



CITIZENS UNION

Issue Brief and Policy Position Statement on Police Accountability August 2016

Introduction

In the past two years, public scrutiny of police practices has led to a national discussion about the relationship between police and the communities they serve, including policing methods, dynamics of power, and how police should be held accountable to the public they serve. New York City has been one center of this focus, with tension between police and certain communities due to policies like Stop, Question and Frisk, and incidents of police using physical force resulting in the deaths of civilian New Yorkers like Eric Garner. Recent events here and across the nation have shaken the public's confidence in police departments' ability to hold officers accountable for their actions and ensure that instances of officer misconduct are answered by appropriate prosecutorial and disciplinary action.

As a watchdog group for the public interest and an historic advocate of open and honest government in New York City, Citizens Union (CU) urges the enactment of laws and adoption of new rules and regulations that will strengthen the accountability of the New York Police Department to the public and consequently improve the relationship between the New York Police Department (NYPD) and the public. It is in this context that we also reexamine our past policy positions on police issues in the context of the current climate.

The primary responsibility of the police is to promote public safety. Police officers occupy a unique position in our society because they are given more power than any set of city employees, with the singular discretion to enforce the law using physical force. For this reason, Citizens Union believes that the best way to ensure the safe and democratic application of policing is to strengthen and streamline systems of oversight and accountability, both within the NYPD and among the independent entities that monitor police misconduct.

Greater trust, we believe, is necessary for the police to perform their duties safely and effectively. Citizens Union therefore urges city government to adopt policy reforms to create a more cohesive system of police oversight with enhanced accountability to the public, by standardizing and expanding the disciplinary powers within the NYPD, and strengthening independent oversight mechanisms. Moreover, CU's position aims to foster transparency regarding police misconduct and the use of force, and to engender public support of the police by facilitating the open exchange of information between the NYPD, other monitoring entities, and the public.

In 2008, Citizens Union released its policy position related to police oversight, with a focus on empowering the Civilian Complaint Review Board (CCRB) to ensure independent oversight of the NYPD. In 2012, the CCRB gained the right to prosecute the cases it substantiates, increasing its independence

and authority. Since that time, New York City has seen changes to its police oversight structures and bodies, including the establishment of the Office of Inspector General to the New York Police Department and the court appointment of a federal monitor and facilitator to review police procedures, training, and community relations. It also saw a major realignment on the use of the practice, Stop, Question, and Frisk that resulted in a significant drop in the number of such unnecessary interactions with New Yorkers, particularly in communities of color where the policy and strategy were used far more judiciously and far less frequently.

In our most recent deliberations updating our position, Citizens Union's Municipal Affairs Committee and its Public Safety Subcommittee led the review of the organization's policy positions by:

- examining the institutions, policies, and processes that address police misconduct;
- evaluating which of our prior recommendations were implemented and which require further advocacy; and
- speaking with the leadership at many of the governmental entities and community groups that have a particular stake in the police accountability system, such as the NYPD, CCRB, Offices of the Comptroller and Inspector General (IG), Brooklyn Movement Center, Communities United for Police Reform, and the New Jersey Civil Liberties Union.

We appreciated the opportunity to speak with these government and community groups. Each demonstrated dedication to the same objectives we held in developing this position: to issue policy recommendations committed to public safety, dignity, and respect for all New Yorkers; to ensure that police oversight mechanisms and processes are part of a balanced, coordinated, and effective system; and to effect government action which is transparent and accountable to the public, with consistent and understandable standards.

Citizens Union also recognizes that several governmental entities are individually and collectively in the process of reviewing and retooling the police oversight system and its components. We respect the ongoing work being conducted by the NYPD, CCRB, IG, and federal monitor and facilitator and the incremental changes emanating from this work. We also acknowledge that the New York City Council and Mayor have recently enacted certain reporting measures that Citizens Union supports and were part of our positions that we wanted to see enacted. As the process continues to unfold, we will continue to consider additional reforms to see which ones are still needed after progress is made in the new oversight system.

