



Written Submission of the American Civil Liberties Union (ACLU) to the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement

The United States' Lack of Comprehensive Federal and State Data Collection on Policing

June 10, 2022

Introduction

The American Civil Liberties Union (ACLU) is a nonprofit organization founded in 1920 to defend and preserve the individual rights and liberties guaranteed by the Constitution, laws and treaties of the United States. With more than 4 million members, activists, and supporters, the ACLU is a nationwide organization that fights in courts, legislatures, international fora, and communities in all 50 states, Puerto Rico, and Washington, D.C., to safeguard everyone's rights in the United States including rights of people of African descent, people whose constitutional and human rights have been violated by law enforcement officers, and victims and survivors of racial discrimination and systemic racism. The ACLU is a founding member of the UN Anti-Racism Coalition and was instrumental in advocating for the creation of the Independent Expert Mechanism under Human Rights Council Resolution 47/21. This submission is made in response to a call for input on data collection on policing.

As we outlined in our December 2020 submission to the United Nations High Commissioner for Human Rights, the United States requires a serious paradigm shift based on reimagining the role of police institutions in public safety.¹ In order to confront fatal discriminatory police violence, the United States must reduce its reliance on police and reinvest in Black and Brown communities to prevent further harm. It is time for the U.S. to implement solutions that are based on life-affirming alternatives to policing, such as the enactment of civilian-led crisis intervention teams. Though abusive policing will not be cured if the United States had more comprehensive data collection, such data would provide greater transparency to the public and accountability for law enforcement agencies.

Indeed, despite the daunting statistics on the disproportionality of unlawful police violence especially towards people of African descent, the true figures are often underreported and difficult to find because of the lack of a uniform data collection system in the United States. There exists detrimental flaws and significant deficiencies in the United States' current mechanisms for data collection and analysis. Furthermore, the decentralization of over 18,000 law enforcement agencies in the United States makes it extremely difficult to hold police agencies accountable for human rights violations and abuses of power. Even when laws mandating data collection on

policing practices are enacted, the implementation and full enforcement of these measures are often deliberately delayed or scarcely monitored. These deficiencies effectively prevent the public, and most importantly, victims of police violence, from holding abusive law enforcement agencies accountable and bringing about transformative change.

Data collection systems must be enacted as fundamental safeguards against unchecked and abusive police institutions, which have gained enormous power and resources without adequate transparency or oversight. The burden should not fall on victims, impacted communities, or civil society groups, including media outlets, to document and collect data on policing practices and abuses. This submission provides a review of federal and state examples demonstrating the lack of adequate and reliable data collection systems. This submission will not focus on other law enforcement agencies such as the U.S. Border Patrol (USBP) or U.S. Immigration and Customs Enforcement (ICE), which are notorious for their civil and human rights violations and grossly inadequate data collection.

Federal Actions on the Collection and Publication of Disaggregated Policing Data

The United States has consistently failed to implement and enforce comprehensive federal laws mandating data collection on police practices. For example, a comprehensive police reform bill, the George Floyd Justice in Policing Act, failed to pass the Senate in September 2021.² Section 201 of the bill sought to establish a National Police Misconduct Registry to increase transparency and data collection related to officer misconduct.³ Though the measure represented a substantial step forward in law enforcement accountability, the bill's data collection provision was limited to instances of excessive force and racial profiling. Section 343 of the bill also prohibited certain policing data from being accessed through Freedom of Information Laws (FOIA). Despite these limitations, including the fact that the order would have only governed federal officers, the bill ultimately did not advance.

