



**Office of the New York State  
Attorney General Letitia James**

Law Enforcement Misconduct Investigative Office

# **Annual Report**

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December 29, 2024

# Introduction

This is the fourth annual report of the Law Enforcement Misconduct Investigative Office (LEMIO) at the Office of the New York State Attorney General (OAG). LEMIO, which is established by Executive Law Section 75, is tasked with helping to prevent and address 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.”<sup>1</sup>

To advance these important goals, Executive Law Section 75 provides LEMIO with authority to investigate misconduct, examine policies and procedures, issue reports on the office’s findings, and recommend reforms at more than 500 covered agencies across the state. 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,” and this is that report.<sup>2</sup> Section II provides an overview of Executive Law Section 75 and the duties that it imposes on local law enforcement agencies. It also describes LEMIO’s structure and our priority areas. Section III discusses LEMIO’s online portal. Members of the public and employees of covered agencies may use this portal to report allegations of misconduct to LEMIO. Section IV summarizes LEMIO’s activities over the past year, including our investigative activity and review of Executive Law Section 75(5)(b) referrals. A table describing completed Section 75(5)(b) referrals is available on OAG’s website, as described below. Finally, Section V identifies a series of recommended legislative changes that would further the goals of effective and accountable law enforcement.

One crucial reform, which we have recommended in prior annual reports, would be the adoption of legislation banning bias-based 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.

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1. N.Y. Exec. Law Section 75(2)(d).

2. N.Y. Exec. Law Section 75(3)(h).

Other recommendations include legislation that would:

- » Facilitate civilian oversight of law enforcement agencies;
- » Limit negative outcomes from non-public-safety related traffic stops;
- » Encourage alternative public health approaches for people in mental health crisis to minimize the risks of police involvement; and
- » Require the use of body-worn cameras.

# Overview of LEMIO and Executive Law Section 75

Executive Law Section 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 passage reflected the legislature's recognition of the need for a stronger system of independent statewide oversight to preserve civil rights and civil liberties, protect public safety, and help increase public trust in law enforcement.

## A. Executive Law 75

Under Executive Law Section 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 Section 75, other than agencies under the jurisdiction of the Metropolitan Transportation Authority Inspector General, the Port Authority Inspector General, and the State Inspector General.<sup>3</sup>

Executive Law Section 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."<sup>4</sup>

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.<sup>5</sup> LEMIO and other units within OAG also may bring civil litigation against covered agencies, as appropriate, to address patterns of misconduct and seek structural changes to protect civil rights.<sup>6</sup>

LEMIO is required to inform the New York State Division of Criminal Justice Services (DCJS) and the heads of covered agencies of allegations of misconduct and the progress of its investigations unless special

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3. N.Y. Exec. Law Section 75(1).

4. N.Y. Exec. Law Section 75(3)(a), (e) & (g).

5. N.Y. Exec. Law Section 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) (finding OAG has parens patriae power to pursue Section 1983 claims against the New York City Police Department); *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).

circumstances require confidentiality.<sup>7</sup> This statutory requirement ensures that covered agencies can investigate and address potential misconduct involving their personnel, as is the case when accountability systems are working properly.

Executive Law Section 75 also imposes certain 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.” These referrals are discussed in more detail in Section IV.C below.

## **B. Overview of LEMIO**

LEMIO has dedicated personnel in OAG’s New York City, Albany, and Buffalo offices. Our team includes assistant attorneys general, investigative analysts, a senior data analyst, and support staff. We also work closely with personnel from other OAG units, including the Civil Rights Bureau, the Office of the Chief Investigator, the Healthcare Bureau, the Research and Analysis Department, the Office of Special Investigation, and OAG’s regional offices.

## **C. LEMIO priority areas**

With its broad scope and mandate, Executive Law Section 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 more than 500 agencies employing more than 80,000 personnel, LEMIO is not a substitute for effective local accountability mechanisms, which must be the first line of review of allegations of misconduct.<sup>8</sup> Police chiefs and sheriffs, internal affairs and professional standards units within covered agencies, civilian review boards, district attorneys, and local legislators 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 Section 75, LEMIO will focus on taking action where there is reason to believe that existing accountability 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 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.

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7. N.Y. Exec. Law Section 75(3)(c), (d) & (f).

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 include:

- » Law enforcement practices that have a discriminatory impact on the basis of race, gender, national origin, and other protected classes, including racial disparities in police stops, searches, arrests, ticketing, and uses of force and systemic failures to appropriately respond to allegations of sexual misconduct and domestic violence, including allegations of sexual harassment or misconduct by law enforcement officers;
- » Traffic enforcement for non-safety-related violations that result in punitive ticketing or unlawful search and detention, or escalate into the unreasonable or excessive use of force, particularly involving racial disparities and patterns of pretextual stops;
- » Retaliation in connection with First Amendment-protected activity, including inappropriate or unlawful responses to protests and to individuals lawfully communicating with or recording police;
- » Responses to people in mental and/or behavioral health crisis;
- » False testimony and other instances of dishonesty; and
- » Deficiencies in accountability and disciplinary processes, including inadequate civilian complaint procedures, policies and practices related to internal investigations, and ineffective discipline systems.

