communities have begun to collect and share their own data. In 2013, a group of Baltimore residents, organizers, and activists who were upset about reoccurring police violence and the lack of information about those injured and killed by the police, came together to compile information on police related deaths in Baltimore and established the Maryland Stolen Lives Project. Together the group began to engage in community research and data compiling. They came to the startling conclusion that every fourteen days in Maryland, someone is killed by law enforcement. In the immediate aftermath of the Michael Brown killing in 2014, Baltimore BLOC was able to use the data they had compiled on officer-involved deaths to galvanize community members into pushing for a host of police reforms at the local, county, and state levels.

**BEST PRACTICES:** Laws requiring the collection of data about law enforcement interactions—including with whom, why, and how—can be enacted at the state or local level through legislation or administrative action.

- ✓ Data collection statutes should mandate data collection for age, race and/or ethnicity, and sex/gender of individuals in police interactions as well as the date, time, location, and geographic location where the interaction took place. Data should be self-reported to ensure accuracy.
- ✓ Data collection statutes should require data on various law enforcement activities and outcomes including stops, frisks, searches, summonses, use of force, arrests, and deaths.
- ✓ An explanation of the reason for the law enforcement action at each stage of police contact should be required as part of the data collection statute, including whether contraband was found.
- ✓ Data collection statutes must include a mandate and funding to create data collection systems that accurately collect, maintain and analyze data and ensure that data can easily be disaggregated by age, ethnicity and/or race, sex, and shared across other systems.
- ✓ Data collection statutes should mandate consistent reporting of data to the public, the state government, and the federal government in disaggregated form. Data should be broken down by the age, ethnicity, and sex of those stopped. This data should be disaggregated by school and non-school interactions.
- ✓ Data collection should be implemented as part of a comprehensive early warning system, in which police departments, oversight bodies and the public use the data to monitor the patterns of the department and the behavior of individual officers. When used in this way data collection can help identify potential police misconduct and deter it.
- ✓ Data collection statutes should apply to both vehicle and pedestrian stops, searches of residences, businesses, faith institutions, and other locations.

- ✓ All data, including geo-mapping of stops, summonses, arrests, detentions, use of force, deaths and a break-down of departmental (and when available officer's) history of stops, should be made easily accessible on a website, which is available to the public and is regularly updated. Protecting the privacy of those stopped needs to be considered in the sharing of data.

### **SAMPLE LEGISLATION AND POLICY**

Maryland State Law requiring the collection and sharing of data for all traffic stops: <http://law.justia.com/codes/maryland/2005/gtr/25-113.html>

*While this legislation is strong in many respects it does not apply to pedestrian stops and searches of residences, businesses, faith institutions and other locations. Ideally any data collection legislation would include data collected in all of those settings.*

Newark Police Department Order on Stop-and-Frisk Reporting: [https://www.aclu-nj.org/files/6513/7338/2486/2013\\_07\\_09\\_snf.pdf](https://www.aclu-nj.org/files/6513/7338/2486/2013_07_09_snf.pdf).

### **RESOURCES**

- For more information on Department of Justice recommendations and best practices around data collection see the DOJ's "A Resource Guide on Racial Profiling Data Collection and Systems": <http://justice.utah.gov/Documents/Research/Race/DOJResourceGuide.pdf>.
- For more information on the Stolen Lives Project: <http://stolenlives.org>.

National March against Police Violence, Washington, DC, December 13, 2014. Photo by fuseboxradio.



## POLICY 10: BODY CAMERAS

Body cameras have become the most popular political response to recent incidents of police misconduct and brutality. There is much debate about the effectiveness and desirability of body worn cameras by community groups and advocates. Some communities and many elected officials believe that if properly regulated, body-worn cameras for police officers may be a tool to increase accountability, transparency, and collect evidence of police misconduct. Communities must decide whether these potential benefits outweigh privacy and other concerns, such as police misuse. Additionally, communities must be involved in the development of departmental protocols to shape when body cameras are mandated for use. If community members advocate for a body cameras, the policy should include a community agreed upon provision outlining when cameras must be activated and a provision applying a presumption of police misconduct if footage is unavailable (when it was supposed to be recorded).

Perhaps more than any other policy solution, body cameras should not be the sole police reform advocated for. To realize benefits, a body camera mandate must be preceded or accompanied by additional policies that support a community-centered culture shift and increased accountability with timely and appropriate discipline for misconduct and abuse in police departments. Otherwise, officers and departments may utilize body cameras only when it advantages them or exclusively as a surveillance tool to monitor community activity. Individuals' safety and privacy interests must also be weighed against accountability goals in considering whether body cameras are a net benefit to community interests. Other sources of video footage such as bystander cell phones are potentially equally or more valuable as they tend to capture police action, not just the behavior of the person the camera is facing. Protections for civilians who video record police behavior (who are commonly threatened with charges or actually charged) may be equally or more valuable than body worn cameras for officers, with few of the privacy downsides that police surveillance carries.

### IN PRACTICE

A 2012 study evaluating the use of body cameras by the Rialto police department in California over a period of 12 months suggests more than a 50% reduction in the total number of incidents of use-of-force. Force was twice as likely to have been used by officers who were not wearing cameras. Complaints about police officers fell 88% compared to the previous 12-month period.

