



**Written Statement of the American Civil Liberties Union
Before the U.S. House Judiciary Committee**

Hearing on

“Policing Strategies for the 21st Century”

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Introduction

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee everyone in this country. Consistent with this mission, the ACLU advocates for reforms that will build trust and legitimacy between law enforcement and the communities they serve.

The ACLU commends the House Judiciary Committee for providing a much needed examination of policing in this country. Recent incidents across this country – from Los Angeles to Cleveland, from Ferguson to New York City, and from North Charleston to Baltimore – offer an opportunity to change the culture of policing. This culture, as it currently exists in some cases, results in a relationship based on mistrust between law enforcement and our low income communities and communities of color.

The controversies of the past few months have focused on the errors and malfeasance of a few individuals – and that is a necessary process that must occur regardless of whether we agree with the specific results. But recent events, as tragic and controversial as they are, also provide America the opportune time to go beyond just dealing with a few bad apples and to reform and refresh an entire system. Fairness and justice demand that we seize this opportunity.

Support the White House Task Force on 21st Century Policing Recommendations

The ACLU provided recommendations to the White House Task Force on 21st Century Policing that focused on data collection, profiling, use of force, and civilian review boards. We were pleased to see that the Task Force adopted recommendations consistent with what we put forward, including a recommendation to “collect, maintain, and report data to the Federal Government on all officer-involved shootings,” to “adopt and enforce policies prohibiting profiling,” that “training on use of force should emphasize de-escalation,” and that there be “some form of civilian oversight of law enforcement.”¹

While state and local law enforcement can implement reforms unilaterally, the Congress should support these efforts through oversight that includes a “top to bottom review of all federal policies and laws and grant programs that incentivize disproportionate arrests and incarceration.”² This review should include the Department of Justice's (DOJ) Community Oriented Policing Services (COPS) programs, as well as the DOJ's Edward Byrne Memorial Justice Assistant Grant program (Byrne JAG). The Congress should determine how current or new federal funding and programs can incentivize police reforms.

Congressional oversight and support are also needed on issues that were not directly or elaborately discussed in the Task Force report. These issues include police militarization, civil asset forfeiture, racial profiling, gender biased policing, policing persons with disabilities, and student resource officers which are discussed in detail below.

Reform Federal Programs that Provide Military Weapons and Equipment to Police

Last year's events in Ferguson, Missouri, and recent circumstances in Baltimore, Maryland, have given national attention to concerns with our domestic policing. These concerns range from racial profiling to excessive use of force and to militarization. In the immediate aftermath of the death of Michael Brown, the nation saw a highly and dangerously militarized response by law enforcement. Media reports indicate that the Ferguson Police Department, in conjunction with other state and local agencies, responded to protests and demonstrations with "armored vehicles, noise-based crowd-control devices, shotguns, M4 rifles like those used by forces in Iraq and Afghanistan, rubber-coated pellets and tear gas."³

Militarized policing is not limited to situations like those in Ferguson, Baltimore, or emergency situations—like riots, barricade and hostage scenarios, and active shooter or sniper situations—that Special Weapons And Tactics (SWAT) were originally created for in the late 1960s.⁴ Rather, SWAT teams are now overwhelmingly used to serve search warrants in drug investigations. Our June 2014 report, *War Comes Home: The Excessive Militarization of American Policing*, found that 79% of the incidents reviewed involved the use of a SWAT team to search a person's home, and more than 60% of the cases involved searches for drugs.⁵ Additionally, just as the War on Drugs has disproportionately impacted people and communities of color, we have found that the use of paramilitary weapons and tactics also primarily impacts people of color. Of the people impacted by SWAT deployments for warrants examined by the ACLU, at least 54% were minorities.⁶

Federal programs providing equipment transfers and funding have contributed to the militarization of American policing. These programs include the Homeland Security Grant Program (HSGP) and its two main components, the State Homeland Security Program (SHSP) and the Urban Areas Security Initiative (UASI),⁷ the Department of Justice (DOJ) Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program, and the Department of Defense (DOD) 1033 Program. In recent months, we have learned about several troubling aspects of the 1033 Program, which transfers surplus DOD military weapons and equipment to state and local law enforcement at no cost. For example, the Associated Press reported that the government has used the 1033 program to benefit certain law enforcement agencies, even though they were under investigation by the Department of Justice for civil rights violations, and in some cases, subject to consent decrees.⁸ The militarization reforms announced by the Administration yesterday, on Monday, May 19, 2015, will provide accountability and transparency for these federal programs and should be codified by Congress.⁹