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

## Online portal for reporting misconduct to LEMIO

Executive Law Section 75 authorizes LEMIO to investigate complaints received from members of the public and to investigate misconduct on our own initiative.<sup>9</sup> The law also imposes a duty on personnel of covered agencies to report information concerning corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse to LEMIO. The knowing failure of personnel to report such information may be cause for removal from office or employment or other appropriate penalty, and personnel who do report information on misconduct are protected from dismissal, discipline, or other adverse action for doing so.<sup>10</sup>

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:

[LEMIO online portal](#)

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.

We are not able to fully investigate and resolve every report of misconduct that we receive through the portal, but every submission is valuable in helping us shape our oversight. In general, LEMIO prioritizes investigations of potential patterns and practices of misconduct and systemic issues that impact significant numbers of people or are directed towards marginalized groups.

LEMIO is required by statute to inform covered agencies of reports of misconduct involving their personnel unless special circumstances require confidentiality. We may request that the agency involved investigate reports of misconduct received by LEMIO and respond with its findings. We also may share submissions with other local, state, or federal agencies when appropriate.

9. N.Y. Exec. Law Section 75(3)(a), (e) & (g).

10. N.Y. Exec. Law Section 75(5)(a).

# Summary of activities

This section summarizes LEMIO's work, including our ongoing investigations and litigation, completed investigations, the Executive Law Section 75(5)(b) referral process, and our outreach and engagement.

## A. Ongoing investigations and litigation/oversight

LEMIO has a number of ongoing investigations into potential misconduct pursuant to Executive Law Section 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 procedures do not appear to have properly addressed those incidents.

In other cases, including matters conducted jointly with OAG's Civil Rights Bureau, ongoing LEMIO investigations focus on potential patterns of misconduct or systemic issues. These investigations involve allegations of improper stops and seizures, discriminatory policing, the treatment of incarcerated people, sexual harassment and misconduct, inadequate internal accountability procedures, and the use of excessive force, including against vulnerable groups such as young people and people in mental health crisis.

The OAG also announced an agreement with the New York City Police Department (NYPD) in September 2023, resolving OAG's lawsuit challenging the department's pattern of excessive force and false arrests against New Yorkers during First Amendment-protected protests, including the summer 2020 racial justice protests. In February 2024, a federal court approved the settlement, which requires the NYPD to, among other things, adopt a graduated, multi-tiered system of protest response that emphasizes de-escalation, implement new restrictions on use of force and the practice of "kettling" at protests, and establish new protections surrounding treatment of members of the press. Now in Phase I of the agreement, NYPD is tasked with changing its trainings and policies to comply with the agreement's terms. Once finalized, an oversight committee including OAG and other stakeholders will meet regularly to review and evaluate NYPD's compliance with the agreement and convey feedback from the community.<sup>11</sup>

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11. 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); see also OAG Press Release: Attorney General James, The Legal Aid Society, NYCLU Announce Agreement with NYPD to Reform Policing of Protests, Attorney General James, The Legal Aid Society, and NYCLU Announce Agreement with NYPD to Reform Policing of Protests: <https://ag.ny.gov/press-release/2023/attorney-general-james-legal-aid-society-and-nyclu-announce-agreement-nypd>



## B. Completed investigations

This section provides brief summaries of LEMIO matters that were completed in 2024. Investigations of officers referred to LEMIO pursuant to Executive Law Section 75(5)(b) are discussed in the following section (Section C).

- » **Unlawful arrest by investigators with the Oswego Police Department:** On November 4, 2024, the Civil Rights Bureau and LEMIO entered into an Assurance of Discontinuance (AOD) with the Oswego City Police Department (OPD) setting forth remedies to address the unlawful arrest of an individual on a civil immigration warrant. The AOD details OAG's findings that two OPD investigators arrested an individual in the Oswego County Courthouse pursuant solely to a federal administrative immigration warrant, in violation of state law relating to arrests and the Protect our Courts Act. In addition to enjoining similar violations of law, the AOD requires OPD to finalize and provide training on a policy regarding its treatment of immigration detainees and warrants and establishes a one-year monitoring period during which communications between OPD and federal immigration authorities must be reported.
- » **Excessive force by an officer of the Binghamton Police Department:** On May 10, 2024, LEMIO issued a report concluding that an officer of the Binghamton Police Department (BPD) used excessive force against an individual who had been arrested in the early morning hours of January 1, 2023. Specifically, the officer knelt on the individual's neck or upper back area adjacent to the neck for more than a minute while the individual was lying face-down on the sidewalk with his hands cuffed behind his back, violating the Fourth Amendment prohibition against excessive force, the New York model use of force policy, and BPD's own use of force policy. The report also identified several deficiencies in BPD's internal investigation of this incident and made several recommendations for remedial action regarding the incident.
- » **Retaliation against Black Lives Matter protestors by Saratoga Springs elected officials and police department:** On February 20, 2024, the Civil Rights Bureau and LEMIO issued a report concluding that Saratoga Springs elected officials, including the then-Mayor and then-Commissioner of Public Safety, and members of the Saratoga Springs Police Department (SSPD), engaged in a policy of retaliation against BLM protestors based on their speech following a July 14, 2021 protest, in violation of the First Amendment.<sup>12</sup> In particular, Saratoga Springs elected officials and other leaders ordered the arrest of BLM members and the initiation of a Child Protective Services investigation in retaliation for protected speech. Following those orders, the SSPD pursued unsupportable criminal charges against some of the BLM protestors and violated SSPD policies in doing so. The OAG is currently in discussions with the City of Saratoga Springs regarding the implementation of reforms to prevent these legal violations from reoccurring.

