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- NEW YORK STATE SHERIFFS' ASSOCIATION
- CITIZENS CRIME COMMISSION OF NEW YORK CITY

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LEGISLATIVE PRIORITIES

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PREFACE

The New York State Law Enforcement Council was formed in 1982 as a legislative advocate for New York's law enforcement community. The Council's members represent the leading law enforcement professionals throughout the state, including the Attorney General of the State of New York, the District Attorneys Association of the State of New York, the New York State Association of Chiefs of Police, the New York State Sheriffs' Association, the New York City Criminal Justice Coordinator, and the Citizens Crime Commission of New York City. Since its inception, the Council has been an active voice and participant in improving the quality of justice and in the continuing effort to provide for a safer New York.

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6. ENHANCE PROTECTIONS FOR POLICE OFFICERS

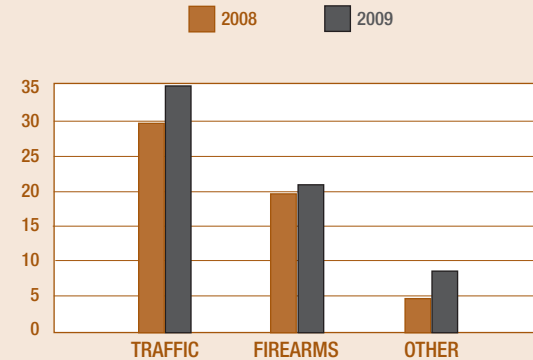
Police officers across New York State serve as the front line protecting public safety 24 hours a day, seven days a week. Their ability to safeguard our cities, towns, and villages stems not only from tactical training and firearms expertise, but also from the respect that the vast majority of civilians afford the law enforcement community. Unfortunately, when an officer confronts a suspect who does not respect the badge and therefore fails to heed police authority, police and civilians are put in unnecessary danger.

Current laws fail to address the threat to police and public safety from those who flout the authority of police officers.

In the first half of 2009, 66 officers died in the line of duty across the nation, an increase of 20 percent from the same time period in 2008.¹ Traffic-related incidents were the most common cause of death nationally.²

Because a single officer fatality in the line of duty is one too many, the Law Enforcement Council urges the passage of laws that will establish penalties for those who clearly flout law enforcement authority. In particular, these penalties should apply when individuals: fail to heed or obey a police officer's lawful command; subject police officers to unwanted physical contact while they are performing their official duties; or attempt, while driving, to elude a police officer's order to pull over and comply.

LAW ENFORCEMENT FATALITIES IN THE U.S. INCREASED ACROSS ALL CATEGORIES FOR MID-YEAR 2009 COMPARED TO MID-YEAR 2008



Source: Berneta Spence, et al., "Law Enforcement Officer Deaths 2009: Mid-Year Report," *National Law Enforcement Officers Memorial Fund Bulletin (July 2009)*, available at www.nleomf.com/MidYearReport/2009MidYearReport.pdf.

Create a Violation for Individuals Who Fail to Comply with Police Officers' Lawful Commands, Risking Injury to Officers and Others

The ability of police officers to effectively carry out their responsibilities relies on the authority and respect commanded by the badge and uniform. When suspects disregard an officer's authority, it is important that a legal remedy exist. Otherwise, individuals have nothing to lose from failing to comply with an officer's lawful orders.

When suspects flee in response to a command to stop, and officers are forced to chase down suspected criminals, they risk injuring themselves or bystanders. Defendants who proactively pre-

vent police from doing their jobs through force or intimidation can be charged with Obstructing Governmental Administration in the Second Degree, an A misdemeanor.³ However, individuals who willfully ignore the lawful commands (for example, commands to stop or identify themselves) issued by police officers are not subject to any penalties.

Suspects Endanger Police Officers' Safety by Failing to Heed Lawful Commands

Police Officer Falls to Death in Chasing Suspect

Police Officer William Rivera of the 78th Precinct in Brooklyn died November 24, 2004, from the injuries he sustained while chasing a suspected burglar. In the midst of the rooftop chase, he lost his footing and fell 20 feet to the ground, breaking both of his legs. Rivera, who was 35, later died from complications from his injuries.