Notably, language from the George Floyd Justice in Policing Act was derived in part from another failed police reform bill, called the End Racial and Religious Profiling Act (ERRPA).⁴ ERRPA was introduced in the Senate in March of 2021. A previous version of the bill, the End Racial Profiling Act (ERPA), failed to pass after it was introduced in June of 2001 and reintroduced numerous times after that, to no avail.⁵ ERPA sought, in part, to require federal law enforcement agencies to collect and monitor demographic data on law enforcement investigatory activities. ERPA seemed likely to pass in 2001 with bipartisan support, however, after 9/11, the bill lost momentum and its chance at passage for almost two decades.⁶

Multiple international human rights bodies, including the U.N. Committee on the Elimination of Racial Discrimination, called on the U.S. government to adopt and implement ERPA and similar legislation.⁷ Further, in March 2019, the Inter-American Commission on Human Rights (IACHR) also released a landmark report examining the deep-seated, widespread racial disparities in policing in the United States.⁸ The IACHR subsequently provided reform guidelines to the U.S., emphasizing the importance of creating a uniform, disaggregated data collection system to track use-of-force incidents involving police and to report disciplinary measures against officers.⁹ The United States Congress' failure to enact ERPA and similar legislative measures, demonstrates the widening gap between rhetoric and action to uphold racial justice and take any

meaningful action to hold federal, state, and local law enforcement accountable for racist police violence.

The Biden Administration has also dragged its feet and faced criticism for its reluctance to take bold actions to combat systemic police violence.¹⁰ Nonetheless, after facing pressure from advocates and impacted communities, on May 25, 2022, President Joe Biden finally issued Executive Order 14074 on Advancing Effective, Accountable Policing, and Criminal Justice Practices to Enhance Public Trust and Public Safety.¹¹ Despite the significantly limited scope of executive orders, the move was an important step forward in light of Congress' failure to take much-needed action on police reform.¹² The stated goal of President Biden's executive order is to advance police reform measures in an effort to increase police accountability and build trust between law enforcement and the communities they serve.¹³ Though the order does not go nearly far enough to challenge systemic racism in American policing, it is a foundation to build on.¹⁴ The order's most impactful provisions relate to improvement of access to alternative behavioral health responses, restrictions on supplying military equipment to state, local, and tribal law enforcement agencies, and amendments on the use of force standard. Another provision of the order requires the development of law enforcement data collection and public reporting to promote transparency and accountability.

Pursuant to Section 5 of Executive Order 14074, all federal law enforcement agencies are required to input instances of police misconduct to the National Law Enforcement Accountability Database. Further, under Section 6 of Executive Order 14074, federal law enforcement agencies are compelled to submit data on a monthly basis to the FBI National Use-of-Force Data Collection, regarding use-of-force incidents. The U.S. Attorney General is to publicly publish the data collected pursuant to Section 6, for research and statistical purposes. The Attorney General is also obligated to review compliance with federal reporting requirements. This includes the Attorney General issuing guidance to state, local, and tribal law enforcement on best practices to "identify relevant data," "complaints from the public," and other information that would assist the Department of Justice's "investigations of patterns or practices of misconduct by law enforcement officers."¹⁵

While a necessary first step, the misconduct database has significant limitations on data transparency that may pose problems during implementation of the order. For example, unsubstantiated complaints may be omitted from the data even if the lack of substantiation was not related to the merits of the complaint, but instead, for example, was due to time limitations on an investigation. State, local, and tribal police departments should expand upon the executive order, which only governs federal officers, and develop more expansive and reliable databases. The vast majority of peoples' interaction with police are with state, local, and tribal law enforcement. Since George Floyd's murder and the protest movement that followed, many jurisdictions have begun taking a range of official actions to improve policing in their communities including on data collection.

Federal Implementation of Data Collection Programs Related to Custodial Deaths

Efforts to increase transparency and hold law enforcement accountable, also encompass the collection and publication of data on deaths that occur in the custody of law enforcement and

correctional institutions. Federal efforts to collect this data, date back decades to the passage of the Death in Custody Reporting Act of 2000 (DCRA). The law, which expired in 2006, lacked funding and resulted in substantial underreporting, ultimately leading the DOJ Bureau of Justice Statistics (BJS) to suspend its program for capturing arrest-related deaths in 2014.¹⁶ In response, Congress reauthorized the legislation in December 2014 with unanimous bipartisan support.¹⁷ The updated legislation was expanded to include mandatory data collection of custodial and arrest-related deaths from states receiving federal funding from the Byrne Justice Assistance Grant and from federal law enforcement agencies.¹⁸ The law also requires the Attorney General to implement guidelines to direct state compliance with the law. However, the DOJ continually delayed implementation of the DCRA until 2020—five years after it was enacted and two years after the DOJ published its near-final compliance plan and guidelines.¹⁹ According to the Office of the Inspector General, which conducted a review of the DOJ after public pressure²⁰, the delay was reportedly due to the incoming Office for Justice Program leadership in 2016 and due to deliberations regarding the methodology of DCRA’s implementation.²¹ The DOJ’s delayed implementation of DCRA represents the United States’ chronic failure to address dangerous deficiencies in its police accountability and transparency mechanisms.