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12. OAG, A Report on the Saratoga Springs Police Department's Response to Protests in 2021, <https://ag.ny.gov/sites/default/files/reports/2024.02.20-sspd-compiled-report-final-final.pdf>.

## C. Section 75(5)(b) referrals

Executive Law Section 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.” LEMIO’s Executive Law Section 75(5)(b) investigations are focused on determining whether the referred complaints constitute a pattern of misconduct, although the investigations may include a review of other incidents when appropriate.

At the conclusion of an Executive Law Section 75(5)(b) investigation, OAG notifies the head of the referring agency whether a pattern of misconduct has been identified. To determine if there is a pattern, we assess whether the referred person engaged in multiple instances of similar misconduct. While the instances of misconduct must have some degree of similarity or commonality, they do not need to be identical, either with respect to the conduct or the law or policy that was violated.

If a pattern has been identified, LEMIO will describe the incidents that make up the pattern and recommend remedial actions to the referring agency, which may include discipline, monitoring, training, and policy or other changes.<sup>13</sup> In certain investigations that do not result in a finding of a pattern of misconduct, LEMIO may identify specific incidents or issues to the referring agency and recommend remedial action.

In cases in which a referred officer has left the referring agency before the investigation has concluded and is not actively serving in a law enforcement role with another covered agency, referrals are administratively closed without a determination as to whether the officer has engaged in a pattern of misconduct. In these cases, LEMIO will cooperate with DCJS with respect to information regarding whether the officer’s departure may be considered a “removal for cause” for purposes of decertification from New York’s police officer registry.<sup>14</sup> The investigation may be reopened if the officer subsequently is re-employed as a police officer.

As of publication, LEMIO has received 418 referrals from covered agencies pursuant to Executive Law Section 75(5)(b). In total, we have completed the investigations of 106 referrals to date, 16 of which resulted in a finding of a pattern or practice of misconduct. In addition to the 106 completed investigations, 20 referrals have been administratively closed due to an officer’s separation from their agency after the referral was made. Investigations regarding the remaining referrals are ongoing.

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Findings letters or reports notifying the agency of the conclusion of the investigation and describing OAG findings can be accessed on OAG website at:

[75\(5\)\(b\) findings](#)

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13. The Civil Service Law imposes an eighteen-month statute of limitations for disciplinary proceedings for police officers absent evidence of criminal conduct. Due to this statute of limitations, discipline may not be available in all instances in which LEMIO identifies misconduct.

14. See Executive Law 845; N.Y.C.R.R. Part 6056.

To protect ongoing investigations, LEMIO does not identify the referred officer or agency before the conclusion of the referral.

Importantly, a higher rate of referrals from a particular agency should not be viewed as an indication of bad performance or misconduct, and instead may be a positive sign that the agency is taking accountability seriously and encouraging and tracking feedback from the public.

The Executive Law Section 75(5)(b) process does not replace or supersede the covered agency's duty to monitor the conduct of its officers and to identify those who require guidance, correction, further support, or discipline to perform their duties effectively and legally. To that end, Executive Law Section 75(5)(b) makes clear that the "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."

## **D. 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 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 past year, LEMIO personnel met with representatives of covered agencies, community groups and nonprofits, experts on policing, and other police accountability agencies to discuss our work and solicit feedback.

Continuing and expanding upon these outreach efforts will continue to be a priority in the year ahead.

# Legislative recommendations

Executive Law Section 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.

## A. Pass legislation that increases transparency and bans profiling

While New York has taken initial steps to improve law enforcement transparency, our laws do not cover many important indicators. With hundreds of law enforcement agencies in New York, to the extent that some individual agencies separately collect and track data, the data is often inconsistent and hard to access.<sup>15</sup> As a result, community members and the state and local governments that represent them may be left in the dark when it comes to key information about policing and its impact.<sup>16</sup>

The data that is available, both in New York state and across the country, suggests that enforcement often disproportionately falls on people of color.<sup>17</sup>

There is a growing movement towards transparency, 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.<sup>18</sup> New York should join these states by mandating uniform statewide data collection and by banning bias-based profiling by law enforcement.

