

COMMUNITIES UNITED FOR POLICE REFORM

Written Testimony of Communities United for Police Reform (CPR) Michael Velarde, Director of Organizing & Policy

Submitted to:
New York City Council Committee on Public Safety
On the *Criminal Justice Reform Act* package

January 25, 2016

Communities United for Police Reform (CPR) is a multi-sector and multi-strategy campaign to end discriminatory policing practices in New York. Our 60+ organizational members and additional partners aim to help build a lasting movement that promotes public safety and policing practices based on respect for the rights and dignity of all New Yorkers. The partners in this campaign come from all five boroughs, all walks of life, and represent many of those unfairly targeted by the New York Police Department (NYPD). The campaign brings together a movement of community members, lawyers, researchers and activists to work for systemic, policy and cultural change.

For too long, New Yorkers of color – including low-income, LGBT/gender non-conforming, women, immigrant, youth, homeless and others - have been forced to experience discriminatory broken windows policing that targets certain communities for the enforcement of non-criminal, low-level infractions, while other communities have been exempt from such enforcement despite identical infractions occurring. This disparate treatment and the disproportionately harsh legal penalties and ramifications after enforcing such infractions do not contribute to public safety and have resulted in the severe harm of New Yorkers. People targeted by and subjected to such enforcement have faced unfair consequences that have often led to arrests, criminal records and open warrants. It is unquestionable that a significant portion of New York City's 1.4 million open warrants are a result of the compounding impact from the legal ramifications following such enforcement. These outcomes have led to significant collateral consequences on the educational, employment, housing, and immigration prospects and status of thousands of New Yorkers, among other challenges.

Therefore, criminal justice reform efforts that seek to reduce how the laws and legal process following such enforcement promote racial and other disparities, criminalization of particular communities, and mass incarceration are essential. The idea that a New Yorker might spend any amount of time within a correctional facility, like those on Rikers Island or elsewhere in the city, as a result of a non-criminal violation is illogical and does not contribute to public safety.

The new proposals within the *Criminal Justice Reform Act* (CJRA) include some good first steps with laudable intentions, though concerns about the details or lack thereof within some proposals need to be addressed to ensure the legislation has a long-term positive impact for New Yorkers. We appreciate the Council's introduction of these new proposals as a recognition of some of the disproportionate negative consequences of broken windows policing and disparate criminal justice enforcement, and we hope this represents the beginning of a productive and inclusive conversation that can lead us to comprehensive solutions to the challenges within our legal system.

As part of moving towards a comprehensive resolution of harmful policies, it also remains critical that the CJRA summons reform be advanced together with police reform proposals, such as the Right to Know Act. The problematic policing practices that drive the disparities in who faces low-level enforcement in the first place must be simultaneously tackled in order to resolve the root of the problem. Failing to address the front-end problems with policing reform and solely relying on back-end reforms would only perpetuate disparities into a newly expanded civil enforcement structure offered by the Criminal Justice Reform Act.

Economic and Financial Protections, and the Need to Guarantee Due Process and Legal Representation for civil infractions

It is imperative that important concerns about the economic and financial consequences of these proposals on New Yorkers be addressed in a substantive and thoughtful manner. There are serious concerns and questions about how incentives to generate revenues with these new civil penalties might lead the city to severely harm the economic health of New Yorkers in a way that mirrors the problems that residents in Ferguson, Missouri have faced. It is clearly not the intention of this Council and these reforms, but incentives – particularly those relating to revenue – are powerful, and protections that are statutory and extend beyond current officeholders are needed to ensure the long-term protection of New Yorkers.

This concern only increases the importance of ensuring that police reform legislation is concurrently advanced. If we neglect to address that low-income New Yorkers of color are the ones disproportionately targeted for low-level enforcement, then we risk simply shifting an economic burden onto those New Yorkers who can least afford it. Such an unintended outcome would likely carry negative consequences for these New Yorkers' income, credit, housing, employment, financial and other standings, as well as the economic well-being of specific communities and neighborhoods.

The significance of advancing legislative reform of police practices during encounters, together with the CJRA, is further heightened given the high rates of dismissal for some of the most frequently charged summonses. In 2013, over 40% of open container summonses were dismissed outright, found to be legally insufficient, or disposed with an adjournment in contemplation of dismissal (ACD). This was also true in nearly 70% of parks charges, over 70% of bicycle on the sidewalk charges¹ (nearly half of which were legally insufficient), and 25% of public urination charges.

Furthermore, the high rates of dismissal of criminal code misdemeanor and violation charges for a number of minor infractions highlights the importance of ensuring due process and access to legal representation in the implementation of civil violations. While summons court is no model of due process, the lack of such due process at OATH is a concern that must be substantively addressed. New Yorkers' experiences with the Transit Adjudication Bureau related to civil offenses raise serious concerns about OATH courts' lack of due process and lack of options for recourse when unjustified tickets are issued. Legislation must ensure that there is adequate due process, as well as right to counsel, in OATH proceedings.