Please note, previously adopted positions of Citizens Union are demarcated by asterisks (*).

This document contains the following sections:

2016 Policy Position on Police Accountability

I. Establish Uniformity, Clarity, and Deliberative Planning Across the Police Oversight System.

II. Enhance Police Department's Internal Oversight of Officer Misconduct.

III. Bolster the Civilian Complaint Review Board's Investigative and Oversight Roles.

IV. Engage Additional Governmental Entities to Enhance Transparency, Independence, and Public Education in the Police Oversight System.

Citizens Union's Past Positions on Police Issues

I. 2008 Position on Public Oversight and Police Misconduct

II. 2013 Position on Reforming Stop, Question and Frisk

2016 Citizens Union Policy Position on Police Accountability

I. ESTABLISH CLARITY AND CONSISTENCY ACROSS THE POLICE OVERSIGHT SYSTEM

New York City's current standards and definitions regarding officer conduct and misconduct are not always clear or uniformly applied throughout city government and the various components that deal with public oversight and accountability. This leads to confusion and inconsistency regarding practices, findings, and interpretations of the various overlapping network of police oversight entities, most notably the NYPD, CCRB, Commission to Combat Police Corruption (CCPC), Department of Investigation (DOI), IG, the federal monitor, and trial judges.

The recommendations in this section aim to: reduce disparities of findings of fact and disciplinary sanctions in complaints of police misconduct, and resulting inefficiencies; address the disparate misconduct standards and possible bureaucratic cohesion which may lead to the NYPD dismissing cases recommended by the CCRB; provide more heft to CCRB determinations, thus encouraging civilians to make formal complaints of officer wrongdoing; increase transparency as to how the NYPD makes determinations about claims of police misconduct; and promote rule of law, ensuring that practices are not changed without due consideration, and without public input and appropriate process. Citizens Union specifically recommends the following:

1. Require the NYPD to make its patrol guide and any other training manuals and rules governing officer conduct, public, free and accessible.
2. Require the Police Commissioner to explain divergence from NYPD trial judge and CCRB disciplinary recommendations via reporting to the issuing body and to the public.* As part of the 2012 Agreement between the City Council, Mayor, and the NYPD granting the CCRB the new power to prosecute cases of police misconduct, originally held by the NYPD itself under the Advocate's office, the Police Commissioner is obligated to provide to the CCRB and the respondent the rationale when diverging from the disciplinary recommendations. Many interpret that the written agreement has not been followed specifically with regard to making such information publicly available, necessitating the need for additional legislation to require codification of this important component of effective public oversight of police misconduct (CU offers modified support for [Intro 138](#)).
3. Establish the CCRB as the primary finder of fact in cases which it investigates, except in cases of clear error. This is the logical outcome of an increased collaborative relationship between the CCRB and the NYPD.
 - a. If the CCRB finds wrongdoing as first finder of fact, the Police Commissioner would be required to issue a penalty, but would still retain discretion as to what the penalty would be.
4. Establish uniform guidelines for the Police Commissioner's disciplinary determinations and the CCRB's disciplinary recommendations. The Police Commissioner would still have independent discretion, but instances of discipline could then be measured against these shared guidelines for increased accountability.
 - a. Guidelines would enumerate ranges of penalties and ranges of misconduct, possibly taking into account type of force, degrees of justification, and mitigating and aggravating factors – but should not be overly complicated.

II. ENHANCE THE NYPD'S POLICE DEPARTMENT'S INTERNAL OVERSIGHT

OF OFFICER MISCONDUCT.

Under the current police oversight system, the NYPD and its commissioner have extensive latitude and discretion in addressing alleged instances of officer misconduct, including: creating internal policies, conducting internal investigations, determining findings of fact and law, and disciplining officers. While the commissioner needs significant discretion in order to appropriately manage the police force, there must be both additional checks and supports to ensure that the NYPD is better positioned to perform internal oversight of officer misconduct, with public support and transparency.