Though the DOJ finally began its DCRA data collection in 2020, outstanding funding and compliance issues compromise the quality of the DCRA data.²² For example, even though the BJS specializes in data collection, the U.S. Office of Management and Budget (OMB) guidance requires BJS to be an independent statistical agency, so it cannot participate in the data collection. Instead, the DOJ Bureau of Justice Assistance (“BJA”), a grant-making office, acts as the data collection authority. However, the OMB guidance is properly read only to preclude BJS from imposing penalties for noncompliance. In that regard, BJS is still an appropriate agency to collect data on DCRA compliance, while another DOJ agency imposes penalties for failing to respond to BJS request. Nevertheless, due to funding limitations, the BJA relies on state law enforcement agencies to collect data from local agencies. This approach, which is similar to an approach previously taken by the BJS that was later suspended, will result in significant underreporting because generally local agencies are not required to report such data without the requisite state laws.²³ Moreover, withholding a percentage of the Byrne Justice Assistance Grant from noncompliant states, results in the punishment of compliant agencies. This is because not all agencies receive federal funding from the Byrne Justice Assistance Grant and are therefore not incentivized to comply with the DCRA. The failure of the DOJ to implement an effective and reliable program, raises concerns about the accuracy and quality of any incoming DCRA data.²⁴

The Role of the U.S. Department of Justice in Policing Data Transparency and Police Accountability

The Department of Justice (“DOJ”) also plays an important role in data collection efforts. The DOJ’s Civil Rights Division uses “pattern or practice” investigations to examine allegations of systemic police misconduct²⁵, and to subsequently provide comprehensive reform agreements to restore trust between police and communities.²⁶ The investigation consists of a thorough and independent examination of policies and practices of policing, with data analysis playing a vital role in the Division’s assessment. If the investigation reveals a pattern or practice of police misconduct, the Division then issues its findings to the public as a report or letter.²⁷ However, the initiation of investigations, and the enactment of subsequent reform agreements especially, are

very rare. Specifically, the DOJ has conducted only 75 “pattern or practice” investigations since 1990.²⁸ That is, on average, roughly three investigations being conducted per year.

Among the most notable investigations performed by the Division over the last decade, includes that of the Ferguson Police Department (FPD) in September 2014. The investigation revealed a clear pattern or practice of police misconduct and racial bias, specifically towards Black Americans.²⁹ The investigative report, in part, analyzed FPD’s own data to reach its conclusion, including data on FPD’s stops, searches, citations, arrests, and other data collected by the municipal court. The Division’s report recognized the substantial deficiencies in the FPD’s own collection of data which can adversely affect its investigation. These deficits include the FPD’s failure to collect reliable or consistent data on pedestrian stops and FPD supervisors’ lax review of incomplete incident and arrest reports. The FPD’s inadequate collection of data make it difficult for unlawful police conduct to be detected. Nevertheless, the Division’s investigation revealed that it was the practice of Ferguson’s police and municipal court to “reflect and exacerbate existing racial bias” towards African Americans.³⁰ The Division outlined recommendations for the City of Ferguson to remedy its disparate practices. These recommendations included the development and implementation of a plan for data collection. This data, which would be made public, would need to be regularly reviewed and analyzed for possible racial disparities.