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 most other states, but also would permit New York to access a federal funding program to help support the collection and

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15. See, e.g., Empire Justice Center, *Stop the Stops: The Disparate Use and Impact of Police Pretext Stops on Individuals and Communities of Color* (Jan. 2003), available at <https://empirejustice.org/wp-content/uploads/2023/04/Stop-the-Stops-Empire-Justices-Preliminary-Report-on-Racial-Disparities-in-Pretext-Stops.pdf> (“Because there is no required conformity in data collection between states, counties, towns, cities, and villages, we have no way of comparing the racial disparities in police stops and searches between jurisdictions. While New York State Police collect data, many county, city, town and village police departments in New York, either do not, or do not make it transparent and available.”).

16. While there has been progress in New York, it has often come piecemeal and at times due to litigation rather than legislation. For example, in 2023 Suffolk County entered into a settlement agreement after years of class action litigation alleging racially discriminatory policing that will require the Suffolk County Police Department to collect data about traffic and pedestrian stops. See *Plaintiffs 1-21 v. Suffolk County Police Department*, 2:15-cv-02431 Docket #443 (E.D.N.Y. July 14, 2023); <https://www.latinjustice.org/en/press/federal-judge-approves-settlement-lawsuit-against-suffolk-county-police-racial-discrimination>.

17. See, e.g., NYCLU, *NYPD Traffic Stop Data*, available at <https://www.nyclu.org/en/nypd-traffic-stops-data> (analyzing NYPD stops and searches by race, outcome, and location).

18. See *Traffic Stop Data*, National Conference of State Legislatures, available at <https://www.ncsl.org/civil-and-criminal-justice/traffic-stop-data>.

analysis of police traffic stop data as a means of reducing profiling.<sup>19</sup> To provide just a few examples, states like California,<sup>20</sup> Connecticut,<sup>21</sup> and Kansas<sup>22</sup> have all banned bias-based profiling in this manner.<sup>23</sup>

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 ordering a person out of a vehicle, handcuffing, searching people and vehicles, seizing property, making arrests, and using force.<sup>24</sup>

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 disclose 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 DCJS. DCJS would also periodically collect and publish 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.

Data collection and reporting systems have been implemented in states such as New Jersey<sup>25</sup> and California<sup>26</sup>

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19. See Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, 119 Stat. 1144, Section 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).

20. See Cal. Penal Code Section 13519.4.

21. See Alvin W. Penn Racial Profiling Prohibition Act, Conn. Gen. Stat. Ann. Section 54-II, Section 54-1m.

22. See Kan. Stat. Ann. Section 22-460E6, Section 22-4609, Section 22-4610, Section 22-4611.

23. In the last year, Louisiana passed HB 89, requiring the state police to collect & report traffic stop data, and Minneapolis entered a settlement with the state of Minnesota to reduce discriminatory policing, including a requirement that the city record and publish pedestrian and traffic stop data, including officer name, perceived race of the pedestrian, duration of stop, whether a weapons frisk occurred, whether a search was conducted, the type of search, whether weapons were found, and the outcome of the stop.

24. Statewide data transparency legislation should set a baseline, but should not impose limits on additional data that any localities wish to track and make public.

25. 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>.

26. See Cal. Gov't Code Section 12525 (use of force data), Section 12525.2 (deaths in custody and arrest-related deaths), Section 12525.5 (stops), Cal. Pen. Code Section 13010-13012 and Section 13020-13021 (arrests), and Cal. Pen. Code Section 13012(a)(5) (civilian complaints against peace officers). All of this 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.

and were recommended for police departments in the 2015 Final Report of the President’s Task Force on 21st Century Policing.<sup>27</sup>

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 further LEMIO’s statutory mission to enhance the effectiveness of law enforcement and protect civil liberties and civil rights.<sup>28</sup>

## **B. Facilitate civilian oversight of law enforcement**

Legislation to remove obstacles to strong independent civilian oversight could improve accountability and help prevent misconduct, particularly in the wake of the Court of Appeals’ recent ruling in *Rochester Police Locust Club, Inc. v. City of Rochester*.

