



June 5, 2017

RE: Oppose A. 2962- A – designating offenses against law enforcement officers, firefighters and emergency medical services personnel a hate crime–

Dear Assembly Codes Committee & Assembly Members:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we urge you to oppose A. 2962- A, which would unnecessarily and unreasonably expand New York's hate crimes statute to offenses committed against law enforcement officers, firefighters and emergency medical services personnel. While LDF supports efforts to advance public safety, A. 2962- A does not accomplish this goal. Instead, the bill duplicates current New York laws that already penalize crimes against law enforcement and first responders, and undermines the public by failing to acknowledge and address strained community-police relations due to police violence and abuse against communities of color.

LDF is the nation's oldest and foremost civil rights legal organization. For almost 80 years, we have relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other persons of color in the areas of education, voting, employment, housing, and criminal justice. LDF advocates for unbiased and accountable policing through litigation and policy advocacy. More recently, LDF, in partnership with Legal Aid Society, filed and settled a law suit on behalf of residents of the New York City Housing Authority against the New York City Police Department for engaging in discriminatory policing practices and trespass arrests of residents and their guests.¹ We have also represented law enforcement officers in lawsuits as they sought to enforce their rights to equal employment opportunities within their own local law enforcement agencies.² With this experience, LDF offers the following critique of A. 2962- A.

¹ Complaint, *Davis, et al. v. City of New York, et al.*, Case No. 1:10-cv-00699-SAS-HBP (S.D.N.Y. Jan. 28, 2010); and *Court approves final settlement in federal class action lawsuit challenging police practices in NYC public housing; major reforms to NYPD to follow in court-ordered monitoring process*, <http://www.naacpldf.org/update/court-approves-final-settlement-federal-class-action-lawsuit-challenging-police-practices-nyc> (last visited June 2, 2017).

² See *Waisome v. Port Authority of New York and New Jersey*, 999 F.2d 711 (2d Cir. 1993) (class action on behalf of African-American police officers at the Port Authority regarding discrimination in promotions); see also *Police Ass'n of New Orleans Through Cannatella v. City of New Orleans*, 100 F. 3d 1159 (5th Cir. 1996) (defended decree entered in settlement of class action by African-American police officers in New Orleans regarding discrimination in hiring and promotions).

I. New York law already imposes adequate penalties for crimes against law enforcement and other first responders.

Extending hate crimes protection to law enforcement officers and other first responders needlessly duplicates New York law that already imposes criminal penalties for crimes of violence against members of these occupations. For example, the New York penal code specifically addresses killings or assaults against law enforcement officers, firefighters, and first responders in numerous provisions.³ Also, there is no credible evidence that New York's law enforcement departments, prosecutors, and judges have failed to apply the existing penalties to those who commit crimes against law enforcement officers, firefighters, and first responders. Therefore, this bill does nothing more than repeat a message that is already loud and clear – violence against law enforcement and first responders will be punished harshly.

II. Hate crime laws are intended to address biased-based violence against social groups that historically have experienced discrimination.

The protections under New York's hate crimes law should not extend to law enforcement officers and other first responders because they are not members of social groups that historically have experienced marginalization, persecution, or discrimination. New York's hate crimes law recognizes crimes motivated by the race, color, religion, sexual orientation, or national origin of the victim.⁴ The United States Congress,⁵ states,⁶ the law enforcement community,⁷ and prosecutors⁸ all agree that the essence of a hate crime is

³ See, e.g., N.Y. Penal Law § 125.26 (McKinney 2017) (stating that a person is guilty of aggravated murder when he/she intentionally causes the death of a police officer, firefighter or emergency medical personnel); N.Y. Penal Law § 120.08 (McKinney 2017)(designating as a class C felony assaults against police officers, firemen and emergency medical service personnel); N.Y. Penal Law § 120.11 (McKinney 2017)(stating that a person is guilty of aggravated assault when he/she intentionally causes serious injury to a person he/she knows to be a police or peace officer); N.Y. Penal Law § 120.18 (McKinney 2017)(describing the crime of menacing a police or peace officer); and N.Y. Penal Law § 125.11 (McKinney 2017)(describing the crime of criminally negligent homicide against a police or peace officer).

⁴ N.Y. HATE CRIMES LAW § 485.05 (McKinney 2017).

⁵ See H. REP. NO. 111-86 at 5 (2009), (stating that hate crimes involve “the intentional selection of victims from identifiable groups” based on their “perceived attributes for violence and intimidation”).

⁶ See Allison M. Smith et al., *State Statutes Governing Hate Crimes*, Congressional Research Service, 1 (2010), <https://fas.org/spp/crs/misc/RL33099.pdf>, (describing hate crimes as “bias-motivated violence and intimidation” and referencing state statutes that prohibit this type of violence against persons from groups based on race, age, sex, religion, color, creed, disability, national origin, or ancestry).

⁷ See e.g., International Association of Chiefs of Police, *Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention* (1999), <http://www.theiacp.org/ViewResult?SearchID=123>, (last visited on June 2, 2017) (describing a hate crime as “a criminal offense committed against persons, property or society that is motivated, in whole or in part, by an offender's bias against an individual's or a group's race, religion, ethnic/national origin, gender, age, disability or sexual orientation.”).

unreasonable and intentional hostility and prejudice toward persons in certain social groups. By seeking to add an employment-based category to New York's hate crime, A. 2962- A would deemphasize the recognition of this country's long history of discrimination against certain individuals and groups – a history that law enforcement simply does not share.

