

The Bronx Defenders

Redefining public defense.

Written Comments of The Bronx Defenders

New York City Council Committee on Public Safety

Oversight Hearing: Examining Community Policing in New York City

March 3, 2015

Good morning. Our names are Kate Rubin, Managing Director of the Civil Action Practice at The Bronx Defenders, and Scott Levy, Director of the Fundamental Fairness Project at The Bronx Defenders. We submit these comments on behalf of The Bronx Defenders and thank the City Council and members of the Committee for the opportunity to testify.

The Bronx Defenders provides innovative, holistic, and client-centered criminal defense, family defense, civil legal services, social work support and advocacy to indigent people of the Bronx. Our staff of nearly 250 represents over 35,000 people each year and reaches thousands more through outreach programs and community legal education. We work in interdisciplinary teams to ensure that each client of The Bronx Defenders has seamless access to multiple advocates and services to meet his or her legal and non-legal needs. The primary goal of our holistic defense model is to address the underlying issues that drive people into the criminal justice system and mitigate the devastating impact of criminal justice involvement, such as deportation, eviction, the loss of employment, student loans and public benefits, or removal of children from the home. Instead of referring to these outcomes as “collateral consequences,” we use the term “enmeshed penalties,” which better reflects the grave risks and realities that our clients face from the moment of arrest.

In the course of serving hundreds of thousands of clients in the Bronx over 18 years, we have seen the dramatic impact of policing practices on communities we serve, particularly low income communities of color. Our model for providing public defense rests on the notion that an arrest is never just an arrest. Every arrest, even for the most minor charges, can have far-ranging

consequences for an individual, his family, and a whole community. For this reason, “Community Policing” must be defined as broadly as possible and any Community Policing program should be evaluated not only on its effectiveness at reducing crime but on its sustained impact on all communities in New York City.

Over the past ten years, New York City has arrested and prosecuted an unprecedented number of people for low-level misdemeanors. Despite the dominant presence of the NYPD in so many of the city’s poorest neighborhoods, however, shockingly little attention has been paid to the role of policing in maintaining economic and social disparities that persist in all five boroughs.

This testimony describes two critical lenses through which the development and evaluation of any successful community policing program must be considered: 1) the impact of enmeshed legal penalties of arrests and convictions and 2) the economic impact of policing practices on communities. Our understanding of enmeshed legal penalties is based on more than a decade of experience providing civil legal services related to housing, immigration, family, employment, education, consumer debt, and other matters to thousands of clients facing criminal charges in the Bronx. This understanding is also supported by extensive legal and social science research describing the severe and often hidden punishments that accompany criminal justice involvement. Likewise, our concerns regarding the economic impact of low-level arrests are based on both anecdotal experiences of clients and a study conducted by the Bronx Defenders’ Fundamental Fairness Project in the summer of 2014. The study includes data from interviews about the economic consequences of arrests with over 160 clients who were charged with marijuana possession. We urge the Council to carefully consider each of these issues as the baseline for any conversation about community policing.

Underlying enmeshed penalties and economic impact is the problem of racial disparity and implicit bias at every level of the criminal justice system. A person arrested for marijuana possession may suffer the legal sanction of losing her employment license as well as the direct economic punishment of lost wages for missed days of work. Because of the racial disparity in marijuana arrests, a Black person is 4.5 times more likely than a white person to be arrested for

marijuana possession,¹ and the economic impact of the arrest will likely be more severe.² Likewise Black and Latino New Yorkers are more likely to have force used against them in police encounters.³

Any successful Community Policing program in New York City must reduce racial disparity and increase trust between the police and communities of color. A recent report by the John Jay College of Criminal Justice found that as both violent and non-violent crime plummeted from 1980 – 2013, misdemeanor arrests increased by 200%. The majority of increased enforcement targeted young Black and Latino men; the arrest rate for black men doubled from 1990-2013.⁴ These statistics are consistent with documented trends in stops and frisks, marijuana arrests, and summonses over the same period. However, we lack a comprehensive picture of the impact of policing on communities of color. We are encouraged that the City is revising summons forms to ensure that data on race and age is consistently collected and we urge the Council to partner with advocates to improve public access to data on race and policing practices, particularly the issuance of summonses. But efforts at addressing racial disparity must go beyond data collection. The City must implement policies that address selective enforcement and ensure that no New Yorker is punished disproportionately for any activity because of her race or ethnicity. This can only be achieved through strict oversight of stops, searches, arrests, and use of force.

