

President's Task Force on 21st Century Policing
Office of Community Oriented Policing Services
U.S. Department of Justice
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Policy and Oversight | Women of Color's Experiences of Policing

The following submission is made on behalf of the undersigned organizations and individuals, and offers recommendations for policing policy and oversight specific to the experiences of Black women, Indigenous women, and women of color of all gender identities and sexualities.

INTRODUCTION

Black women, Indigenous women, women of color, immigrant women, lesbian and transgender women, and homeless and low income women experience many of the same forms of racial profiling, law enforcement violence, and race and poverty-based discriminatory policing practices as other members of Black communities and communities of color, American Indian and Alaska Native peoples, homeless and low-income communities, and immigrants, as well as gender and sexuality-specific forms of racial profiling and police brutality.ⁱ

Profiling and Women of Color

Although racial profiling data reported by federal and state governments is rarely, if ever, disaggregated by race *and* sex, racial profiling studies which do analyze the experiences of women of color separately from those of men of color conclude that “for both men and women there is an identical pattern of stops by race/ethnicity.”ⁱⁱ For instance, in New York City, one of the jurisdictions with the most extensive data collection on police stops, rates of racial disparities in stops and arrests are identical among men and women.ⁱⁱⁱ Racial profiling of women of color has specifically been reported in the context of law enforcement practices associated with the “war on drugs” and the policing of prostitution-related offenses.^{iv}

Use of Force

Black women and women of color also experience excessive force up to and including police shootings,^v including most recently Jessie Hernandez, a 16 year old Latina killed by Denver police as this submission was being prepared,^{vi} Aura Rosser, a 40 year old Black woman killed by Ann Arbor police,^{vii} and Tanisha Anderson, a 37 year old Black woman killed by Cleveland police,^{viii} all of whom were killed in the short period of time since this Task Force was established. In the weeks following Eric Garner's killing in New York City, an NYPD officer put Rosan Miller, a Black 27 year-old 5 month pregnant woman in a choke hold as they attempted to arrest her for grilling on the sidewalk,^{ix} Denise Stewart, a Black grandmother who also had asthma was dragged naked into a hallway by officers who falsely assumed she was abusing her children,^x a woman perceived by NYPD officers to be queer was thrown to the ground and beaten after being accused of jaywalking in the West Village,^{xi} and another pregnant mother was thrown to the ground in Sunset park by NYPD officers who then used a TASER on her stomach.^{xii} These are but a few examples of the excessive force to

which women of color are submitted on a routine basis, and which must also be at the center of national debates surrounding police shootings and use of excessive force against people of color.

Police Sexual Assault and Misconduct

Although no official data currently exists, what research is available indicates that sexual harassment and assault of members of the public by police officers occurs with alarming frequency, yet the vast majority of departments have no policies or training in place explicitly addressing this issue.^{xiii}

In 2010 the CATO Institute's National Police Misconduct Statistics and Reporting Project recorded 4,861 unique reports of police misconduct involving 6,613 sworn law enforcement officers. Sexual assault and misconduct was the second most frequently reported form of police misconduct after excessive force, representing 9.3% of complaints analyzed. Over half of the officers involved in reported misconduct were alleged to have engaged in forcible nonconsensual sexual conduct while on-duty. Over half of incidents analyzed alleged police sexual misconduct with minors. Rates of sexual assault rising to the level of FBI index crimes were found to be significantly higher among law enforcement officers than the general population.^{xiv}

Two studies of law enforcement license revocations in Missouri and Florida found that sexual misconduct was the basis for revocations in almost 25% of cases.^{xv} A survey of law enforcement officials in the St. Louis, Missouri metropolitan area concluded that officers report sexual misconduct to be common, yet criminal justice officials have done little to control the problem.^{xvi} The Salt Lake City Tribune quoted the Utah Peace Officer Standards and Training Director as estimating that as many as 30% of the sexual misconduct cases his agency investigates are not criminally prosecuted. The investigation also revealed that where prosecutions do take place, they are for misdemeanors.^{xvii}

