



NYCLU

NEW YORK CIVIL LIBERTIES UNION

Protecting Fundamental Rights and Liberties

A Legislative Agenda for 2015-2016

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I. POLICING AND THE CRIMINAL JUSTICE SYSTEM

The death of Eric Garner at the hands of a New York City police officer is driving protest and debate about the use of aggressive police practices in circumstances that involve little, if any, risk to public safety. The recent shooting that took the lives of two NYPD officers has given new urgency to the need for measures that will reduce tension and conflict between police and civilians. Governor Cuomo has called for a broad inquiry into the sources of this problem, which is not limited to New York City. He has called for legislation establishing an independent monitor charged with reviewing grand jury investigations of charges brought against police officers that involve the death of a civilian. He has also proposed proposals to make grand jury proceedings more transparent. These initiatives have merit, and should be addressed in the context of formal public hearings held statewide. However, these proposals, alone, are not sufficient to curtail overly aggressive policing practices, and to mitigate the conflict such practices create between police and civilians. To that end the NYCLU recommends the following measures.

Reform police practices

▪ Cite and release – end unnecessary custodial arrests

New York law authorizes police officers to issue a summons, or appearance ticket, rather than taking a person into custody for criminal violations and certain misdemeanors. There is little reliable data regarding police practices in such encounters. But there is ample evidence that custodial arrests are commonplace, if not routine, even for low-level, non-violent offenses.

Arresting persons for minor, non-violent offenses is simply bad policing. The practice foments tension and conflict between police and civilians; it creates unnecessary risk of harm – to police as well as civilians – as well as legal jeopardy that can disrupt the lives of those subject to arrest. The practice of making arrests for minor infractions is also wastes tax dollars at an exorbitant rate. What's more, giving police broad discretion in these circumstances invites unequal and discriminatory enforcement of the law.

Lawmakers should enact smarter policy. At least four states (Ohio, Minnesota, Virginia and Tennessee) have adopted laws *mandating* that police officers issue a citation and then release the individual issued the citation absent exigent circumstances – such as, a risk to public safety, the inability to identify the individual who committed an offense, or an outstanding warrant for an individual's arrest. New York should do the same, prohibiting custodial arrests for non-criminal violations, minor misdemeanors, and in other circumstances in which an arrest serves no public safety interest.

Restore fairness to the criminal justice system

▪ Reform public defense services

In 1963 the Supreme Court ruled that everyone accused of a crime is entitled to a competent lawyer, even if he or she cannot afford one. Almost immediately after that ruling New York passed the responsibility for public defense services to the counties. This resulted in an inefficient and poorly coordinated patchwork of sixty-two public defense programs.

In October of 2014 the State of New York settled a class-action lawsuit (*Hurrell-Harring v. State of NY*) that charged the state is failing its constitutional duty to provide effective legal representation to individuals charged with a crime who cannot pay for a lawyer. Across the state defendants often appear in court without legal representation. Public defense lawyers in New York carry an average of 420 felony cases in year – nearly three times the maximum caseload recommended by the New York State Bar Association and other legal experts. The settlement obligates the state and the five defendant counties (Onondaga, Ontario, Schuyler, Suffolk and Washington) to reduce the caseloads of public defense attorneys, guarantee counsel at arraignment, and ensure effective legal representation of indigent defendants.

However, the failure of the state’s public defense services is systemic – and therefore reform must be comprehensive and systemic. The settlement in *Hurrell-Harring* creates a model for reform in the five counties named in the lawsuit. The state must meet its commitment to reform the quality of public defense services pursuant to the settlement; and it must adopt those reforms statewide. This will require legislative action.

▪ Improve crime reporting

Modern policing practices are informed by the collection and analysis of data: crime complaints, arrests, shootings. The NYPD’s Compstat program is often cited as the engine of a data-driven policing model, one that allocates police resources based upon the nature and location of potential risks to public safety. But in New York lawmakers and law enforcement professionals lack key data needed to analyze how street policing is conducted in cities and towns across the state. Absent such data, policy makers cannot make sound judgments about the effectiveness of policing policies and practices.

In a recent op-ed piece two criminal justice experts (one, a retired NYPD captain) stated that it’s time to build a better Compstat – in the interest of good policing practices, and as a matter of credibility and accountability.³ “Open the books,” is their recommendation to the police. “The public needs to be informed in order to assess the effectiveness and fairness of its police force – so all crime data should be made public on a regular basis.” This includes information on misdemeanors and violations – such as the nature of offenses charged; the race, ethnicity, gender and age of the person charged; and the disposition of the summons.