Enmeshed Legal Penalties

¹ The War on Marijuana in Black and White. American Civil Liberties Union (2013), p. 130. Accessible: <https://www.aclu.org/sites/default/files/assets/1114413-mj-report-rfs-rel1.pdf>. Note that this data is from 2010, when arrests for marijuana were considerably higher in New York City. However, as overall marijuana arrests have decreased, racial disparity in marijuana arrests has not. See “Race, Class & Marijuana Arrests in Mayor De Blasio’s Two New Yorks,” Drug Policy Alliance (2014), p. 1. Available: <http://www.drugpolicy.org/sites/default/files/Race-Class-NYPD-Marijuana-Arrests-Oct-2014.pdf>.

² Pager, D. (2003). The Mark Of A Criminal Record. *American Journal of Sociology*, 108(5), 958-958. Pager’s audit study of job-seekers applying for employment with and without criminal records found that even white applicants with criminal records received more favorable treatment (17%) than Black applicants without criminal records (14%).

³ Stop & Frisk 2013. New York Civil Liberties Union (2014), p. 13. Accessible: http://www.nyclu.org/files/publications/8.26.14_Stop-and-Frisk_2013_final.pdf.

⁴ Goodman, J. (2014, October 28). Crime Dips in New York as Misdemeanor Arrests Rise, Report Says. *New York Times*. Available: http://www.nytimes.com/2014/10/29/nyregion/crime-dips-in-new-york-as-misdemeanor-arrests-rise-report-says.html?_r=0

Mr. Dorian⁵ was at a bar on 189th Street in the Bronx on a rainy night in April, celebrating his friend's birthday. He bought his friend two pitchers of beer, but he had a migraine so he wasn't drinking. After midnight, a fight broke out outside the bar between several men and the police came to the scene. Although Mr. Dorian was on his way out, an officer yelled, "Get the fuck out of here. Keep it fucking moving." Mr. Dorian gave the officer a dirty look and turned to leave. He was immediately thrown to the ground, kneed in the face, and handcuffed. Mr. Dorian threw his hands behind his back to make it clear he was not resisting and said, "Please stop hitting me in the face. I am a security officer." In response a police officer yelled, "Resisting arrest!" and started kicking Mr. Dorian in the face. Six more officers joined in. One took a running start and kicked Mr. Peralta in the side by his kidney. Another officer said, "This is what you get for being a smart ass."

Mr. Dorian was charged with Harassment, Attempted Assault, and Resisting Arrest. Convinced of his innocence, Mr. Dorian vowed to fight his case. After more than a year, he had his day in court and was acquitted of all charges at trial. But Mr. Dorian's struggles had only just begun. Throughout the year that he had an open criminal case, he was unable to renew his Security Guard license and was suspended from his job. Without income, Mr. Dorian fell behind on rent and was eventually served an eviction notice. Only through advocacy from housing, employment, and public benefits specialists at The Bronx Defenders was Mr. Dorian able to enroll in the FEPS program, stay in his apartment with his wife and infant, and eventually get back his license to work as a Security Guard.

Hundreds of federal, state and local laws combine to erect barriers to success for the hundreds of thousands of people arrested in New York City each year and the hundreds of thousands more who receive summonses for low-level offenses. Those barriers translate into lost employment opportunities, housing instability, and obstacles to education. They mean that families are separated, whether by incarceration, placement of children in foster care, or deportation of parents. None of these effects are isolated; each one radiates out to touch families, neighborhoods, and the fabric of our entire city.

⁵ All names of clients have been changed.

We applaud the City for taking significant steps in recent years to mitigate the most severe penalties of arrests, particularly low-level arrests. Most notably, this body has passed legislation removing Immigration and Customs Enforcement (ICE) from Rikers Island and prohibiting the NYPD and the NYC Department of Correction from honoring detainer requests issued by ICE in most cases. Because of the Council's action on this issue we have represented dozens of clients who were allowed to return home to their families, jobs, and communities rather than face deportation. In addition, we appreciate that the City has made great efforts to expand participation in the New York City Housing Authority (NYCHA) Family Reentry Pilot Program, which allows New Yorkers returning home from jail and prison to reunite with their families in public housing, even if they would otherwise be barred from doing so under NYCHA's ineligibility guidelines. To address one of the most extreme consequences of the most minor convictions, NYCHA also revised those ineligibility guidelines so that people are no longer automatically barred from living in public housing as a result of a conviction for a *non-criminal* offense. The City Council has introduced the Fair Chance Ordinance, which when enacted will ensure that job applicants with criminal records have a fair chance by requiring that employers run criminal background checks only *after* making conditional offers of employment.

Despite these substantial steps, severe consequences of arrests – even the lowest level arrests – persist for families and communities. While the City Council has reduced exposure to deportation through the City jail system, under federal immigration law two convictions for turnstile jumping or marijuana possession still make a Lawful Permanent Resident deportable if detected by ICE. In the public housing context, a misdemeanor conviction still triggers automatic NYCHA ineligibility, as does any allegation of marijuana possession, even if not proven in court. In the internet age, job seekers are powerless to defend against online searches that turn up information about arrests, even if those arrests were later dismissed and sealed. And while job seekers enjoy some discrimination protections under the City and State Human Rights Laws, apartment hunters have no parallel rights. Landlords may lawfully inquire of prospective tenants about all past arrests, even those that were dismissed and sealed.