Other studies found that up to 2 in 5 young women reported sexual harassment by law enforcement,^{xviii} and that young women of color, low income women, lesbian and transgender women, and otherwise marginalized women – as well as men and transgender people - are particularly vulnerable to sexual misconduct by law enforcement.^{xix} Sexual harassment and assault have been reported to be particularly pervasive during traffic stops and in the context of police cadet programs intended to engage youth from the community.^{xx} It is also reported to take place with alarming frequency in the context of responses to requests for assistance or investigation of domestic violence or sexual assault.^{xxi}

Sexual harassment and assault by law enforcement officers may take many forms, including:

- inappropriate or sexual comments made to passersby, during traffic or street stops, searches, including strip searches, or police custody;
- unnecessary contacts/actions taken by officers for personally and/or sexually motivated reasons such as unwarranted call backs to crime victims, or making a traffic stop to get a closer look at the driver for non-professional reasons, or pressuring individuals to provide their phone number or other contact information in order to contact them for non-law enforcement purposes;
- extorting sexual favors in exchange for promises of leniency;
- inappropriate touching during stops, searches and detention;

- inappropriate questions or conversation about individuals’ sexual orientation, up to and including implicit and explicit threats of sexual assault made to lesbian and bisexual women to “correct” their sexual orientation;
- unlawful strip searches, including searches to assign gender or humiliate or degrade transgender and gender nonconforming people;
- forcible or coercive sexual conduct, including rape.^{xxii}

Sexual misconduct, while not justified by any lawful purpose, is by no means an isolated phenomenon, and is facilitated by the authority vested in law enforcement officers, and therefore requires a policy response by law enforcement agencies.^{xxiii}

RECOMMENDATIONS

A. *Civil Rights Enforcement*

1) **Pass, effectively implement, and enforce gender and sexuality-inclusive anti-profiling measures**

- The Administration should immediately **expand the protections of the Guidance for Federal Law Enforcement Agencies** issued by the U.S. Department of Justice in December 2014 to reach all federal and federally funded law enforcement activities, including those that target Muslim, Arab, South Asian and Sikh communities and which take place at the nation’s borders.
- Local law enforcement agencies should be required, as a condition of receipt of federal funding, to **adopt, effectively implement, and enforce prohibitions against profiling consistent with the Guidance for Federal Law Enforcement Agencies on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation and Gender Identity** issued by the U.S. Department of Justice in December 2014. State and local profiling bans should incorporate an **independent enforcement mechanism**.
- The Administration should work with Congress toward the passage of an **End Racial Profiling Act that includes protections against profiling on the basis of gender, sexual orientation, and gender identity**.

2) **End Sexual Harassment and Assault by Law Enforcement Officers**

As documented by Amnesty International, the International Association of Chiefs of Police, the Cato Institute, and independent researchers, sexual harassment and assault by law enforcement officers is an often invisible but pervasive practice requiring immediate adoption and effective enforcement of policies, training, oversight and disciplinary practices.^{xxiv}

- Federal law enforcement agencies should **adopt policies aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents** which are consistent with the recommendations of the IACP.
- The US Department of Justice should **condition federal funding to local law enforcement agencies on adoption of policies** aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by local law enforcement agents consistent with the recommendations of the IACP.

- The US Department of Justice should **aggressively pursue enforcement of existing PREA standards for police lock-ups**, clarify that the definition of “lock-ups” contained in the standards includes police cars and other temporary locations of police detention, and initiate new rulemaking that would more closely harmonize the PREA provisions pertaining to police lockups with those pertaining to adult facilities, including augmenting provisions concerning access to victim advocates, response planning, training and education, and screening for risk of sexual victimization and abusiveness, to police lock-ups.