³ John Eterno, Eli Silverman, “Building a Better Compstat,” *Daily News* (“Be our Guest”), Jan. 24, 2011, p. 23.

facilitate the transfer of public money to religious schools, in violation of the constitutional principle that bars the government from endorsing religion.

Much is at stake in the outcome of this debate. Lawmakers committed to a progressive, egalitarian society must oppose this proposal and related initiatives that would privatize public education, and thereby undermine the state's constitutional obligation to ensure all students a sound basic education.

▪ **Stop suspending and arresting students for minor misbehavior**

Education research in the last decade demonstrates that students who are suspended from school are at least twice as likely to drop out as their peers; the research also shows that students who are arrested in school are four times as likely to drop out. In districts across New York State, however, students are routinely subjected to suspensions and in-school arrests, often for minor acts of misbehavior. This push-out/drop-out phenomenon reflects misguided education policy, but also indicates widespread civil rights violations: The majority of the affected students are African-American and/or students with disabilities.

Misguided school suspension and discipline policies turn police officers into disciplinarians, and drive down graduation rates. In 2015, the NYCLU will advocate for enactment of the Safe and Supportive Schools Act, state legislation that would eliminate certain mandated discipline requirements, require transparency in disciplinary procedures, and enhance due process protections for students facing discipline. The bill would also provide educators with the flexibility to adopt creative disciplinary practices that hold kids accountable for their behavior in a safe, supportive learning environment.

II. **UPHOLD PROTECTIONS AGAINST DISCRIMINATION UNDER NEW YORK'S HUMAN RIGHTS LAW**

▪ **Prohibit discrimination based upon gender identity**

New York's Human Rights Law prohibits discrimination based upon certain protected statuses, such as race, ethnicity, age and gender. But people who are transgender and gender-nonconforming are often the targets of brutal and degrading discrimination because their appearance or behavior does not conform to societal gender norms. Such discrimination is lawful because gender identity and expression are not recognized as protected statuses under New York law.

The effects of this omission are greatly under-appreciated. Persons who are transgender routinely suffer discrimination that creates insurmountable barriers to meeting the most basic human needs, including housing, employment and medical care. These barriers

legislature to make unmistakably clear that all education institutions in New York are subject to the state's Human Rights Law.

IV. WOMEN'S EQUALITY

In his 2013 State of the State address, Governor Cuomo announced his commitment to pass a ten-point Women's Equality Agenda. That agenda included measures to strengthen equal pay laws, outlaw sexual harassment in all workplaces, authorize attorneys' fees in gender discrimination cases, and strengthen laws that protect against domestic violence and sex trafficking. The centerpiece of this women's rights agenda was a measure to reform the state's outdated abortion law, bringing it in line with the Supreme Court's ruling in *Roe v. Wade*.

The Women's Equality Coalition became a galvanizing political force in the two legislative sessions following the governor's address in 2013. However, due to a partisan political standoff, legislative action on the Women's Equality Act has been stalled.

The NYCLU, together with its allies in the Women's Equality Coalition, will press the governor and lawmakers to make 2015 the year in which New York adopts, *in law*, long overdue reforms that advance women's equality.

▪ **Workplace accommodations for pregnant employees**

Federal laws prohibit discrimination against women in the workplace. But pregnant women, especially low-wage workers performing physically demanding jobs, are routinely discriminated against. They are pushed out of their jobs or forced to take unpaid leave when they request a modest, temporary accommodation – such as a stool to sit on, more frequent restroom breaks, or temporary relief from heavy lifting. Explicit legal protections are needed for these workers because court decisions have created confusion regarding the law. Many New York employers do not understand their obligations, and employees are unaware of their rights. As a consequence women are often forced to choose between maintaining a health pregnancy and keeping their jobs.

We can, and must, do better to protect pregnant workers from harm. Proposed legislation would require that employers make a reasonable workplace accommodation when an employee has a known medical condition that could affect her pregnancy and childbirth. The bill is fair and reasonable: Employers may request medical documentation of the medical condition that requires an accommodation; and no such accommodation is required that would place an undue hardship on the employer.

▪ **Close the wage gap between women and men**

Women are entitled to equal pay. But it is often the case that women are underpaid relative to men – even when a woman is doing the same job as man. Women in New York earn 84 percent of what men earn; and the gender wage gap is even greater for African-American and Hispanic women. What's more, 61 percent of private sector employees in the United States report that