After pattern and practice investigations, the Division conducts reform agreements to address unlawful police conduct more effectively. In Ferguson, an important component of the city’s consent decree was data collection, reporting, and transparency.³¹ The agreement stated the City of Ferguson’s agreement to develop a data collection plan to ensure collected data is accurate, regularly assessed, and publicly available. The City also agreed to produce an annual report describing the activity and progress of the FPD and Ferguson Municipal Court, including status updates on the City’s implementation of the consent decree. Unsurprisingly, the actual implementation of the consent decree was a delayed and convoluted process.³² Indeed, it was not until September 2019 that the FPD even enlisted a consent decree monitor to manage its compliance.³³ Though some provisions of the consent decree have yet to be followed, the FPD was reportedly working with a software company to develop a new data collection system.³⁴

Ferguson was not the only city that has been investigated by the Civil Rights Division. Indeed, a pattern and practice investigation conducted in Seattle, Washington similarly revealed racial disparities in policing and led to the enactment of a consent decree with numerous police reform measures, including in data collection.³⁵ The City of Seattle fell in and out of compliance with the order for several years. In early 2018, the City was found in compliance of the consent decree based on its adoption of new policies and evidence revealing reduced biased policing.³⁶ However, the City then indefinitely fell out of compliance with the consent decree in May 2019 for failing to prove it could sustain full compliance for two years.³⁷

In August 2016, the Baltimore Police Department was also exposed after the Division investigated and reported that it frequently engaged in unlawful and discriminatory conduct against Black Americans.³⁸ Pursuant to the consent decree that followed the Division’s report, the city of Baltimore agreed to establish a Community Oversight Task Force to recommend system reforms of civilian oversight, including data collection.³⁹ Following the consent decree, the Baltimore

Police Department also provided data on use of force incidents and officer-involved shootings that occurred between 2015 and 2019.⁴⁰

The Springfield Police Department of Massachusetts was also investigated by the Division, and subsequently consented to a reform agreement when the investigation revealed a pattern or practice of discriminatory police misconduct.⁴¹ Similar to the previous consent decrees, one component of the decree required the Springfield Police Department to designate a Data Collection and Analysis Coordinator to develop and analyze a comprehensive data collection system. The City was also required to issue annual reports of complaint trends to the public.⁴² These examples illustrate how advocates attempt to request that the DOJ of the Civil Rights Division conduct pattern and practice investigations to reach reform agreements with law enforcement agencies to confront discriminatory police practices.⁴³ Though reform measures often include the enforcement of data collection systems, most law enforcement agencies fall in and out of compliance with the agreement and delay its implementation. Even so, DOJ practice and pattern investigations are seldom initiated by the DOJ, which conducts an average of less than three investigations every year.⁴⁴

The DOJ also occasionally issues guidance reports to help law enforcement agencies improve and mitigate deficient practices, which may in part include guidance on data collection. For example, the DOJ's report, *Improving Law Enforcement Response to Sexual Assault and Domestic Violence*, issued recommendations to law enforcement agencies to prevent gender bias. Specifically, one stated principle was for law enforcement agencies to “maintain, review, and act upon data regarding sexual assault and domestic violence” due to concerns that current data collection practices facilitate under-reporting and fail to capture gender and racial disparities.⁴⁵ However, the DOJ's guidance is limited in its scope, as it only serves as recommendations for law enforcement agencies.

The Department of Education's Role in Generating Policing Data

The Department of Education also collects and releases data through the Civil Rights Data Collection (CRDC), which shows the number of student referrals and arrests made by police in public schools. Every other year, when this data is released to the public, it reveals that students of color are disproportionately referred to and are arrested by police in schools.⁴⁶ The ACLU of California conducted an analysis of CRDC data in 2021 to assess law enforcement interaction with students at school. The ACLU of California's report revealed that students of color and students with disabilities were disproportionately vulnerable to referrals to police and arrest in California.⁴⁷ Despite the importance of this data, the U.S. Department of Education is not always compliant with requirements to publicly release collected records. This was especially true in July 2020, when the ACLU was forced to file a FOIA request to get the 2017-2018 CRDC data released.⁴⁸

Steps Taken by States to Increase Accountability Through the Collection of Policing Data

Some states have established policing databases and enacted statutes mandating transparency over law enforcement agencies. However, it is apparent that states often delay, and even resist, efforts to actually implement and enforce mandated data collection programs. In response, advocates and organizers often resort to litigation including under Open Records and

Freedom of Information laws to pressure law enforcement agencies to comply and release this vital data to the public.