Recommendations to Congress to End Police Militarization

- Ensure that the National Defense Authorization Act for Fiscal Year 16 (NDAA FY16) does not expand the DOD 1033 program preferences to include "border security activity" as the House passed NDAA FY16 does and reverse the militarization of border communities and institute oversight and accountability reforms for Customs and Border Protection.
- Enact the H.R. 1232, the Stop Militarizing Law Enforcement Act, sponsored by Representatives Hank Johnson (D-MI) and Justin Amash (R-MI), that would prohibit the

DOD 1033 program transfer of offensive military weapons and equipment to state and local law enforcement and provide much needed transparency and oversight to the 1033 program.

- Condition state and local law enforcement agencies' receipt of federal funds on an agreement not to use the funds to purchase certain military weapons and equipment not suitable for law enforcement purposes.
- Require state and local law enforcement to use Byrne JAG and Homeland Security Grant Program dollars to purchase body cameras for SWAT officers.

Reform Federal Civil Asset Forfeiture and Eliminate Forfeiture's Profit Incentives

The current federal civil asset forfeiture program undermines civil liberties and violates due process rights. Civil asset forfeiture provides law enforcement with the power to take property from someone who has not been convicted of a crime. Innocent citizens are deprived of their property without due process of law, often without an arrest or a hearing. Property owners bear the burden and the costs of demonstrating a property's "innocence" and in most cases are not entitled to a lawyer. As outrageous as this sounds, civil asset forfeiture is used by federal, state, and local law enforcement throughout the country. The practice is driven by the billions of dollars it generates annually for law enforcement at all levels because law enforcement is permitted to keep the assets it seizes. As such, it has been appropriately called "policing for profit" by the Institute for Justice and a "system of legal thievery" in The Des Moines Register.¹⁰ Since 2008, state and local police have made more than 55,000 seizures of cash and property worth \$3 billion dollars with the help of the federal government.¹¹

Far greater than these billions, however, is the price that people pay when their homes, businesses, cars, cash, and other property have been seized. Civil asset forfeiture has long been used to carry out the ineffective and abusive "War on Drugs". Just as the "War on Drugs" disproportionately impacts people and communities of color, so has civil asset forfeiture. For decades, Blacks and Latinos have had their property seized based on mere suspicion of drug activity as a consequence of racial profiling. In the 1990's, in one Florida county, 90% of the drivers from whom cash was confiscated without arrest were Black or Latino.¹²

In response to such suspicionless seizures, the ACLU supported efforts that resulted in the Civil Asset Forfeiture Reform Act of 2000. We found that in "traffic stops, airport searches, and drug arrests ... minorities are hardest hit."¹³ This continues to be the case more than a decade later. In 2012, the ACLU settled a lawsuit on behalf of African American and Latino drivers in two East Texas counties where police seized \$3 million dollars between 2006 and 2008. None of these people were ever arrested or charged with a crime.¹⁴ And had it not been for the ACLU's intervention, these drivers with low and modest incomes would have never seen justice. Very few people have the resources to take on the government, especially when the deck is stacked against property owners as it is in civil asset forfeiture cases.

Civil asset forfeiture is also fueling police militarization, another byproduct of the "War on Drugs." Police departments are able to purchase military weapons and equipment using the profits they reap from forfeitures. They can do so with little oversight or accountability. In one Georgia town, police used forfeiture funds to purchase a \$230,000 armored personnel carrier.

Across the country, police have spent more than \$175 million on weaponry with funds acquired through federal and local partnering on civil asset forfeiture.¹⁵

Recommendations to Congress to Reform Federal Civil Asset Forfeiture

- Enact a federal legislative response to civil asset forfeiture, like the Fifth Amendment Integrity Restoration (FAIR) Act, is necessary. The FAIR Act:
 - Eliminates the profit incentives driving civil asset forfeiture at all levels by ending federal and state/local partnerships known as “equitable sharing” that have been used to circumvent state civil forfeiture reforms.
 - Tackles the perverse profit incentives by sending forfeiture proceeds to the U.S. Treasury’s General Fund for congressional spending on any purpose instead of to the Department of Justice (DOJ) Asset Forfeiture Fund that pads only the DOJ budget.
 - Increases the burden of proof from a “preponderance of the evidence” to “clear and convincing evidence” before the government can take someone’s property believed to be connected to a crime.
 - Provides property owners with the right to counsel in all civil forfeiture proceedings. As a result, the FAIR Act reforms should help minimize civil asset forfeiture’s disproportionate impact on people of color and low-income people.