3) End the use of condoms as evidence of all prostitution-related crimes

Use of the mere possession or presence of condoms as evidence of any prostitution-related offense serves as a tool of racial profiling of women of color, and acts as a powerful disincentive to carrying, distributing and sharing condoms among populations at high risk of police profiling and discriminatory policing such as women and LGBTQ of color, who are also at high risk of HIV and other sexually transmitted infections.^{xxv} It also encourages people engaged in sex trafficking to deny access to condoms to people they are exploiting – placing trafficking victims at even greater risk.^{xxvi}

- The Administration should, consistent with the recommendation of the Presidential Advisory Commission on HIV/AIDS, **issue and publicize guidance to federal, state and local law enforcement agencies condemning the reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity**, and encouraging agencies to adopt policies prohibiting this practice.

4) Establish nationwide standards for treatment of LGBT people in custody

In the absence of policies prohibiting discrimination based on sexual orientation and gender identity and clear policies governing the determination of gender for the purposes of arrest processing, LGBT people in the custody of local law enforcement, including in police lock-ups, all too often experience unlawful, unnecessary and humiliating searches to assign gender, homophobic and transphobic discrimination and abuse, and unsafe placement.^{xxvii}

- In consultation with groups who have successfully advocated for local policies, the US Department of Justice should **develop and promulgate national standards for local law enforcement agencies relating to placement, searches, and interactions with transgender and gender non-conforming individuals** consistent with the provisions of consent decrees entered into with the New Orleans Police Department and the Puerto Rico Police Department, and make adoption of policies consistent with the guidance a condition of receipt of federal funding.

B. *Use of Force*

Where **special prosecutors** or independent investigatory bodies are established to respond to incidents of police killings and use of excessive force, they should pay special attention to incidents involving women of color, and their **jurisdiction should include investigation of allegations of police rape and sexual assault**.

C. *Civilian Oversight*

Independent and vigorous civilian oversight is essential to effective enforcement of changes to policing policies. Additionally, civilian oversight bodies must be representative of and responsive to the experiences of communities directly impacted by discriminatory policing.

- Civilian oversight bodies must develop expertise and commitment to receiving, analyzing and responding to complaints of sexual harassment and assault by law enforcement agencies, ensure that complainants receive appropriate support and referrals, and develop campaigns to raise public awareness of this form of police misconduct and abuse. Additionally, given the reluctance of victims of sexual assault to come forward to make complaints, routine spot checks and “stings” should be employed to detect and deter sexual harassment and abuse by police.
- Civilian oversight bodies should be charged with regularly analyzing data on a range of police department practices to determine if there are disparities based on race, age, gender, gender identity, or sexual orientation in enforcement practices and provided with sufficient resources to do so. Information relating to sexual orientation and gender identity of complainants must be collected on a voluntary and anonymous basis, after informed consent, and analyzed separately from any identifying information regarding the complainant.
- Individuals should be offered the opportunity to file complaints anonymously in order to ensure that individuals can do so without fear of retaliation or further abuse. Oversight bodies should accept and vigorously investigate complaints filed by third parties and organizations on behalf of individuals.

D. *Data Collection*

No official data is currently available regarding the number of rapes and sexual assaults committed by law enforcement officers in the U.S. Statistics regarding racial profiling and physical brutality by law enforcement officers do not include information on the number of allegations, complaints, or incidents of rape, sexual assault, sexual harassment or coerced sexual conduct by police officers. Similarly, information gathered by the federal government on rape and sexual assault does not include information about rapes committed by police officers and other law enforcement agents.

- Questions concerning sexual harassment and assault by law enforcement officers should be added to the Bureau of Justice Statistics Police Contact Survey and to the Office of Victims of Crime National Intimate Partner and Sexual Violence Survey;
- Data collected concerning stops, searches, use of force, police killings, and arrests must be disaggregated by gender and race in order to uncover patterns of profiling and police violence against women of color;
- In order to protect the privacy and dignity of the people they come into contact with, law enforcement agents should never be charged with collecting data relating to actual or perceived sexual orientation or gender identity during police interactions.