The recommendations in this section aim to: provide for public and City Council input regarding the NYPD's operations, management, and policy development and implementation; give New Yorkers the tools to understand and assess the civilian-police relationship; ensure transparency regarding officers' use of force and sanctions; ensure that the commissioner is lawfully empowered to determine appropriate sanctions for misconduct with a greater range of possible penalties for misconduct; and encourage positive relationships between the police and communities they serve. Citizens Union recommends the following:

1. Expand the Police Commissioner's range of disciplinary options for cases of misconduct to include more intermediary levels of punishment, in line with disciplinary guidelines, if adopted.*
2. Institute continuing education for more senior officers, with reformulated training for probationary officers and police officers, created pursuant to the *Floyd* federal monitor's participation.
3. Improve NYPD's website to consolidate and clearly organize information for the public:
 - a. Make quantitative data dynamic and enable it to be compared and searched, with consistent categories and not only in pdf form.
 - b. Make narrative data well-organized to ensure that New Yorkers can learn about police operations, oversight mechanisms, and rights and obligations of civilians and officers.
4. Develop well conceived body-worn cameras in a deliberative manner in advance of full-scale NYPD roll out.
 - a. Develop and publish internal NYPD body camera policy before expanding pilot program. (CU supports for [IG Eure's report recommendation](#).)
 - b. Establish an advisory task force to examine, report, and issue recommendations on NYPD use of body-worn cameras, addressing feasibility, cost, privacy implications, best practices regarding officer recordings and video storage, and evidentiary issues. This task force would be comprised of the following appointments: 3 from mayor, 3 from speaker of the Council, and 4 jointly from mayor and speaker. (CU supports [Intro 607](#).)
5. Continue to diversify the Police Department's recruitment and hiring practices, building off of internal NYPD efforts since 2013 to monitor demographic data of the police force and improve the pipeline for hiring officers reflecting the diverse city population.
6. Continue the practice of conducting regular systems evaluations in line with modern, pragmatic research, as is currently underway as a collaborative effort between the NYPD and the court-

appointed federal monitor and facilitator; and publish the reports, findings, data, and any changes resulting from such evaluation.

7. Two local laws were recently enacted that reflect CU's recommendation to expand reporting on incidents of police use of force against civilians, without publishing officers' names.
 - a. [Intro 606-A](#), supported by Citizens Union, now requires the NYPD to publish use of force reports quarterly on the NYPD website and to detail the number of use of force incidents by: (1) type of force used regarding arrests related to quality of life offenses; and (2) by geographic information of where the incident occurred, including precinct. This data should then be audited for accurate reporting by the Inspector General.
 - b. [Intro 539](#), supported by Citizens Union, now requires the NYPD to also publish use of force summary reporting within 30 days of an incident of force resulting in hospitalization or death, including: (1) type of force used; (2) officer's precinct; (3) whether officer was on duty; (4) officer's years of employment; (5) incident summary; (6) whether CCRB reviewed the incident, if so its findings, as well as NYPD findings and final decision regarding discipline; and (7) geographic information of where the incident occurred. Each data point should be updated as the information becomes available, though the provision should take into account that some of the data required may not be available within 30 days. The data should also be audited for accurate reporting by the Inspector General.

The legislation lacked language requiring the NYPD to provide important aggregate information about race, age, and gender. During the day the Council considered and passed the legislation, the Council explained that it was an unintentional error not to require reporting data on race. During the same day, the NYPD committed to including race data in their reporting, though because the law does not require it, it is strictly voluntarily. It is hard to believe that this was a simple error given the importance of race data specifically. It is very much hoped that such important data will accurately and consistently be provided to the public.

III. Bolster Independent Oversight of the Police by Strengthening the Civilian Complaint Review Board

In recent years, the CCRB has further professionalized its work, including seeking to substantially reduce the time it takes to close open cases. Yet the potential for CCRB growth and effectiveness is hamstrung by structural and legal provisions. In order for the CCRB to fulfill its mandate to investigate and substantiate complaints of officer misconduct against civilians, and to prosecute substantiated complaints, it must be properly empowered.