However, despite some success stories, the efficacy of body cameras is not clear. A U.S. Justice Department investigation into the Albuquerque police department found that the use of the cameras in practice was "highly inconsistent." Officers sometimes failed to turn their cameras on when they initiated encounters with civilians. Additionally, incidents involving body camera footage were not always properly documented, and the implementation of body cameras generally involved little oversight from the department.



**BEST PRACTICES:** Body cameras have become a popular reaction to police misconduct. Body cameras should only be enacted if they are supported by communities and include clear and enforceable regulations around their use and strong privacy protections for community members.

- ✓ Body camera mandates should include a provision outlining when cameras must be activated. These mandates should be a reflection of the desires of community members and advocates.
- ✓ Body camera mandates should include a provision applying a presumption of police misconduct if footage is unavailable for any interaction with civilians for any duration, regardless of cause.
- ✓ Police tampering of cameras or footage should carry criminal penalties.
- ✓ Body camera mandates must be preceded or accompanied by additional policies that support a community-centered culture shift and increased accountability in police departments.
- ✓ Body camera mandates must be preceded or accompanied by a policy mandating a special prosecutor in all cases of police use of force against civilians. Otherwise, the inherent conflict of interest due to relationships between local police and prosecutors may negate even the most compelling footage.
- ✓ There must be clear procedures for access to body camera footage, which both protect the privacy of individuals captured on body cameras and ensure public accountability for officers involved in misconduct.

National March against Police Violence, Washington, DC, December 13, 2014. Photo by fuseboxradio.



- ✓ City budgets typically earmark disproportionately high funding for police departments—departments should not receive additional funding for body cameras. Rather, body cameras should be supplied to departments by the state or locality.
- ✓ The civilian right to film police officers must be protected.
- ✓ A portion of money set aside for body-worn cameras should be diverted to establishing and supporting community-based video oversight programs like CopWatch.

### **SAMPLE PROPOSED LEGISLATION**

*There is no ideal legislation relating to body cameras but here are two examples of recently introduced legislation. Issues with these legislations include the lack of mandates that written policies exist and the lack of accountability around misuse.*

California AB 65, Creating grant program for body cameras: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB65](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB65)

California AB 66, Regulating officer use of body cameras: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB66](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB66)

### **RESOURCES:**

- For examples of model state legislation see the Harvard’s Black Law Student’s Association report, Independent Lens: Toward Transparency, Accountability, and Effectiveness in Police Tactics Model State Legislation for Body Worn Cameras: <http://www.charleshamiltonhouston.org/wp-content/uploads/2015/05/Independent-Lens-Cvr-Guts.pdf>
- For an analysis of body camera implementation, see the ACLU brief, Police Body-Mounted Cameras: With Right Policies in Place, a Win For All: [https://www.aclu.org/sites/default/files/assets/police\\_body-mounted\\_cameras-v2.pdf](https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf)
- For arguments against body camera implementation, see the Stop LAPD Spying Coalition brief, Body Cameras Have Not Helped Enforce Accountability Among Various Police Departments: <http://stoplapdspying.org/wp-content/uploads/2015/03/Body-Camera-Fact-Sheet-Jan-2015-1.pdf>
- And LAPD Spying Coalition brief, Body-Worn Cameras: An Empty Reform to Expand the Surveillance State: <http://stoplapdspying.org/wp-content/uploads/2015/04/Stop-LAPD-Spying-Coalition-Report-on-Use-of-Body-Cameras-by-Law-Enforcement-April-2015.pdf>
- For more information on CopWatch programs and how to establish one in your community, see Grassroots Thinking manual: <http://grassrootsthinking.com/2015/04/23/how-to-put-together-a-community-cop-watch-program/>

# INDEPENDENT OVERSIGHT

## POLICY 11: SPECIAL OR INDEPENDENT PROSECUTORS

When trying criminal defendants, district attorneys rely on testimony and evidence provided by police officers, many of whom they work with regularly. These relationships create conflicts of interest when prosecutors must determine whether and how to prosecute police officers accused of criminal acts. A special, or independent, prosecutor—someone external to the local jurisdiction and local governmental departments—should be assigned to investigate and determine whether criminal charges should be filed against a police officer, especially in cases where officers use force against civilians. Further, the special prosecutor should be provided with qualified investigators and resources to eliminate reliance on information provided by or investigations led by local police—another potential conflict of interest. The White House Task Force on 21st Century Policing reiterated the need for independent prosecutors in cases of police involved killings.

### IN PRACTICE

After John Crawford, a Black man, was gunned down by white police officers in a Beavercreek, Ohio, Wal-Mart because he was holding a BB gun, organizations such as the Ohio Students Association and others rallied and pressured the county prosecutor to support the appointment of a special prosecutor. Against a backdrop of simmering national discussions about police use of force following the Eric Garner and Michael Brown shootings, the Ohio attorney general assigned a special prosecutor with experience in police-involved shootings to the case. Several states have proposed measures about appointing special prosecutors or providing independent investigation when there are officer-involved deaths, including California, [Indiana](#), New York, [Missouri](#), [Maryland](#), Colorado, New Jersey, and New Mexico. New York and Indiana are the only states to propose establishing an office at the state level.



**BEST PRACTICES:** States should establish a permanent and independent “Office of Police Investigations”, authorized to investigate and prosecute all police killings of civilians, use-of-force cases, sexual assault by law enforcement officers, and any other cases of police misconduct against civilians, at its discretion. Unlike civilian oversight bodies or Inspectors General Officers, (discussed below) these offices would have the power to prosecute officers accused of misconduct in criminal court.

