



Reform / Transform: A Policing Policy Toolkit

BANS ON BIAS-BASED POLICING

LOCALPROGRESS
IMPACT LAB

POLICY BACKGROUND

Bans on bias-based policing prohibit officers from targeting individuals based on their perceived race, socioeconomic status, gender identity, sexual orientation, religion, immigration status, language, disability status, or housing status. There is no evidence that bias-based policing is an effective law enforcement strategy that leads to greater public safety.¹ In fact, statistics show that profiling is ineffective—just 0.1 percent of the New York Police Department’s (NYPD) racially biased stop-question-and-frisk stops resulted in a conviction for a violent crime or possession, according to a 2013 report released by the New York Attorney General.² Instead, bias-based policing breeds mistrust of law enforcement by impacted community members.³

For a ban on bias-based policing to be effective, it should include a comprehensive definition of protected categories and robust measures for data collection and reporting, mandate disciplinary measures that are enforceable in court for officers that violate the law, and require recurring training for officers. However, a ban on the books only solves one part of the problem; there must also be measures in place for dealing with bias-based policing when it does occur, such as strong mechanisms for independent intake, investigation, and reporting on complaints, as well as a private right of action.

ASSESSING THE LANDSCAPE

The following questions can help to provide additional local context:

- ★ Does state legislation ban profiling?
- ★ Is there additional legislation at the local level banning profiling or increasing data collection and transparency?
- ★ What kind of oversight structures exist to ensure accountability?

BEST PRACTICES

Though bans on profiling are often established through state law, local elected officials often have authority to pass stronger local legislation to curb racial profiling or increase data collection and transparency. There should be more aggressive oversight by local elected officials when constitutional rights are at stake. The following criteria for effective state or local legislation to ban profiling and other forms of bias-based policing are derived from the NAACP’s model bill and criteria⁴ as well as conversations with policy experts.

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
The legislation should include a definition of bias-based policing.	★ Does the legislation include a clear definition of bias-based policing?	<input type="checkbox"/> Y <input type="checkbox"/> N _____	State or local statute
The legislation should include a comprehensive ban on profiling.	★ Does the legislation include comprehensive definitions of what constitutes profiling and bias? Does the legislation protect: <ul style="list-style-type: none"> ★ race? ★ color? ★ ethnicity? ★ religion? ★ national origin? ★ age? ★ sex? ★ gender identity and expression? ★ sexual orientation? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____	State or local statute

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
	<ul style="list-style-type: none"> ★ immigration and/or citizenship status? ★ language? ★ disability (including HIV status)? ★ housing status? ★ occupation? ★ socioeconomic status? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	
<p>The legislation should ban pretextual stops.</p>	<ul style="list-style-type: none"> ★ Does the legislation ban pretextual stops of pedestrians and motorists—instances in which police use common traffic violations to inquire about drugs, guns, or other breaches of the law? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>
<p>The legislation should outlaw violations of racial profiling.</p>	<ul style="list-style-type: none"> ★ Does the legislation specify penalties for officers who repeatedly engage in racial profiling? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
<p>The legislation should mandate comprehensive data collection.</p>	<ul style="list-style-type: none"> ★ Does the legislation mandate data collection for traffic and pedestrian stops? ★ Does the legislation mandate data collection in all circumstances, including warnings and citations given as a result of the stop (and if so, the specific violation)? ★ Does required data include whether a search was performed as a result of the stop? ★ If a search was performed, whether the person consented to the search? ★ The probable cause or reasonable suspicion for the search? ★ Whether the person’s property was searched? ★ The duration of the search? ★ Does required data include: ★ perceived race? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
	<ul style="list-style-type: none"> ★ perceived gender? ★ age? ★ ethnicity? ★ English language proficiency? ★ whether immigration status was inquired about during the stop? ★ Does required data include whether any contraband was discovered or seized and what type? ★ Does data include whether any physical force was used by and/ or against the law enforcement officer or officers (and if so, to what extent)? ★ Does data include whether search involved canine units or advanced technology? 	<ul style="list-style-type: none"> <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ 	

