

**STATEMENT OF THOMAS GIOVANNI  
CHIEF OF STAFF AND EXECUTIVE ASSISTANT FOR GOVERNMENT POLICY  
NEW YORK CITY LAW DEPARTMENT  
BEFORE THE NEW YORK CITY COUNCIL  
COMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

**JUNE 28, 2016**

Good morning. My name is Thomas Giovanni, and I serve as the Chief of Staff and Executive Assistant for Government Policy at the New York City Law Department. I am pleased to be here to offer the Law Department's comments regarding Intro 119-C, which is before you today. I am joined by Nancy Savasta, the Deputy Chief of the Tort Division in charge of Risk Management, and Beth Nedow, the Litigation Support Director for Practice Management of the Litigation Support Division.

Intro 119-C would require the Law Department to compile and post twice a year on its website a report that lists certain civil actions filed within the prior five years against the Police Department and its individual police officers. The report would include information about the date commenced and the court in which it was filed, the law firm representing the plaintiff and the law firm or agency representing the defendant, and whether the plaintiff alleged improper police conduct including the use of force, assault and battery, malicious prosecution, or false arrest or imprisonment. Finally, as to actions that have been resolved, the report would provide the date on which they were resolved, the manner in which they were resolved, whether there was a payment to the plaintiff and the amount of any such payment.

As a threshold matter, I would like to mention the work the Law Department is already doing in this area. Our Risk Management unit was established in 2002 to promote many of the values reflected in Intro 119-C -- namely, the use of litigation information to help agencies identify systemic problems and develop targeted solutions. Members of our Risk Management

team regularly meet with the ten largest and most active agencies, including the Police Department, to discuss issues identified in civil actions and to strategize ways to address widespread concerns. Our work with the Police Department continues to evolve, and we look forward to strengthening our partnership with improved information-sharing and problem-solving practices, just as we do with other City agencies.

With respect to this bill, I note that there have been several predecessor versions of proposals dating as far back as 2009 that have ultimately resulted in Intro 119-C. I am pleased to say that the bill we are discussing today represents the culmination of a recent series of collaborative discussions among my office, Council staff and the Police Department. The Law Department agrees that civil suits against the Police Department and its officers are an important source of information that may reveal patterns of misconduct or operational deficiencies. We at the Law Department are in a unique position to discern and report on such trends. That said, our role is also unique because we have an attorney-client relationship with all agencies, including the Police Department, and must vigorously safeguard the legal privileges that attach to that relationship. Indeed, as attorneys we are bound by the Rules of Professional Conduct that mandate the protection of privileges. The extent to which we can share or discuss information and documents is circumscribed by our professional responsibility. In our view, Intro 119-C strikes an appropriate balance between the Law Department's operational capability and its mandate to safeguard the attorney-client relationship with the desire of the public to know more about the performance of the City's police officers.

It is also important to view this proposal in context with other local laws relating to the work of our Police Department: as you know, in recent years, the Administrative Code has been amended several times by adding or amending sections that require the Police Department to

post various statistics on its website, including those relating to crime statistics; revisions to the Patrol Guide; “stop, question and frisk” actions; firearms discharge; criminal complaints and arrests categorized by crime; bias-based profiling; school activity; and traffic data. The Law Department shares the Council’s goal of transparency regarding information that helps the public understand how the City is addressing the issues and concerns relating to public safety and the men and women who are committed to making our City both safe and hospitable.

Thank you for the opportunity to provide comments on Intro 119-C. My colleagues and I would be pleased to answer any questions and look forward to working with you on this and related matters.