- ✓ The Office should be equipped with sufficient resources, including investigators independent of local police departments.
- ✓ Absent the creation of a permanent office, independent, special prosecutors should be assigned in all cases where criminal misconduct against civilians is alleged against police and in all police encounters or custody that result in the death of a civilian.
- ✓ In cases that involve state police departments, Attorney Generals should be required to appoint a special, independent prosecutor.

### **SAMPLE LEGISLATION**

*No model legislation for independent prosecutors exist but the following is an example of a piece of legislation that may be helpful, along with the best practices section, in crafting legislation that reflects the needs of your community.*

HR 5830: <https://www.congress.gov/bill/113th-congress/house-bill/5830>.

Directs the governor of a state to: (1) appoint a special prosecutor to present evidence on the state’s behalf at a hearing before a judge to determine whether probable cause exists to bring criminal charges against a law enforcement officer who uses deadly force against a person and thereby causes his or her death; and (2) use a random process to select the special prosecutor from among the prosecutors in the state, excluding the prosecutors of the locality in which the death took place.

### **RESOURCES**

- For more information about efforts to establish state-level special prosecutor policies, visit the National Conference of State Legislatures website: <http://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx>.
- For a fact sheet on establishing a permanent special prosecutor’s office, see WeTheProtestors’s policy brief: <https://www.scribd.com/doc/254133568/Policy-Brief-1-Special-Prosecutor>.
- For more information about the Ohio Student Association’s work: <http://www.ohiostudentassociation.org>

## POLICY 12: INSPECTORS GENERAL OR OVERSIGHT COMMISSIONS

Subjecting law enforcement agencies to external oversight can provide some transparency and may help monitor the practices and policies of local police. Unlike community based oversight, Inspectors General or Oversight Commissions refer to oversight of police departments by third party government agencies or officials. The establishment of an Inspectors General or Auditor's Office or Oversight Commission by no means guarantees effective oversight, but may help the public access information about police abuses, ensure effective implementation of reforms, and proactively identify issues in the operations, policies, programs and practices of police departments. While the powers exercised by such an office will depend on state and local law, oversight bodies are most likely to be effective if they are not controlled by law enforcement, empowered to monitor police department practices related to civil rights and civil liberties, able to exercise subpoena power, and able to issue binding policy changes.

### IN PRACTICE

Inspectors General, auditors and oversight agencies and commissions are not a silver bullet, but they can be an important part of the landscape of oversight necessary to ensure police accountability. Oversight agencies or commissions can often investigate systemic issues of misconduct and are well positioned to monitor reforms and provide information to the public about how effective reforms have been. Reports and recommendations from oversight agencies or commissions can be useful advocacy tools and can help persuade local elected officials (and sometimes law enforcement leadership) to make changes to policies or procedures. A number of cities have active Inspectors General Offices, which through reports and recommendations have unearthed problematic departmental practices. For instance a report by the recently created Inspector General in New York City documented the illegal use of chokeholds by NYPD officers and the flawed NYPD disciplinary system. A report by the Los Angeles Inspectors General high-

lighted the lack of data around use of force by the Sheriff's department, gaining a lot of media and community attention in late 2014 and early 2015. In New Orleans, a series of reports conducted by the Inspectors General Office throughout 2014 resulted in ten federal indictments and three convictions of officers involved in misconduct. While there are a number of examples of strong Inspectors General Offices, the effectiveness of the Office depends on the priorities and allegiances of whoever is appointed.

The Seattle Community Police Commission provides another model. Rather than being headed by a single person, who may be vulnerable to political pressure or just not be effective, the Community



Protest in Los Angeles, CA on December 13, 2014. Photo by Greg Lilly.



Police Commission is a fifteen member body representative of different community interests and appointed by the Mayor. Unlike most other civilian police commissions, it does not review individual misconduct cases; rather, it reviews the civilian oversight and accountability system, as well as police policies and practices of public significance. Seattle champions this approach because they believe the representative nature of the Community Police Commission ensures that the Office does not become bureaucratized and/or disconnected from community priorities or concerns. While information provided by oversight bodies has been helpful for advocates across the country, there is no clear evidence that these oversight bodies alone are effective in obtaining meaningful reforms.

**BEST PRACTICES:** Oversight agencies, which review law enforcement policy and practices, are normally instituted at the city or county level and can help make the public aware of systemic police misconduct and abuses.