Respectfully submitted,

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Best Practices Policy Project
Black Youth Project 100
Chicago Alliance Against Racist and Political Repression
Chicago Taskforce on Violence against Girls and Young Women
Colorado Coalition Against Domestic Violence
Communities United for Police Reform
Ella Baker Center
Forward Together
Girls for Gender Equity
Idaho Coalition Against Sexual & Domestic Violence
INCITE!
Justice Committee
Justice Strategies
National Center for Lesbian Rights
National Queer Asian Pacific Islander Alliance (NQAPIA)
NC Coalition Against Domestic Violence
Ohio Domestic Violence Network
Project Nia
Providence Youth Student Movement
Racial Justice Action Center
Rhode Island Peoples Assembly
RI Coalition Against Domestic Violence
Sisterlove, Inc.
Streetwise and Safe (SAS)
Third Wave Fund
Univocal Legislative Minority Advisory Commission (ULMAC)
U.S. Human Rights Network
Vermont Network Against Domestic and Sexual Violence
WA State Coalition Against Domestic Violence
We Charge Genocide
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ⁱⁱ R. Lundman and R. Kaufman, *Driving While Black: Effects of Race, Ethnicity and Gender on Citizen Reports of Traffic Stops and Police Action*, *Criminology* 41(1) 195-220 (2003).

ⁱⁱⁱ New York Civil Liberties Union, *Women Demand End to Discriminatory NYPD Stop-and-Frisk*, Press Release, April 3, 2013; Women of Color Policy Network, *Women of Color: Two-Thirds of all Women in New York City Still Invisible in Policy - The 2nd Annual Report on The Status of Women of Color in NYC*, Wagner Institute for Public Policy at New York University (2003).

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^v Ritchie, *supra* note i.

^{vi} Michael Roberts, *Jessie Hernandez, Teen Killed By Denver Cops: Protests Over Alleged Police Violence*, http://blogs.westword.com/latestword/2015/01/jessie_hernandez_killed_denver_police.php

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^{viii} Tom Beres, *Woman's Death in Police Custody Ruled a Homicide*, USA Today January 2, 2015, available at: <http://www.usatoday.com/story/news/nation/2015/01/02/womans-death-in-police-custody-ruled-a-homicide/21218595/>

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^x John Marzulli, Laura Dimon, Ginger Adams Otis, *Naked Brooklyn woman dragged from apartment, left topless in hallway for minutes by NYPD officers*, August 1, 2014, NY Daily News, available at: <http://www.nydailynews.com/new-york/brooklyn/nypd-officers-drag-naked-brooklyn-woman-apartment-video-article-1.1889292>

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^{xii} *Watchdog Group: Officer Seen Throwing Pregnant Woman To Ground In Sunset Park*, CBS News, September 23, 2014, available at: <http://newyork.cbslocal.com/2014/09/23/watchdog-group-officer-seen-throwing-pregnant-woman-to-ground-in-sunset-park/>

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<http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Cato Institute, *National Police Misconduct Reporting Project Annual Report (2010)*, available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; Irlbeck, Dawn and Samuel Walker. "Police Sexual Abuse of Teenage Girls: A 2003 Update on 'Driving While Female'" University of Nebraska at Omaha, Department of Criminal Justice, Police Professionalism Initiative (June 2003), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>; Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2002), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>

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^{xvi} Timothy Maher, *Police Sexual Misconduct: Officers' Perceptions of its Extent and Causality*, Crim. Just. Rev. 28(2):355 (2003).

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^{xxi} Nancy Phillips and Craig R. McCoy, *Police Turned Predators*, a series by the Philadelphia Inquirer, August 2006, available at: http://www.philly.com/philly/news/special_packages/inquirer/Police_Turned_Predators.html

^{xxii} See IACP, *supra* note v; Amnesty International, *supra* note i.

^{xxiii} Stinson et al., *supra* note v; IACP, *supra* note v.

^{xxiv} Stinson, Philip M.; Liederbach, John; Brewer, Steven L.; and Mathna, Brooke E., *Police sexual misconduct: A national scale study of arrested officers* (2014), Criminal Justice Faculty Publications. Paper 30, http://scholarworks.bgsu.edu/crim_just_pub/30; International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide* (Virginia: International Association of Chiefs of Police, 2011), available at: <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; Cato Institute, *National Police Misconduct Reporting Project Annual Report (2010)*, available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2012), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>.

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