In 2020, Rochester residents voted to create a civilian Police Accountability Board (PAB) authorized, among other things, to discipline Rochester police officers for misconduct. In the *Rochester Police Locust Club* ruling, the Court of Appeals stripped the PAB of its disciplinary authority, holding that a 1985 change to municipal law in Rochester meant that, from that point forward, the discipline for Rochester police would be subject to collective bargaining with the local police union, regardless of any future municipal law-making or referenda. This ruling followed other Court of Appeals decisions in which the Court had concluded that the specific local legislative history of other municipalities (in particular, New York City, Schenectady, and Walkill) meant that those other municipalities, unlike Rochester, retain control over discipline without union approval. Both the majority and dissent noted that the ultimate resolution of these complex issues rests with the state legislature.<sup>29</sup>

Over the past several decades, many jurisdictions have established external civilian-led entities designed to provide independent oversight of law enforcement agencies.<sup>30</sup> The development of these civilian oversight entities generally has resulted from concerns over inadequate internal accountability processes and resulting breaches of public trust. Recently, prompted by increased scrutiny in the wake of high-profile incidents of police

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27. 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](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

28. In addition to mandating data collection for traffic and pedestrian stops, New York should consider requiring data transparency for local jails, requiring agencies to track and publish data including but not limited to assaults occurring in jails against people in custody and staff; demographic information related to those placed in solitary confinement; daily prisoner population segmented by charge type, race, sex, and mental health diagnosis, ; mean and median length of stay; as well as lists and descriptions of all programs available to incarcerated people and completion rates.

29. *Rochester Police Locust Club, Inc. v. City of Rochester*, --- N.E.3d ---- (2023), 2023 N.Y. Slip Op. 05959, 2023 WL 8007121, at \* (Nov. 20, 2023) (explaining that “[t]he Legislature may therefore act to articulate a public policy that would prevail over the ‘strong and sweeping’ one favoring collective bargaining that it has already adopted in the Taylor Law”); see also *id.* at \*15 (Chief Justice Wilson, stating in dissent that “[f]ortunately, the legislature has the power to break the cycle.... If Rochester’s desire to establish an independent disciplinary commission is in fact consistent with state policy, the legislature may easily correct our error).

30. See generally, Michael Vitoroulis, Cameron McElhiney, & 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 McElhiney, & 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).

misconduct, civilian oversight entities have expanded—both in number and in the extent of their authority—in New York and across the country.<sup>31</sup>

As the ruling in *Rochester Police Locust Club* makes clear, despite the trend towards local civilian oversight, certain state laws have had the unintended consequence of restricting the development of civilian oversight entities. The civil service laws at issue in *Rochester Police Locust Club* are one example. As another example, Unconsolidated Law Section 891 has been interpreted to prevent non-police personnel from presiding over police disciplinary hearings, unlike disciplinary hearings for other municipal employees.<sup>32</sup>

In the coming session, the legislature should address these issues and, more generally, facilitate civilian oversight by removing restrictions that prevent localities from determining the best way to establish police oversight and accountability mechanisms that serve the needs of their communities.<sup>33</sup>

Another way to remove obstacles to strong independent civilian oversight is to improve civilian oversight agencies' access to sealed records. New Yorkers are protected by laws that restrict access to—or “seal”—certain criminal justice records maintained by law enforcement agencies and the courts. These sealing laws serve important functions, but they can unintentionally hinder investigations of police misconduct. LEMIO and oversight entities such as civilian review boards often require access to sealed criminal justice records to fully investigate allegations of misconduct. For example, investigators may need to review body-worn camera footage, arrest records, and other documents related to incidents involving police interaction with young people or cases in which charges were dismissed—yet access to these records by OAG and other oversight entities may be blocked by sealing laws (although Executive Law Section 75 permits OAG to access sealed records maintained by covered agencies).

Legislation to address this problem should amend various provisions of the Criminal Procedure Law, Civil Rights Law, and Family Court Act to make clear that OAG, as well as other agencies investigating misconduct, can access sealed records as needed.

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31. 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).

32. See, e.g., *Lynch v. Giuliani*, 301 A.D.2d 351, 359 (1st Dep't 2003) (holding that Unconsolidated Law Section 891 required disciplinary hearings to be conducted by employees of the NYPD Commissioner, rather than the Office of Administrative Hearings and Trials).

33. 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).

## C. Develop legislation to reduce negative outcomes from traffic stops

Law enforcement officers make more than a million traffic stops each year in New York.<sup>34</sup> These stops may involve speeding and safety-related issues, but many stops are based on Vehicle and Traffic Law (VTL) violations that are less critical to safety, such as an expired registration or equipment violations like a broken taillight or tinted windows.

Under current law, these traffic stops can be “pretextual” in nature. In other words, the primary reason for the stop may not be the potential VTL violation, but rather the officer’s hunch—which on its own would not meet the constitutional standard—that stopping the car might lead to evidence of another offense.<sup>35</sup> Given the wide range of potential VTL violations, it is not hard to find a reason to stop a car and hold its owner on the side of the road.

Traffic stops may seem commonplace, but they can have serious consequences that range from the financial burdens of tickets to lengthy roadside detentions and searches. The racial disparities are significant. Black drivers are far more likely to be pulled over than white drivers.<sup>36</sup> While most New York agencies do not track searches and their outcomes, analyses from other states that do track data show that while drivers of color are more likely to be searched, the likelihood of officers finding contraband from those searches is much lower than for white drivers who are searched.<sup>37</sup> And, tragically, some of the high-profile deaths of individuals at the hands of police over the past decade originated with simple traffic stops that escalated into violence or high-speed pursuits.<sup>38</sup>

Some states and localities have attempted to mitigate the disparities and harmful outcomes from traffic stops by limiting stops for low-level equipment violations, repealing excess fees and implementing voucher programs to help fix equipment issues, and restricting high-speed pursuits to stops involving specific serious offenses. New York should consider legislation that adopts these reforms across the state.