State of New York

For example, on June 10, 2020, following the #Repeal50a campaign, the New York Legislature voted to repeal New York Civil Rights Law Section 50-a, a statute used for decades to keep police performance records secret. The repeal effectively prohibited police departments from hiding disciplinary and misconduct records from the public.⁴⁹ The move represented a critical step forward in police accountability. However, the repeal of 50-a did not prevent various New York law enforcement agencies from denying requests for records.⁵⁰ Specifically, in March 2021, the Syracuse Police Department was sued by the New York Civil Liberties Union (NYCLU) after unlawfully denying FOIL requests for police misconduct records that did and did not result in discipline.⁵¹ A similar NYCLU lawsuit, was filed and won against the Rochester Police Department in December 2020, after the department also refused to release misconduct records.⁵² The reluctance of law enforcement agencies to abide by enacted police transparency measures is a substantial obstacle in the way of implementation of these laws.

State of California

On October 3, 2015, Assembly Bill 953: The Racial and Identity Profiling Act of 2015, was signed by Governor Jerry Brown into California law.⁵³ This legislation sought to improve public access to data on racial profiling and abuses of force by law enforcement.⁵⁴ Under this law, California law enforcement agencies are required to uniformly collect and report data on law enforcement interactions with communities to the California Attorney General.⁵⁵ Officers are required to report their perception of the identity of the person they stopped, including race and gender. This data would then be sent to an established advisory board for analysis and the development of recommendations to address existing issues. In application of this law, the San Francisco Police Department improved its data collection methods and implemented the State's Stop Data Collection System in May 2018.⁵⁶ The new system requires officers to document more information in their stop reports regarding police interactions for all types of stops, which is then made publicly accessible.

State of Florida

In 2018, Florida legislators passed the Criminal Justice Data Transparency law, which required law enforcement agencies, court clerks, state attorneys, public defenders, county detention centers, and state prisons to submit relevant records and data on a monthly basis—including the race of the people impacted.⁵⁷ However, 32 months after the entities were set to collect and publish data on its activity, no database had yet been created—despite agencies having been provided with the funds to do so. In response to the agencies' refusal to comply with the law, in August 2021 the ACLU filed a lawsuit on the state and local levels, including against the Florida Department of Law Enforcement, demanding the data be provided promptly.⁵⁸ Once again, public access to mandated data systems is intentionally hindered by resistant law enforcement agencies.

Interestingly, in September 2020, the Pasco County Sheriff's Office implemented a data system to generate lists of people it considered to be likely to break the law based on factors like arrest histories and unspecified intelligence.⁵⁹ The program was heavily criticized for monitoring and harassing families. This program provides an example of how law enforcement agencies can, and often do, abuse existing data collection systems at the expense of communities they are meant to serve.

State of Illinois

Likewise, on June 21, 2019, Illinois state legislators also enacted a statute on policing data collection to combat racial bias, called the Illinois Traffic and Pedestrian Stop Study Act.⁶⁰ The measure was first signed into law in 2003 and was sponsored by then-state senator Barack Obama. The statute is now expanded to encompass data collection on traffic stops and pedestrian stops. Now, over 900 Illinois law enforcement agencies are required to collect specific information whenever they stop someone, including the person's race, the reason for the stop, whether a search was conducted, whether contraband was discovered, and the outcome of the stop.⁶¹ The Illinois Department of Transportation then makes this data available to the public on an annual basis.

Local law enforcement agencies have also resisted efforts to adequately implement state laws mandating data collection on law enforcement interactions and have failed to properly monitor their own agency's system of collecting and publishing data.