¹ Although bicycle on the sidewalk charges are not included in the Council's "Criminal Justice Reform Act" package, the high level of dismissals helps to demonstrate the importance of due process and legal representation for minor offenses.

It is also critical that the public be informed through robust public education efforts that include publicizing potential negative consequences for those who may plead guilty to charges without understanding the full spectrum of potential consequences. For example, individuals may pay a fine and plead guilty to an excessive noise ticket, not realizing the potential for negative consequences that impact their housing. A landlord could use such tickets as proof of breach of contract, unintentionally providing another tool to unscrupulous landlords to evict people in neighborhoods experiencing gentrification and displacement of long-term residents.

Community Service Alternative

We support providing a community service alternative to the payment of monetary fines, as recommended in T2016-4006. It is critical for low-income New Yorkers to have such an alternative to avoid the economic and financial harm such a system might impose. However, it is vital that this legislation be fully detailed and specified beyond its current form to guard against potential implementation that is inflexible or abusive towards those with the least access to financial resources. Such protections should ensure that community service is a feasible option within such a system, including when elected officeholders change.

Community service options should be reasonable to prevent individuals with low tickets do not lose the equivalent of an entire day of work to complete community service, and should be flexible to afford options for weekend and evening service with convenient locations to individuals serving in order to protect against employment loss and undue financial hardship to individuals. There should also be no fee options available to individuals who may not be able to perform community service for reasons including age, disability, or other health and wellness reasons.

Strong protections must exist to ensure that community service sites and supervisors do not perpetuate some of the existing harms faced by those who are mandated to do community service. For example, our coalition has heard reports of young women who have experienced sexual harassment and misconduct by city supervisors and others at community service sites, without any protection or recourse for such harassment and misconduct.

The current legislation related to community service indicates that the poverty definition will be determined by the “center for employment opportunity,” without specification of the entity. There is some confusion about the entity being referred to, and whether the legislation intended to designate the city’s Center for Economic Opportunity. Clarity should be provided on the designee, and the chosen entity should be required to update the NYC-specific poverty threshold annually and clearly publish the index and changes on its website and through city notices each year.

T2016-4001 | NYPD Discretion over Policy & Implementation

Requiring the NYPD to formally provide guidance to officers related to when civil enforcement should be the preference over criminal enforcement, as well as requiring this guidance be made public, is a positive step for transparency. However, given the lack of public trust for the police department to hold itself accountable or to discipline officers who abuse their authority, and the reality that the NYPD’s role is to enforce the law rather than legislate enforcement options, there are significant concerns related to the department maintaining policy-making discretion over enforcement guidelines related to non-criminal offenses.

Given the existing and historically discriminatory manner in which broken windows policing has been implemented, there are also deep concerns that there will be discriminatory and abusive aspects of daily implementation by NYPD officers – particularly since the option of criminal misdemeanors and/or violations are generally not being removed as a result of the CJRA. Significant protections are necessary to avoid this discretion resulting in the perpetuation of racial and other disparities with civil penalties.

To ensure that such guidance result in daily practice that supports the intent of the legislation will require:

- Development of the guidance with input of directly affected communities, police reform advocates and criminal justice advocates
- Guidance should specify disciplinary outcomes in instances where officers do not follow departmental guidance, and there should be public reporting of disciplinary actions
- Guidance should include civil preferencing for a broad range of non-violent minor infractions, not limited to only those in the current bill (i.e. charges related to turnstile jumping, riding a bicycle on the sidewalk)
- Robust data collection, regular public reporting of data, and oversight

Reporting Transparency

We are supportive of the increased transparency of Int. 639 and 662 to require the NYPD to report quarterly on the issuance of criminal court summonses, desk appearance tickets, and OATH summonses, with demographic information on the race, gender and age of those issued. The city needs to be transparent in collecting and reporting the impact of such policing enforcement on communities, and this is an important step together with the restoration of collecting race data on summons forms.

The reporting bills should be amended to ensure that they provide the Council and the public with sufficient data to ensure proper and non-discriminatory implementation of the new CJRA provisions. Amendments should include:

- Reporting on the number of instances that include an individual being held in custody, regardless of the incident outcome
- Reporting on the use of force during any incidents, including an officer placing their hands on an individual. This is particularly important for violations, where most would agree that there is no need to make physical contact or use force on an individual.
- Intersectional demographics reporting, so that categories such as a subject's race, gender and age are reported as their own categories as well as in relationship to each other.

Conclusion

We thank the Council for the opportunity to offer testimony today on the importance of reforming the legal penalties of certain low-level offenses. In order to build on the introduction of these proposals, we urge the Council to engage communities impacted the most by these issues to have a substantive opportunity in shaping final solutions to ensure they are comprehensive and positive in the long-term

regardless of the ideology of future officeholders. Advancing policing reforms at the same time as these summons reforms is a priority for communities, to address the lack of accountability and transparency within police encounters, policies and practices that have historically driven and continue to promote the disproportionality of criminal justice outcomes. Reducing the legal ramifications at the end of police encounters is important, but legislative reforms like the Right to Know Act are equally essential to reducing abuses that continue to harm New Yorkers and undermine trust within communities.