



March 31, 2020

For nearly 100 years, the American Civil Liberties Union (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. With more than three million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, DC to advance the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, disability, or national origin. 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’s work to reform police practices is multifaceted. We pursue litigation against police departments that are using unconstitutional tactics that harm the communities they are sworn to protect. The ACLU sued the Milwaukee Police Department over its aggressive and unconstitutional stop and frisk policy, securing reforms in 2017 that include data collection, training, and accountability. The organization is also working with state affiliates and grassroots partners across the country to secure policies that promise to build trust between law enforcement and community. Last month’s enactment of the California Act to Save Lives (AB392), which changes the police use of force standard from “reasonable” to “necessary,” is an example of how the ACLU is advancing 21st century policing in state legislatures. Finally, we advocate at the federal level to achieve reforms that will reach police departments nationwide. The 2014 enactment of the Death in Custody Reporting Act, which mandates state reporting of deaths that occur in police custody, was a response to the hundreds of police caused fatalities that occur annually with no accounting.

Given the ACLU’s advocacy around police practices, we are providing work product to the President’s Commission on Law Enforcement and the Administration of Justice. The ACLU is disappointed that the Commission representation is exclusively law enforcement and that civil rights and civil liberties stakeholders are not formally represented. The ACLU is also troubled by the Commission’s decision to change the public submission deadline from May 30, 2020 to March 31, 2020 in the wake of the COVID-19 epidemic. Nonetheless, below are hyperlinked ACLU materials to be considered by the Commission as it formulates recommendations around law enforcement and the criminal legal system:

[Written Statement of the ACLU before the U.S. House Judiciary Committee Oversight Hearing on “Policing Practices”:](#)

The ACLU commends the House Judiciary Committee for providing a much needed examination of policing in this country. 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, results in a relationship based on mistrust between law enforcement and our low income communities and communities of color. The United States has the opportunity to go beyond dealing with a few bad apples in police departments and to reform an entire system. Fairness and justice demand that we seize this opportunity to ensure accountability and transparency in police departments across the country.

**Written Statement of the ACLU to the President’s Task Force on 21st Century Policing
Listening Session on Building Trust and Legitimacy:**

The recommendations put forward today are ones that state and local law enforcement can implement unilaterally. The Administration and Congress can support such local police reform through investigations and federal grant program requirements; and federal law enforcement agencies, including Customs and Border Protection and the FBI, must lead in implementing best practices.⁹ Just as this White House Task Force demonstrates, efforts must come from every level given the crisis this country is facing. The good news, however, is that there is no shortage of solutions; and the recommendations highlighted below are in no way exhaustive of the reforms that are needed. Police reforms have been considered for decades, and the ACLU’s reports, litigation, and local and national advocacy attest to that. What we need now is nationwide implementation of these solutions.

Campus Policing Policy Regarding Bias and Bias-Based Reports:

Campus police are expected to exercise sound judgment and critical decision making when responding to all calls for service, but especially those that may be the result of a bias-based report. Understanding the fluidity of situations and circumstances they may be facing as an incident occurs, campus police should remain aware that the subject of the call may be experiencing anger and fright as a result of a police presence initiated by a bias-based report. These are key factors in safeguarding the community’s trust and maintaining legitimacy with the community.

ACLU Comments Sent to DOJ on the Death in Custody Reporting Act Data Collection:

DOJ’s delayed implementation of DCRA is unacceptable, as there continues to be an unreliable national census of custodial and arrest-related deaths, including national statistics on mortality rates, demographic impact, circumstances of these deaths, and implicated law enforcement agencies. Simply put, the federal government does not know how many people are killed by law enforcement every year. Instead, police-caused fatalities are tracked by outlets like The Washington Post, which estimates 3,538 people have been killed by police since DCRA was enacted in December 2014.² Knowing the number and circumstances of police-caused fatalities is crucial to developing policies that could reduce the number of such fatalities. This data is also critical to providing the public and DOJ the information needed to ensure law enforcement agencies are complying with civil rights laws, and to assisting DOJ with fulfilling its enforcement responsibilities.

Police ‘Command and Control’ Culture Is Often Lethal — Especially for People With Disabilities:

When police know — or should know — that they are interacting with a person with a disability, police have a legal obligation to proceed in ways that take into account the person’s disability. Most such changes are simple: recognize that it may take time for the person to understand what is happening, create a calm environment, have one person communicate simply and clearly, allow time for the person to respond to questions or instructions, and exercise patience. Such steps are called “reasonable modifications” under the Americans with Disabilities Act. They are legally required for people with disabilities. But, as with so many accommodations, implementing these practices across the board would benefit everyone — people with disabilities, the general public, and police officers themselves.

[ACLU Memo on Understanding Gender-Biased Policing:](#)

In this era of reform, new attention must be paid to the problem of gender-biased policing, specifically the improper, discriminatory, and unlawful ways in which law enforcement officials respond to or commit crimes involving domestic violence and sexual assault. Voices across the country—including the U.S. Department of Justice, anti-violence and civil rights advocates, and law enforcement leaders—have sounded the alarm on police practices and policies that are premised on pernicious gender stereotypes about survivors of violence. Gender-biased policing not only denies victims of domestic violence and sexual assault the equal protection of the law and protection from harm, but also destroys trust between law enforcement and the communities they serve.

[ACLU Written Submission to Inter-American Commission on Human Rights:](#)

We are extremely concerned that the DOJ is acting behind closed doors to dismantle carefully negotiated consent decrees, undermine pattern or practice investigations, and abandon valuable collaborative reform efforts launched through the COPS office. We urge the Commission to issue strong recommendations to the government of the United States to reverse recent actions by the Trump Administration that eliminate or roll back federal oversight and investigation of alleged police killings and other misconduct. We also call on the Commission to continue its human rights monitoring of the situation including through a follow-up fact-finding visit and consideration of other measures to ensure that the United States complies with its regional and international obligations requiring accountability for police killings including access to justice for victims. Additional information can be found in the [IACHR report](#) on Police Violence against Afro-descendants in the United States and the [INCLIO report](#) on Defending Dissent: Towards State Practices that Protect and Promote the Rights to Protest.

[Statement of Concern about Predictive Policing by ACLU and 16 Civil Rights Privacy, Racial Justice, and Technology Organizations:](#)

A growing number of police departments across the United States are deploying new computer systems that use data in an attempt to automatically forecast where crime will happen or who will be involved. Today, these “predictive policing” tools are used primarily to further concentrate enforcement activities in communities that are already over-policed, rather than to meet human needs.

[The ACLU Supports the Rights of Law Enforcement Professionals:](#)

The ACLU is well known for its efforts to combat police misconduct, but is less recognized for its legal advocacy on behalf of police officers. Like everyone else in the United States, police officers deserve constitutional protections. The ACLU has defended the rights of police officers, firefighters and corrections officers throughout the nation.

Thank you for your consideration. For follow-up, please contact ACLU Senior Legislative Counsel, Kanya Bennett, at kbennett@aclu.org.