



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

“The State of Civil and Human Rights in the United States”

**Submitted to the
U.S. Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights**

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ACLU Washington Legislative Office

Laura W. Murphy, Director

Vania Leveille, Senior Legislative Counsel

Lenora Lapidus, Director, ACLU Women’s Rights Project

Sandra Park, Senior Staff Attorney, ACLU Women’s Rights Project

On behalf of the American Civil Liberties Union (ACLU), a nationwide organization that has worked in the courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in this country, we commend the Senate Judiciary Committee Subcommittee on the Constitution, Civil Rights, and Human Rights for holding a hearing on “The State of Civil and Human Rights in the United States.”

We submit this supplemental statement to draw the Subcommittee’s attention to the continuing problem of inappropriate, improper and often illegal law enforcement responses to domestic and sexual violence that violate the civil rights of domestic violence and sexual assault survivors and endanger their lives.

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. For years, the ACLU has 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, as well as about people of color, immigrants, LGBT people and people who embody multiple, marginalized identities.¹ 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 assess and grapple with law enforcement reforms to achieve racial justice, 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. It 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. 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 violence. Moreover, discriminatory police responses to these crimes have been found to violate the U.S. Constitution and federal law and may violate international human rights law.

Domestic and Sexual Violence and Law Enforcement

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,² and one in four women and one in seven men will experience domestic violence in their lifetime. Not only does

¹ American Civil Liberties Union, *Jessica Gonzales v. U.S.A.*, ACLU Blog (Oct. 27, 2014), <https://www.aclu.org/human-rights-womens-rights/jessica-gonzales-v-usa>.

² Rape, Abuse & Incest National Network (RAINN), *How often does sexual assault occur*, <https://www.rainn.org/get-information/statistics/frequency-of-sexual-assault> (aggregating results from the US Census Bureau for the Bureau of Justice Statistics National Crime Victimization Survey from 2008-2012).

domestic violence and sexual assault have ongoing and destabilizing effects on families, individuals, and communities but it also has an enormous fiscal impact: a study found that intimate partner violence costs the U.S economy \$12.6 billion annually in legal and medical services, judicial system costs and low productivity.³

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. 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 agencies to acknowledge the extent of crime in their communities and from stereotypes and misapprehensions about domestic and sexual violence.⁴ 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.

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.⁵ 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

³ University of Miami School of Law Human Rights Clinic, Columbia Law School Human Rights Institute & ACLU Women's Rights Project, *Domestic Violence & Sexual Assault in the United States: A Human Rights Based Approach & Practice Guide*, (Aug. 2014), available at http://web.law.columbia.edu/sites/default/files/microsites/human-rights-institute/files/dv_sa_hr_guide_reduce.pdf.

⁴ U.S. Dep't U.S. DEP'T OF JUSTICE, CIV. RTS. DIV., INVESTIGATION OF THE NEW ORLEANS POLICE DEPARTMENT xi (Mar. 2011), available at http://www.justice.gov/crt/about/spl/nopd_report.pdf.

⁵ American Civil Liberties Union, *Failure to Police Crimes of Domestic Violence and Sexual Assault in Puerto Rico*, (Jun. 2012), available at <https://www.aclu.org/human-rights/failure-police-crimes-domestic-violence-and-sexual-assault-puerto-rico>.

assault cases.⁶ 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, AZ, and Missoula, MT.⁷

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.⁸ 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.⁹ Additionally, the role and conduct of law enforcement with respect to campus sexual assault has also come under increased scrutiny.¹⁰ 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 expectation and experience. When police officers rely on gender stereotypes and bias in addressing campus sexual violence complaints, they deny victims equal protection under the law.

Making Progress to Eliminate Gender-Biased Policing

We applaud the Justice Department’s current efforts to combat gender-biased policing. In addition to the groundbreaking investigations of police departments, last year 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

⁶ HUMAN RIGHTS WATCH, *CAPITOL OFFENSE: POLICE MISHANDLING OF SEXUAL ASSAULT CASES IN THE DISTRICT OF COLUMBIA*, (2013) available at http://www.hrw.org/sites/default/files/reports/us0113ForUpload_2.pdf.

⁷ U.S. DEP’T OF JUSTICE, CIV. RTS. DIV., *INVESTIGATION OF THE PUERTO RICO POLICE DEPARTMENT* (Sept. 2011), http://www.justice.gov/crt/about/spl/documents/prpd_letter.pdf; Findings Letter from Thomas E. Perez, Assistant Attorney General for the Civil Rights Division to Bill Montgomery, County Attorney, Maricopa County, Arizona on United States’ Investigation of the Maricopa County Sheriff’s Office (Dec. 2011), available at <http://www.justice.gov/crt/about/spl/mcso.php>. See also Statement of Thomas E. Perez, Assistant Attorney General for the Civil Rights Division at Missoula, Montana Press Conference (May 1, 2012), <http://www.justice.gov/crt/opa/pr/speeches/2012/crt-speech-1205011.html> [hereinafter “Missoula Statement”].