- ✓ Oversight agencies or commissions are most effective if they are fully independent and have the freedom and power to choose what they investigate. City or state law may limit the ability to create truly independent bodies, but it is normally possible to ensure that oversight agencies are not controlled by law enforcement.
- ✓ Oversight agencies or commissions should be charged with monitoring and investigating patterns and practices of police interactions with particularly vulnerable populations, including: women, LGBTQ people, youth, homeless people, and people living in public housing, immigrants, and people with disabilities, as well as specific forms of police misconduct including sexual harassment and assault and discriminatory treatment against LGBTQ people and other populations.
- ✓ Oversight agencies or commissions should be charged with regularly analyzing data on a range of police department practices to determine if there are disparities based on race, age, gender, gender identity, or sexual orientation in enforcement practices.<sup>4</sup>
- ✓ Oversight agencies or commissions should have full access to all information needed to complete their investigations. To ensure access, they should have: subpoena power, ability to compel testimony, and access to all relevant internal documents, systems, and personnel of the police department and related departments or bodies that may have access to complaints against officers and departments.
- ✓ There should be legal protections from retaliation for people who provide information about potential abuses or misconduct to oversight agencies or commissions.
- ✓ Communities should have input in determining the priorities and topic of investigations. Oversight agencies or commissions should be mandated to report all of their findings to the

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4. See Andrea Ritchie, Soros Justice Fellow, Testimony to White House Taskforce on 21st Century Policing. [http://www.cops.usdoj.gov/pdf/taskforce/02-14-2015/Invited\\_Testimony\\_February\\_14.pdf](http://www.cops.usdoj.gov/pdf/taskforce/02-14-2015/Invited_Testimony_February_14.pdf)

public and consult communities most impacted by police brutality and incarceration in the development of their priorities.

- ✓ The budget of oversight agencies or commissions should be adequate and consistent.
- ✓ There must be various accountability mechanisms, including mandated annual reporting and/or open public hearings.
- ✓ Oversight agencies or commissions should be responsible for monitoring and reporting on the status of prior recommendations.
- ✓ Police departments should be required to respond to and acknowledge the recommendations of oversight agencies or commissions.
- ✓ Oversight agencies or commissions should have public websites that include past reports, recommendations, and opportunities for community members to submit questions, complaints, or recommended investigations.

### **SAMPLE LEGISLATION AND POLICY**

New York City Inspectors General Legislation: <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1444266&GUID=EAB137A1-CEDE-434A-AC63-FE91DF78C337&Options=ID|Text|&Search=1079>.

Los Angeles Board of Police Commissioners, Policies and Authority relative to the Inspectors General: <http://www.oiglapd.org/documents/policies&authority.pdf>.

### **RESOURCES**

- The Brennan Center for Justice has a number of resources on Inspectors General Offices, specifically around the need for an NYPD Inspectors General: <http://www.brennancenter.org/sites/default/files/legacy/Justice/NYPDInspectorGeneral-web.pdf>.

For more information about existing Inspectors General Offices, their scope of power and their past and present investigations see the following websites:

- The Seattle Community Police Commission: <http://www.seattle.gov/community-police-commission>.
- The Los Angeles Inspectors General: [http://www.lapdonline.org/police\\_commission/content\\_basic\\_view/1076](http://www.lapdonline.org/police_commission/content_basic_view/1076).
- The Washington D.C. Office of Police Complaints: <http://policecomplaints.dc.gov>.
- The New York City Inspectors General: <http://www.nyc.gov/html/doi/html/inspector/inspector-general.shtml>.

## POLICY 13: DEMILITARIZE LOCAL POLICE FORCES

During the last few decades local police forces have become increasingly militarized.

Militarization has taken many forms including the use of military grade equipment. The dangers of distributing military grade weapons to local law enforcement was vividly exposed in the local police response to protestors in Ferguson after the murder of Michael Brown. Starting in 1997, the federal government began making excess military equipment available to local law enforcement agencies. Police agencies in all 50 states have requested military equipment from the Department of Defense that is cumulatively worth more than \$727 million. Over 100 college and university police departments also have access to this military equipment as do more than 20 school districts. The distribution of excess military equipment by the Department of Defense to local police forces through the Law Enforcement Support Office—known as the 1033 program—has contributed to troubling use of that weaponry by police and contributes to the already existing over-militarization of police. Ultimately, an end to this dangerous practice is in the hands of the federal government. The Obama administration announced in May 2015 that they are banning some military-style assault gear from local police departments, but the list of items banned is small and there is still a long way to go.

Some states have attempted to curtail the influx of military equipment through state law. Such laws are important in encouraging police departments to consider non-combative methods of engaging with communities. Localities can also stop requesting equipment from the Department

Police in Ferguson, MO, August 19, 2014. Photo by Justin Norman.



of Defense or put in place democratic checks on law enforcement's ability to request military grade equipment.

Militarization of local police goes beyond the use of military equipment. It has been decades in the making and is manifested in the growing employment of military tactics in policing strategies and training as well the recruiting of former military personnel. The popularity of SWAT teams and their increasingly common deployment are another symptom of over-militarization.

### **IN PRACTICE**

The issue of police militarization is not limited to the 1033 program. It is part of a larger trend of increasingly large and war-like police forces. There is a need to engage in a more substantive debate about the militarization of police, the prevalence of SWAT teams and the growing warlike orientation of law enforcement across the country. Curtailing the 1033 program has caught the attention of elected officials and advocates across the country and is a way of bringing attention to the larger issue of police militarization.

New Jersey is the first state to pass a law providing a democratic check on the distribution of federal military equipment. The new law requires local, democratic approval before law enforcement agencies can receive surplus military equipment from the Department of Defense. Before the passage of the new law New Jersey law enforcement agencies acquired nearly \$33 million worth of military equipment, including armored vehicles, grenade launchers, and assault rifles. Under the new law, police departments must not only notify local governments of their intention to obtain used military gear, but also receive their explicit approval before doing so.

