Office of the New York State Attorney General Letitia James

Law Enforcement Misconduct Investigative Office

Second Annual Report Pursuant to Executive Law Section 75

December 31, 2022

Introduction

This is the second annual report of the New York Attorney General's Law Enforcement Misconduct Investigative Office (LEMIO), a recently-established office created pursuant to Executive Law 75 that is charged with preventing and remedying misconduct at local law enforcement agencies in New York State.

Our statutory goals are "enhancing the effectiveness of law enforcement, increasing public safety, protecting civil liberties and civil rights, ensuring compliance with constitutional protections and local, state and federal laws, and increasing the public's confidence in law enforcement."[1]

To advance these vital goals, Executive Law 75 provides LEMIO with authority to investigate misconduct at more than 500 covered agencies across the state, examine policies and procedures, issue reports on the office's findings, and recommend reforms. These recommendations can include legislation, policy changes, disciplinary action, and other remedial steps.

On an annual basis, LEMIO is required to submit a report "summarizing the activities of the office and recommending specific changes to state law to further [its] mission."[2]

Section II of this report provides an overview of Executive Law 75 and the duties that it imposes on local law enforcement agencies. It also describes an initial set of LEMIO focus areas.

Section III summarizes LEMIO's activities over the past year, including initiating investigations into allegations of misconduct, building capacity by recruiting staff and developing protocols and procedures, and establishing relationships with covered agencies, community groups, and other crucial stakeholders.

Finally, Section IV identifies a series of important legislative changes that would further the goals of effective and accountable law enforcement. One significant reform would be the adoption of legislation banning racial profiling and requiring increased data collection and reporting on law enforcement activity. Such a bill would bring New York State in line with established best practices in other states, promote transparency, and help LEMIO and the public ensure that law enforcement is operating fairly and effectively. Other important legislative measures include facilitating local civilian oversight and promoting non-police alternatives for assisting people in mental health crisis.

[1] N.Y. Exec. Law § 75(2)(d).

[2] N.Y. Exec. Law § 75(3)(h).

Overview of LEMIO and Executive Law 75

Executive Law 75 was enacted in June 2020 following state- and nation-wide protests regarding high-profile law enforcement abuses and a perceived lack of accountability. Its creation reflects a legislative recognition of the need for a stronger system of statewide oversight to help increase public trust in law enforcement, preserve civil rights and civil liberties, and protect public safety.

Executive Law 75

Under Executive Law 75, LEMIO's jurisdiction extends to more than 500 local enforcement agencies (known as "covered agencies") across New York State, ranging from the New York City Police Department (NYPD) to county sheriffs to smaller police departments in towns and villages. Every agency that employs police officers as defined in N.Y. Crim. Proc. Law 1.20 is a covered agency for purposes of Executive Law 75, other than agencies under the jurisdiction of the Metropolitan Transportation Authority Inspector General, the Port Authority Inspector General, and the State Inspector General.[3]

Executive Law 75 empowers LEMIO to "receive and investigate complaints from any source, or upon [its] own initiative, concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse in any covered agency," to review policies and procedures of covered agencies with regard to the prevention and detection of misconduct, and to "investigate patterns, practices, systemic issues, or trends identified by analyzing actions, claims, complaints, and investigations."[4]

The statute also authorizes LEMIO to determine whether disciplinary action, civil or criminal prosecution, or further investigation by an appropriate federal, state, or local agency is warranted, to prepare and release written reports of investigations, and to recommend remedial action.[5] In conjunction with other units within the Office of the Attorney General (OAG), LEMIO may seek structural changes to protect civil rights and prevent misconduct through civil litigation.[6]

[3] N.Y. Exec. Law § 75(1).

[4] N.Y. Exec. Law § 75(3)(a),(e) & (g).

[5] N.Y. Exec. Law § 75(3)(c),(d) & (f).

[6] *See In re: New York City Policing During Summer 2020 Demonstrations,* No. 20-cv-8924, 2021 WL 2894764, at *6-7 (S.D.N.Y. Jul. 9, 2021); *New York v. Town of Wallkill,* No. 01-cv-0364, 2001 U.S. Dist. LEXIS 13364, at *9 (S.D.N.Y. Mar. 16, 2001).

