

POLICING AND CIVIL RIGHTS

“I’VE BEEN STOPPED SO MANY TIMES THAT NOW I’VE LOST COUNT... WHEN I SEE OFFICERS NOW, I FEEL LIKE I’M GOING TO BE STOPPED, LIKE A HOSTAGE IN MY OWN NEIGHBORHOOD.”

—Clive, Brooklyn Resident¹⁷

“THE NYPD WANTS TO CREATE PUBLIC SAFETY BUT IS INSTEAD INSTILLING FEAR AMONG IMMIGRANT COMMUNITIES. WHILE OFFICERS BELIEVE THAT THEY ARE CREATING SAFETY BY STOPPING INNOCENT NEW YORKERS, THEY ARE REALLY CREATING ENEMIES WHO WILL BE LESS LIKELY TO REPORT CRIME WHEN IT DOES HAPPEN.”

—Daniel, Queens Resident²

THE PROBLEM

In too many communities across the country, local law enforcement officers who are responsible for serving and protecting residents are instead targeting them for harassment and abuse. Each day, individuals are targeted because of their race, ethnicity, national origin, immigration status, religion, age, sexual orientation, gender identity or expression or other characteristics. Every day, residents of entire neighborhoods are subjected to policing practices that violate constitutional protections and state and local laws and simultaneously erode trust between police and area residents.

A Department of Justice investigation in Washington documented the **Seattle’s** Police Department’s disproportionate use of excessive force against people of color and its tendency to use similar tactics when interacting with individuals with mental health issues.¹ In **New York City**, a 2011 study revealed that the NYPD had conducted over 685,000 street stops.² African-

American and Latino young men between the ages of 14-24—while less than 5% of the City’s population—accounted for over 40% of those stopped. More than 80% of those ticketed in NYC for low-level offenses were Black or Latino, and in nearly 9 out of 10 cases, no ticket was issued or arrest made.^{4,5} This is a trend that has unfortunately continued in recent years. In 2013 the NYC Attorney General released a report that revealing that just 0.1% of stop-and-frisks resulted in conviction for a violent crime or possession of a weapon.⁶ In 2015 in **New York City**, the NYPD conducted 22,939 street stops. 12,223 of those stops were of Black residents (54%) and 2,567 were of Latino residents (11%). 18,353 of the total number of stops (80%) were completely innocent.⁷

THE SOLUTION

Eliminating discriminatory policing requires innovative policies that reinforce constitutional principles. The most promising approaches not only outlaw the targeting of individuals and communities on the basis of demographic characteristics, they also provide guidance on how law enforcement agencies can protect the rights of residents while also ensuring public safety and institute effective transparency and accountability measures. In **New York City** in 2013 Communities United for Police Reform was able to help 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.⁸

In the absence of federal action, local leaders are partnering with community and labor to hold law enforcement agencies accountable to the communities they serve. Cities including **New York**⁹, **Detroit**¹⁰, **Cincinnati**¹¹, **Columbus**¹² and **Jackson**¹³ have enacted local laws barring—at a minimum—police profiling on the basis of race or ethnicity. In 2011, in response to concerns about surveillance of Middle Eastern and Muslim communities in **Portland**, the City Council enacted an ordinance protecting residents’ rights and supporting public safety by ensuring city oversight of

local law enforcement collaboration with the FBI's Joint Terrorism Task Force.¹⁴ Similar legislation was enacted by the San Francisco Board of Supervisors in 2012.¹⁵

POLICY ISSUES

The following are important issues to consider in designing local policy solutions to address discriminatory policing. Legislators can tailor their proposals to the political realities of their communities.

POLICE PROFILING: Many legislative efforts to address discriminatory policing bar profiling on the basis of race, ethnicity, religion or national origin, but individuals are often targeted on other bases as well. It is important to work with community members to get a full sense of whether they have been targeted on other grounds, such as sexual orientation, gender identity or expression, age, housing status, immigration or citizenship status, language, disability, housing status, occupation or socioeconomic status. The most effective measures will be those that bar reliance on these characteristics to any degree.

POLICE IDENTIFICATION: Measures that require police officers to identify themselves, explain the reasons for a stop or other police activity and share information on complaint procedures can help to promote transparency and accountability and promote trust. Similar laws exist in other jurisdictions and the U.S. Department of Justice has made adoption of similar policies a requirement in consent decrees entered into with the City of New Orleans and the Puerto Rico Police Department.