Enhance Penalties for Individuals Who Subject Police Officers to Unwanted Physical Contact

New York should provide an enhanced harassment statute for people who subject police officers to unwanted physical contact. Enhanced penalties already exist when defendants assault and cause serious physical injury to police officers.⁴ New York also provides stronger penalties under its aggravated harassment laws when certain categories of victims are subjected to unwanted physical contact without further injury. For example, Aggravated Harassment of a Correctional Employee by an Inmate is a class E felony when the inmate throws bodily substances at the employee

in order to “harass, annoy, threaten or alarm” him.⁵ Similarly, harassment involving unwanted physical contact is an A misdemeanor when the defendant is motivated by bias against a protected group.⁶

However, people who strike, kick, or shove police officers -- so long as they do not cause serious physical injury -- are not subject to anything more serious than a violation.⁷ Under New York law a violation is not a criminal charge. The enhanced protections that the Penal Law provides for aggravated harassment against some specific groups should be extended to police officers.

Penalize Drivers Who Flee Police Officers and Fail to Stop Without Breaking Other Traffic Laws

Suspects who flee police officers on New York State's highways and roads represent a major challenge to public safety. Traffic incidents are the leading cause of officer deaths. From 1999 to 2008, 46 people were killed in New York as a result of police chases.⁸

Officer Dies in Pursuit of Motor Vehicle:

On July 17, 2000, Officer John M. Kelly, a member of the New York City Police Department's auto-larceny unit, was working a red-light enforcement detail when he stopped a motorcycle with stolen license plates. The operator fled on the motorcycle and Officer Kelly pursued the suspect. Officer Kelly died after he lost control of his unmarked cruiser and collided with a utility pole.

New York State Police Trooper Dies in High Speed Pursuit; Leaves Legacy:

New York State Trooper Craig Todeschini was killed in an auto-

mobile accident that occurred while he was pursuing a motorcycle that was traveling in excess of 100 miles per hour in Onondaga County. Trooper Todeschini pursued the motorcycle for approximately two miles before his Chevy Tahoe patrol vehicle left the roadway and struck a tree.

The "Trooper Craig Todeschini Bill," which created the crime of Fleeing from a Police Officer, became law in November 2006. The law makes it illegal to flee from the police in New York State while driving recklessly or at speeds in excess of 25 miles per hour above the speed limit.

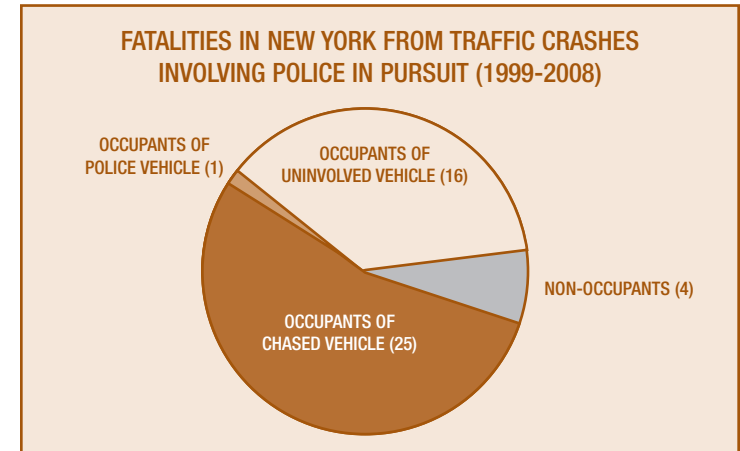
In addition to the law bearing his name, Trooper Todeschini, age 25, left behind his wife, Kristi, who was expecting their first child.

Source: The Officer Down Memorial Page, Inc., available at www.odmp.org.