LEMIO is required to inform the Division of Criminal Justice Services and the heads of covered agencies of allegations of misconduct and the progress of its investigations unless special circumstances require confidentiality.[7] This statutory requirement is particularly important to ensure that covered agencies can investigate and address potential misconduct involving their personnel, as is the case when accountability systems are working properly.

Executive Law 75 also imposes new reporting duties on covered agencies and their personnel, including the Section 75(5)(b) requirement that covered agencies refer to LEMIO instances in which an officer or employee has been the subject of "at least five complaints from five or more individuals relating to at least five separate incidents ... within two years." Upon receiving such a referral, LEMIO is required to "investigate such complaints to determine whether the subject officer or employee has engaged in a pattern or practice of misconduct, excessive force, or acts of dishonesty."

LEMIO Priority Areas

With its broad scope and mandate, Executive Law 75 is a powerful vehicle for identifying and addressing misconduct, improving policies and practices, and enhancing trust in law enforcement, all of which are crucial to the safety and well-being of New Yorkers.

Yet with coverage over 500 agencies employing more than 80,000 personnel, LEMIO is not a substitute for effective local accountability mechanisms, which should be the first line of review of allegations of misconduct.[8] Police chiefs and sheriffs, internal affairs and professional standards units within covered agencies, civilian review boards, district attorneys, and legislative oversight are key players when it comes to effective and accountable policing. Community and advocacy groups and other stakeholders also have a crucial role.

Given the scope of Executive Law 75, LEMIO will focus on taking action where there is reason to believe that existing procedures may be insufficient. Our aim is to ensure accountability where it is lacking, strengthen local oversight, increase transparency, and improve policies and practices. We will prioritize investigations of potential patterns and practices of misconduct and systemic issues that impact significant numbers of community members or are directed towards marginalized groups.

[7] N.Y. Exec. Law § 75(3)(b) & (b-1).

[8] Executive Law 75 emphasizes the importance of local accountability mechanisms. For example, Section 3(b) requires LEMIO to inform covered agencies of allegations involving their personnel and Section (5)(b) states that referral investigations "shall be in addition to and shall not supersede any civil, criminal, administrative or other action or proceeding relating to such complaints or the subject officer or employee."

Our areas of focus for the coming year include:

- » Policing practices that have a discriminatory impact on the basis of race, gender, and other protected classes, including disparities in police stops and uses of force and the failure to appropriately respond to sexual assault and domestic violence;
- » Retaliation in connection with First Amendment-protected activity;
- » False testimony and other instances of dishonesty; and
- » Inadequate complaint procedures, internal investigations, and other lapses in accountability and disciplinary processes.

We will also focus on outreach to covered agencies, community groups, and others to help guide our approach.

Summary of Activities

This section summarizes LEMIO's work, including our portal for receiving reports of misconduct, our ongoing investigations and litigation, the Section 75(5)(b) referral process, our efforts to build organizational capacity, and our outreach and engagement.

Online Portal for Reporting Misconduct to LEMIO

Executive Law 75 authorizes LEMIO to investigate complaints received from members of the public and to investigate police misconduct on our own initiative.[9] The law also imposes a duty on personnel of covered agencies to report information concerning certain types of misconduct to LEMIO.

To these ends, the OAG has created an online portal for members of the public and personnel of covered agencies to report misconduct, which can be accessed at: https://ag.ny.gov/bureau/LEMIO

Every report of alleged misconduct that we receive is carefully considered by LEMIO staff. We use the information that is reported to guide our investigative and enforcement activity. While we are not able to fully investigate and resolve every report of misconduct that we receive through the portal, every submission is valuable in helping us shape our oversight.

LEMIO is required by statute to inform covered agencies of reports of misconduct involving their personnel unless special circumstances require confidentiality. We may also share submissions with other local, state, or federal agencies when appropriate.

[9] N.Y. Exec. Law § 75(3)(a), (e) & (g).

Ongoing Investigations and Litigation

LEMIO has a number of ongoing investigations into potential misconduct pursuant to Executive Law 75(3)(a) and (g). Investigations may be prompted by reports received through the online portal, referrals or notifications from other government agencies, media reports, contacts with community groups and nonprofits, data analysis, and other sources.

Some of these investigations relate to individual instances of alleged misconduct, particularly where the covered agency's internal accountability and disciplinary process does not appear to have properly addressed the incident.