Prohibit Racial Profiling and Enact the End Racial Profiling Act

Racial profiling in law enforcement is a persistent problem in the United States. Racial profiling and gender-biased policing cause targeted communities to mistrust the police. Such practices reduce public safety as communities are less likely to cooperate with police to address serious crime. Profiling leads to the aggressive enforcement of minor offenses in communities of color. Members of these communities, particularly youth, are then disproportionately subjected to the criminal justice system. And as recent tragedies across the country make clear, there is a need for systemic change throughout the United States in the implicit and explicit bias against people of color and particularly African American youth who are routinely targeted by law enforcement even within their own communities.¹⁶

On December 8, the U.S. Department of Justice released a revised version of its 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. According to the White House and Justice Department, the revised Guidance will eliminate some of the existing carve-outs for law enforcement activities related to “protecting national security or the integrity of the borders.”¹⁷ It will prohibit profiling based on national origin, religion, gender, sexual orientation, and gender identity, in addition to race and ethnicity. It also will apply to state and local law enforcement agencies participating in federal law enforcement task forces.¹⁸ However, the Guidance does not eliminate exemptions permitting discrimination at the border by Transportation Security Administration (TSA) and both at and in the “vicinity” of the border by U.S. Customs and Border Protection (CBP), nor does it fully bar biased profiling in the national security context.

The release of this revised Guidance is an important signal of progress, but it does not completely address the need for reform of policing tactics at the state and local level. The inclusion of new categories such as national origin, religion, sexual orientation and gender identity; establishment of much-needed data collection and training, and coverage of some state and local law enforcement activities are important steps forward. Nonetheless, several components of the Guidance do little to protect some minority populations that have to endure unfair targeting by law enforcement every day. Although, the government recognizes that bias-based policing is patently unacceptable, it will continue to allow the FBI, TSA, and CBP to profile racial, religious and other minorities at or in the vicinity of the border and in certain national security contexts, and does not apply the Guidance to most state and local law enforcement. Allowing profiling in “border integrity” investigations disproportionately impacts Latino communities and communities living and working within the 100-mile zone. Profiling in national security investigations has led to the inappropriate targeting of Muslims, Sikhs, and people of Arab, Middle Eastern, and South Asian descent. Using race, the color of someone’s skin, religion, or ethnicity as any basis for suspicion or investigation is demoralizing, unconstitutional.

This Guidance is not an adequate response to the crisis of racial profiling in America. Legislative action such as the End Racial Profiling Act (ERPA) is needed to end racial profiling in all of its forms.

Recommendations to Congress to End Biased Policing and Conduct Oversight of Agencies

- Congress should pass legislation like the End Racial Profiling Act of 2015 (H.R. 1933), which would: prohibit profiling by federal, state, local, and Indian tribal law enforcement authorities on the basis of race, religion, ethnicity, gender, sexual orientation, gender identity and expression, and national origin; mandate law enforcement training on racial profiling and data collection on all law enforcement routine or investigatory activities; create a private right of action for victims of racial profiling to seek redress; authorize the DOJ to provide grants for the development of best practices to discourage racial profiling and withholding grants from law enforcement agencies that do not comply with ERPA; and require DOJ to provide periodic reports to Congress to assess any ongoing discriminatory policing practices by federal, state, local, and tribal law enforcement authorities.
- The government should eliminate exemptions to the Guidance that allows the FBI, TSA, and CBP to profile racial, religious and other minorities at or in the vicinity of the border and in certain national security contexts, and should also apply the Guidance to state and local law enforcement who receive federal funds. DOJ should release the full current version of the FBI Domestic Intelligence and Operations Guide (DIOG) and require the FBI to amend it to completely prohibit profiling in all contexts, require at least an articulable factual basis to open investigations, and prohibit the recruitment or tasking of informants when there is no reasonable suspicion of wrongdoing.
- DHS should make corresponding changes to its relevant memorandum on non-discriminatory law enforcement activities.