Jurisdictions across the country have banned police stops for low-level equipment violations, including states such as Virginia and Oregon, localities such as Philadelphia, Pittsburgh, and Memphis, and various local police

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34. While precise data is not available for all New York state law enforcement agencies (see Section IV.A above), in 2022, NYPD officers alone made more than 670,000 traffic stops.

35. See *Whren v. U.S.*, 517 U.S. 806 (1996); *People v. Robinson*, 97 N.Y.2d 341 (2001).

36. See, e.g., *CitiStat*, Buffalo Open Data (2020), <https://data.buffalony.gov/stories/s/ftkr-cpvn> (showing traffic stop data in Buffalo); *New York Police Department Traffic Stops Data*, New York Civil Liberties Union (2023), <https://www.nyclu.org/en/nypd-traffic-stops-data>.

37. See, e.g., Empire Justice Center, *Stop the Stops* (Jan. 2023) at 12-17, <https://empirejustice.org/wp-content/uploads/2023/04/Stop-the-Stops-Empire-Justices-Preliminary-Report-on-Racial-Disparities-in-Pretext-Stops.pdf> (summarizing analyses from several states and municipalities).

38. See, e.g., Elisha Fieldstadt, *Newly aired Sandra Bland cellphone video shows traffic stop from her vantage point: Sandra Bland was pulled over for failing to use her turn signal and was found dead in her Texas jail cell a few days later. Her death was ruled a suicide.*, NBC News (May 7, 2019), <https://www.nbcnews.com/news/us-news/newly-aired-sandra-bland-cellphone-video-shows-traffic-stop-her-n1002756>; *Philip Heisel and Jacquellena Carrero, Philando Castile, Killed By Police During Traffic Stop, Remembered as Gentle Man: Philando Castile was a kitchen supervisor for Saint Paul Public Schools, where those who knew him were shocked and saddened by his death*, NBC News (July 7, 2016), <https://www.nbcnews.com/news/us-news/philando-castile-killed-police-during-traffic-stop-remembered-gentle-man-n605581>.



departments across the country.<sup>39</sup> These jurisdictions have met with successes: in Philadelphia, Pennsylvania, evidence suggests that, because police officers spend considerable time and resources enforcing low-level violations that fail to make roadways safer, officers were able to redirect those resources to deal with serious issues more effectively and were able to get more guns off the street.<sup>40</sup> Similarly, in Fayetteville, North Carolina, after police stopped conducting stops for certain low-level equipment violations, car accidents decreased and crime was unaffected, while racial disparities in traffic stops were reduced.<sup>41</sup> Components of such legislation include prohibiting police officers from initiating traffic stops for specified low-level equipment and traffic violations, rendering inadmissible in criminal actions any evidence derived from a traffic stop initiated on prohibited grounds, and requiring robust data collection on traffic stop encounters.

Jurisdictions across New York and the country have also begun to address the financial burdens of fines and fees associated with traffic stops.<sup>42</sup> As a report by the Vera Institute found, even low-level violations come with high financial costs: a single window tint violation can cost \$340 in fines, fees, and surcharges in New York.<sup>43</sup> The cost of multiple traffic tickets can range in the thousands, a cost that many households cannot afford.<sup>44</sup> Some localities in New York, such as Buffalo, have repealed local fees associated with traffic infractions in light of the financial hardship they impose on residents.<sup>45</sup> Several localities across the state have also implemented voucher programs, where community groups, government agencies, or police officers issue vouchers that cover the costs of fixing equipment violations such as broken headlights and taillights, or have implemented programs waiving fines if the driver can show the equipment is fixed.<sup>46</sup> New York should consider legislation that eliminates the use of fees and surcharges imposed on those convicted of offenses under the penal and vehicle and traffic laws,<sup>47</sup> and should consider implementing the issuance of vouchers by community groups and government agencies for low-level equipment violations statewide.

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39. In December 2022, New York passed legislation prohibiting police officers from issuing traffic summonses for two specific traffic violations relating to obstruction of a driver's view of the front and rear windshields.

40. Monroe, Howard, *New Philly Law Takes Weapons off the Streets, Data Shows*, CBS News Philadelphia, March 3, 2023, available at <https://www.cbsnews.com/philadelphia/news/new-philly-law-takes-weapons-off-the-streets-data-shows>.

41. Fliiss, M.D., Baumgartner, F., Delamater, P. et al., *Re-prioritizing traffic stops to reduce motor vehicle crash outcomes and racial disparities*, *Injury Epidemiology* 7, (2020), 3, available at <https://doi.org/10.1186/s40621-019-0227-6>.