In other cases, including matters conducted jointly with the OAG's Civil Rights Bureau, LEMIO investigations focus on potential patterns and practices of misconduct. These broader investigations involve potential discriminatory policing, including racially-motivated stops, seizures, and enforcement of low-level violations, and the use of excessive force, including against vulnerable groups such as young people and people in mental health crisis. Retaliation by police against people engaging in First Amendment-protected activity, particularly in connection with racial justice protests, is another issue of statewide concern to the OAG and is the subject of ongoing pattern-or-practice investigations.

The OAG has also sued the NYPD in federal court seeking to end the department's pattern of using excessive force and false arrests against New Yorkers during First Amendment-protected protests, including the summer 2020 racial justice protests.

This lawsuit stems from the OAG's extensive investigation of the NYPD's response to the 2020 racial justice protests. From May 2020 through January 2021, OAG attorneys, investigators and other staff team reviewed over 1,300 complaints, interviewed witnesses, coordinated a public hearing, and collected evidence from witnesses, the NYPD, and other government agencies. Based on this investigation, the lawsuit alleges that the NYPD used excessive force against protesters in over 150 incidents between May and December of 2020, falsely arrested legal observers and curfew-exempt essential workers, and otherwise violated New Yorkers' First Amendment rights. The lawsuit also specifically charges the NYPD and its leadership with failing to address its longstanding pattern of abuse by not properly training, supervising, and disciplining officers to prevent misconduct, despite knowledge and public admission that they violated the rights of New Yorkers. This litigation is ongoing.[10]

[10] *See In re: New York City Policing During Summer 2020 Demonstrations,* No. 20-cv-8924, 2021 WL 2894764, at *6-7 (S.D.N.Y. Jul. 9, 2021).

Section 75(5)(b) Referrals

Executive Law 75(5)(b) requires covered agencies to refer to LEMIO incidents in which an officer or employee has "receiv[ed] at least five complaints from five or more individuals relating to at least five separate incidents involving a certain officer or employee within two years." Upon receiving such a referral, LEMIO is required to "investigate such complaints to determine whether the subject officer or employee has engaged in a pattern or practice of misconduct, use of excessive force, or acts of dishonesty." Importantly, "[t]he referral and investigation … shall be in addition to and shall not supersede any civil, criminal, administrative or other action or proceeding relating to such complaints or the subject officer or employee."

As of publication, LEMIO has received 215 referrals pursuant to Executive Law 75(5)(b). Our investigations into most of these referrals are ongoing. We have resolved eight referrals to date, none of which resulted in a finding of a pattern or practice of misconduct. A short summary of the closed referrals follows:

» Nassau County Police Department: Five referrals closed without a finding of a pattern or practice. With respect to two referrals, we identified instances of problematic conduct that did not rise to a pattern or practice finding.

» Yonkers Police Department: One referral closed without a finding of a pattern or practice. While we did not find a pattern or practice of misconduct, we identified an instance of a traffic stop followed by a search of a vehicle and its occupants that was likely retaliatory in nature and unjustified under law.

» Utica Police Department: One referral closed without a finding of a pattern or practice.

» Endicott Village Police Department: One referral closed without a finding of a pattern or practice.

We anticipate resolving a number of pending referrals early in 2023 and expect the speed in which we are completing investigations to increase over time. We are also working with covered agencies and the Division of Criminal Justice Services to ensure that covered agencies are aware of their Executive Law 75(5)(b) obligations and are in full compliance.

Capacity Building

LEMIO is a new, first-of-its-kind statewide law enforcement oversight office. Therefore, in addition to our investigative activity, one of our primary efforts has been building organizational capacity. To do so, we have focused on developing investigative and organizational protocols and processes and on recruiting personnel across the state. In addition to New York City, we now have LEMIO attorneys based in Buffalo. We anticipate adding further personnel in Buffalo, Albany, and New York City in winter and spring 2023, increasing our ability to cover the state and establish connections with key regional stakeholders.

Engagement and Outreach

To effectively fulfill our statutory mandate, LEMIO must build strong and productive relationships with those who are affected by our work, from law enforcement agencies to impacted community members. To that end, we have focused on engaging and working with stakeholders, including community groups, covered agencies, law enforcement associations, experts, academics, and other oversight practitioners. Over the course of the past year, LEMIO personnel regularly met with representatives of covered agencies and law enforcement associations, community groups and nonprofits, experts on policing, other police accountability agencies, and bar associations, among others.

