SENATE STANDING COMMITTEE ON CODES; ASSEMBLY STANDING COMMITTEE ON CODES; SENATE STANDING COMMITTEE ON CRIME VICTIMS, CRIME AND CORRECTION; ASSEMBLY STANDING COMMITTEE ON CORRECTION; SENATE STANDING COMMITTEE ON JUDICIARY; ASSEMBLY STANDING COMMITTEE ON JUDICIARY

HEARING:
Joint Public Hearing on Criminal Justice Data, Jan. 30, 2023

DATE OF TESTIMONY:
February 1, 2023

TESTIMONY OF THE POLICING PROJECT AT NYU SCHOOL OF LAW REGARDING IMPROVING COLLECTION OF CRIMINAL JUSTICE DATA IN NEW YORK STATE

In the wake of yet another police killing, the chasm between what people want to know about policing and what we actually know gapes. Though New York has taken some towards data collection and transparency, more must be done.

New York does not require law enforcement agencies to collect (and publish) some of the most fundamental policing data that many other states have been collecting for years (e.g., traffic and pedestrian stop data). Without data, the state risks implementing solutions that fail to fix underlying problems, or even exacerbate existing harms.

Data are essential for identifying the policies that actually advance public safety, while minimizing the policing harms that tend to fall disproportionately on Black people and communities of color.

Officer Stop Data

As a necessary first step, New York must start collecting meaningful data about traffic and pedestrian stops. Traffic stops are the most common public interaction with the police, yet New York has done little to collect information related to stops.

Twenty-three states, including Alabama, Montana, and Texas, have laws requiring the collection and publication of traffic stop data (and, in many states, pedestrian stop data)– but New York is not among them. Some of New York's largest municipalities, including

Stop data collection can lead to important improvements in policing outcomes. In Connecticut, for example, which has been collecting traffic stop data since 1999, racial disparities have fallen year over year.[1] The data collection efforts have also provided valuable information to policymakers in assessing what works. A Policing Project study of traffic stop data in Nashville, for example, found that the department's heavy reliance on minor stops was not an effective strategy for reducing crime.[2] In short, gathering this data will give lawmakers greater insight into what the problems that need solving are, and how to solve them.

We also need to understand the data we collect. One way to ensure a meaningful understanding of the data is to follow the lead of Illinois and require that non-police researchers study the data and provide legislators with an in-depth assessment of its takeaways and limitations. In this way, New York can ensure that it is not just collecting data, but contextualizing it as well.

Our recommendations:

- **Require every law enforcement agency to collect and report data on each traffic and pedestrian stop**, including the demographics of the officer and persons stopped, the basis for the stop, the outcome of the stop (i.e., whether a search was conducted and whether a citation was issued or an arrest made), unique officer ID, and other data points.[3]

- **Require law enforcement agencies to report stop data to a state agency annually.**

- **Require the state agency to publish stop data in a manner easily accessible to the public.**

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[1] "In general, we continue to identify far fewer departments in this report relative to prior year's studies with only two municipal departments and three State Police Troops." Ken Barone *et al.*, *Traffic Stop Data Analysis and Findings, 2020*, at xv, Conn. Racial Profiling Prohibition Project (Nov. 2022).

[2] *An Assessment of Traffic Stops and Policing Strategies in Nashville*, The Policing Project at New York University School of Law, at 3.

[3] More details about data points to collect for this recommendation, as well as all subsequent recommendations, can be found in the Policing Project's Data Collection and Transparency Model Statute.

Use of Force Data

New York has made some strides on collecting and publishing use of force information. Currently, New York's use of force data collection statute requires agencies to report all uses of force that involve a weapon, a chokehold, or that result in death or serious bodily injury. For these (and only these) types of uses of force, the Commissioner of the Division of Criminal Justice Services prepares an annual report that provides agency-level data on all use of force incidents for that year.

But more can be done. For example, under the current law, an officer can punch a person in the face and it need never be reported, so long as a "serious bodily injury" (defined as an injury that substantially risks death or disfigurement) does not result. New York should require agencies to collect information about uses of force that result in *any* bodily injury requiring medical treatment or evaluation and other categories of force (like when officers deploy canines against people).

More comprehensive data are needed to identify troubling patterns and make necessary reforms. Like a number of other states, New York should publish *incident-level data* on each officer use of force, including at least a unique officer ID. This would enable local policymakers to determine whether a small number of officers are responsible for a disproportionate number of use of force incidents.

Our recommendations:
- Require law enforcement agencies to collect and report information about **uses of force that result in *any bodily injury*** requiring medical attention or evaluation.

- Require law enforcement agencies to collect and report information about when **officers deploy canines** against people.

- Require that a **unique officer ID** be reported as part of each use of force incident.

Police Misconduct Settlement and Judgment Data

New York does not currently require municipalities or state agencies to publish how much they spend paying settlements and judgments in police misconduct suits or insuring against such misconduct. New York taxpayers should know whether they are funding massive misconduct payouts each year. New York should follow states like Maryland and require reporting of misconduct settlement data.

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Our recommendations:
- Require municipalities and state agencies to **publish totals spent on settlements and judgments** related to officer misconduct, with de-identified information about each claim's cost, subject, and sources of payment.

- Require municipalities and state agencies to **publish totals spent on insurance, risk management, or risk pools** to insure against law enforcement misconduct.

Other Types of Policing Data

Other categories of information would provide even greater insights into how police across New York operate and where regulations, oversight, and prevention are needed.

Complaints: First, New York does not currently require any law enforcement agencies to collect or share data on misconduct complaints received against officers. Several jurisdictions, including Delaware and Washington D.C., require agencies to report this information. Publishing complaints holds the law enforcement agency accountable for addressing them. It also allows the public and lawmakers to recognize demographic or geographic patterns in complaint data.

Agency policies: In addition, New York should follow Maine's lead and require police agencies to publish their policies governing how police operate in their communities.[4] In fact, New York City already requires transparency around its policing surveillance technology policies.

Collective bargaining agreements: Police collective bargaining agreements often govern whether and how police will be subject to discipline. New York, unlike states like Florida, Kansas, Montana, and Minnesota, does not require that police collective bargaining agreements be adopted in open meetings. Despite that, some municipalities in New York have once again gone further than state law, with cities like Ithaca, Buffalo, and Syracuse adopting their police collective bargaining agreements only after approval by the local municipal body.

Our recommendations:
- Require law enforcement agencies to **collect information about complaints** received, including incident details, demographics of the complainant (when

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[4] Me. Rev. Stat. § 2803-B.

known), status of the complaint, outcome of the complaint, and unique officer ID for the subject of the complaint, and to report this information to a state agency. The state agency that receives reports should be required to publish the information in a manner accessible to the public.

- Require law enforcement agencies to **publish department policies and directives**.

- Require law enforcement agencies to **publish existing police collective bargaining agreements** and make proposed collective bargaining agreements available for public comment before being adopted in an **open meeting**.

<u>Conclusion</u>

The Policing Project commends the New York Assembly and Senate for convening this joint session—and for the steps that the state already has taken toward greater data collection and transparency around policing. We urge the General Assembly to introduce and pass additional legislation requiring police to collect and publish more information, so that the people and lawmakers of New York can better understand the landscape and craft effective, meaningful improvements.