### **SAMPLE LEGISLATION AND POLICY**

Recently passed New Jersey State Legislation requires law enforcement agencies obtain the permission of local governments before obtaining equipment through the 1033 program: <http://www.njleg.state.nj.us/bills/BillView.asp?BillNumber=S2364>

Proposed legislation in New Hampshire, while limiting the ability to obtain new military grade equipment does not call for restricting the use of previously purchased military grade equipment. Potential legislation may benefit from such a provision: <http://www.gencourt.state.nh.us/legislation/2014/HB1307.html>.

### **ADDITIONAL RESOURCES**

- For more information on the nationwide phenomenon of militarization see the American Civil Liberties Union Report, "War Comes Home: The Excessive Militarization of American Police": <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>.
- For more information about the Million Hoodies Movement for Justice campaign to end militarization see: <http://demilitarizepolice.mhoodies.org/>



# DEPARTMENT STANDARDS & PRACTICES

## POLICY 14: USE OF FORCE

There is no single national standard governing police use of force. The Supreme Court established a discretionary standard of “reasonable” use of force in 1989’s *Graham v. Connor*, stating that law enforcement interactions with suspects must be “judged from the perspective of a reasonable officer on the scene, rather than 20/20 vision of hindsight.” From a legal perspective, this benchmark makes it difficult to prosecute officers who use force to subdue a suspect, since the standard is so subjective.

This standard must be better defined and enforced in order to limit use of force cases. Further, police departments must adopt a culture of accountability and community partnership, implement processes to collect disaggregated data on use-of-force incidents, and be trained on implicit bias, de-escalation tactics, and procedural justice.<sup>5</sup>

### IN PRACTICE

As part of a comprehensive consent decree reached in 2012 between the Department of Justice and the City of New Orleans, detailed principles and standards regarding use of force are mandated for the New Orleans Police Department, including de-escalation tactics, prohibitions on neck holds and head strikes, and limitations on firearm use.

The Las Vegas Police Department implemented a tactic called “No Hands On,” prohibiting an officer pursuing a suspect from being the same officer to physically apprehend him or her. The strategy was implemented in the context of a series of reforms, including training on treating people with respect and dignity at all times, reality-based training that used actual scenarios where department members had struggled, and refresher training to help officers act effectively with mentally ill suspects. Use-of-force reports in Las Vegas dropped from 1,400 in 2005 to 842 in 2012 and 734 in 2013.

The Miami-Dade Police Department established an early warning system flagging problem behavior by officers. Early warning systems are made possible by data collection practices that



5. For more information on use of force, see Interim Report of The President’s Task Force on 21<sup>st</sup> Century Policing recommendation 2.2



force departments to track stops and outcomes. Regular reports tally use of force complaints by citizens, and when an officer reaches a particular threshold, his or her supervisor may refer the officer to other services such as counseling, stress reduction, or additional training. Prior to implementing the system, only 4 percent of officers in the early warning study cohort had zero use of force reports. Following implementation, 50 percent of officers in the cohort had zero reports.

**BEST PRACTICES:** State and local jurisdictions can adopt policies that decrease the use of force and encourage the de-escalation of violent situations. Use of force policies should require police departments to:

- ✓ Develop a comprehensive use-of-force policy that outlines how and when force may be used, with a clear values statement affirming that officers should use minimal force to subdue an individual.
- ✓ Develop clear reporting, investigation, discipline, and accountability procedures and policies regarding use of-force incidents. Policies should be clear, concise, and open to the public.
- ✓ Develop policies that allow officers to intervene when other officers are using force that is not objectively reasonable and proportional to the risk presented.
- ✓ Implement proven training programs— including programs on implicit bias, procedural justice, and fairness in policing—designed to deescalate and minimize the use of unnecessary force and death, especially with vulnerable populations (people with emotional or cognitive disabilities, pregnant women, youth, and people with limited English proficiency).
- ✓ Maintain detailed records on the use of force and related injuries—disaggregated by race, ethnicity, age, gender, and other demographic characteristics—and make this data immediately available to the public.
- ✓ Implement early-warning systems to detect problematic officer behavior predicting a likelihood of using excessive force.
- ✓ Require training on and use of de-escalation techniques.

### **SAMPLE REGULATION**

Seattle Police Department Manual, Title 8: <http://www.seattle.gov/police-manual/title-8>

### **RESOURCES**

- For more information about promising practices to limit police use of force, see the PolicyLink and Advancement Project report, *Limiting Use of Force: Promising Community-Centered Strategies*: [http://www.policylink.org/sites/default/files/pl\\_police\\_use%20of%20force\\_111914\\_a.pdf](http://www.policylink.org/sites/default/files/pl_police_use%20of%20force_111914_a.pdf)

## POLICY 15: IMPROVED TRAINING

Police training in the academy and in the field tends to emphasize the technical and tactical aspects of policing, with insufficient focus on being community-centered. Balancing traditional training components with a broad focus on working with the community as partners to achieve safety is essential. Field training should support and strengthen community-centered policing practices by including role-playing scenarios that require critical thinking in the face of potential confrontations with civilians.

Training that addresses culture, diversity, mental illness, youth development, bias and racism, and mediation improves how police relate to the community and can help minimize use of force. Training elements should also emphasize skills that can avoid, prevent, or de-escalate a situation that might otherwise result in violence.