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
<p>Data should be analyzed and published regularly.</p>	<ul style="list-style-type: none"> ★ Does the legislation require that the analysis is conducted by an independent expert? ★ Is the data reported in a statistical, anonymized form to the public? ★ Is data reported at least quarterly? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p> <p>Public website</p>
<p>Legislation should establish an independent commission to receive, review, and respond to complaints.</p>	<ul style="list-style-type: none"> ★ Does the legislation require that an independent commission review and investigate complaints? ★ Is there a clearly defined process by which law enforcement must report complaints received to the commission? ★ Does the commission have independent subpoena and disciplinary authority? ★ Does the legislation require that the commission publish an annual report of complaints received and investigated? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
	<ul style="list-style-type: none"> ★ Does the legislation require that the commission report on rates of complaints that are substantiated? ★ Does the legislation mandate that the commission include representation from advocacy groups that work directly with communities impacted by profiling (communities of color, homeless people, undocumented residents, LGBTQ community, etc)? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	
<p>Legislation should allow individuals to seek legal relief through the court and through mediation.</p>	<ul style="list-style-type: none"> ★ Is there a private right of action? ★ Are there remedies, including the ability to collect damages? ★ Does the legislation make room for a mediation option for complaints? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>
<p>Legislation should establish funds for periodically retraining officers and installing equipment.</p>	<ul style="list-style-type: none"> ★ Does the legislation require that all law enforcement agencies be trained on the prohibition of profiling, data collection, and reporting? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
	<ul style="list-style-type: none"> ★ Does the training include instruction on interacting with diverse communities? ★ Does the legislation mandate officers take a refresher course at least once every five years? ★ Does the legislation require funding for in-car video cameras, body-worn cameras, and gun cameras for monitoring traffic stops and other police interactions? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	
<p>All officers should be required to undergo regular training on bias.</p>	<ul style="list-style-type: none"> ★ In addition to new recruits, are captains and sergeants required to undergo training? ★ Is the department required to keep records that document the type of training received (including length, frequency, content, and who develops it)? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p> <p>Police training policies (may require records request)</p>
<p>Legislation should include public-hearing requirements.</p>	<ul style="list-style-type: none"> ★ Are there public-hearing requirements that allow the public to engage on this issue? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>

BANS ON BIAS-BASED POLICING

Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/ Other:	Where to Look
<p>Departments should be required to publicly disclose their use of predictive analytics techniques as well as any algorithm data law enforcement is drawing upon to make decisions.</p>	<ul style="list-style-type: none"> ★ Is law enforcement required to publicly disclose use of predictive analysis techniques? ★ Is law enforcement required to disclose any algorithm it is using to make decisions? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>
<p>Profiling bans should hold local law enforcement responsible for both intentional discrimination as well as unintentional practices that unfairly impact specific communities (known as “disparate impact”)</p>	<ul style="list-style-type: none"> ★ Does the legislation hold local law enforcement responsible for both intentional discrimination as well as unintentional practices that unfairly impact specific communities? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<p>State or local statute</p>

ADDITIONAL CONSIDERATIONS

- ★ When settlements are paid out, funds should come from law enforcement budgets and not from the general fund.
- ★ Jurisdictions should also consider reforms to end surveillance and racially biased investigator practices:
 - ★ Civilian monitors should have strong oversight over intelligence gathering and surveillance.
 - ★ Investigations in which race, religion, or ethnicity is a substantial or motivating factor should be prohibited.
 - ★ Officers should have to account for the potential effect of investigative techniques on constitutionally protected activities such as religious worship and political meetings.
 - ★ Police should be required to produce factual information before launching an investigation into political or religious activity.
 - ★ The use of undercovers and confidential informants to situations should be limited.⁵

LESSONS FROM THE FIELD

Ending Bias-Based Policing

In 2013, New York City Council Member Jumaane Williams and his colleagues, working with allies across the city, passed the Community Safety Act (CSA), a landmark legislative package that included legislation to effectively prohibit bias-based policing.⁶ Advocates seeking to address a number of abuses in policing, including stop-question-and-frisk, had approached city council with a package of bills to enact reform within the NYPD. Although New York City had already

banned bias-based policing, the ban had not been enforceable. In order to give the policy teeth, the new legislation included a private right of action. It also expanded protected categories beyond race and ethnicity to include sexual orientation, gender identity, citizenship status, and housing status. The same year, the council passed legislation that would establish an inspector general to oversee and audit the NYPD's policies and practices.⁷

Leading up to 2013, the political climate was ripe for police accountability reform. Stop-question-and-frisk usage was at an all-time high. Data showed that in recent years, the NYPD had stopped more young Black men than the total number of Black men living in the New York City—meaning that individual Black men were being stopped multiple times by the police. It was important for advocates to be able to show the police the department's own data in making the case for reform. Then Council Member Williams was himself profiled and arrested at the 2011 West Indian Day Parade alongside his friend and fellow activist Minister Kirsten John Foy. Even after Williams identified himself to the police as a council member, he was cuffed and briefly detained, only to be released with no charges.⁸ The high-profile arrest of Williams created a groundswell of mobilization by advocates and provided an opportunity to more widely communicate the dire need for reform.