The recommendations in this section aim to: furnish the CCRB with needed resources and powers; create protections to ensure the integrity of CCRB investigations; and increase reporting of complaints to the CCRB regarding officer misconduct.

1. Increase the CCRB budget to maintain and grow staff capacity, offering competitive compensation and comprehensive training for investigators so as to attract and keep experienced staff.*

2. Safeguard the independence and integrity of CCRB investigations and standardize the effects of participation in an investigation for complainants, witnesses, and officers.
 - a. Require the CCRB to inform complainants, witnesses, and officers that their statements to the CCRB may be used against them in corresponding court cases, and of the associated risks.
 - b. Reinstate “zero tolerance” policy for false official statements.*
 - i. Possibly include or clarify penalties for false statements, including being subjected to charges of perjury.
 - c. Grant the CCRB authority to prosecute officers who lie under oath during the course of their investigations.*
 - i. Possibly include that civilian complainants and witnesses would also be subject to prosecution for perjury.
3. Expand CCRB’s data reporting, to:
 - a. Require the CCRB to provide the public with aggregate information about both the police officer and complainant involved in complaints, which could include: race, ethnicity, age, gender, and for officers, years on the force.
 - b. Build off of CCRB’s new transparency initiatives, such as increased online reporting and development of an early warning system, to require the CCRB to issue a report listing precincts or divisions of officers with the highest numbers of: (1) CCRB complaints; (2) CCRB substantiated complaints; and (3) incidents of being named defendants in civil lawsuits alleging police brutality. (CU offers modified support for [Intro 824](#), with one significant amendment, to require the CCRB to perform this reporting rather than the NYPD, as the CCRB is better positioned to report upon its own data.)

IV. Make Police Accountable to the Public Through Elevated Transparency, Independence, and Public Education in the Police Oversight System

The police oversight system has many components and parties, which are necessary to promote accountability: internal oversight within the NYPD, as well as the CCRB, CCPC, DOI, IG, and more. Yet, other entities also need to be included to ensure that there is proper coordination, information sharing, political independence and accountability, and civic awareness of the rights and obligations of police officers and civilians.

1. Enhance data-sharing regarding civil actions against police officers and related civil legal settlements.
 - a. Require the Law Department to issue quarterly reports to the Council, comptroller, and CCRB detailing the number and disposition of civil actions filed against the NYPD. (CU offers modified support for [Intro 119](#) with one significant amendment, to require the Law Department to issue this report rather than the Inspector General, as the information is held by the Law Department which litigates and settles civil cases against the police, and therefore is in the best position to accurately report on such cases.) [During the finalization of this position Citizens Union was informed that its recommendation for the required reports to be issued by the Law Department has in fact been included in the bill.]
 - b. Require the comptroller to submit information regarding civil legal settlements in all cases to relevant agencies, as the comptroller approves the payments and has the most up-to-date data on such settlements.

2. Establish public education programs and initiatives to ensure that New Yorkers are informed about the rights and obligations of civilians and police officers during civilian-officer interactions.
 - a. Develop a program through the Department of Education, potentially in conjunction with other modes of civics education, and potentially partnering with other agencies that conduct youth programming and social services, as well as civil society partnerships.
 - b. Support initiatives to educate New Yorkers of all ages and in all communities about the rights and obligations of civilians and police officers during their interactions.