## TESTIMONY

The Council of the City of New York  
Committee on Oversight and Investigations

A Local Law to amend the administrative code of the city of New York  
and the New York city charter, in relation to the evaluation of civil  
actions, claims, and complaints alleging improper police conduct

Proposed Int. No. 119-C

The Legal Aid Society  
Special Litigation Unit,  
Criminal Practice  
199 Water Street  
New York, NY 10038

NAACP Legal Defense and  
Educational Fund  
40 Rector Street, 5<sup>th</sup> Floor  
New York, NY 10006

June 28, 2016

Good morning. I am Cynthia Conti-Cook, Staff Attorney of the Legal Aid Society's Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing client problems with the criminal justice system. I am joined by Natasha Merle, Fried Frank Fellow from the NAACP Legal Defense and Educational Fund, which is co-counsel with the Society in Davis et al v. City of New York et al., a federal class action that was filed in 2010 to challenge the systemic practice of illegally stopping and arresting individuals for purported trespass violations on New York City Housing Authority ("NYCHA") property. This case settled last year and, as part of the settlement, is currently part of the court monitoring of the New York City Police Department ("NYPD") that had been ordered by the federal court to institute substantive reforms in police training, supervision, disciplining, and monitoring in the areas of stop-and-frisk and trespass enforcement. For the past several months, we have been working in collaboration with the Court-Ordered Monitor, the NYPD, the City Law Department, and plaintiffs' counsel in the related cases, Floyd v. City of New York and Ligon v. City of New York, on developing these reforms.

We thank this Committee for the opportunity to provide testimony on proposed Bill 119-C, and look forward to providing future testimony on proposed legislation regarding early intervention systems within the NYPD.

### **ORGANIZATIONAL INFORMATION**

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of indigent people prosecuted in the State court system. In this capacity, and through our role as

counsel in the Davis case, the Society is in a unique position to testify about policing in New York City. We represent many of those who are arrested and have spoken with them about the circumstances of their arrests.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is a non-profit, non-partisan civil rights law organization founded in 1940 by the late U.S. Supreme Court Justice Thurgood Marshall. As the nation’s first civil rights and public interest law organization, LDF is recognized for its pioneering and long-standing advocacy for racial justice in the criminal justice system. As counsel in the Davis case, LDF seeks to reform police policies and practices that target NYCHA residents, who are overwhelmingly Black and Latino. LDF believes that the collection and evaluation of civil actions and other complaints alleging police misconduct is vital to improve police practices and provide the transparency and accountability that is necessary to build trust and legitimacy within the diverse and vibrant communities in New York City served by the NYPD.

### **PROPOSED INT. NO. 119-C**

Both LDF and the Legal Aid Society support the amendments to the Administrative Code of the City of New York and the New York City Charter concerning the collection and analysis of civil actions and other complaints alleging police misconduct in order to improve the disciplining, training, and monitoring of police officers and other relevant operations, policies, programs, and practices of the NYPD. We believe that the collection and evaluation of this information is essential to the fairness and integrity of policing reform in New York City. This bill is an important first step in identifying patterns and trends of police misconduct, and has the potential to improve both officer performance and police-community relations. By coupling this data with an “Early Intervention System,” supervisors and senior officials within the NYPD

can identify at-risk officers who may be in need of enhanced training or monitoring. Although this data is not a perfect indicator of police performance, if collected and used properly, it can become a tremendous resource for the benefit of individual officers, the police department, community members, and the City at large. To further enhance the benefits and capabilities of collecting this data, however, LDF and the Legal Aid Society suggest the following amendments to the proposed legislation:

1. Expand the type of data collected beyond those enumerated in Proposed Section 7-112(2);
2. Specify not only how civil action data should be collected, but also how that data should be used; and
3. Ensure transparency of the data collection, analysis, results, and consequences to improve legitimacy and trust of the police within the community.

We discuss each of these proposed amendments in more detail below.

#### **A. Expansion of Data Collection**

Although the types of data to be collected, as enumerated in Section 7-112(2), are essential, they are not enough. Thus, we suggest expanding the type of data collected to include information taken from lawsuit allegations, as well as evidence and testimony revealed during litigation, including but not limited to information concerning: (1) the address where the incident occurred; (2) the date and time the incident occurred; (3) criminal accusations (if any) against law enforcement and their outcome; (4) any racist, sexist, xenophobic or homophobic comments made by law enforcement and their content; (5) law enforcement reactions (if any) to being recorded; (6) allegations of or destruction of property by law enforcement; (7) alleged racial or other biased profiling; (8) detail on any officer use of force, including whether any weapons were



brandished and/or used; (9) police overtime to process the arrest; (10) the precinct or Police Service Area where the incident occurred; (11) whether the incident occurred on the street, in NYCHA housing, in a private residence, or some other distinctive location; (12) the arrest charge, if any, imposed on the civilian plaintiff; (13) the response, if any, of fellow law enforcement, including peers and supervisors; and (14) any reprimand or disciplinary action issued in connection with the incident.