The campaign was fueled by a broad, diverse coalition of advocates, including organizations that represented Black, Latinx, and LGBTQ community members. It also included members of the Muslim community who had specific experiences of being surveilled and targeted by the NYPD. This coalition played a crucial role in the passage of the reform because its members had been directly impacted by the policing policies and practices that so badly needed reform. Williams said it was “the best inside/outside strategy [he'd] ever been a part of.”

Council Member Williams and his colleagues faced opposition by the former mayor and the police union. To counter this opposition, Williams

grounded his argument in data and worked to humanize the issue. He took care not to villainize the opposition and made the argument that the reform would ultimately help the police do their job more effectively. In the end, the council secured and maintained the 34 votes needed to override the mayor's veto. When the legislation was later challenged by the police union, the State Supreme Court Justice upheld the law, protecting the right to sue as a means of ensuring consequences to using profiling to make stops.⁹

Ending Discriminatory Surveillance Practices

In 2011, at the same time that there was a groundswell of organizing to end stop-question-and-frisk in New York City, the NYPD came under fire for its use of racially biased surveillance of Muslim communities. A 2011 Associated Press investigative probe found that the NYPD had mapped Muslim communities and their religious, educational, social, and business institutions, and they had secretly dispatched undercover officers into communities without any suspicion of wrongdoing.¹⁰ In this moment of heightened awareness around the need for police reform, American Muslim advocates and community organizations alike came together to formulate a coordinated response, much of which was done under a newly formed coalition, the Muslim American Civil Liberties Coalition (MACLC). MACLC and its component organizations ensured that surveillance became an integral issue within the police accountability conversation, and that Muslim communities also showed up for other communities impacted by other discriminatory policing practices. As a result, an unprecedented alliance of advocates banded together in New York City to form a coalition that included American Muslim groups and other community groups of color with a longer history of organizing around police accountability.

The coalition took a multi-pronged approach in their advocacy. An

important part of the effort was to bring community experiences and perspectives to the table in order to concretely show that NYPD surveillance practices were damaging and harmful. To this end, MACLC, the Creating Law Enforcement Accountability & Responsibility (CLEAR) project, and the Asian American Legal Defense and Education Fund (AALDEF) produced a groundbreaking report, "Mapping Muslims: NYPD Spying and its Impact on American Muslims," which highlighted, through interviews and stories, the ways that surveillance of Muslims creates a pervasive climate of fear.¹¹ Advocates used this report in city council hearings to keep the issue on the agenda and generate continued attention around the issue. And advocates in the New York Muslim community fought alongside other allies towards the passage of the Community Safety Act, which instituted protections and oversight to curb racially biased surveillance practices.¹² These efforts forced many decision-makers to disavow past surveillance practices,¹³ creating a wedge issue for the mayoral election.

On a parallel track, advocates challenged the legality of surveillance practices. In 2013, the American Civil Liberties Union, New York Civil Liberties Union, and the CLEAR project filed a lawsuit asserting that the NYPD's surveillance program violated constitutional rights to equal protection and free exercise of religious beliefs. A settlement was finalized in 2017, which jointly addressed the 2013 lawsuit (the Raza case) as well as a long-standing class action lawsuit that challenged the NYPD's surveillance of political groups and activists (the Handschu case).¹⁴ The settlement established a number of reforms that were designed to prevent the use of discriminatory surveillance practices (see, "Additional Considerations," above).¹⁵ In New Jersey, the Center for Constitutional Rights and Muslim advocates also sued the NYPD; the case, *Hassan v. City of New York*, also settled in 2018.