At a minimum, broadening hate crimes protection should be predicated on evidence demonstrating a need for greater protection,⁹ and there is little to no evidence to suggest that one's status as a law enforcement officer has rendered New York law enforcement officers vulnerable to increased violence or bias-motivated attacks. On the contrary, the reality—supported by FBI statistics—is that there has been a continuing and precipitous decline in assaults and killings of law enforcement officers nationwide for years.¹⁰ In fact, FBI data showed 2015—the last full year of FBI statistics released—to be the safest year recorded in history for law enforcement.¹¹ Specifically in New York, in 2015, the number of officers feloniously killed declined when compared to 2014.¹²

III. A. 2962- A will harm community-police relations.

Assembly bill 2962- A threatens to sow division between law enforcement and communities of color because it advances a policy that would be superfluous and ignores the need for policy changes that would improve strained relationships between these populations due to biased policing practices. This is a moment when the country and indeed, New York

⁸ See American Prosecutor's Research Institute, *A Local Prosecutor's Guide for Responding to Hate*, 5, 2000, http://www.ndaa.org/pdf/hate_crimes.pdf, (stating that hate crimes are “committed because of hatred or prejudice toward a certain group of people. . .”).

⁹ The hate crimes provision of the Civil Rights Act of 1968 was passed by Congress in response to widespread attacks on African Americans attempting to vote, attend school, apply for employment, and engage in other federally-protected activities. See S. REP. NO. 90-721, at 1838-39 (1967). The record leading up to the passage of the Hate Crimes Prevention Act cited FBI statistical evidence showing a copious number of hate-based attacks nationally on protected groups. See H. REP. NO. 111-86, at 5 (2009).

¹⁰ See Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, *Law Enforcement Officers Killed and Assaulted 2015*, <https://ucr.fbi.gov/leoka/2015> (last visited June 2, 2017); See also Federal Bureau of Investigation Press Release, *FBI Releases 2015 Statistics on Law Enforcement Officers Killed and Assaulted*, FBI National Press Office (Oct. 18, 2016), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2015-statistics-on-law-enforcement-officers-killed-and-assaulted>; Martin Kaste, *Is There A 'War On Police'? The Statistics Say No*, National Public Radio (Sept. 17, 2015, 5:34 PM), <http://www.npr.org/2015/09/17/441196546/is-there-a-war-on-police-the-statistics-say-no>; Radley Balko, *Once again: There is no 'war on cops.' And those who claim otherwise are playing a dangerous game*, WASHINGTON POST (Sept. 10, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/09/10/once-again-there-is-no-war-on-cops-and-those-who-claim-otherwise-are-playing-a-dangerous-game/?utm_term=.144e3c91fa5b.

¹¹ Matt Ferner, *FBI Confirms 2015 Was One Of The Safest Years Ever For Cops*, HUFFINGTON POST (May 17, 2016, 6:26 PM), www.huffingtonpost.com/entry/fbi-police-deaths_us_573b53aae4b0646cbeeb02b8.

¹² See FBI, Criminal Justice Information Services Division, *Law Enforcement Officers Feloniously Killed, 2006-2015*, Table 1, https://ucr.fbi.gov/leoka/2015/tables/table_1_leos_fk_region_geographic_division_and_state_2006-2015.xls (last visited June 2, 2017).

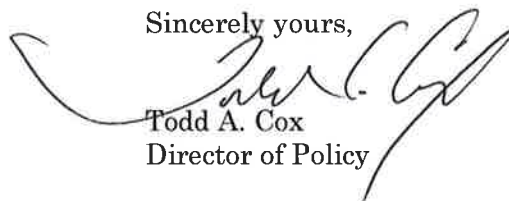
City, has witnessed numerous police-involved shootings of persons of color including Eric Garner,¹³ Akai Gurley,¹⁴ and Deborah Danner,¹⁵ and persistent racial disparities in policing practices, such as stop and frisks.¹⁶

Rather than adopt policing reforms aimed at ensuring law enforcement is acting in a constitutional manner and begin to heal relationships between law enforcement and communities, the New York State Assembly is considering legislation which does nothing to address the well-documented, longstanding concerns these communities have with policing. A. 2962- A is cynical and flawed legislation that threatens to further undermine police-community relations and, in so doing, ultimately threatens the safety of both officers and communities.

Policymakers should responsibly foster healing between law enforcement and the communities they serve by advancing policies that ensure New Yorkers are treated fairly by law enforcement through improved training and supervision.

For the reasons summarized above, we urge you to oppose A. 2962- A.

Sincerely yours,



Todd A. Cox
Director of Policy

Monique Dixon
Deputy Director of Policy

Carlton T. Mayers, II
Policy Counsel, Policing Reform
Campaign

¹³ Josh Sanburn, *Behind the Video of Eric Garner's Deadly Confrontation With New York Police*, TIME (Jul. 22, 2014), <http://time.com/3016326/eric-garner-video-police-chokehold-death/>.

¹⁴ Ross Barkin, *NYPD Officer in Akai Gurley Shooting Indicted: Reports*, OBSERVER (Feb. 10, 2015, 3:45 PM), <http://observer.com/2015/02/nypd-officer-in-akai-gurley-shooting-indicted-reports/>.

¹⁵ Sarah Wallace and Erica Byfield, *NYPD Sergeant Charged With Murder in Shooting Death of Mentally Ill Bronx Woman*, NBC New York (May 31, 2017, 12:11 PM), <http://www.nbcnewyork.com/news/local/Police-Officer-Arrest-Hugh-Barry-Shooting-Deborah-Danner-Mentally-Ill-Woman-Bronx-2016-Manslaughter-Charge-425509004.html>.

¹⁶ Al Baker, *Street Stops by New York City Police Have Plummeted*, The New York Times, May 30, 2017, <https://www.nytimes.com/2017/05/30/nyregion/nypd-stop-and-frisk.html? r=0>.