

## **AN ACTION PLAN TO ELIMINATE IMPROPER ARRESTS AND DETENTIONS IN BALTIMORE**

- 1. Create Incentives for Arrests that Result In Successful Prosecution and Eliminate Incentives to Improper Arrests:** The BPD currently has in place a Performance Evaluation System that assesses officers based on their “enforcement statistics,” which include numbers of arrests and citations. Similarly, police supervisors and commanders must report and justify arrest and citation figures at weekly “Comstat” meetings. The singular focus on arrest and citation statistics, without holding officers and supervisors accountable for the outcome of those arrests, creates inappropriate incentives that drive up improper arrests. Addressing this problem requires that the outcome of arrests be tracked at the individual and command level, and that both individual officers, supervisors, and commanders be made aware of which arrests do not result in prosecution, and why. Officers, supervisors, and commanders must also be held accountable for patterns of arrests that cannot be prosecuted, particularly since such arrests do nothing to make the City safer. BPD legal staff should review all arrest reports of persons Released Without Charge (RWOC) and make an independent determination of whether probable cause was present and communicate that information to the officer and supervisors.
- 2. Stop Arresting People for Offenses that the State’s Attorney Will Not Prosecute:** The Baltimore City State’s Attorney has made a policy and resource decision that certain petty crimes, such as littering, will not be criminally prosecuted following an arrest unless the person is a repeat offender. The BPD should immediately cease arresting people for these offenses, unless they meet the criteria for prosecution. Arrests for offenses that the police know will not be prosecuted are unreasonable seizures in violation of the Constitution, and inappropriately turn the police into the judge, jury, and executioner. Should the police feel a need to charge someone under these circumstances, they should utilize a criminal citation, so that person is not subjected to a custodial arrest, with all of the attendant resource costs to the criminal justice system, and so they have an opportunity to defend themselves, with the right to the assistance of counsel, including a public defender if necessary. Should concerns about identity arise, the police should utilize portable fingerprint scanners in the field to confirm identity.
- 3. Implement Policies and Training to Eliminate Improper Loitering and “Failure to Obey” Arrests:** A significant portion of the cases RWOC’d by the State’s Attorney are arrests for loitering and “failure to obey” the order of a police officer. These laws are being enforced without any regard to the statutory and constitutional limits on such offenses. The BPD consistently arrests persons simply for standing on the street, or refusing a directive to “move along,” despite the fact that such arrests are neither authorized by any of Baltimore’s loitering ordinances, nor constitutional (and an ordinance authorizing such arrests would itself be unconstitutional). Similarly, the BPD consistently arrests persons on failure to obey charges simply because officers believe that the persons have not obeyed one of their directives, despite the fact that

such arrests are not authorized by statute. The BPD should issue written directives to each officer setting forth the legal elements of a proper loitering or failure to obey charge. In addition, because of the history of problems with loitering arrests in Baltimore, and because a constitutional loitering statute, lawfully applied, is of little to no value to a law enforcement agency, Baltimore should repeal its loitering statutes, consistent with many other major urban centers in the U.S.

**4. Make Expungement of Arrest Records Automatic When Charges are Not Pursued:** When an arrestee is released without charges, he or she is given the opportunity to have that arrest expunged from his record by signing a form. However, the arrest is only expunged if the arrestee agrees to waive any claims he or she may have regarding the arrest. This policy allows for police misconduct to go unreported and unchecked. Arrestees who are illegally arrested should have their arrests expunged as a matter of course, and should remain free to pursue legal action for their unlawful deprivation of rights

**5. Immediately Cease Blanket Strip Searches and Cavity Searches of Male Detainees at Central Booking:** Courts throughout the country have consistently and repeatedly held that policies permitting blanket strip or body cavity searches of detainees, regardless of the nature of the offense alleged, and absent any individualized suspicion that they are concealing contraband, violate the Constitution. The State should immediately cease this unlawful and humiliating practice.