42. See End Justice Fees Reform Map: States and Localities That Have Repealed Fees, Fines and Fees Justice Center, available at <https://endjusticefees.org/reform>. Fines, as opposed to fees, are monetary sanctions prescribed as punishment, while fees and surcharges do not serve the purpose of punishment and are instead intended to fund the justice system and other government services.

43. See Chris Mai and Maria Rafael, *The High Price of Using Fines and Fees to Fund Government in New York*, Vera Institute of Justice (December 2020), 3, available at <https://www.vera.org/downloads/publications/the-high-price-of-using-justice-fines-and-fees-new-york.pdf>.

44. Angela LaScala-Gruenewald, Katie Adamides, and Melissa Toback, *New York's Ferguson Problem*, Fines and Fees Justice Center, No Price on Justice (September 2020), available at [https://noprisonjustice.org/wp-content/uploads/2020/09/New\\_York\\_Ferguson\\_Problem\\_NPJ\\_Report.pdf](https://noprisonjustice.org/wp-content/uploads/2020/09/New_York_Ferguson_Problem_NPJ_Report.pdf).

45. See The Buffalo Reform Agenda, available at <https://policereform.ny.gov/system/files/documents/2021/04/buffalocityprc.pdf>.

46. See, e.g., Greg Cergol, *Instead of Tickets for Defective Lights, LI Drivers Will Get Vouchers to Fix Them*, NBC News (Apr 21, 2022), <https://www.nbcnewyork.com/news/local/instead-of-tickets-for-defective-lights-li-drivers-will-get-vouchers-to-get-them-fixed/3657711>.

47. Other important components of legislation to address the burdens of fines and fees include eliminating mandatory minimum fines; requiring an individualized assessment by the court of an individual's ability to pay a fine; vacating existing judgments and warrants arising out of the imposition of court fees and surcharges; and eliminating the use of the funds of an incarcerated person to pay such fees, surcharges, fines or other monetary penalties.

Finally, a growing number of municipalities and law enforcement agencies across the state and country have begun to address the dangers of high-speed vehicle pursuits. A recent national study found that police pursuits resulted in the death of more than 3,000 people from 2017 to 2022, more than 500 of whom were bystanders, and that the vast majority of police vehicle pursuits were to stop drivers suspected of committing minor vehicle and traffic violations or lower-level crimes.<sup>48</sup> In Buffalo, pursuits are banned where the reason for the attempted stop is a Vehicle and Traffic Law violation, a misdemeanor, or a non-violent felony.<sup>49</sup> In Albany, officers are required to consider several factors before starting a chase, such as the seriousness of the offense for which the person is pursued, the present danger the fleeing person poses to the public, and the possibility of apprehending the person at a later time.<sup>50</sup> Statewide legislation should restrict high-speed pursuits to a limited set of circumstances, such as where officers have cause to believe a serious or violent offense has been or will be committed, or where a driver's conduct threatens immediate harm to themselves, bystanders, or officers.

## **D. Develop and Support Research on Alternative Public Health Approaches for People in Mental Health Crisis to Minimize the Risks of Police Involvement**

Our previous annual reports have called for legislation to help localities establish specialized mental health units as alternatives to police response to situations involving mental health emergencies. Troubling statistics confirm the disparate harm associated with the status quo. 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.<sup>51</sup> 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.<sup>52</sup> Recent federal civil rights litigation has highlighted how failure to provide alternative, non-police responses to mental health emergencies could constitute a violation of anti-discrimination law.<sup>53</sup>

Recognizing the problems resulting from relying on police as the default first responders to mental health crises, many local governments are turning to co-responder models (in which civilian specialists pair with police

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48. See Jennifer Gollan and Susie Neilson, *Police chases are killing more and more Americans*. With lax rules, it's no accident, San Francisco Chronicle (Feb. 27, 2024), <https://www.sfchronicle.com/projects/2024/police-chases>.

49. Rowe, A. (2022, March 31). *Did Officers Disobey BPD Rules in City-wide Police Chase?* ABC News 7 Buffalo.

50. Albany Police Department (2015). Albany Police Department General Order No. 3.1.15: Pursuit Situations 1-2. <https://perma.cc/CF3Q-LWCJ>

51. 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>.

