



## **Suggestions for Participating in Police Collaboratives**

### **I. Before the Meeting.**

The clear language of EO 203 indicates that the local “Public Defender” who provides services to the particular municipality must be “consulted”. It is not clear if that means the indigent service provider in that municipality must be a member of any committee, but it certainly must mean that we must be at least heard in a meaningful way prior to any report being ratified.

But do we want our voice to be the leading or only voice? Of course not.

#### **A. Identify, Organize, Educate and Empower your Allies.**

Most indigent defense offices have standing relationships with groups, organizations and individuals who provide services to our client community and members of our client community. Use all your contacts and experiences with local allies to get them energized and to the table. The municipality is also required to consult with them, especially with any groups who seek to address systemic racism in the community. There is no way this transformative process can be considered legitimate without these voices from the community being heeded.

Go through the Executive Order with them. Empower them to demand their space at the table with the appropriate representative from the relevant municipality. Be clear that in no way are you telling them what to say, but help lead them to analyze their priorities and speak with their own voice. The best moments I have seen at these EO 203 public forums are when members of the community take up the cause and tell their painful stories of police interactions. In many ways, these personal stories are more impactful than our lawyerly approaches to these issues.

#### **B. Gather local and State data to make your point at the outset.**

I suspect that at every gathering there will be people present who do not think there is a racial problem in the local criminal justice system and that the police have little if anything to do with it if there is. The Division of Criminal Justice Services at <https://www.criminaljustice.ny.gov/crimnet/ojsa/stats.htm> has data for every county that should be sufficient to dispel those thoughts. Both policing and outcomes in the local criminal justice system likely speak for themselves. Use that local data to drive home the point that there is clearly a problem and now is the time to do something about it.

In addition, any discussion about data will necessarily lead to a discussion of the value and necessity for accurate and transparent local data about what the police do. Incorporate a discussion about what data is available, what data should be available and how it can be made transparent to the public on an ongoing basis going forward. That is the only way members of the

community will be able to police the police absent the creation of a Civilian Citizen Review Board or some type of civilian oversight group. Such Boards are an immense challenge. They often have no real teeth, and are very difficult to establish in rural areas of the state. Getting a commitment to transparent data in any EO 203 plan will assist any community group and your office in at least keeping tabs on police actions short of a CCRB established in your community.

**C. Know your terrain.**

As the local indigent legal defense providers we certainly know all the Courts and the Das and perhaps even some aspects of the local law enforcement administrative structure. Take some time and try to gather information about the heads of the municipalities that are tasked with organizing any listening sessions, forums, working groups and guiding their boards to any final ratifications. As we always do, seek areas where ground might be fertile for agreement in that locale. Look for ways to advance other priorities best as possible.

**D. Don't be shy about reminding the municipality of the consequences of non-compliance:**

The Division of Budget is empowered to withhold state and federal funding if a compliant plan is not ratified by the local Board by April 1<sup>st</sup>, 2021. In most cases Board action would have to be taken by March 2021. Time is very short.

## **II. Possible Plans**

Whatever you and your allies have prioritized for these EO 203 forums, it is unlikely you will all get what you want. Thus, it is necessary to have an eye on the long game. You or some of your allies may want to form a loose coalition or a formal committee to continue to monitor police activity. Try to build into any ratified plans the building blocks of information you can use to provide adequate, real time monitoring of law enforcement down the road.

**A. Civilian Review Boards** are very complicated, specific to jurisdictions, and beyond the scope of this minimal guide. Here are some links to extensive information provided by NYSDA:

**Government Law Center of Albany Law School, The New York Experience: Models of Citizen Oversight (Fall 2003)**

<https://www.albanylaw.edu/centers/government-law-center/about/publications/past-publications/Documents/The%20New%20York%20Experience-%20Existing%20Models%20of%20Citizen%20Oversight.pdf>

**National Association for Civilian Oversight of Law Enforcement**

<https://www.nacole.org/>

<https://www.nacole.org/resources>

**Guidebook for the Implementation for New or Revitalized Police Oversight (2016)**

**Civilian Oversight of Law Enforcement: A Review of the Strengths and Weaknesses of Various Models (September, 2016)**

This report from the **US Commission on Civil Rights**, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>, contains a section on civilian review boards

From the ACLU-CT, **For Civilian Review Boards to Work, They Must Avoid Past**

**Mistakes** (September 10, 2020) <https://www.acluct.org/en/news/civilian-review-boards-work-they-must-avoid-past-mistakes>

**Getting it Right: Building Effective Civilian Review Boards to Oversee Police**, Udi Ofer (ED, ACLU of New Jersey) (2016)  
<https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1572&context=shlr>

**In Search of Police Accountability**, Rodney D. Green and Jillian Aldebron (Phylon, Vol. 56, No. 1, Special Volume: Remembering the 150th Anniversary of the Birth of W.E.B. Du Bois and the 50th Anniversary of the Death of Martin Luther King, Jr. (SUMMER 2019), pp. 111-133) [attached]

## **B. Data:**

The DCJS data on the DCJS website appears to be mostly annual and lags behind. DCJS does also provide monthly reports broken down by officer to each department. These reports should be made publicly available in the name of transparency.

### **Data we would want collected and posted on the department's website:**

- What is the racial makeup of the jurisdiction? 30% of traffic stops are of citizens of African descent means nothing if you don't know if the jurisdiction is made up of 6% or 60% of this demographic.
- What is the racial makeup of traffic stops in the jurisdiction?
- What is the racial makeup of searches during a traffic stop regardless of whether it resulted in an arrest?
- What is the racial makeup of consent searches, regardless of whether the search resulted in an arrest?
- What is the racial makeup of searches during street encounters, regardless of whether the search resulted in an arrest?
- What is the racial makeup of citizens arrested for obstructing or resisting?
- What is the racial makeup of use of force reports?
- What is the racial makeup of the police department?
- What is the racial makeup of applicants?