Eliminate Gender-Biased Policing and Protect Domestic and Sexual Violence Survivors

While police abuses such as racial profiling or police brutality are well-understood as civil rights violations, police abuses toward survivors of domestic and sexual violence are not. These abuses include failure to address and prevent officers' commission of domestic and sexual violence, as well as police misconduct in enforcing domestic and sexual violence laws. The ACLU has long argued that systemic problems in policing domestic and sexual violence can violate civil and human rights because they are often rooted in discriminatory attitudes about women, people of color, immigrants, and LGBT people.¹⁹ Victims of these crimes may be denied equal protection under the U.S. Constitution when domestic or sexual violence is treated less seriously than other offenses. Due process violations may also occur when police affirmatively condone the violence, or when a victim is put at greater risk as a result of police conduct.

Today, as our country and members of Congress grapple with law enforcement reforms, we must also ensure that law enforcement policies and practices are free of gender stereotypes and gender bias because discriminatory law enforcement undermines efforts to end domestic and sexual violence and reduces confidence in the criminal justice system. Gender-biased policing furthers the perpetuation of domestic and sexual violence by discouraging victims from coming forward and by allowing perpetrators to continue to commit crimes with impunity. Additionally, gender and racial bias in law enforcement have a particularly harmful impact on survivors who are women of color. Few victims will decide that their safety is advanced by reaching out to police when there is a history of police brutality in their communities, leaving them without recourse to the criminal justice system and vulnerable to continued violence.

Domestic violence and sexual assault are two of the most prevalent forms of gender-based violence. In the US, there are approximately 237,800 sexual assault victims each year,²⁰ and one in four women and one in seven men will experience domestic violence in their lifetime.²¹

Until the last few decades, domestic and sexual violence was treated as a private matter, undeserving of police, governmental, or public attention. Far too often, survivors of domestic and sexual violence faced disbelief, victim-blaming, shaming, and hostility. That attitude frequently resulted in law enforcement's refusal to accept complaints, conduct investigations, or make arrests, even when the abuse clearly qualified as criminal activity. Over time, the U.S. has increasingly recognized that domestic and sexual violence are serious crimes that should be treated as such by law enforcement. The Violence Against Women Act and other federal laws and programs have, among other things, built criminal justice capacity and expertise, trained thousands of officers, and resulted in more effective law enforcement in many communities. Indeed, law enforcement has improved responsiveness to domestic and sexual violence by incorporating current, evidence-based research into law enforcement policies and providing training to relevant personnel.

Yet reports regularly surface of law enforcement agencies failing to investigate or adequately respond to domestic and sexual violence perpetrated by private individuals or officers. Discriminatory policing-- including ignoring abuses committed by officers, refusing to enforce established laws, misclassifying or dismissing domestic or sexual violence complaints, and inadequate training and supervision -- often stems from the reluctance of law enforcement

agencies to acknowledge the extent of crime in their communities and from stereotypes and misapprehensions about domestic and sexual violence.²² Because domestic and sexual violence are committed primarily against women, and because domestic and sexual violence survivors often are subjected to gender-based stereotypes, law enforcement's failed responses can constitute impermissible discrimination. Addressing this discrimination is key to advancing effective law enforcement, as domestic violence makes up the single largest category of calls received by police departments.²³

Egregious and recent examples of law enforcement failures with respect to domestic violence and sexual assault were found in Puerto Rico where the ACLU documented police failure to enforce domestic violence laws that contributed to the highest per capita rate in the world of women killed by their intimate partners.²⁴ The Puerto Rico Police Department also systematically underreported rape crimes and rarely took action when their own officers committed domestic violence, allowing 84 officers who had been arrested two or more times for domestic violence to remain active. In Washington, DC, Human Rights Watch described serious problems with police documentation and investigation of sexual assault cases.²⁵ The Civil Rights Division of the Department of Justice recently examined and documented discriminatory law enforcement responses to domestic and sexual violence cases in police misconduct investigations, undertaken by its Special Litigation Section, in Puerto Rico, New Orleans, Maricopa County, Arizona, and Missoula, Montana.²⁶

Another deeply troubling and widespread example of discriminatory policing is the biased enforcement of local "nuisance ordinances," which frequently authorize law enforcement to punish or penalize tenants or landlords based on requests for police assistance.²⁷ Police officers too often enforce the nuisance ordinances disproportionately against victims of domestic and sexual violence, with devastating consequences. For example, in Norristown, PA, an African-American domestic violence victim faced eviction because police concluded that she had violated the 3-strike nuisance ordinance – with each strike consisting of an act of domestic violence perpetrated against her, including a stabbing that required her to be taken by helicopter to a trauma center.²⁸ Additionally, the role and conduct of law enforcement with respect to campus sexual assault has also come under increased scrutiny.²⁹ In some campus cases, student survivors report the violence to law enforcement authorities only to have their complaints treated with hostility and dismissal; some survivors are deterred from filing complaints because of this experience. When police officers rely on gender stereotypes and bias in addressing campus sexual violence complaints, they deny victims equal protection under the law.