We have witnessed first-hand the impact of collecting this additional information. The Legal Aid Society has been extracting the above listed data points from lawsuits filed in federal court for the past 15 months. The attached report is a sample of the types of dynamic analyses that would be possible if more specific data were collected. For example, because many lawsuits name the precinct where an arrestee is taken, Legal Aid has been able to map, by precinct, where most incidents described in lawsuits originate and how much each precinct costs the City in settlements. Moreover, by analyzing data regarding what originating incidents become the subjects of lawsuits, Legal Aid has determined that the majority began as street stops and that lawsuits filed in late 2015-early 2016 include 25 allegations of officers using chokeholds—an issue that many entities, including the City Council, has been interested in tracking. With this type of granular data, the City could identify the specific problems that are leading to costly litigation, and help develop solutions to prevent future misconduct that may lead to additional waste of resources.

#### **B. Use of Data Collected**

Whether this bill will accomplish its goals of improving policing in New York City depends not only on what is collected, but also what is done with the data that is collected. For

this purpose, we recommend that, at the very least, the following steps be taken with the data collected pursuant to the proposed legislation:

1) Review of Data by Supervisors: This bill should be used to encourage supervisory involvement in officer development. In addition to collecting data regarding civil actions and other complaints alleging police misconduct, NYPD supervisors should review and analyze the data on a regular basis. Sergeants and lieutenants play a large and important role in the professional development of the officers under their supervision and the establishment of the culture of the entire Department. Thus, the bill should provide clarity on how these critical players should utilize the data for the benefit of the Department, the City, and the communities they serve. At a minimum, supervisors should identify officers who raise performance concerns, based on their analysis of the data, for additional instruction, training, monitoring, or other intervention.

2) Baseline Standards for Intervention: As already stated, the Department should utilize the collected data to counsel, educate, re-train, and/or discipline officers, as needed. In this regard, we further recommend that more clarity be added to the bill beyond simply authorizing the Inspector General of the Department to “develop recommendations relating to the discipline, training, and monitoring of police officers and related operations, policies, programs, and practices of the police department.” For example, there is no specificity as to a threshold number civil actions and other complaints against an officer and what happens once that threshold has been met. To be clear, we do not suggest that police officers should be automatically disciplined every time they are involved in a civil lawsuit. Allegations, evidence, and testimony developed through civil rights litigation should serve to supplement and inform police departments’ personnel and policy evaluations, not to substitute them.

3) Post-Intervention Monitoring: The Department should perform post-intervention monitoring to promote improvements or identify non-compliance. These assessments should be ongoing with an eye towards steady improvement of individual officers, as well as entire precincts and Police Service Areas that may have had disparate incidents of alleged and/or substantiated misconduct.

**C. Transparency and Accountability of Data Collection**

The effective collection, analysis, and use of the collected data can be instrumental in improving police accountability and engendering greater trust in police-community relations when the public is fully informed of such efforts. We, therefore, recommend that the NYPD be transparent in its data analysis so that New York City residents can better understand the conduct of officers serving their community, how the NYPD is using this data to identify trends and potential problems within the Department as a whole, the steps taken by the NYPD to remedy identified problems.

Of course, the issue of police transparency and accountability cannot be fully addressed without discussion of reforming N.Y. Civ. Rights Law § 50-a, which, like no other statute in the country, affords police disciplinary data unparalleled secrecy regarding an officer's disciplinary history. For this reason, for example, we continue to have no information about Officer Daniel Pantaleo's history of misconduct and, thus, whether some intervention could have prevented Eric Garner's death. The Legal Aid Society's petition for a summary of Officer Pantaleo's CCRB records was granted last year, and yet this administration has appealed that decision, claiming that Section 50-a prohibits absolutely all disclosures, even summaries, of officer misconduct records. Without Section 50-a reform, which we urge the City Council to support, it would difficult—if not impossible—to fully evaluate the NYPD's accountability to the public.