Continuing and expanding upon these outreach efforts will be a major priority in the year ahead, especially with respect to community stakeholders.

Legislative Recommendations

Executive Law 75(3)(h) requires LEMIO to "recommend[] specific changes to state law to further [its] mission." The following legislative recommendations would promote civil rights and civil liberties, enhance public confidence in law enforcement, and improve public safety. These recommendations are consistent with the recommendations from LEMIO's First Annual Report issued on December 31, 2021.

Pass Legislation that Increases Transparency and Bans Profiling

Law enforcement officers are empowered with broad authority to stop people, conduct searches, make arrests, and use force to do so. Yet despite these sensitive and sometimes dangerous activities, community members have limited access to data concerning interactions between law enforcement and the public.

While New York has taken initial steps to improve law enforcement transparency, including by requiring use of force data to be tracked and published, the state's laws do not cover many important indicators. And with hundreds of law enforcement agencies in New York State, to the limited extent that agencies separately collect and track data, the data are often inconsistent and difficult to access. As a result, community members and the state and local governments that represent them are left in the dark when it comes to key information on policing practices and their impact. The data that is available suggests that enforcement often disproportionately falls on people of color.

Across the country, there is a growing movement towards transparency and accountability, with nearly half of U.S. states now requiring data collection when an individual is stopped by law enforcement and most states prohibiting bias-based profiling. New York should join these states by mandating uniform statewide data collection and by banning bias-based profiling by law enforcement. This kind of legislation would improve public confidence in policing and help protect against racial and other forms of discrimination.

One important component of such legislation would be to prohibit agencies from relying on race and other protected characteristics in initiating or determining the scope of law enforcement action, including pedestrian and traffic stops, searches, and arrests. This prohibition not only would bring New York in line with the majority of other states, but also would permit New York to access a federal funding program to help support the collection and analysis of police traffic stop data as a means of reducing profiling.[11] To provide just a few examples, states like California,[12] Connecticut,[13] and Kansas[14] have all banned bias-based profiling in this manner.

In addition, law enforcement agencies should track and report a standardized set of data on traffic and pedestrian stops including the duration and location of each encounter, the reason the encounter was initiated and its result, the perceived race, gender, and age of the person stopped, and actions taken by the officer during the encounter such as handcuffing, ordering a person out of a vehicle, searching people and vehicles, seizing property, and using force.

Law enforcement agencies should also make their policies publicly available online, except for policies that, if disclosed, would substantially undermine ongoing investigations or endanger officers or members of the public. They also should be required to publish collective bargaining agreements and to disclose annually the amount they spend on settlements relating to alleged misconduct.

Given the logistical challenges involved, data collection should be facilitated by a centralized state agency such as the Division of Criminal Justice Services (DCJS) to ensure that agencies have the capacity to accomplish the mandate. DCJS would also be charged with periodically collecting and publishing key data reported by law enforcement agencies. These efforts could be supported by the federal funding that would be made available by the anti-profiling provision of the legislation.

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[11] *See* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144, §1906 Grant Program to Prohibit Racial Profiling (2005) (providing resources to states that ban bias-based profiling to collect, maintain, and analyze data on traffic stops).

[12] *See* Cal. Penal Code § 13519.4.

[13] *See* Alvin W. Penn Racial Profiling Prohibition Act, Conn. Gen. Stat. Ann. § 54-1l, § 54-1m.

[14] *See* Kan. Stat. Ann. § 22-460E6, § 22-4609, § 22-4610, § 22-4611.

Statewide data collection and reporting systems have been implemented in states such as New Jersey[15] and California[16] were recommended for police departments across the country in the 2015 Final Report of the President's Task Force on 21st Century Policing.[17]

In sum, legislation that bans profiling and requires agencies to track and publicize important data and policies would advance public accountability, help agencies manage and evaluate their own performance, and help LEMIO in furthering its mission to enhance the effectiveness of law enforcement and protect civil liberties and civil rights. Uniform data collection on traffic and pedestrian stops across the state would allow the public and government entities such as LEMIO to identify disparities in law enforcement action and help address and prevent discriminatory policing. Better access to data would also help inform state and local policymakers, enhancing the effectiveness of law enforcement and ultimately strengthening community trust.