Recommendations to Congress for Oversight of DOJ's Response to Gender-Biased Policing

We applaud the Justice Department's current efforts to combat gender-biased policing and Congress should conduct oversight of and support these efforts. In addition to the groundbreaking investigations of police departments, in 2013 the Office of Community Oriented Policing Services, the Office for Victims of Crime, and the Office on Violence Against Women of the Department of Justice issued a crucial joint statement on addressing gender discrimination in policing.³⁰ Because "gender bias plays a role in undermining the effective response by law enforcement to crimes against women," the statement announced that the prevention of sex-

based discrimination by law enforcement is a “top priority” of the Civil Rights Division of the Department of Justice in its oversight of law enforcement agencies.

We strongly urge the Justice Department to expand its current efforts by issuing much-needed guidance to law enforcement on how the Constitution and federal laws apply to protect victims and to articulate the fundamental elements of effective law enforcement responses to domestic and sexual violence. Such guidance would give greater clarity to law enforcement agencies seeking to strengthen their practices and to survivors of violence about their civil rights. For example, guidance issued by the Justice Department could encourage law enforcement agencies to address and integrate the following issues:

- Development of policies and protocols about law enforcement response to allegations of domestic violence and sexual assault including: 911 operators’ receipt of domestic and sexual violence calls; initial and follow-up victim interviews, including how violence and victimization may affect a victim’s cooperation; identification and documentation of victim injuries; forensic examinations, including of victims; evidence preservation and crime scene management; enforcement of protective orders; follow-up investigations; victim’s reluctance to cooperate. Policies should also address domestic and sexual violence committed by officers.
- Development of policies and protocols ensuring that cases alleging domestic or sexual violence are investigated with the same care and attention given to similar violent offenses: complaints should be recorded, preserving detailed, verbatim statements from victims and witnesses and describing the appearance of the scene, victim injuries and need for medical assistance, and results of forensic exams or laboratory analysis. Evidence should be collected in accordance with standard guidelines.
- Law enforcement officers should be held fully accountable when they are alleged to have perpetrated domestic or sexual violence. Systems of recruiting, training, supervision, review of use of force, and internal officer investigations should incorporate standards for evaluating officers accused of sexual or domestic violence and for making criminal referrals where appropriate. Internal investigations should involve concurrent administrative and criminal processes, where possible, with due consideration of the rights of the accused officer. Procedures should also clearly lay out when and how officers should be relieved of duty and of their weapons, as prescribed by agency policy and federal and state law.

Again, we appreciate the attention that the Department of Justice has already given this too-often neglected issue and urge publication of additional guidance to law enforcement on gender-biased policing. And we urge members of Congress to consider these important issues of gender and race as it begins to scrutinize police conduct.

Advance Policies that Take Disability into Account During Police Interactions

Hundreds of Americans with disabilities die every year in police encounters, and many more are seriously injured.³¹ While law enforcement does not officially track numbers, available data indicates that of police shootings, people with disabilities are involved in about 50% nationally, and anywhere from 40% to 80% in various communities. People with disabilities such as

epilepsy,³² diabetes,³³ cerebral palsy, and disabilities resulting from a stroke are sometimes mistakenly thought by police to be intoxicated or using drugs.

Persons with autism may take longer to process and understand information, and may be unable to follow instructions promptly or to maintain eye contact. Persons with intellectual disability may “not understand commands [or] instructions ... be overwhelmed by police pressure[,] ... [or] act upset at being detained and/or try to run away[.]”³⁴ People who are deaf and hard of hearing are disproportionately injured (and killed) by police – in large part because of communication problems.³⁵ For example, police have beaten, tasered, and even shot deaf people for failing to respond to verbal commands. Finally, persons with significant psychiatric disabilities face the greatest risk of injury or death during their encounters with law enforcement. In fact, approximately half of all fatal police interactions involve persons with psychiatric disabilities. Police appear to respond poorly when they perceive an individual with psychiatric disabilities. Because of perceptions that people with psyche disabilities may be violent, police may use force first and ask questions later.