Citizens Union’s Past Positions on Police Issues

I. 2008 Position on Public Oversight and Police Misconduct

In 2008, Citizens Union sought to address public mistrust in the NYPD, which was largely influenced by its handling of police misconduct. To that end, we made recommendations for a more independent and transparent system of oversight, prosecution and adjudication of misconduct. Specifically, CU recommended that:

1. The CCRB be enabled to prosecute cases it substantiates.
2. The CCRB be given the authority to prosecute officers who make false statements to CCRB investigators during the course of investigations.
3. The CCRB’s resources for investigation and staffing be expanded in order to handle its growing caseload and prevent delays in carrying out its important oversight function.
4. To ensure appropriate disciplinary responses to misconduct, Citizens Union also recommended expanding the responsibilities and disciplinary options of the Police Commissioner, to allow for more narrowly tailored punishment and better compliance with CCRB recommendations.
5. Finally, Citizens Union recommended that the City enact legislation that would recreate the Commission to Combat Police Corruption, which is currently established through Executive Order, thereby expanding its mandate to serve as a permanent monitoring commission.

In 2012, pursuant to a Memorandum of Understanding between the CCRB and NYPD, the CCRB was given the authority to prosecute cases it substantiates when the most serious discipline is recommended. While Citizens Union applauds this step as a measure that increases the level of independence across police oversight mechanisms, ensuring that police who engage in misconduct are more accountable to the public, it is concerned that the Police Commissioner is still not publicly releasing his rationale when he diverges from the disciplinary recommendations of the CCRB and

II. 2013 Position on Reforming Stop, Question and Frisk

In 2013, Citizens Union conducted in-depth analysis of the NYPD’s Stop, Question and Frisk policy and issued a [policy position on it](#), as well as policy recommendations. This built on the earlier work CU has undertaken on police conduct and accountability by addressing a policy that facilitates police misconduct and which federal courts have found to be employed unconstitutionally in New York City.

Citizens Union came independently to the conclusion that Stop, Question, and Frisk should be used less frequently, employed more judiciously, and performed with the utmost professionalism given the intrusive nature of the tactic with a disparate impact on communities of color. As a matter of policy, we opposed the overuse of Stop, Question and Frisk in its then aggressive form, which has now been ruled unconstitutional. We do so because, while it is uncertain how many stop and

frisks need to occur in order to reduce crime, we believe there comes a point when its overuse brings diminished results and can be counterproductive.

We also wish to see it used more appropriately by focusing on the quality of the stops and not quantity, because it imposes a significant burden and personal infringement on the rights and lives of individuals who are mostly people of color.

The then-recent rulings and the appointment of a federal monitor to oversee the use of Stop, Question and Frisk indicate that the policy should be applied in specific and limited ways if it is going to be effective in reducing crime. Citizens Union's analysis agreed that evidence relating to crime rates and the number of instances where Stop, Question and Frisk was used does not definitively establish the extent to which the policy is a significant factor in reducing crime.

Based on these findings, Citizens Union recommended shifting the emphasis of Stop, Question and Frisk from the quantity of police interactions to their quality. To this end, it advocated for:

1. Improved training and accountability systems within the NYPD.
2. The use of more productive and professional stops, with the understanding that any stop, whether justified or not, "is an indignity upon the person temporarily detained."
3. That City and governmental bodies clarify what appropriate instances of using Stop, Question and Frisk are.

CU's 2013 policy position also reiterated its existing positions related to the CCRB and independent monitoring of police misconduct.

Since the time of our recommendation, the court-appointed federal monitor has continued to work with the NYPD, CCRB, and other entities of the police oversight system to ensure that Stop, Question and Frisk is utilized judiciously. The number of instances where the practice was exercised has been decreasing annually since it reached a high point in 2011, with a dramatic drop between 2013 and 2014. Last year, the number of instances was the lowest it has been in over a decade, indicating that at least more consideration of whether a stop is warranted or necessary is being employed at a city-wide level.

At the same time, the federal monitor continues to make recommendations regarding the use of Stop, Question and Frisk, which aim to improve implementation. Citizens Union sees that reforms surrounding the Stop, Question and Frisk policy are taking place and appreciate the work that is being done by the various agencies involved in police oversight, both independently, and in collaboration with the federal monitor. We look forward to seeing continued reform in the area of this policy's overuse.