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December 8, 2014

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

I write because of the current crisis of confidence in our State's criminal justice system. In New York, and across the country, the promise of equal justice under law has been eroded by a series of tragedies involving the death of unarmed persons as a result of the use of force by law enforcement officers. Many of these tragedies involve unarmed persons of color. All too often, the families of the victims and the members of their communities are left with the belief that our criminal justice system has both unjustly targeted and inexplicably failed them.

This crisis of confidence is long in the making and has deep roots. But it is not a problem without a solution. A common thread in many of these cases is the belief of the victim's family and others that the investigation of the death, and the decision whether to prosecute, have been improperly and unfairly influenced by the close working relationship between the county District Attorney and the police officers he or she works with and depends on every day. It is understandable that many New Yorkers feel that it is unfair to charge a local District Attorney with the task of investigating and prosecuting those officers when they are accused of a serious crime committed in the course of their duties.

The question in these difficult cases is not whether a local prosecutor, including one with understandably close ties to his or her fellow local law enforcement officers, is capable of setting aside any personal biases in deciding whether, or how vigorously, to pursue the case. As the State's chief law enforcement officer, I know that I and the overwhelming majority of my fellow prosecutors are not only capable of doing so, but are conscientious about our ethical duty to see that justice is done in every case. Rather, the question is whether there is public *confidence* that justice has been served, especially in cases where homicide or other serious charges against the accused officer are not pursued or are dismissed prior to a trial by jury.

Several measures to address this issue have been offered over the years by various State legislators. One such bill, first introduced by Assemblyman Keith Wright in 1999 and most recently sponsored in the Senate by Senator Gustavo Rivera, would vest power in my Office to investigate and prosecute any crime allegedly committed by a police officer. A similar measure, applicable only to offenses allegedly committed by New York City police officers, was recently introduced by Senator Kevin Parker. A third bill, sponsored by Assemblyman Nick Perry, would amend County Law section 701 to allow a judge to appoint another District Attorney or the Attorney General to act as a "special district attorney" in criminal matters where the judge finds that the county prosecutor is "disqualified." I look forward to working with you and our colleagues in the Senate and Assembly to pass legislation addressing this issue as early as possible in the coming legislative session, or in a special session if one is called.

Given the lack of action on this important issue in the past, and the urgency of the need for reform, I respectfully request that you take immediate interim executive action as well under existing State law. Subdivision two of Executive Law section 63 currently authorizes you to supersede any local District Attorney on any criminal matter as you deem appropriate by appointing the Attorney General to investigate and prosecute the case. This broad grant of authority is based in Article IV, section 3 of the State Constitution and has been invoked numerous times in the past. Our State Court of Appeals has duly noted, in a case involving a potential death penalty prosecution in the Bronx, that this provision of section 63 "neither limits the Governor's authority to supersede nor requires the Governor to explain that choice." *Matter of Johnson v. Pataki*, 91 N.Y.2d 214, 224 (1997). A related provision of Executive Law section 63 (3) further authorizes you to direct the Attorney General to "investigate the alleged commission of any indictable offense or offenses," and to "prosecute the person or persons believed to have committed the same and any crime or offense arising out of such investigation or prosecution or both, including but not limited to appearing before and presenting all such matters to a grand jury."

Consistent with the above, I respectfully request that you immediately issue a temporary standing order, pursuant to subdivisions two and three of Executive Law section 63, authorizing me to: (1) investigate the circumstances surrounding the commission or alleged commission by any police officer or peace officer in the State of any act or acts, committed while the officer is engaged in the performance of his or her official duties, that result in the death of any unarmed person other than a fellow law enforcement officer so engaged; and (2) where warranted, criminally prosecute the officer for such acts as provided in those subdivisions. I would further respectfully request that, to avoid the possibility of compromising any local, state or federal investigations already in progress, the order apply only to incidents occurring on or after the date the order is signed. Finally, I would ask that the order state that it will expire when the Legislature acts to permanently address this issue in such manner as it deems appropriate.

Sincerely,



ERIC T. SCHNEIDERMAN
Attorney General of New York State