Many of these deaths and injuries are needless, the tragic result of police failing to use well-established and effective law enforcement practices that take disability into account.³⁶ Moreover, the March 2015 shooting deaths of individuals such as Jason Harrison³⁷ and Anthony Hill³⁸ show that the victims of these police encounters are not only young men of color but persons with mental disabilities. Improving police practices for persons with disabilities can both reduce fatalities and help address the intersectionality of race and disabilities in policing. Furthermore, improving police practices can reduce jail and prison populations. With 64% of local jail populations demonstrating some type of mental disability, more effective training on how to divert people with disabilities from jail to treatment should benefit both the justice system and those caught within it.

Title II of the Americans with Disabilities Act (ADA) prohibits discrimination by any public agency, and requires government agencies to take disability into account by making reasonable modifications of their policies and practices when needed.³⁹ That requirement, however, does not prevent police agencies from safely and effectively doing their work. Modifications to take account of disability are not required where there is a direct threat to the safety of officers or to members of the public.⁴⁰ By requiring that disability be taken into account in officer training, police policies and protocols, and in arrest and detention - but at the same time allowing an exception for direct threats as well as limiting damages liability - the ADA sensitively accounts for the needs of both police agencies and people with disabilities.

Recommendations to Congress for Oversight of the Policing of Persons with Disabilities

- Require police departments to include a minimum of 30 hours training on ADA compliant practices as part of Police Academy training, and to include updates on such trainings every year as part of officers’ on-going training. This training should include safer policing strategies for working with people with disabilities, such as calm communication, collaboration with mental health resources, physical containment of the individual from a distance, and patience.

- Require police departments to adopt ADA-compliant policies, practices, and procedures for working with people with disabilities, especially people in psychiatric crisis.
- Provide training for police departments on how to interact with deaf and hard of hearing individuals, and how to recognize the most common types of disabilities that may interfere with police interactions.

Limit Enforcement Authority of School Resource Officers

The presence of police officers in our public schools has blurred the lines between school discipline and school safety, rather than improving school safety. Officers in schools carry and use Tasers⁴¹ and pepper spray⁴² in situations that may not warrant such weaponry. Policing in schools also looks like the criminalization of youth of color and students with disabilities, who are disproportionately referred to law enforcement and subjected to school-related arrests and thus pushed out of schools and into the juvenile justice system.⁴³ Yet, the explosion of school-based arrests cannot be attributed to an increase in youth violence. Between 1992 and 2002, school violence actually dropped by half.⁴⁴ In fact, overall school violence has significantly decreased since the 1990s.⁴⁵ Moreover, the percentage of students in middle school and high school who reported being afraid of attack or harm at school declined from 11.8% in 1995 to 3.7% in 2011, reinforcing that schools remain the safest places for young people.⁴⁶

Our public schools should create an environment that nurtures learning and is safe. Achieving this goal requires minimizing the role of police in schools and creating accountability measures for those police officers who do work in schools. The ACLU and other organizations have repeatedly raised concerns about the growing presence of police in schools and the use of police officers to carry out school discipline practices. As a 2014 Supportive School Discipline Initiative (SSDI) study shows, police should not be used in schools to handle routine discipline matters.⁴⁷ Improper school-based arrests and referrals to law enforcement not only have a detrimental psychological effect on children but also nearly double the odds of dropping out of school, and, if coupled with a court appearance, nearly quadruple the odds of dropout and increase the likelihood of future interaction with the criminal justice system.⁴⁸

Recommendations to Congress for Oversight of School Resource Officers

- The federal government should reprioritize its investments and should not transfer of military equipment to school districts.⁴⁹
- Authority over police in schools must be restored to school administrators.⁵⁰
- The role of police personnel in schools must be limited to legitimate security concerns for children and educators. Where school resource officers (SROs) are being used, SROs should not engage in school discipline.⁵¹
- The federal government should prioritize the use of Positive Behavior Interventions and Supports (PBIS) and other alternative discipline practices.⁵²
- Police personnel must be trained to function in accordance with sound educational practices and to respect the differences between street and school environments.⁵³
- Police personnel must be trained around ADA-compliant policies, practices, and procedures for working with students with disabilities.