Pass Legislation to Explicitly Facilitate Access by Civilian Oversight Agencies and the OAG to Sealed Records in Connection with Misconduct Investigations

New Yorkers are protected by a number of laws that restrict access to—or "seal"—certain criminal justice records. While these sealing laws serve important functions, they can unintentionally hinder investigations of police misconduct.

Oversight entities such as civilian review boards and LEMIO often require access to sealed criminal justice records to fully investigate and address allegations of police misconduct. For example, civilian investigators may need to review body-worn footage of incidents involving police interaction with young people or arrest reports for individuals who were ultimately exonerated—both of which can be hindered by sealing laws. Improved access to sealed records is particularly important in cases of systemic or widespread misconduct, including investigations of patterns of discriminatory policing, because in these cases it may be particularly difficult for civilian investigators to contact everyone who was affected by the misconduct.

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[15] New Jersey law requires that the Office of the Attorney General publish aggregate data regarding N.J. State Police motor vehicle stops, including the reason for the stop, the actions the trooper took during and after the stop, the driver's race, and whether any evidence was seized. This information is available on a database that is updated every 6 months and includes a public feedback mechanism. *See* N.J.S.A. 52:17B-222 et.seq., "The Law Enforcement Professional Standards Act of 2009"; *see also* New Jersey Office of the Attorney General, *State Police Traffic Stop Dashboard*, https://www.njoag.gov/trafficstops. The N.J. A.G. also promulgated a new Use of Force policy requiring covered law enforcement agencies to report involved officers' names, the age, race, and gender of the victim of each use of force, whether injuries were sustained, the underlying circumstances of the incident, and the kind of force used, within 24 hours of the incident. See Office of the Attorney General, *Use of Force Policy*, Dec. 2020, https://www.nj.gov/oag/force/docs/UOF-2020-1221-Use-of-Force-Policy.pdf.

[16] *See* Cal. Gov't Code § 12525 (use of force data), § 12525.2 (deaths in custody and arrest-related deaths), § 12525.5 (stops), Cal. Pen. Code § 13010-13012 and § 13020-13021 (arrests), and Cal. Pen. Code § 13012(a)(5) (civilian complaints against peace officers). All of these data and more, including crimes and clearances and officer staffing, are publicly downloadable and viewable on regularly updated dashboards at California Department of Justice, "Open Justice Data Portal," https://openjustice.doj.ca.gov/data. *See also* Cal. Sen. B. 16 (2020-2021), Chapter 402 (Cal. Stat. 2021), making sustained findings of excessive or unreasonable force and of failures to intervene in such force subject to disclosure.

[17] President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing, (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

The laws that require the sealing of arrest records were created to help protect people whose charges were resolved favorably (in other words, who were not convicted) from suffering long-term consequences from their contact with the criminal justice system. Yet ironically, those same sealing laws can end up preventing oversight agencies from investigating potentially problematic police conduct that led to the arrest and charges in the first place.

Legislation to address this problem would help protect civil rights, bolster law enforcement accountability, and ensure that allegations of misconduct are fully and completely investigated. For example, Senate Bill 8067 would amend various provisions of the Criminal Procedure Law, Civil Rights Law, and Family Court Act to ensure that police oversight entities can access sealed records for purposes of their investigations of potential misconduct.

Importantly, any such legislation should provide the OAG with access to sealed records on the same terms as civilian law enforcement oversight entities when investigating potential police misconduct.

Facilitate Civilian Oversight of Law Enforcement

In addition to Senate Bill 8067, other legislation to remove obstacles to strong independent civilian oversight could improve accountability and help prevent misconduct. As we noted in last year's annual report, over the past several decades, many jurisdictions have established external civilian-led entities designed to provide independent oversight of law enforcement agencies.[18] The development of these civilian oversight entities generally has resulted from concerns over weak or biased internal accountability processes and resulting breaches of public trust.

Recently, prompted by increased scrutiny in the wake of high-profile incidents of police misconduct, civilian oversight entities have expanded—both in number and in the extent of their authority—in New York State and across the country.[19] For example, voters in Rochester and Albany recently approved referenda creating or expanding civilian oversight entities.[20] In New York City, the Civilian Complaint Review Board has been granted additional powers through referenda and the actions of the City Council.[21] Other municipalities across the state have also developed or bolstered their own civilian oversight entities, including through the individualized reviews of local law enforcement agencies required by the Executive Order 203 Police Reform and Reinvention Collaborative Plan.[22]

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[18] *See generally,* Michael Vitoroulis, Cameron McEllhiney, & Liana Perez, *The Evolution and Growth of Civilian Oversight: Key Principles and Practices for Effectiveness and Sustainability*, Office of Community Oriented Policing Services (2021); Michael Vitoroulis, Cameron McEllhiney, & Liana Perez, Civilian *Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*, Office of Community Oriented Policing Services (2021).