52. See Ayobami Laninyonyu and Phillip Atiba Goff, *Measuring Disparities in Police Use of Force and Injury Among Persons with Serious Mental Illness*, BMC Psychiatry (2021) <https://bmcp psychiatry.biomedcentral.com/counter/pdf/10.1186/s12888-021-03510-w.pdf>

53. In Washington, D.C., the District Court recently barred the city from dismissing a lawsuit alleging police response to mental health emergencies violates the Americans with Disabilities Act (ADA). See Minute Order, *Bread for the City v. D.C.*, No. 1:23-cv-01945 (D.D.C. Sept. 10, 2024). A similar lawsuit is also underway in Washington County, Oregon, advancing the theory that municipalities fail to provide people with disabilities equal access to and opportunity to benefit from the government's emergency response system by sending police as first responders to mental health emergencies. See *Compl., Disability Rts. Oregon v. Washington Cnty.*, Oregon, No. 3:24-cv-00235, 2024 WL 477591 (D.Or. Feb. 5, 2024).

responders) or alternative first responder models (in which armed police are not involved in the response).<sup>54</sup> Researchers at the Community Safety Workgroup have documented over 100 alternative crisis response units operating in the United States, as of May 2024.<sup>55</sup>

Cities developing new alternative crisis response models have achieved early successes. Eugene, Oregon, a pioneer of non-police response to mental health emergencies, adopted Crisis Assistance Helping Out on the Streets (CAHOOTS) in 1989, which led to responders requiring police backup in only 1% of mental health calls.<sup>56</sup> The city dispatches two-person teams of crisis workers and medics from Eugene's White Bird Clinic to respond to 911 calls involving an individual in behavior health crisis.<sup>57</sup> As of 2019, the CAHOOTS team answered approximately 17% of the city's police department calls and was estimated to save the city approximately \$8.5 million in public safety spending annually.<sup>58</sup> In Durham, North Carolina, following the implementation of the Holistic Empathetic Assistance Response Team (HEART), a 2022 study documented a 34% drop in low-level crime in neighborhoods where the mental health responders operated in Denver, compared to neighborhoods that did not yet have responders.<sup>59</sup>

New York has also seen the development of mental health programs, such as New York City's Behavioral Health Emergency Assistance Response Division (B-HEARD), a co-response program piloted in 2021.<sup>60</sup> Albany launched the Albany County Crisis Officials Responding and Diverting (ACCORD) Program in 2021 as a pilot in Hilltowns, with plans to expand to Albany by 2025.<sup>61</sup> The City of Rochester has also experimented with a Person in Crisis team, but received early criticism for its inconsistent early implementation.<sup>62</sup> Because few New York state alternative response programs have surpassed preliminary implementation, where they have been piloted at all, state legislators have an important role to play in incentivizing the development of new and more sophisticated models via funding and technical assistance in establishing these programs.

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54. 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>

55. See Cmty. Safety Workgroup, *Directive of Alternative Crisis Response Programs* (May 26, 2024), <https://drive.google.com/file/d/18KBgQGeuiSfc3Ue1fYMIuZCC-OBHOqe5/view> (providing city-by-city snapshots of alternative response programs).

56. See Christie Thompson, *Sending Unarmed Responders Instead of Police: What We've Learned*, The Marshall Project (July 25, 2024), <https://www.themarshallproject.org/2024/07/25/police-mental-health-alternative-911>.

57. Jackson Beck, Melissa Reuland, & Leah Pope, *Behavioral Health Crisis Alternatives Case Study: CAHOOTS*, Vera Inst. (November 2020), <https://www.vera.org/behavioral-health-crisis-alternatives/cahoots>.

58. White Bird Clinic, *Crisis Assistance Helping Out On The Streets* (2020), <https://whitebirdclinic.org/wp-content/uploads/2020/07/CAHOOTS-Media.pdf>.

59. Thomas S. Dee, A Community Response Approach to Mental Health and Substance Abuse Crises Reduced Crime, *ScienceAdvances* (Jun 8, 2022), <https://www.science.org/doi/10.1126/sciadv.abm2106>.

60. See B-Heard, City of New York, <https://mentalhealth.cityofnewyork.us/b-heard>.

61. Rachel Silberstein, *Albany officials pledge to expand mental health, homeless services*, Times Union (Sep. 20, 2023), <https://www.timesunion.com/news/article/albany-officials-pledge-expand-mental-health-18377555.php>.

62. Sam Mellins, In Rochester, A Police Alternative Delivers...Police, *In These Times* (April 28, 2021), <https://inthesetimes.com/article/replacing-police-pic-rochester-crisis-response>.

Accordingly, 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.

## **E. Require the Use of Body-Worn Cameras**

Video footage of interactions between law enforcement and the public can promote accountability for misconduct that might otherwise go undetected and protect officers who are wrongly accused. As recommended in the October 1, 2024 Annual Report of OAG’s Office of Special Investigation, the legislature should require by statute that all police and sheriff’s departments deploy and use body-worn cameras and dashboard cameras in all encounters with members of the public. The statute should provide smaller departments with funding from the state as needed for such deployment and training by DCJS as needed for such use. The statute should permit departments to create exceptions to such deployment or use, but exceptions must be limited to specific and clearly articulated and justified law enforcement need.<sup>63</sup>

## **Conclusion**

Executive Law Section 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. We look forward to the work ahead.

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<sup>63</sup> See New York State Office of the Attorney General, Office of Special Investigation Fourth Annual Report (Oct. 1, 2024), <https://ag.ny.gov/sites/default/files/reports/20241001-annual-report.pdf>.