New York City, State of New York

During the mayoral administration of Michael Bloomberg, the number of NYPD stops grew to hundreds of thousands.⁶² As a result, in 2008, the Center for Constitutional Rights filed the landmark stop-and-frisk case, *Floyd v. City of New York*, to seek injunctive relief for the NYPD's decade-long pattern of unconstitutional and racially discriminatory conduct.⁶³ In August 2013, the court found the NYPD systematically engaged in racially motivated and abusive policing practices. The judge ordered a court-appointed monitor to oversee compliance with ordered police reforms and ordered a Joint Remedial Process to collect input from impacted communities.⁶⁴ The City subsequently appealed the order and police unions attempted to intervene in the case.⁶⁵ In January 2014, the City and Bloomberg's successor, Bill de Blasio, agreed to embrace a reform agreement and settle the case. Among the reforms ordered by the court was the implementation of more comprehensive officer records of stops, review and evaluation by supervisors of stops conducted, and tracking of civilian complaints of racial profiling.⁶⁶ Recently, in May 2022, the court-appointed monitor reported that the NYPD engages in widespread underreporting, possibly in an attempt to mask ongoing racially motivated misconduct.⁶⁷

Furthermore, especially after 50-a was repealed, the NYCLU sent numerous FOIL requests to review policing records.⁶⁸ On August 20, 2020, the NYCLU was able to share the NYPD Misconduct Complaint Database, which contained the full database of NYPD officer misconduct reports dating back over 35 years.⁶⁹ The NYCLU obtained the database after filing the FOIL requests with the New York City Civilian Complaint Review Board (CCRB), an independent agency that investigates police abuse complaints.⁷⁰ Originally, the database was intended to be published on July 23, 2020. However, on July 22, 2020, the NYCLU was prohibited from

publishing the data after a collection of police and fire unions filed a lawsuit to block the release of the records.⁷¹ The NYCLU subsequently filed a motion arguing that the court's bar on release of the records was a violation of the First Amendment, and the data was later made public. This again demonstrates how law enforcement agencies resist and delay compliance with transparency measures.

The CCRB data includes relevant information on complaints made against officers, including the incident date, the officer's name, race and rank, the race of the impacted person, the allegation, and the CCRB's and NYPD's evaluation of the complaint.⁷² The NYCLU's analysis of the database revealed that the vast majority of complaints result in little or no discipline and the injured parties are overwhelmingly people of color.⁷³ The analysis also revealed fatal flaws in CCRB's system. Specifically, CCRB substantiates only a small fraction of the complaints it receives, which means that many complaints do not even reach the NYPD's desk.⁷⁴ Between 2000 and 2021, only 12,980 out of 180,700 complaints were substantiated, and even fewer resulted in the NYPD imposing discipline on its officers. Most complaints were not substantiated because the CCRB's "investigation" found a lack of evidence, the complainant was unavailable or uncooperative, or the officer was exonerated because though the event occurred, it was deemed not improper.

The NYPD also releases stop-and-frisk data through the publication of quarterly summary reports and through the annual publication of complete databases to the public.⁷⁵ The NYPD's quarterly reports are released by the NYCLU. The reports include data on stops, arrests, and summonses, which are disaggregated by categories like race and gender of the person stopped.⁷⁶ Additionally, the NYPD uploads the records from the NYPD Stop, Question, and Frisk database to their website annually.⁷⁷ The NYCLU has also published a comprehensive police transparency database to disclose to the public New York police department policies and rules.⁷⁸

Boston, State of Massachusetts

Another example of local agencies taking steps to collect policing data, exists in Boston, Massachusetts. The Boston Police Department (BPD) requires its officers to complete reports of police-civilian encounters, called Field Interrogation, Observation, Frisk and or Search (FIOFS Reports). BPD Rule 323 compels officers to complete these reports after "observ[ing], detain[ing], or interrogat[ing] a person suspected of unlawful design," after "frisk[ing] or search[ing] an individual during a stop," and after searching vehicles.⁷⁹ In 2010, the BPD hired a researcher to analyze more than 204,000 BPD reports. The analysis of these reports revealed that even though Black citizens made up 24% of Boston's population, they were subjected to 63% of police encounters between 2007 to 2010.⁸⁰ As the ACLU of Massachusetts recognized in its report "Black, Brown, and Targeted," these findings may still be grossly underestimating the role of racial bias in the BPD's policing practices because researchers were forced to rely on BPD's own data and deficient reporting practices.⁸¹ Notably, in 75% of the FIOFS Reports, BPD officers merely wrote "investigate person" as the reason for their encounters, which is an insufficient justification for a stop under the U.S. and Massachusetts Constitutions. Further, according to BPD officials, officers often neglected to file FIOFS Reports when encounters resulted in arrest, omitted encounters with people who lack arrest records or gang affiliations, and overall, failed to comply uniformly with the rule to report all stops and frisks.