RESOURCES

See New York City’s legislation to end the use of bias-based policing: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1444267&GUID=BCB20F20-50EF-4E9B-8919-C51E15182DBF&Options=ID%7CText%7C&Search=1080>

See the New York City Administrative Code, § 14-151, for an example of a clear definition of bias-based policing: https://www.nyc.gov/assets/cchr/downloads/pdf/human-rights/030414_biasbased_profiling.pdf

See legislation establishing the New York City’s Inspector General: <https://www.nyc.gov/assets/oignypd/downloads/pdf/Local-Law-70.pdf>

See a New York City bill that would require reporting and oversight of surveillance technologies: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3343878&GUID=996ABB2A-9F4C-4A32-B081-D6F24AB954A0&Options=&Search=>

See the NAACP’s report, “Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America,” which includes a model bill (Appendix III): <https://bja.ojp.gov/sites/g/files/xyckuh186/files/bwc/pdfs/born-suspect-report.pdf>

See the Vera Institute’s study, “Coming of Age with Stop and Frisk”: <https://www.vera.org/downloads/publications/stop-and-frisk-technical-report-v4.pdf>

See the Muslim American Civil Liberties Coalition (MACLC), the Creating Law Enforcement Accountability and Responsibility (CLEAR) project, and the Asian American Legal Defense and Education Fund (AALDEF) report, “Mapping Muslims: NYPD Spying and its Impact on American Muslims”: <http://www.law.cuny.edu/academics/clinics/immigration/clear/Mapping-Muslims.pdf>

ENDNOTES

- 1 “Born Suspect: Stop-and-Frisk Abuses and the Continued Fight to End Racial Profiling in America,” NAACP, September 2014, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/bwc/pdfs/born-suspect-report.pdf>, 6.
- 2 “A Report on Arrests Arising From the New York City Police Department’s Stop-And-Frisk Practices,” New York State Office of the Attorney General, November 2013, https://chicagodefender.com/wp-content/uploads/sites/4/2013/11/oag_report_on_sqf_practices_nov_2013.pdf ,1.
- 3 “Born Suspect: Stop-and-Frisk Abuses and the Continued Fight to End Racial Profiling in America,” NAACP, 16.
- 4 Ibid, Appendix II and III.
- 5 “Raza v. City of New York - Legal Challenge to NYPD Muslim Surveillance Program,” ACLU, August 3, 2017, <https://www.aclu.org/cases/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program>.
- 6 Local Law 71, New York City Council, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=1444267&GUID=BCB20F20-50EF-4E9B-8919-C51E15182DBF&Options=ID%7CText%7C&Search=1080>, Attachment 12.
- 7 Local Law 70, New York Council, <https://www.nyc.gov/assets/oignypd/downloads/pdf/Local-Law-70.pdf>.
- 8 Jumaane Williams, “What happened to me at the parade: City Councilman Jumaane Williams explains how he wound up cuffed,” New York Daily News, September 7, 2011, <https://www.nydailynews.com/2011/09/07/what-happened-to-me-at-the-parade-city-councilman-jumaane-williams-explains-how-he-wound-up-cuffed/>.
- 9 Barbara Ross, “Public allowed to sue NYPD cops over stop-and-frisk profiling, state judge rules,” New York Daily News, June 18, 2014, <https://www.nydailynews.com/2014/06/18/public-allowed-to-sue-nypd-cops-over-stop-and-frisk-profiling-state-judge-rules/>
- 10 Matt Apuzzo, Adam Goldman, Eileen Sullivan and Chris Hawley of the Associated Press, “Associated Press,” Accessed May 31, 2024, <https://www.pulitzer.org/winners/matt-apuzzo-adam-goldman-eileen-sullivan-and-chris-hawley>
- 11 “Mapping Muslims: NYPD Spying and its Impact on American Muslims,” MACLC, CLEAR, and AALDEF, <https://drive.google.com/file/d/1RK6pJtq1aGBmnEwKUHPg3yHJLziBfJlk/view>,
- 12 J. David Goodman, “City Council Votes to Increase Oversight of Police,” The New York Times, June 27, 2013, https://www.nytimes.com/2013/06/27/nyregion/new-york-city-council-votes-to-increase-oversight-of-police-dept.html?smid=tw-share&_r=1&.
- 13 Inae Oh, “NYPD Finally Shuts Down Controversial Surveillance Program that Spied on Muslims,” Huffington Post, April 16, 2014,