Thank you for your consideration of The Legal Aid Society's and the NAACP Legal Defense Fund's comments to the proposed amendment to 119-C.

JUNE 2015—MAY 2016

# Federal Civil Rights Lawsuits Against the NYPD

**Data Source** All our data comes from federal civil rights lawsuit complaints. There were **966** lawsuits filed in the last 6 months, from June 2015 through May 2016. Data was collected by searching PACER daily for cases from the New York Eastern and Southern District categorized as “440: Civil Rights Other” or “550 Prisoner Civil Rights”. Lawsuits filed against the city that named one or more NYPD officers (not John Does) were collected and analyzed by five staff.

## PLAINTIFF DEMOGRAPHICS

### Race

Plaintiff’s race was reported in 18% of the lawsuits.

↳ Of the 18% reported, the Race breakdown was as follows:

82% Black or African American, 143

15% Hispanic or Latino, 26

2% White, 3

2% Asian, 3

### Gender

Plaintiff’s gender was reported in 82% of the lawsuits.

↳ Of the 82% reported, the gender breakdown was as follows:

73% Male, 648

14% Multiple Plaintiffs, 123

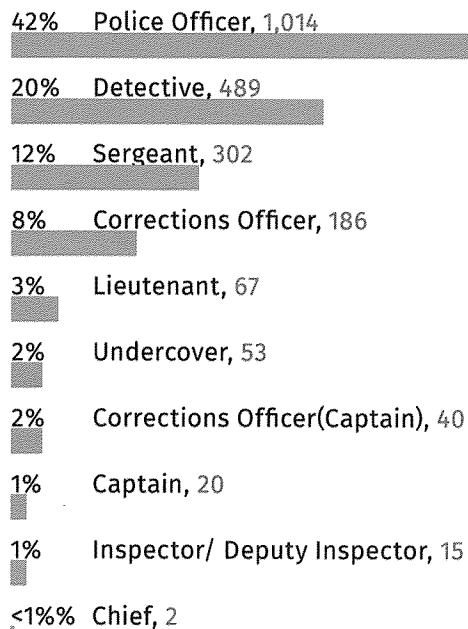
13% Female, 115

.2% Transgender, 2

## Rank

77% of the lawsuits identified defendants and their rank.

↳ Of the 77% reported:

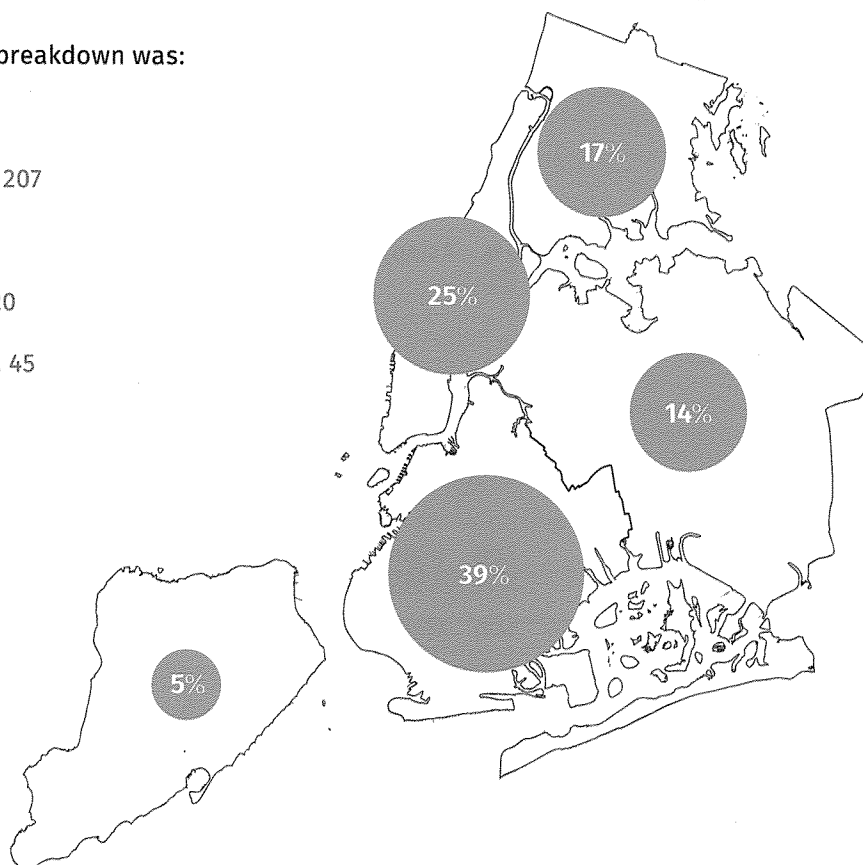
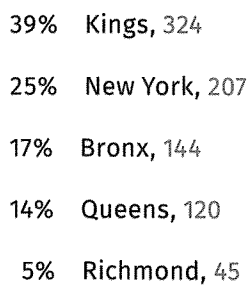