**C. General Orders:** It would also be beneficial to convince the local departments to place their General Orders publicly on their website. There is no real argument against this as the General Orders can be FOILED in their entirety. Posting them on the police website also avoids the problems of having to continually update the orders by FOIL.

### **General Orders we would want to see posted on the website:**

- Use of Force General Orders
- Duty to Intervene General Orders

### **Policy Resources**

- **Campaign Zero Model Use of Force Policy**  
<https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5deffb38594a9745b936b64/1576009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf>
- **NAACP, Pathways to Police Reform Community Mobilization Toolkit**  
<https://www.naacp.org/wp-content/uploads/2018/07/Toolkit.pdf>
- **The President's Task Force on 21<sup>st</sup> Century Policing: Implementation Guide Moving from Recommendations to Action (2015)** <https://cops.usdoj.gov/RIC/Publications/cops-p341-pub.pdf>

## **D. Addition Website Data:**

In addition to the General Orders and the Data, Former Civil Rights Law 50-a material, now mostly available by FOIL should be on the website.

- To the extent possible, local municipalities should be encouraged to publicly post all police disciplinary records that would have to be released under the new FOIL laws. Again, since those records are now subject to FOIL, there does not seem to be a strong argument against this.
- A form should be available on the website to file an internal affairs complaint and follow up with the complaint as well as how the complaint was resolved should be posted as well. A sample citizen complaint form can be found here:  
<https://secureservercdn.net/198.71.233.184/1be.177.myftpupload.com/wp-content/uploads/Complaint-Action-Form.pdf>

### **E. Police Training**

Trainings should be continuously monitored to ensure they are up-to-date and should be annual and necessary before any promotion. Trainings should be given by outside vendors. All trainings, including the dates given and the number of officers (by rank) in attendance and who gave the training should be posted on the website.

#### **Trainings we would like given annually and posted on the website:**

- Implicit Bias/Racial Sensitivity/Anti-racist training
- De-escalation training
- Implicit Bias/Gender, Gender Identity and Gender Expression Sensitivity/Anti-sexist training.

All police training material should be posted on the website.

### **F. Vulnerable Clients**

Attached as addendum A is an analysis of mental health issues and some possible plans to suggest in moving forward.

Additionally, NYSDA has posted a number of other links to address vulnerable clients including ESL citizens, LGBTQ citizens, minority ethnicity citizens, minority religious citizens, non-conforming gender citizens, and other types of citizen whose culture, appearance, or language may be unfamiliar to the officer who encounters them. Here are some resources from NYSDA:

#### **People who are Deaf or Hard of Hearing**

- Model Policy for Communicating With People Who are Deaf or Hard of Hearing (ADA.gov and USDOJ) <https://www.ada.gov/lawenfmopolicy.pdf>
- Settlement with Houston- Model policy <https://www.ada.gov/houston.htm#anchor284876>
- National Association for the Deaf, Police and Law Enforcement <https://www.nad.org/resources/justice/police-and-law-enforcement/>
- Talila A. Lewis, <https://www.talilalewis.com/publications.html>  
Concerns re Disability/Deaf Rights Communities' Responses to Policing Systems' Violence  
<https://docs.google.com/document/d/1zac8cR-0sN4WMfMGj3ka5bN8PpwJl17Z774klynevzo/edit?fbclid=IwAR0cttFKmvPAvHOQNNnVrAe8PHW06u7kjmKHYd2i8UKWM2otv7SwkOksLLI>

#### **Limited English Proficiency**

- Sample Directive  
[https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/lep\\_sample.pdf](https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/lep_sample.pdf)

- Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan Addressing Limited English Proficiency in a Law Enforcement Agency [https://www.justice.gov/crt/fcs/Law\\_Enforcement\\_Planning\\_Tool](https://www.justice.gov/crt/fcs/Law_Enforcement_Planning_Tool)

**Law Enforcement Guide to the Muslim Community (Council on American-Islamic Relations)** <https://www.cair.com/wp-content/uploads/2020/02/Law-Enforcement-Official%E2%80%99s-Guide-to-The-Muslim-Community.pdf> (includes information on general interactions, body searches, etiquette on entering homes and mosques)

### **Transgender People**

- Police Department Model Policy on Interactions with Transgender People (National Center for Transgender Equality) [https://transequality.org/sites/default/files/docs/resources/FTPS\\_MP\\_v6.pdf](https://transequality.org/sites/default/files/docs/resources/FTPS_MP_v6.pdf)
- Background report (National Center for Transgender Equality) <https://transequality.org/blog/new-report-details-failure-of-nation-s-police-departments-to-protect-and-serve-transgender>

**Position statement of The Arc and the American Association on Intellectual and Developmental Disabilities on the criminal justice system:** <https://thearc.org/position-statements/criminal-justice-system/>

### **III. Looking toward the future: Keep the Pressure on:**

This is a long game. The more we can get them to continue to meet and the more we get them to post on the websites the more accountable they will be to the public into the future. Someday, with continued pressure, the coalitions may be able to make some inroads into the CBA's when they come up for renewal.

### **Collective Bargaining Agreements**

<https://seethroughny.net/contracts/police>

Also, check out Tim's Donaher's great idea for police officer to be a licensed profession with its own oversight:

<https://m.rochestercitynewspaper.com/rochester/the-time-for-a-standard-code-of-conduct-for-police-is-now/Content?oid=12572114>

Attached as Exhibit B is a spread sheet condensing some of these issues and possible suggestions for progress published by the NYCLU.