⁸ American Civil Liberties Union, *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime*, ACLU Blog (accessed Dec. 2014) available at www.aclu.org/notanuisance.

⁹ American Civil Liberties Union, *Briggs v. Borough of Norristown et al.*, ACLU Blog (accessed Dec. 2014) available at <https://www.aclu.org/womens-rights/briggs-v-borough-norristown-et-al>

¹⁰ U.S. Senate, Committee on Judiciary, Subcommittee on Crime & Terrorism. *Campus Sexual Assault: the Roles and Responsibilities of Law Enforcement*, Hearing, Dec. 9, 2014, available at <http://www.judiciary.senate.gov/meetings/campus-sexual-assault-the-roles-and-responsibilities-of-law-enforcement>. See also ACLU Statement for the Record for Roundtable Discussion on Campus Sexual Assault and the Criminal Justice System (Jun. 20, 2014), available at <https://www.aclu.org/womens-rights/aclu-statement-record-roundtable-discussion-campus-sexual-assault-and-criminal-justice>.

policing.¹¹ 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 encourage 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 domestic and sexual 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:

- Agencies should have in place policies that provide guidance with respect to basic, essential functions of law enforcement response to allegations of domestic violence and sexual assault. They should include protocols that address the following: 911 operators’ receipt of domestic and sexual violence calls; initial and follow-up victim interviews, including how to safely communicate with victims and how violence and victimization may affect a victim’s cooperation with law enforcement; identification and documentation of victim injuries; forensic examinations, including of victims; victim interviews and suspect interrogations; evidence preservation and crime scene management; enforcement of protective orders; follow-up investigations, including cases in which the suspect has left the scene; collaboration with victim advocates; and services and assistance to be offered to victims. Policies should also address domestic and sexual violence committed by officers.
- Agencies should require that cases alleging domestic or sexual violence be investigated with the same care and attention given to similar violent offenses. Staffing should be sufficient to allow for full and complete on-scene and follow-up investigations. 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, such as by interrogating suspects, interviewing witnesses, ascertaining the history of violence, taking photographs, and gathering other physical and forensic evidence. Evidence collection should be performed to the fullest extent possible, even if time has passed since the crime. Investigative reports should include any reports prepared by patrol officers or other first responders.
- Law enforcement should not dismiss domestic or sexual violence complaints because they assume that victims will not cooperate or will not be good witnesses. Even where a victim

¹¹ U.S. Department of Justice, Office on Violence Against Women, Joint Statement of the Office of Community Oriented Policing Services, The Office for Victims of Crime, and the Office on Violence Against Women on Addressing Gender-Discrimination in Policing, (Jun. 2013), <http://www.justice.gov/ovw/blog/joint-statement-office-community-oriented-policing-services-office-victims-crime-and-office>.

expresses a reluctance to cooperate, law enforcement should not request that victims officially withdraw charges until the investigation is complete.

- Agencies whose jurisdiction covers Indian Country should establish and implement clear protocols for investigation, follow-up, and collaboration among federal, state, local, and tribal authorities. Agencies should ensure that training of officers includes discussion of jurisdictional issues and promotes cultural competency. DOJ has issued guidance on these issues, including memoranda and statements that address responding to domestic or sexual violence in Indian Country.¹² That another agency may have concurrent jurisdiction does not mean that federal, state, and tribal authorities can prematurely end the investigation of domestic or sexual violence, such as by failing to respond, document complaints, or collect and preserve evidence.¹³
- 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.

We also urge members of Congress to consider these important issues of gender and race as it begins to scrutinize police conduct. More immediately, we hope that as Congress seeks solutions to the problem of campus sexual assault, it will closely examine the policies and practices of relevant local law enforcement agencies that interact with student victims of sexual assault.

We look forward to working closely with Congress and the Department of Justice to eliminate law enforcement practices and policies that discriminate against survivors of domestic and sexual violence.

¹² See Tom Perrelli, Associate Attorney General, Statement before the Senate Committee on Indian Affairs (Sept. 22, 2011), <http://www.justice.gov/iso/opa/asg/speeches/2011/asg-speech-110922.html>; Memorandum from David W. Ogden, Deputy Attorney General for U.S. Attorneys with Districts Containing Indian Country, Indian Country Law Enforcement Initiative (Jan. 11, 2010), <http://www.justice.gov/dag/dag-memo-indian-country.html>.

¹³ See AMNESTY INTERNATIONAL, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA (2007), www.amnestyusa.org/pdfs/MazeOfInjustice.pdf.