Without meaningful and timely disciplinary consequences for officers involved in misconduct, training alone can do little to curb police abuse or increase community trust. However, training can be an important reform when enacted with other changes to policing disciplinary procedure and departmental evaluations. Changes in training should be accompanied by changes in how departments evaluate the performance of officers. Officer evaluations based on the number of arrests or stops they initiate, as opposed to how they have built community trust, or their ability to diffuse violent situations, incentivizes unproductive and abusive policing practices.

In order to ensure that internal policies and trainings effectively improve the safety of communities—specifically youth, Black and Brown, and LGBTQ communities—trainings should be developed in partnership with community-based organizations working directly with individuals affected by discriminatory and abusive policing practices. Police departments should not be directly funded for training; state and local funding should be earmarked for community-based trainers selected through an application process with public input.



Reclaim MLK Day rally in Silver Springs, MD on January 24, 2015. Photo by Stephen Melkisetian.

## **IN PRACTICE:**

The Seattle Police Department and Oakland Police Departments have implemented procedural justice and police legitimacy training programs. Oakland began its training process in June 2014 and has so far trained some 200 members of the officer and civilian staff. All Seattle Police employees received procedural justice training in a bias-free policing course in 2014 which also focused on implicit bias in individual decision-making. Institutional bias training will be provided to the SPD command staff in 2015, co-designed by the Community Police Commission and the Seattle Office for Civil Rights.

The police department in Richmond, California initiated a rigorous in-service training program regarding use of force in 2008. Since the program began, officer-involved shootings have occurred less than once per year. Tragically, the first fatal officer-involved shooting in seven years occurred when a Richmond police officer shot and killed 24-year-old Richard Perez in a confrontation at a liquor store on September 14, 2014.

The Oakland Police Department recently contracted with Stanford University researcher Jennifer Eberhart to conduct a comprehensive analysis of the department's police stops and train officers to understand how bias plays out in interactions with the public. According to department figures, Black people accounted for 62 percent of police stops between April and November 2014, although they comprise just 28 percent of the population.

In May 2014, Connecticut enacted a law that requires all police officers to complete crisis intervention training. The University of Memphis Crisis Intervention Team (CIT) Center provides resources developed in partnership with the National Alliance on Mental Illnesses, the International Association of Chiefs of Police, and CIT International, intended for police departments that start their own crisis intervention team training programs. Today, nearly 2,700 sites in 47 states operate crisis intervention teams.

The Oklahoma City Police Department has made language training for officers a major part of its overall training effort. New recruits in the academy receive 70 hours of Spanish instruction. The Lexington, Kentucky, Division of Police partnered with a local university to develop a U.S.-based Spanish language curriculum and collaborated with two Mexican law enforcement agencies to establish a subsequent five-week Spanish immersion program in Mexico where Lexington officers are hosted by Mexican police counterparts. They return with improved language skills and an increased understanding of Mexican immigrants' perspectives about interactions with law enforcement.

Current Arizona law requires that police determine the immigration status of someone arrested or detained when there is "reasonable suspicion" they are undocumented. According to Tucson police Chief Roberto Villaseñor, this policy places local police in an "untenable position" with regard to the Latino community. Villaseñor initiated steps to train the entire department in implicit bias in October 2014, using trainers and curriculum provided by the Department of Justice.

**BEST PRACTICES:** Police departments should ensure that academy training, field training, and continuing education of officers reinforces community-centered values and skills. State and local jurisdictions should fund community-based experts to provide required training to new police recruits and in-service officers on:

- ✓ Procedural justice and fairness in policing.
- ✓ Implicit bias.
- ✓ Institutional bias in enforcement patterns.
- ✓ Relationship-based policing and community interaction.
- ✓ Crisis intervention, mediation, conflict resolution, and rumor control.
- ✓ Appropriate engagement with youth based on the science of adolescent brain development
- ✓ De-escalation and minimizing the use of force in certain common situations, including vehicle pursuits, coping with mentally ill or cognitively disabled individuals, and encounters with youth.
- ✓ Increase language proficiency and cultural competency among law enforcement officers to effectively engage and partner with immigrant communities.
- ✓ Appropriate engagement with LGBTQ, transgender and gender nonconforming community members.
- ✓ Documenting, preventing, and addressing sexual harassment, abuse and assault by local law enforcement agents.

### **SAMPLE REGULATION**

Illinois Police Training Act: <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=731&ChapterID=11>

New Jersey Police Training Act: [http://www.state.nj.us/lps/dcj/njptc/pdf/njsa52\\_17b-69-2.pdf](http://www.state.nj.us/lps/dcj/njptc/pdf/njsa52_17b-69-2.pdf)

Connecticut SB 1089: <http://www.cga.ct.gov/2015/TOB/s/pdf/2015SB-01089-R00-SB.pdf>

### **RESOURCES**

- For more information about police trainings, see the PolicyLink and Advancement Project series of briefs, *Beyond Confrontation: Community-Centered Policing Tools*: <http://www.policylink.org/equity-tools/beyond-confrontation-community-centered-policing-tools>

# ORGANIZING 101

While communities must identify their most urgent priorities and opportunities, many—if not all—of the policy reforms proposed in this *Toolkit* will be needed in combination in order to create transformative change. Community and advocates must demand comprehensive change while still prioritizing policy reform options and deciding which reforms may be rendered useless unless tied to others. For example, implementing department-wide body cameras may not be useful unless filming is properly regulated, evidence collected is public, and other police accountability and transparency measures are also implemented. In addition, for each reform, community decisions need to be made about the acceptable range of compromise.