The BPD failed to disclose any further data, despite the ACLU's public records request in September 2014 and the BPD pledge to publish policing data annually in July 2015. It was only after the ACLU of Massachusetts and the national ACLU filed a public-records lawsuits against the BPD in August 2015, that the BPD finally complied.⁸² On January 8, 2016, the City of Boston posted a substantial amount of street-encounter data to its Open Data Portal. This example demonstrates how even when local law enforcement agencies enact woefully faulty and lacking data systems, advocacy groups are forced to utilize additional resources to get agencies to comply.

Minneapolis, State of Minnesota

The Minneapolis Police Department also took a significant step toward police accountability and transparency when it launched an online data portal in August 2017 to allow the public to access disaggregated data from certain stops.⁸³ The data revealed that Black and Native American Minneapolitans make up a disproportionate number of stops, exceeding their population size. This data was only revealed after community organizers and organizations like the ACLU pressured the Minneapolis Police Department to properly track and regularly release the data. Specifically, in May 2015, the ACLU of Minnesota released a report analyzing what little data the Minneapolis Police Department collected for low-level arrests.⁸⁴ After the report was released, the ACLU successfully continued pushing the department to implement more robust data tracking and collection systems for the public, which led to the portal being created.⁸⁵

Data is also accessible in Minnesota through the Minnesota Government Data Practices Act ("Act"), which was originally enacted in 1974 to improve government data collection and the public accessibility of those records.⁸⁶ However, this Act has been willfully subverted by law enforcement agencies. For example, evidence showed that the Minneapolis Police Department was improperly classifying serious violations as "coaching."⁸⁷ Coaching is used to address low-level police behavioral problems. It typically comprises a conversation between the employee and his supervisor and a written memo for documentation. The Minneapolis law enforcement agencies were burying police misconduct by deliberately misclassifying incidents in its reports as coaching.⁸⁸ In response to this discovery, in June 2021, the ACLU of Minnesota filed a lawsuit against the Minneapolis Police Department to order the city to follow state law and release the disciplinary data.⁸⁹ The ACLU also filed a FOIA request under the Act in February 2022 to obtain data on no-knock warrants carried out by the Minneapolis Police Department amid calls for the firing of the officer that killed Amir Locke.⁹⁰ Indeed, calls for transparency and accountability of the Minneapolis Police Department significantly increased after officers of the department murdered George Floyd and used excessive force against protestors in subsequent demonstrations against police brutality.

District of Columbia

In another instance, in March 2016, the Neighborhood Engagement Achieves Results Act (NEAR) was passed by the D.C. Council.⁹¹ The statute requires the Metropolitan Police Department (MPD) to keep comprehensive records on every stop its officers complete. However, unsurprisingly, the MPD refused to comply with the law. Despite the ACLU of D.C. filing a FOIA request in February 2017 for the NEAR data, the MPD continuously fabricated excuses as to why

it would not release the data.⁹² In fact, based on the testimony of D.C. officials and MPD press statements, data collection requirements had yet to be implemented even two years after the enactment of NEAR.⁹³ Even after FOIA requests for this data were renewed, the MPD still refused to take steps to comply with NEAR.

