

GOVERNOR'S EXECUTIVE ORDER 147 IS GRAVELY FLAWED AND WILL HARM THE CAUSE OF JUSTICE

District Attorneys Association of the State of New York asks AG Schneiderman for written protocols for the investigation & prosecution of cases involving deadly police encounters

(BROOME COUNTY, NY – JULY 13, 2015) The District Attorneys Association of the State of New York (DAASNY) said today that Governor Andrew Cuomo's Executive Order No. 147 is gravely flawed and invites serious legal issues regarding how cases involving the "deaths of unarmed civilians caused by law enforcement officers" will be properly investigated during the critical, early hours and days after such a tragic incident occurs. Such ambiguity will prove harmful to the cause of justice, not only for the families of the deceased, but for the entirety of the impacted community.

DAASNY President Gerald F. Mollen (DA Broome County) said that Executive Order No. 147 should never have been issued. He added that each elected District Attorney will now be forced to navigate many uncertainties that will arise because of the imprecision of this Order. He also requested that Attorney General Eric Schneiderman provide DAASNY with written protocols to address these concerns.

Among the many serious ambiguities raised by the Order are:

- It may take the AG's office hours to respond to an incident – particularly in upstate rural areas. The first few hours of an investigation are critical. What happens to the investigation during that time?
- What constitutes a weapon – a garbage can lid; a pipe; an iPhone case in the shape of a gun?
- If the victim dies weeks after the incident, does the DA turn the investigation over to the AG in that case?
- If the law enforcement officer is a state employee, will the AG investigate?

DA Mollen said, "The members of the District Attorneys Association remain committed to providing the communities that we are elected to serve with our vigilant efforts to provide justice to all citizens without fear or favor.

"It is understandable that the Governor and the Attorney General sought to address the concerns of the families who tragically lost loved ones in encounters with the police. However, District Attorneys have far more experience – and resources – in dealing with these cases than either the Governor or the Attorney General. District Attorneys have also learned from long, sometimes painful experience that our legal system cannot always heal the pain a family suffers from the loss of a loved one. But our system of criminal justice, although not perfect, does work," DA Mollen added.

Only in the most exceptional circumstances have Governors of the state have used their power to usurp the elected District Attorneys. Governor Al Smith put it best when he said that the power to supersede should be exercised

“...only when the Governor is satisfied beyond question that the interests of the public demand such exercise and when the Governor is satisfied beyond question that the district attorney is either disqualified or is willfully (sic) neglecting to perform his duty, or is guilty of corrupt or illegal conduct.”

There is no evidence to support such a drastic action at this time.

At its annual conference which concluded on July 12th, DAASNY members unanimously agreed on a statement that, in part, read, “Rather than coming together on true legal reforms that would help us understand why the grand jury in Staten Island voted not to charge police officers in the death of Eric Garner, our statewide leaders proclaimed the existence of a crisis of confidence in the criminal justice system. Rather than quelling this false notion, they fed it and gave it legitimacy. The fact that many prosecutions have successfully been undertaken by local District Attorneys of police officers who have committed crimes belies this claim.”

Since December 2014, the District Attorneys Association has devoted considerable time and effort to draft proposed legislation that would provide for greater transparency into the investigation and grand jury action with respect to citizen fatalities involving the police.

DAASNY’s proposal not only provides for the release of the legal instructions provided to a Grand Jury, but for a mechanism whereby a Grand Jury may issue a report regarding the nature of the evidence adduced, as well as the creation of an Independent Monitor to review the proceedings.

“Sadly and ironically, the Executive Order does nothing to create greater transparency to the Grand Jury process that the public craves and the District Attorney’s Association supports,” Mollen concluded.

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