Identifying decision-makers who have the power to affect each of the policy arenas is a preliminary step in organizing—they are the targets of your campaign. Examples include::

- **State**
  - Attorney General or equivalent
  - State Legislature
    - ✓ Individual Committees
    - ✓ Representatives of highly affected districts
- **Governor**
  - Department of Corrections and other relevant agencies
  - State budget development and oversight
- **Local: City, County**
  - Mayors
  - City Managers
  - County Executives
  - City Council or Board of Supervisors
  - Police Chiefs
  - Agency Heads

To help identify your targets and develop an effective organizing campaign, consider the following questions:

- What is the structure of your local police departments or Sheriff's department?
  - What is the internal hierarchy and who has power?
  - Who do your police chiefs answer to?
- Who controls the budget for your particular police department?
  - Who allocates funding for your local police departments?
  - Can your state legislative committees or city council committees regulate police through the budgeting process?



- ✓ Consider: Learning your government structure for oversight and budgeting can help you engage in an effective campaign to limit the use of funds for certain activities, and to incentivize other types of desired activities, behavior, training, mandated data collection and data reporting, and community programming that can help build trust with communities.
- Is statewide legislation the best way? Are local laws or regulations better ways?
- Is your police chief willing to change internal practices, like training or hiring? Can your mayor or city council affect those changes?
- Who are potential allies (e.g., city council members, sympathetic police chiefs/officers)?
- Who is likely to challenge your efforts (e.g., police unions, law-and-order politicians)? Who can help you move past their opposition?

## RESOURCES

- For a comprehensive review of the steps necessary to turn protest into policy, advocates should download the PolicyLink handbook, *Organized for Change: The Activist's Guide to Police Reform* at [http://www.policylink.org/sites/default/files/ORGANIZEDFORCHANGE\\_FINAL.PDF](http://www.policylink.org/sites/default/files/ORGANIZEDFORCHANGE_FINAL.PDF).



# BEYOND POLICY

This *Toolkit* provides information and resources about policy reforms that communities, advocates and elected officials are discussing and in many cases advocating for. However, we recognize that local policy reform alone is not enough. The policing and criminal justice systems in this country are predatory and fundamentally flawed. They remain deeply rooted in racism, profiteering, and victimize millions of Americans—a disproportionate number of whom are Black and Brown. The road to transforming these systems and making our communities stronger and safer is community-specific and cannot be translated into a toolkit or single set of policy recommendations. A fundamental shift in the purpose of our policing and criminal justice systems is necessary.

A shift in purpose requires an articulation of a different vision.

## MAYOR'S PLEDGE

It may be helpful to ask elected officials and city leaders, including Mayors, to take a pledge committing themselves to a vision of public safety based on trust, legitimacy, accountability, respect, and the sanctity of all lives. A public pledge clearly positions policymakers as committed to needed changes and can help advocates hold them accountable for advancing those changes.

Here is a template of a Mayoral Pledge to end police violence:  
[www.policylink.org/node/29911](http://www.policylink.org/node/29911).



Protest in Memphis, TN, November 24, 2013. Photo by Chris Wieland.

# RETHINKING OUR INVESTMENTS

For most, the need for policy change is nested within a broader vision, of a government and society that invests in health, education, and wealth—not just criminalization and incarceration. Many communities are demanding a re-evaluation of our investment priorities.



Reclaim MLK Day rally in Silver Springs, MD on January 24, 2015. Photo by Stephen Melkisethian.

The United States has invested trillions in policing, jails, and military-grade weapons for domestic law enforcement. We spend \$100 billion annually on policing alone, despite a steady and dramatic decline in crime rates. More spending on policing and incarceration leaves fewer resources for other investments that support safe and strong communities. This pattern exists across the country at every level of government. Nationally, state spending on higher education rose by less than 6% between 1986 and 2013, but corrections spending jumped by 141%.

This disparity reflects an investment choice of public money by those in power. Neighborhoods that are afflicted most by aggressive policing and high incarceration rates also have high levels of poverty, unemployment, and racial segregation. In many urban neighborhoods, where millions of dollars are spent to lock up residents, the education infrastructure and larger social net are completely crippled.

The declaration that Black lives matter is a call to action for governmental officials and policy makers. Budgets are an articulation of who and what we choose to invest in. Policy makers should direct funds to true community-based efforts, prevention, intervention, treatment, education, and other programs that have been shown to promote healthier and stronger communities. Reinvestment can happen at the local, state and federal level. At the local level it requires an evaluation of the city or county budget—which can easily be accessed on official government websites. Many cities invest disproportionately in policing and incarceration. Instead, cities should invest in programs that provide opportunity and stability to neighborhoods that have been ravaged by the criminal justice system.

Studies show that jobs and education do not just make communities stronger—they make them safer. Investments in community-based drug and mental health treatment, education, universal Pre-K, and other social institutions can make communities safer while improving life outcomes for all. Some examples of alternative funding supported by communities include: community based alternatives to incarceration, restorative justice practices, community-based drug-treatment, transportation improvements, health services for the mentally ill, access to housing for the homeless, and summer job programs for youth.

Because cities and counties have limited funds, an investment strategy at the local level may require a re-allocation of funds from oversized and overtasked police departments into areas that we know will make us safer and will mean that we need less police in the long run.