- Students, families, and educators must be given a meaningful mechanism to complain about wrongdoing by school-based police personnel.⁵⁴
- The jurisdiction of Civilian Complaint Review Boards should be expanded to accept complaints regarding school safety agents.⁵⁵
- Annual reporting requirements for policing activities in schools should be instituted.⁵⁶
- Annual evaluations of school safety practices should be conducted and practices with proven success should be adopted.⁵⁷

¹ Washington, DC: Office of Community Oriented Policing Services, *Interim Report of the President's Task Force on 21st Century Policing*, Mar. 4 2015, available at http://www.cops.usdoj.gov/pdf/taskforce/interim_tf_report.pdf.

² *President's Task Force on 21st Century Policing, Part 4*, C-SPAN.ORG, Jan. 13, 2015, available at <http://www.c-span.org/video/?323754-4/presidents-task-force-21st-century-policing-part-4>.

³ David Nakamura & Niraj Chokshi, *Obama orders review of military equipment supplied to police*, WASH. POST, Aug. 23, 2014, available at http://www.washingtonpost.com/politics/obama-orders-review-of-military-equipment-supplied-to-police/2014/08/23/6316b8aa-2b03-11e4-8593-da634b334390_story.html.

⁴ Daryl Gates, *Chief: My Life in the LAPD* 131 (Bantam Books, New York, 1992). For an excellent summary of the creation and evolution of SWAT, see Radley Balko, *Rise of the Warrior Cop* (PublicAffairs, 2013).

⁵ ACLU, *War Comes Home: The Excessive Militarization of American Policing*, 3, June 23, 2014, available at <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>.

⁶ *Id.* at 36-37.

⁷ U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties, *Civil Rights/Civil Liberties Impact Assessment: DHS Support to the National Network of Fusion Centers*, 6 (March 1, 2013), available at https://www.dhs.gov/sites/default/files/publications/DHS%20Support%20to%20National%20Network_0.pdf.

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⁹ Law Enforcement Equipment Working Group, *Recommendations Pursuant to Executive Order 13688, Federal Support for Local Law Enforcement Equipment Acquisition*, May 2015, available at https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf.

¹⁰ Jason Clayworth and Grant Rogers, *Iowa forfeiture: a 'system of legal thievery'?*, DES MOINES REGISTER (Apr. 4, 2015), <http://www.desmoinesregister.com/story/news/investigations/2015/03/28/iowa-forfeiture-system-legal-thievery/70600856/>.

¹¹ Robert O'Harrow, Jr. et al., *Holder limits seized-asset sharing process that splits billions with local, state police*, WASH. POST (Jan. 16, 2015), http://www.washingtonpost.com/investigations/holder-ends-seized-asset-sharing-process-that-split-billions-with-local-state-police/2015/01/16/0e7ca058-99d4-11e4-bcfb-059ec7a93ddc_story.html.

¹² Jeff Brazil and Steve Berry, *Tainted cash or easy money?*, ORLANDO SENTINEL (June 14, 1992), http://articles.orlandosentinel.com/1992-06-14/news/9206131060_1_seizures-kea-drug-squad.

¹³ *Letter to the House on "The Civil Asset Forfeiture Act of 1999"*, ACLU.ORG (June 10, 1999), <https://www.aclu.org/racial-justice/letter-house-civil-asset-forfeiture-act-1999>.

¹⁴ *ACLU Announces Settlement in "Highway Robbery" Cases in Texas*, ACLU.ORG (Aug. 3, 2012), <https://www.aclu.org/criminal-law-reform/aclu-announces-settlement-highway-robbery-cases-texas>.

¹⁵ Nick Sibilla, *Federal Forfeiture Program: wWhat's It Funding?*, FORBES (Oct. 22, 2014), <http://www.forbes.com/sites/instituteforjustice/2014/10/22/how-civil-forfeiture-fuels-police-militarization-and-lets-cops-buy-sports-cars-and-hire-clowns/>.

¹⁶ See ACLU Foundation of Massachusetts, & ACLU Racial Justice Program, *Black, Brown and Targeted: A Report on Boston Police Department Street Encounters from 2007-2010* (Oct. 2014), available at https://www.aclum.org/sites/all/files/images/education/stopandfrisk/black_brown_and_targeted_online.pdf.

¹⁷ *Guidance For Federal Law Enforcement Agencies Regarding the use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, U.S. Dep't U.S. DEP'T OF JUSTICE, CIV. RTS. DIV. (Dec. 2014), available at <http://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>.

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