

COMMUNITIES UNITED FOR POLICE REFORM

Testimony of Carolyn Martinez-Class On Behalf of Communities United for Police Reform (CPR)

**Submitted to NYS Senate Finance & Assembly Ways and Means Committee
Chairs**

For January 29th 2019 Joint Legislative Hearing on Public Protection Budget

Dear Senate Finance Chair, Assembly Ways and Means Chair, and members of the New York State Legislature:

My name is Carolyn Martinez-Class and I am presenting this testimony on behalf of Communities United for Police Reform, an unprecedented campaign working to end discriminatory policing practices in New York State. As part of our work, we have organized coalitions of over 200 local and national organizations to win police accountability legislation and policy change in New York City and in Albany; our members have trained thousands of New Yorkers on their rights in interactions with police; and we engage in community education, civic engagement, community organizing, litigation and other activities to promote greater transparency and accountability from government – particularly police departments – to build a safer New York that is respectful of the rights of all New Yorkers.

We believe the public protection budget provides a key opportunity to advance policy that will help make New York's police departments more transparent and accountable to the communities they serve.

About CPR

CPR is a multi-sector campaign working to end discriminatory and abusive policing practices in New York. Through community organizing, policy advocacy, public education, litigation, civic engagement and other strategies, CPR seeks to build a broad-based movement to promote community safety and respect for the rights and dignity of all New Yorkers. Our members and partners include over 200 local and national organizations, many of whom are based in and led by those most directly impacted by abusive policing. Our member organizations include grassroots community organizing groups, policy and legal advocacy organizations, research projects and more.

Through this campaign, we have helped to change the local conversation on public safety, increased the knowledge and practice of New Yorkers in observing and documenting police misconduct, and have won key policy victories including passage of the Community Safety Act (which established the first Inspector General of the NYPD and an enforceable ban on bias-based policing) and Right To Know Act in the New York City Council; and organized the campaign to secure an executive order establishing a special prosecutor for police killings from Governor Cuomo.

Comments Related to the Initial Executive Budget Proposal

Amongst low-income communities of color - including youth, immigrants, women, LGBT and gender non-conforming people, homeless individuals and others - it is no secret that there is a systemic crisis in lack of meaningful or timely police transparency and accountability throughout New York State. New York State is arguably the least transparent state in the country when it comes to police misconduct in part because of the police secrecy law, CRL section 50-a. To add to the opaqueness, New York municipalities have inadequate and uneven data collection as related to policing. The lack of public information about law enforcement action and our police departments, coupled with the continued discriminatory, abusive over-policing in communities of color that is the driving force and pipeline to mass incarceration raises this issue as one of incredible importance for the legislature to address. Therefore, we appreciate that police reform was afforded some attention in the proposed Executive Budget and related policy document.

The Governor's Budget sections that have been released to-date include three items specific to policing: 1) a proposal to establish a permanent 'Special Counsel' within the Attorney General's office to investigate instances where a person is unarmed and killed by police; 2) a proposal regarding the use of Desk Appearance Tickets (DATs) instead of Custodial Arrests in certain situations; and 3) a proposal to mandate use of force reporting throughout New York State. Additionally, the Governor's Budget outlined priorities for Marijuana legalization - which is one of CPR's priorities for the upcoming legislative session.

CPR and our member organizations oppose the Special Counsel proposal included in the preliminary Executive Budget. Based on the budget document, what is being proposed is legislation that would permanently establish within the Attorney General's office a unit to investigate cases where unarmed people are killed in or pursuant to police custody. While we believe it is necessary to codify the Office of the Special Prosecutor, which was created in 2015 through Executive Order, the proposal in the budget is a step backwards from the original EO and is opposed by CPR member organizations, partners and many families who have lost loved ones to police killings in New York.

Unlike the Executive Order, the proposal would remove the Attorney General's discretion to investigate instances where there is "significant question as to whether the civilian was armed and dangerous at the time of their death."¹ This lack of discretion will limit the Attorney General's capacity to investigate in timely ways, cases where there are discrepancies between the testimony of officers and witnesses about whether an individual was armed and posed a danger at the time of their killing. There are a number of cases in recent history where this exact question was at the center of determining

¹ No. 147: A Special Prosecutor to Investigate and Prosecute Matters Relating to the Deaths of Civilians Caused by Law Enforcement Officers <https://www.governor.ny.gov/news/no-147-special-prosecutor-investigate-and-prosecute-matters-relating-deaths-civilians-caused>

whether the Office of the Special Prosecutor would investigate the killing. In the case of Deborah Danner, a 66-year-old woman in the Bronx, who allegedly held a bat while naked when officers stormed her bedroom and who was fatally shot, the AG declined to prosecute because they felt it fell outside of their jurisdiction – in spite of the fact that there are serious questions as to whether the officers' statements about the bat were true, and if true, whether it warranted the use of deadly force.²

We would urge the Governor and the legislature not to take police accountability in New York State backwards. **The changes to the Office of the Special Prosecutor that should be achieved through budget are already outlined in Assemblymember Perry's Special Prosecutor bill (A1601),** which has been previously included in the Assembly budget and has for two consecutive years passed out the Assembly. The Special Prosecutor legislation would codify and strengthen the Executive Order in a number of significant ways. It would clarify the Attorney General's jurisdiction to include all killings and deaths in custody, removing the unnecessary armed/disarmed distinction which delays investigations (too often resulting in great harm to investigations) and creates confusion about who has jurisdiction in cases where there's a dispute. It would expand the AG's jurisdiction to explicitly investigate, and if necessary prosecute, criminal misconduct related to killings and deaths in custody.³ Assemblymember Perry's Special Prosecutor legislation would also require the AG to publicly report on investigations and outcomes, even in cases where they decline to indict, and would enable the AG's office to investigate and prosecute related misconduct, such as actions that enable cover-ups.