Accordingly, in May 2018, Black Lives Matter D.C., the Stop Police Terror Project D.C., and the ACLU of D.C. filed a lawsuit against Mayor Bowser, Deputy Mayor Kevin Donahue, and Chief of Police Peter Newsham for violating their legal obligations to implement NEAR.⁹⁴ It was only after a court order that the MPD finally overhauled its data collection system and pledged to release stop-and-frisk data. The ACLU of D.C.'s analysis of the stop-and-frisk data collected by the MPD between July 22, 2019 through December 31, 2019, revealed that the MPD disproportionately stops Black people.⁹⁵

Despite the MPD's promise to publish the data every year, it failed to publish any data from March 2020 through February 2021. In response, the ACLU of D.C. filed a FOIA request in January 2021.⁹⁶ After the MPD failed to respond to the request for information, the ACLU of D.C. filed a successful lawsuit in the D.C. Superior Court, which ultimately forced the MPD to release the NEAR data. The ACLU of D.C.'s analysis of the 2020 data similarly revealed that the MPD had a pattern of disproportionately stopping and searching Black people.⁹⁷ The MPD's blatant refusal to abide by the statute, in addition to the numerous FOIA requests and court orders filed in response to its resistance, highlights the lack of adequate state mechanisms for implementation of data collection laws.

Overall, though some states have passed statutes on the collection and dissemination of policing data, law enforcement agencies often resist efforts to implement these laws. Further, the collection of data by police agencies often lacks uniformity and quality control, causing agencies to struggle to analyze their own data and miss out on crucial information related to interactions with their communities.⁹⁸ Like federal agencies, local law enforcement agencies have inadequate incentives to produce reliable and optimal information on policing.⁹⁹

The Role of Media Outlets and Unofficial Websites in Data Collection

In the absence of robust and comprehensive state and federal action regarding the collection and dissemination of policing data, media outlets and civil society websites often engage in investigative reporting. For example, in 2014, The Washington Post, began developing a database to track every fatal shooting by a police officer in the United States.¹⁰⁰ The database, which is still being updated today, relies on news accounts, social media posts, and police reports to collect and publicly release data on policing killings. The Guardian also collected data between 2015 and 2016 to create a database of police killings.¹⁰¹ Another prominent data source is the project Mapping Police Violence, which provides a comprehensive accounting of people killed by police since 2013.¹⁰² Mapping Police Violence captures an estimated 92% of the total number of policing killings since 2013.¹⁰³ These nongovernmental databases, though limited in its resources, serve to provide transparency to the public and accountability for police departments in the movement to confront systemic racism.

Recommendations

While data collection plays a critical role in upholding the rule of law and holding law enforcement accountable, we urge the International Independent Expert Mechanism to use its comprehensive and comparative research on data collection to advance much needed transformative changes in policing, not to maintain the status quo. As we noted in our 2020 submission to the UN High Commissioner for Human Rights, it is essential to reimagine an effective and far more limited role for police in the United States. We therefore reiterate the importance of implementing changes that will save lives, advance human rights and safeguard liberties; and create the conditions to start repairing decades of harm and violence inflicted on overpoliced communities of color. We therefore call on the Independent Mechanism to recommend that the United States take the following steps to significantly improve data collection on policing:

- Collect and disseminate comprehensive, publicly available data on police interactions, disaggregated by race, ethnicity, gender, self-reported LGBTQ status, and disability. This includes enforcement of the Death in Custody Reporting Act to obtain and publish data on deadly police force.
- Effectively and diligently oversee the full implementation of Executive Order 14074 on Advancing Effective, Accountable Policing, and Criminal Justice Practices to Enhance Public Trust and Public Safety, especially section 5 and section 6 of the order requiring federal law enforcement agencies to accurately collect and consistently report policing data.
- Provide concrete guidance and incentives to state and local authorities on the implementation of existing data collection laws, and require agencies without such laws, to mandate the enforcement of robust data collection laws with adequate monitoring. This includes passage of the End Racial and Religious Profiling Act.
- Enforce a nationwide uniform policing data collection and publication system across all states to provide full transparency to the communities police serve.
- Ensure that policing statistics are always released pursuant to the application of Freedom of Information Laws and Open Records Requests, without any waivers or exceptions for law enforcement agencies.
- Require the Department of Justice to prioritize data collection as part of its oversight of law enforcement agencies. Further require the Department of Justice to increase the number of pattern and practice investigations it initiates and to consistently monitor the implementation of subsequent consent decrees.

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