## RESOURCES

New York and Los Angeles have both begun campaigns that would fundamentally shift local investment. For more information on those campaigns see:

- The New York City, “Safety Beyond Policing” campaign has proposed alternative uses to the nearly \$100 million that would otherwise be spent on hiring additional police: <http://www.safetybeyondpolicing.com>.
- In Los Angeles the 1% Campaign is asking that 1% of the Los Angeles County Law Enforcement budget, according to them \$100 million, be invested in youth jobs, youth centers, and community intervention/peace builders. For more about the work of LA For Youth’s Campaign: <http://www.youth4justice.org/take-action/la-for-youth-1-campaign>

Sample resolution calling on local governments to change their investment priorities: [https://docs.google.com/document/d/1Yfn71wtiQfbuschn24KcG\\_NGYXAJ1sJwPZTY8fckTdU/edit?usp=sharing](https://docs.google.com/document/d/1Yfn71wtiQfbuschn24KcG_NGYXAJ1sJwPZTY8fckTdU/edit?usp=sharing)

Sample letter requesting that the police give part of its allocated budget to community based safety initiatives: [https://docs.google.com/document/d/1zvFgbUQP\\_pKvwDTYR-NxwuYE7mck-k4HHR7SNQGbEajQ/edit?usp=sharing](https://docs.google.com/document/d/1zvFgbUQP_pKvwDTYR-NxwuYE7mck-k4HHR7SNQGbEajQ/edit?usp=sharing)



# ALTERNATIVES TO POLICING

One of the fundamental issues with policing today, identified by community members and police officials alike, is that police have become responsible for dealing with a growing number of social problems. Police have been overburdened with tasks outside of their expertise—such as dealing with homelessness, drug use, educational discipline, and mental illness. Oftentimes, police are called to deal with issues that social workers, mental health experts, teachers, or other community members are better equipped to deal with.

Many communities have created community-based alternatives aimed at addressing issues of public safety that do not rely on police intervention or incarceration. For decades, communities across the world have recognized the limitations and dangers of overreliance on police and punitive state policies. People from South Africa to Brooklyn have created and sustained community-based organizations, safe spaces, and institutions that more holistically and humanely deal with community violence or anti-social behavior.

Community-based programs aimed at reducing the need for police intervention can be established at the street, school, city, or state level and include: street outreach workers to prevent community violence, community-based mediators to deescalate potentially violent situations, and restorative justice programs to deal with community conflict.

## RESTORATIVE JUSTICE:

Restorative justice, as an example of an alternative to police and incarceration, has a long history in Canada, parts of South America and Southern Africa. Restorative justice deemphasizes punishment and focuses on making communities whole after incidents of violence or trauma. It uses techniques such as mediation, dialogue, and reconciliation. Restorative justice has been used by police, cities, and schools throughout the country. Some government-run programs include the threat of punitive consequences—which in many ways detracts from the purpose of instituting alternatives. Nonetheless, we have included examples of both state and community sponsored restorative justice programs in order to provide a variety of potentially helpful resources.

- ✓ The peacemaking program at the Red Hook Community Justice Center uses traditional Native American practices to resolve disputes that originate in either the justice system (in the form of a court case) or in the community. Peacemaking sessions, which are facilitated by trained peacemakers from the community, are designed to enable those affected by the dispute to “talk it out” and reach a consensus agreement for restitution and repair: <http://www.courtinnovation.org/project/peacemaking-program>
- ✓ The International Institute for Restorative Practices (IIRP) works with licensees and affiliates around the world to make certain restorative practices are presented in a culturally appropriate manner and that programs are affordable and sustainable within the framework of local needs and resources: <http://www.iirp.edu/>



- ✓ The Restorative Justice for Oakland Youth Program works to mitigate the consequences of punitive school and juvenile justice policies by promoting institutional shifts toward restorative approaches that actively engage families, communities, and systems to repair harm and prevent re-offending: [www.rjoyoakland.org](http://www.rjoyoakland.org)
- ✓ Project Nia has a number of resources to support restorative justice programs: [www.project-nia.org](http://www.project-nia.org)

### **COMMUNITY ANTI-VIOLENCE PROGRAMS:**

Many communities from Detroit to Los Angeles have created community based programs aimed at leveraging the power and expertise of community members to patrol their neighborhoods and curb violence before it starts, so that police and state intervention are unnecessary. Some examples of community anti-violence programs include:

- ✓ Audre Lorde Project's The Safe Neighborhood Campaign seeks to empower community members to be proactive in preventing anti-LGBTST violence, intervene when violent situations arise, and build stronger relationships between LGBTST people of color, our allies and the community as a whole: <http://alp.org/community/sos>
- ✓ CURE Violence is a state supported program which seeks to use community members to deter and deescalate violent situations in communities. Many organizations have noted that once programs are state-sponsored they may be co-opted or include undesirable punitive consequences: <http://cureviolence.org>

### **RESOURCES**

For additional resources on alternatives to policing and examples of successful programs:

- Rose City Cop Watch "Alternatives to Policing": <https://rosecitycopwatch.wordpress.com/alternatives-to-police>
- Listing of local programs from across the country: [http://www.derailthejail.org/site\\_derail/Alternatives.aspx](http://www.derailthejail.org/site_derail/Alternatives.aspx)