[19] *See, e.g.,* Cheryl Corley, Across The Country, *Voters Approve More Civilian Oversight for Police*, NPR, Nov. 7 2020, https://www.npr.org/2020/11/07/931806105/across-the-country-voters-approve-more-civilian-oversight-for-police; Sharon R. Fairley, Survey Says?: *U.S. Cities Double Down On Civilian Oversight of Police Despite Challenges and Controversy*, Cardozo L. Rev. De Novo (2020).

[20] Brian Sharp, *Rochester voters approve Police Accountability Board, setting stage for court battle*, Dem. and Chron., Nov. 5, 2019, https://www.democratandchronicle.com/story/news/2019/11/05/police-accountability-board-rochester-ny-election-results-passes-referendum-vote/4171703002/; Giuliana Bruno, *Albany Community Police Review Board may soon launch first probe with new powers from 'Prop 7,'* News 10, Nov. 23, 2021, https://www.news10.com/top-stories/albany-community-police-review-board-may-soon-launch-first-probe-with-new-powers-from-prop-7/.

[21] *See, e.g.,* Stephen M. Lepore, *CCRB adopt rules to allow investigations into NYPD sexual misconduct*, Pix11, Feb. 10, 2021, https://pix11.com/news/local-news/ccrb-adopt-rules-to-allow-investigations-into-nypd-sexual-misconduct/; Yoav Gonen, *De Blasio and Council Move to Widen Net for NYPD Misconduct Probes*, The City, Nov. 17, 2021, https://www.thecity.nyc/2021/11/17/22788662/de-blasio-council-widen-net-for-nypd-misconduct-probes.

[22] *See, e.g.* New York State Office of the Governor, N*ew York State Police Reform and Reinvention Collaborative: Initial Report on Innovative Community Initiatives*, May 25, 2021 at 12, https://policereform.ny.gov/system/files/documents/2021/05/policereform_innovativecommunityinitiatives.pdf; *A Resolution Adopting and Authorizing Mayor to Submit the Reimagining Public Safety Plan Pursuant to New York State Executive Order 203*, Ithaca, NY, Mar. 30, 2021, available at https://www2.tompkinscountyny.gov/files2/2021-04/Master%20Final%20Document%20City%20of%20Ithaca.pdf.

Despite the trend towards local oversight, several longstanding provisions of state law have had the unintended consequence of restricting the development of civilian oversight entities. For example, in certain circumstances, state civil service laws have been held by certain courts to preclude municipal referenda and legislation that establish or empower civilian oversight entities, blocking the democratic preferences of local voters.[23] Another law has been interpreted by courts to prevent non-police personnel from presiding over police disciplinary hearings, unlike disciplinary hearings for other municipal employees.[24]

In the coming session, the legislature should seek to address these issues and, more generally, to facilitate civilian oversight by removing restrictions that prevent localities from determining the best way to establish police oversight and accountability mechanisms that serve their individualized needs of their communities.[25]

Develop Alternative Public Health Approaches for People in Mental Health Crisis to Minimize the Risks of Police Involvement

In our first annual report, we called for legislation to help localities establish specialized mental health units to de-escalate situations involving people experiencing mental health crises instead of relying on armed police officers as first responders. Sobering statistics demonstrate that the status quo has resulted in tragic outcomes. Studies indicate that people with mental illness generate one in ten calls for police service, and account for at least one in four fatal police encounters.[26] People with serious mental illness are more than 11 times as likely to experience police use of force, more than ten times as likely to be injured, and 16 times more likely to be killed by law enforcement as those without serious mental illness.[27] Data from California show that people perceived or known to have a mental health disability were 4.8 times as likely to be searched by police, even though the discovery rate on those searches was lower than the rate on people perceived to have no disability.[28]

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[23] *See, e.g., Rochester Police Locust Club, Inc. v. City of Rochester,* 196 A.D.3d 74 (N.Y. App. Div. 2021).