Enacting robust Special Prosecutor policy can be accomplished through the budget. Unfortunately, the Governor's proposal falls short and represents a serious deviation from even the flawed Executive Order. **Again, we ask the legislature to advance a budget proposal that includes the critical elements highlighted here that are within Assemblymember Perry's Special Prosecutor bill A1601.**

In addition to the concerns raised regarding the Special Counsel proposal, we have concerns related to the policy to reduce the use of custodial arrests for misdemeanors and Class E felonies. We support the goal of decreasing the use of custodial arrests generally - including for misdemeanors and felonies. Our concern with the proposed budget language is that we fear that the extensive list of exceptions risk swallowing the rule and making the policy unlikely to result in the goal of reducing custodial arrests. In

² Attorney General Won't Investigate Deadly NYPD Shooting of Mentally Ill Bronx Woman <https://www.nbcnewyork.com/news/local/Deborah-Danner-Mentally-Ill-Woman-Shot-Killed-Police-NYPD-Bronx-Condemn-Vigil-Investigation-397749941.html>

³ In the following conforming orders to EO147 – the Governor has clarified that the AG has the authority to investigate related criminal misconduct: conforming orders related to the killings of Gerard Roldan (147.21), Jaime Roderigo Lopez-Cabrera (147.20) Edwin William Garcia Lopez (147.19), Robert Scott (147.18), Saheed Vassell (147.17), Susan LoTiempo (147.16), Dwayne Pritchett (147.15), John Havener (147.14) Jonathan Maldonado (147.13) and others <https://www.governor.ny.gov/keywords/executive-order>

particular, exceptions that enable officer discretion reinforce the status quo and systemic racial/discriminatory biases, and as a result would be unlikely to drive down custodial arrests.

Finally, as related to the proposals in the Executive Budget - we want to express support for the provision mandating use of force reporting. The proposal includes requiring every department, county sheriff, and the superintendent of the state police to report to DCJS any instance during which an officer discharges his firearm in the direction of another person, or where the officer's actions resulted in death or serious bodily harm to another person. **We believe that there are ways to strengthen this reporting requirement, including requiring the inclusion of geographic and demographic data, defining 'bodily harm' more broadly, and including other examples of use of force (e.g. use of tasers, batons, etc).**

There were two other proposals included in the Governor's policy priorities that were not specifically outlined in the budget documents that have been released to-date including a proposal to redefine 'peace officers' and a proposal regarding the use of police and other law enforcement agencies in schools. We are eager to discuss specifics with the legislature and the Governor's office once a proposal is publicly shared.

Besides strengthening the Special Counsel proposal, narrowing the enumerated exceptions to the use of Desk Appearance Tickets instead of custodial arrests, and enhancing the use of force reporting mandate - **we ask that the legislature consider including the Police STAT Act (S1830), the Unnecessary Arrests bill, and the repeal of 50-a (A2513) in their respective one-house budget proposals.**

The Police Statistics and Transparency (STAT) Act, would require police departments across the state to record & report comprehensive demographic and geographic data on deaths and killings occurring during law enforcement activity as well as enforcement of low-level offenses (including violations, misdemeanors, etc.) to improve transparency and help address aggressive and selective police enforcement.⁴ A repeal of 50-a would bring much needed transparency to police departments throughout the state, and help address a systemic lack of accountability for officer's who engage in misconduct and the Unnecessary Arrests bill would end the use of custodial arrests for non-criminal minor offenses and violations.

CPR also supports the legislation advocated for by the statewide **Start SMART NY** coalition (**Sensible Marijuana Access through Regulated Trade**), which is comprised of organizations and advocates dedicated to criminal justice reform, civil rights, public health, and economic justice and faith leaders, directly impacted people, farmers, and community-based organizations – all of whom support marijuana legalization grounded in racial and economic justice.

⁴ The Police STAT Act has previously been included in the Assembly one-house budget, and has passed out of the Assembly for three consecutive years.

We support legalization because it will remove a tool that has been used to harm communities by effectively ending the ineffective, racially biased, and unjust policing enforcement of marijuana prohibition in New York and create a new, well-regulated, and inclusive marijuana industry that is rooted in racial and economic justice. Marijuana legalization is a criminal justice reform issue. Legalization will inherently eliminate one of the top misdemeanor arrests from the state's penal law. New York's legalization framework must also:

- Clear criminal records (either through sealing and vacatur or expungement) and address additional devastating impacts of marijuana prohibition in the fields of immigration and family law, and protect against discrimination in housing and employment based on a prior marijuana arrest or off-the-clock marijuana use.
- Expand resentencing and reclassification of crimes for people previously convicted for marijuana, increasing opportunity for thousands of New Yorkers; and removing a positive marijuana test as justification for violating a person's parole or probation.

Protect against continued criminalization of youth and help people transition from the illicit to the legal market.

Comprehensively address impacts in the fields of immigration, family law, and discrimination in housing and employment based on a prior marijuana arrest.

- Tackle the unjust consequences of marijuana prohibition and the hyper-criminalization of communities, primarily communities of color and low-income areas, by creating a process for people who have been previously convicted for marijuana can have their records sealed and/or marijuana convictions vacated or reclassified, and resentence currently incarcerated individuals who are serving a sentence due to a marijuana-related offense.

Importantly, legalization presents a unique and much-needed opportunity to create equity, economic justice, and work to restore communities most damaged by this country's failed war on drugs. **We urge the legislature to, through the budget process, effectively end marijuana prohibition with a racial equity lens.**

Thank you for your time and consideration.