Any Community Policing approach must account for the far-reaching impact of enmeshed penalties on families and communities. While we hope to continue to work with the City Council to craft policies that mitigate the civil harms of arrests, by far the most effective

strategy for reducing these harms is to reduce arrests in the first place. We are encouraged by the announcement of new pre-arrest diversion programs and hope those programs will be sustained and expanded. We also call on the Council to thoroughly review all offenses defined in the Administrative Code with the aim of downgrading offenses whenever appropriate to non-criminal violations, and to support a parallel effort on the state level.

Economic Impact

Mr. Smith, a Bronx resident in his late 40's who had worked as a bricklayer for over a decade, was arrested for possession of marijuana one weekend in the spring of 2014 and issued a Desk Appearance Ticket (DAT). Though he ultimately received an Adjournment in Contemplation of Dismissal months later, he was forced to miss a full day of work, losing approximately \$150 in wages. In the interim, he was told that he was ineligible for a job involving a governmental agency due to his open case. Finally, because Mr. Smith was a legal permanent resident at the time, his immigration status and ability to work and provide for his family was put in jeopardy, despite the fact that he has lived legally in the United States for most of his life.

This past summer, The Bronx Defenders systematically interviewed over 160 people arrested for low-level marijuana possession, collecting data on the economic and broader community impact of marijuana arrests in the Bronx. The findings, put forward in our report, “The Hidden Tax,” are striking. The data suggest that the City’s marijuana arrest policies and practices cost the residents of the Bronx, and of New York City more broadly, millions of dollars each year in fines, court fees, and lost wages, in addition to countless missed days of work and appointments, school absences, and childcare complications. Based on our interviews, we estimate that in 2013 alone, misdemeanor marijuana arrests cost Bronx residents almost \$1 million in fines, fees, and lost wages. Looking back over a five-year period, the number jumps to almost \$7 million in the Bronx and a staggering \$24 million citywide.

As the data show, the costs associated with broken windows policing overwhelmingly fall on young men of color and their families in the city’s low-income neighborhoods –

communities and populations that are particularly vulnerable to economic shocks. These costs function as a hidden regressive tax on the city's low-income communities of color.

The seemingly minor disruptions associated with an arrest can easily destabilize a family living from paycheck to paycheck or on the edge of severe poverty or homelessness. This is especially true in communities like the South Bronx, where more than 60% of residents spend more than 30% of their income on housing expenses, and homelessness is a constant threat.

For many people, the threat of losing a job is the most immediate and pressing consequence of an arrest. The 167 arrests represented in our study resulted in at least 93 missed days of work by respondents, their families, and their friends. Over half of the people we interviewed for our report had jobs either at the time of their arrests or on the day of their arraignments. Of those, fully 69% were forced to miss work in order to come to their first court appearances, which regularly required spending hours in court.

For many of those forced to take a day off from work for court, a missed day of work means not only a lost day of wages but also an increased risk of losing a job completely. Our clients are among the most vulnerable people in the workforce. They have little in the way of job security, sick leave, or vacation time. When they miss work because of an arrest, their jobs may not be waiting for them when they get back.

When the negative economic consequences of low-level arrests are multiplied by tens of thousands of cases every year and concentrated in the New York City's most vulnerable neighborhoods and communities, quality-of-life policing can become a significant destabilizing force and obstacle to economic opportunity. With a relatively small number of economically depressed neighborhoods bearing the brunt of the aggressive policing of low-level offenses, more attention needs to be paid to the ways in which the myriad costs, inconveniences, disruptions, and trauma that result quality-of-life arrests contribute to the widening inequality gap.

Working with clients day in and day out in the Bronx we have seen that charging and processing tens of thousands of low-level, nonviolent misdemeanors each can lead to significant and long-lasting negative consequences--such as higher unemployment, decreased access to education, and homelessness--in communities that are already struggling. These costs have been largely externalized by the NYPD. Any formulation of community policing going forward must internalize these costs. The City should work with academics and social scientists to monitor the broad, community-wide social and economic effects of its policing strategies, so that any evaluation of new community policing initiatives reflects a broad, more holistic view of community outcomes

Conclusion

A robust community policing strategy must take into account the full spectrum of legal, social, and economic consequences of law enforcement in low-income communities of color. As the city looks toward a new era in community policing, we encourage policymakers not to merely focus on police-community relations—which, of course, are vital—but also on how the success of the policing function is to be assessed. Specifically, we hope that policing strategies will be evaluated not just in terms of crime rates, but overall community health and broader holistic outcomes.