[24] *See, e.g.,* Lynch v. Giuliani, 301 A.D.2d 351, 359 (N.Y. App. Div. 2003) (holding that Unconsolidated Law § 891 required disciplinary hearings to be conducted by employees of the NYPD Commissioner, rather than the Office of Administrative Hearings and Trials).

[25] Resources on police accountability and oversight include *What Does Police Oversight Look Like?*, Policing Project (2020), https://www.policingproject.org/oversight#chart; Udi Ofer, Getting It Right: *Building Effective Civilian Review Boards to Oversee Police*, 46 Seton Hall L. Rev. 1033 (2016).

[26] *See* Doris A Fuller et al., Overlooked in the Undercounted, *The Role of Mental Illness in Fatal Law Enforcement Encounters*, Treatment Advocacy Center (2015), https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf.

[27] *See* Ayobami Laniyonyu and Phillip Atiba Goff, *Measuring Disparities in Police Use of Force and Injury Among Persons with Serious Mental Illness,* BMC Psychiatry (2021) https://bmcpsychiatry.biomedcentral.com/counter/pdf/10.1186/s12888-021-03510-w.pdf.

[28] California Racial & Identity Profiling Advisory Board, Annual Report 2022, at 85, https://oag.ca.gov/system/files/media/ripa-board-report-2022.pdf.

There are several reasons that alternative systems that prioritize mental and physical health assistance by trained professionals likely will achieve better results for the individuals who need care and support and for the police officers who are often forced to deal with situations for which they are not adequately prepared.[29] As explained by Don Kamin, the director of the Institute for Police, Mental Health & Community Collaboration, "the mere presence of the police can escalate a situation even before they have a chance to say or do anything. And, quite frankly, not every police officer has, nor should have, the ability to work with individuals in distress in the first place."[30]

Police are not mental health specialists, and they often lack the training, resources, and support to fill that challenging role. There are numerous ways in which police interactions can worsen the struggles individuals are experiencing, from the trauma of police use of force to the myriad negative mental and physical consequences of incarceration. And public safety is ill-served by a system that may worsen the struggles experienced by these people rather than ensuring that supportive services are brought to bear. One study estimates that fully 10% of law enforcement agencies' budgets has been spent responding to and transporting people with mental illness.[31]

Recognizing the problems resulting from relying on police as the default first responders to mental health crises, more and more local governments are turning to co-responder models (in which civilian specialists pair with police responders) or alternative first responder models (in which armed police are not involved in the response).[32] A recent study by the Brennan Center for Justice shows that, among the 50 jurisdictions with the largest law enforcement agencies, more than half had adopted a co-responder program by 2020, and since 2020, 15 of these jurisdictions created new co-responder programs.[33] Of those same 50 jurisdictions, 19 have adopted alternative first responder programs since 2020, including New York City.

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[29] *See, e.g.,* Dr. Ronal Serpas, *A Smarter Public Safety Model, Addressing Crises Related to Mental Health, Substance Abuse, and Chronic Homelessness,* Center for Justice & Safety Finance (2021) https://justicesafetyfinance.com/perspectives/a-smarter-public-safety-model.

[30] Samantha Max, *Is the NYPD Ready for New Role in Dealing with People in Mental Health Crisis?*, Gothamist, Dec. 3, 2022, https://gothamist.com/news/is-the-nypd-ready-for-new-role-in-dealing-with-people-in-mental-health-crisis.

[31] *See* Road Runners, Treatment Advocacy Center (2019), https://www.treatmentadvocacycenter.org/storage/documents/Road-Runners.pdf.

[32] *See* Ashley Krider et al., *Responding to Individuals in Behavioral Health Crisis via Co-responder Models: The Role of Cities, Counties, Law Enforcement, and Providers*, Policy Research Inc. & National League of Cities (Jan. 2020), https://www.theiacp.org/sites/default/files/SJCResponding%20to%20Individuals.pdf; Amy C. Watson et al., *Crisis Response Services for People with mental Illnesses or Intellectual and Developmental Disabilities: A Review of the Literature on Police-based and Other First Response Models,* Vera Institute of Justice (Oct. 2019), https://www.vera.org/downloads/publications/crisis-response-services-for-people-with-mental-illnesses-or-intellectual-and-developmental-disabilities.pdf.