When introducing "Craig's Bill" then-Senate Majority Leader Joseph L. Bruno said, "A husband, a father, a son, a brave law enforcement officer, was killed because a driver refused to pull over and caused a tragic high speed chase ... We need tougher penalties to make drivers think twice about fleeing an officer and putting innocent lives in danger." Enacted in 2006, the law, crafted to prevent this type of tragedy, is narrow in scope; it only punishes drivers that flee police officers by driving recklessly or at speeds 25 miles per hour or more above the speed limit.⁹ If the driver was otherwise obeying traffic laws, failure to pull over when directed to by a police officer is only an infraction under the Vehicle and Traffic Law. Much like a violation, an infraction is not a criminal charge.¹⁰ Yet even at normal or slightly above-normal highway speeds, suspects who flee can cause dangerous accidents, harming police officers, other drivers, and themselves. We should

not wait for the death of another dedicated officer to enact appropriate legislation.

Almost half of people who died as a result of police pursuits in the past ten years were innocent drivers and passengers sharing the road with the police and the fleeing suspects: 16 of those who died were riding in uninvolved vehicles and four were not in a vehicle, compared to 25 who died while riding in a police vehicle or a chased vehicle.¹¹ Clearly, these chases not only threaten the lives and well-being of suspected criminals and officers in pursuit, but they also represent a deadly menace to innocent drivers, cyclists, and pedestrians who must share the road.



Source: Nat'l Ctr. for Statistics and Analysis, Nat'l Highway Traffic Safety Admin., "Fatalities in Motor Vehicle Traffic Crashes Involving Police in Pursuit, 1982-2008" (June 26, 2009) (unpublished statistical report, on file with LEC).

Bystander Felled After Suspect Refuses to Stop

On New Year's Eve in 2004, David Scaringe was making last-minute preparations to celebrate the holiday and make wedding plans with his girlfriend, Karen Jabonaski. He ran out to his car, which was parked on Lark Street in Albany, when he was caught in the crossfire of a police pursuit.

The suspect, Daniel Reed, initially stopped at the command of police officers. When asked to remove his hands from the steering wheel, Reed instead sped toward them. After a foot and automobile chase, an officer fired his weapon to stop the vehicle. One of those shots ricocheted off of an automobile and hit David Scaringe, puncturing his lung, triggering massive hemorrhaging, and killing him.

Source: Brendon Lyons, "Deadly Pursuit Costly for City," Times Union (January 6, 2005) available at <http://timesunion.com>

The Law Enforcement Council supports the creation of a Penal Law misdemeanor for those who fail to heed police orders to stop their vehicle regardless of how fast or how recklessly the offender is driving.

SUMMARY

It is the responsibility of the State Legislature to ensure that our state, county, and municipal police departments have the authority to safeguard their officers. The existing laws do not afford sufficient protections to police officers. Swift action by the State Legislature on the above proposals will have a signifi-

cant impact on the well being of New York's law enforcement officers and civilians.

1. Berneta Spence, et al., "Law Enforcement Officer Deaths 2009: Mid-Year Report," National Law Enforcement Officers Memorial Fund Bulletin (July 2009), available at www.nleomf.com/MidYearReport/2009MidYearReport.pdf.

2. *Ibid.*

3. N.Y. Penal Law § 195.05.

4. N.Y. Penal Law § 120.08.

5. N.Y. Penal Law § 240.32.

6. N.Y. Penal Law § 240.30(3).

7. N.Y. Penal Law § 240.26.

8. Nat'l Ctr. for Statistics and Analysis, Nat'l Highway Traffic Safety Admin., "Fatalities in Motor Vehicle Traffic Crashes Involving Police in Pursuit, 1982-2008" (June 26, 2009) (unpublished statistical report, on file with LEC).

9. NY Penal Law §§ 270.25, 270.30, 270.35.

10. N.Y. Veh. & Traf. Law §§ 1101, 1102.

11. Nat'l Ctr. for Statistics and Analysis, Nat'l Highway Traffic Safety Admin., "Fatalities in Motor Vehicle Traffic Crashes Involving Police in Pursuit, 1982-2008" (June 26, 2009) (unpublished statistical report, on file with LEC).