CONSENSUAL SEARCHES: In many cases, residents are unaware of their constitutional right to decline to consent to a search for which there is no other legal basis. Provisions that require that consent be informed and documented can safeguard residents' rights and protect law enforcement agencies from false claims of wrongful behavior. Similar laws exist in other jurisdictions and the U.S. Department of Justice has made adoption of similar policies a requirement in consent decrees entered into with the City of New Orleans and the Puerto Rico Police Department. West Virginia and Colorado have enacted measures related to consensual searches. Other states such as CA, Minnesota, NJ and RI have banned consent searches all together due to discrimination.

OFFICER TRAINING: High-quality training and other forms of professional development can help law enforcement officers better understand how to promote public safety while respecting the rights of all residents. Training should relate to the nature of profiling, how to avoid profiling and the implementation of data collection requirements.

DATA COLLECTION & REPORTING: The collection, analysis and reporting of data on law enforcement activity is a critical element of legislation to address discriminatory policing. Processes must allow for the disaggregation of data on the demographic characteristics of individuals who are the targets of law enforcement activity, including the rates at which drugs, weapons or other items are found during stops and searches. Regular, public reporting of this data must be required.

OVERSIGHT & ACCOUNTABILITY: Strong provisions for ongoing oversight will incentivize compliance and allow for the identification of successful efforts. One means of accomplishing this is through establishment of an independent office or body with a specific mandate to monitor compliance.

For example, the Los Angeles Police Department is subject to oversight by an Inspector General with investigative authority.¹⁶

LANDSCAPE AND RESOURCES

The **Rights Working Group** (RWG) is a coalition of more than 340 local, state and national organizations with a website features extensive resources on racial profiling. The **Racial Profiling Data Collection Resource Center** at Northeastern University has a valuable compilation of policy and litigation materials related to the topic. The **Center for Popular Democracy** provides legal, strategic, and organizing support to local campaigns.

- 1 See Complaint, United States v. Seattle Police Department (Sept. 27, 2012), available at https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf
- 2 NYCLU, Stop-and-Frisk 2011: NYCLU Briefing 3 (2012).
- 3 See id. at 7.
- 4 Center for Popular Democracy. (2015, June). Building Momentum From the Ground Up: A Toolkit For Promoting Social Justice in Policing. In *Center for Popular Democracy*.
- 5 Ibid.
- 6 New York State Office of the Attorney General. (2013, November 14). A.G. Schneiderman Releases Report On Arrests Resulting From Stop And Frisk Practices And Their Impact On The Criminal Justice System. In *New York State Office of the Attorney General*.
- 7 New York Civil Liberties Union. (2016). Stop-and-Frisk Data. In *New York Civil Liberties Union*. Retrieved March 31, 2016.
- 8 Building Momentum From the Ground Up: A Toolkit For Promoting Social Justice in Policing.
- 9 New York City, N.Y., Local Law No. 30 Int. 142-B, §1(a)(1) (2004).
- 10 Detroit, MI, Detroit City Code, § 27-9-3 (2007).
- 11 Cincinnati, OH, Administrative Code, §4-A (2001).
- 12 Columbus Ohio, Code §§ 2331.01(A)(13), 2331.07 (2004).
- 13 Jackson, MS, Code of Ordinances § 86-193.
- 14 Portland, Or., BCP-PSF-7.01 (2011).
- 15 San Francisco, CA, Administrative Code § 2A.74 (2012).
- 16 Los Angeles Police Department, "Office of the Inspector General," available at http://www.lapdonline.org/police_commission/content_ba-sic_view/1076 (last visited November 11, 2012).
- 17 Clive Olin quote (Democracy Now. *New York Police Ends Practice of Keeping Innocent New Yorkers in Stop-and-Frisk Database*. August 8, 2013. http://www.democracynow.org/2013/8/8/new_york_police_ends_practice_of>)
- 18 Jumanne Williams Quote (New York Civil Liberties Union. Council Members, Communities United for Police Reform Explain Need for NYPD Reforms at Hearing on Community Safety Act. October 12, 2012). <http://www.nyclu.org/news/council-members-communities-united-police-reform-explain-need-nypd-reforms-hearing-community-sa>