[33] Ram Subramanian and Leily Arzy, *Rethinking How Law Enforcement is Deployed, Brennan Center for Justice* (Nov. 2022), https://www.brennancenter.org/our-work/research-reports/rethinking-how-law-enforcement-deployed?s=03.

For example, in 2021, New York City launched B-HEARD (Behavioral Health Emergency Assistance Response Division), a pilot program that diverts 911 mental health calls to a specialized division that dispatches mental and physical health professionals.[34] Some of the data from the first year are encouraging. The teams reached people in under 16 minutes on average; 89% of people accepted assistance; unnecessary hospitalizations declined significantly; and every person served was offered follow-up care for mental and physical health.[35] Other initiatives are taking root across the state. In Syracuse, lawmakers have approved a program that pairs mental health workers with police on calls involving mental health crises.[36] In Rochester, city leaders launched a "Person in Crisis" team of professionals trained in crisis intervention, de-escalation, and social work.[37] Ithaca and Tompkins County have instituted planning for alternative public safety approaches including non-armed community responders to handle intervention in mental health crises.[38]

While preliminary results in some jurisdictions nationwide are promising, many programs remain at the pilot project level, and have yet to provide alternatives at scale, whether due to lack of resources or difficulties in implementation, particularly in routing mental health calls to specialist responders.[39] This suggests a role at the state level to assist communities with funding and technical assistance in establishing these programs.

We strongly recommend legislation to help localities establish specialized mental health units that are specifically trained and equipped to provide assistance to those in mental health crisis, including by providing funding and technical support. Such legislation could also require training for emergency dispatchers and potentially create regional mental health councils to provide structure and oversight to local responses. Building up non-law enforcement responses to people struggling with mental illness has the potential to better allocate resources towards helping people in need of mental health assistance and decrease the risk of harm from police encounters. Finally, we also note that the OAG's Office of Special Investigation recently called for legislation to require meaningful training for all police officers in crisis intervention to prepare them for the inevitable instances in which they are called upon to respond to behavioral health emergencies.[40]

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[34] *See* B-HEARD, City of New York, https://mentalhealth.cityofnewyork.us/b-heard.

[35] *See* B-HEARD, Transforming NYC's Response to Mental Health Emergencies Fiscal 2022, City of New York, https://mentalhealth.cityofnewyork.us/wp-content/uploads/2022/10/FINAL-DATA-BRIEF-B-HEARD-FY22-TOTAL.pdf.

[36] *See* Chris Libonati, *City Re-ups Contract to Keep Sending Mental Health Workers to 911 Calls with Syracuse Police*, Syracuse.com (Apr. 11, 2022), https://www.syracuse.com/news/2022/04/city-re-ups-contract-to-keep-sending-mental-health-workers-to-911-calls-with-syracuse-police.html.

[37] *See* Person In Crisis Team, City of Rochester, https://www.cityofrochester.gov/person-in-crisis-team/; Dan Schrack, *City Leaders Launch New 'Person in Crisis' Team*, WHAM (Jan 21, 2021), https://13wham.com/news/local/city-leaders-launch-new-person-in-crisis-team-for-mental-health-substance-abuse-calls.

[38] *See* Implementing the City of Ithaca's New Public Safety Agency: Suggestions from the City of Ithaca's Reimagining Public Safety Working Group (Feb. 2022), https://www.cityofithaca.org/DocumentCenter/View/13725/WG_IthacaReport_Final.

[39] *See* Greg B. Smith, *Non-Cop Response Teams Handled Just 16% of 911 Mental Health Crisis Calls*, The City (Jul. 18, 2022), https://www.thecity.nyc/2022/7/18/23267193/mental-health-911-b-heard-teams (noting that EMS operators referred less than 1 in 4 mental health calls to B-HEARD teams).

[40] *See* New York State Office of the Attorney General, Office of Special Investigation Second Annual Report (Oct. 1 2022), 2022_osi_annual_report.pdf (ny.gov).

Conclusion

Executive Law 75 provides a first-of-its-kind framework for improving law enforcement practices, increasing accountability, and promoting public trust—all of which are crucial to enhancing the safety of New Yorkers. Over the past year, we have made significant progress developing LEMIO's capacity, initiating investigations, resolving Section 75(5)(b) referrals, and establishing relationships with key stakeholders. In the coming year, we will continue to build on this progress, including through further community outreach and engagement with covered agencies. We look forward to the work ahead.