## LOCATION INFORMATION

### County

Incident County was reported 87% of the time.

↳ Of the 87%, the breakdown was:

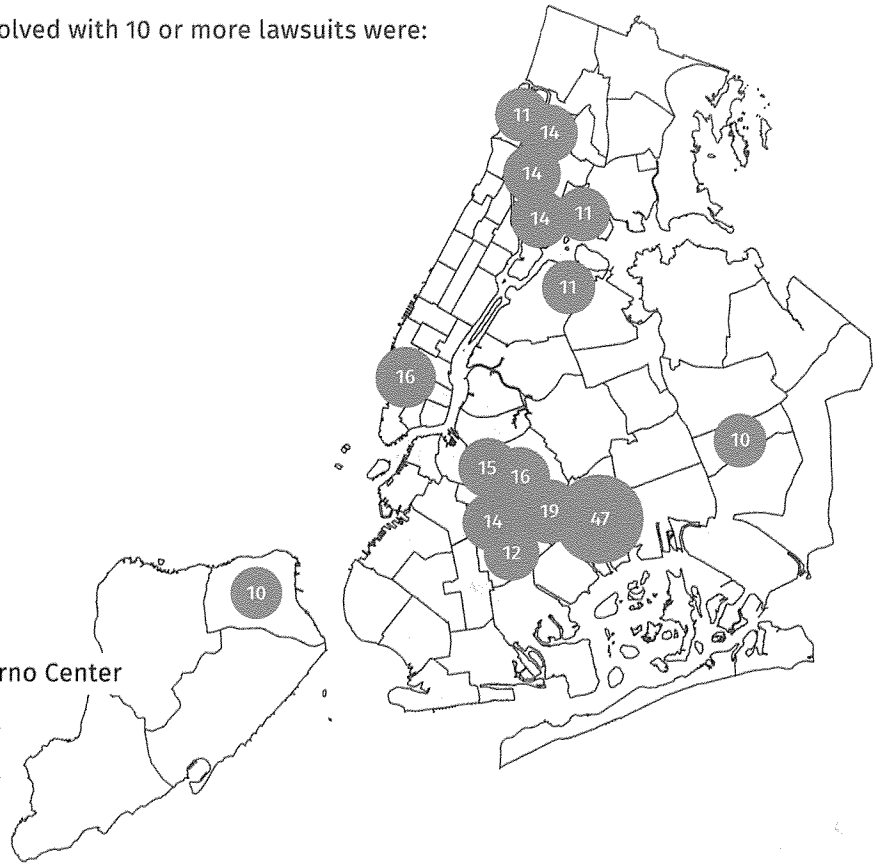


## Precinct

A specific precinct was named as involved in a lawsuit 53% of the time.

↳ The Precincts involved with 10 or more lawsuits were:

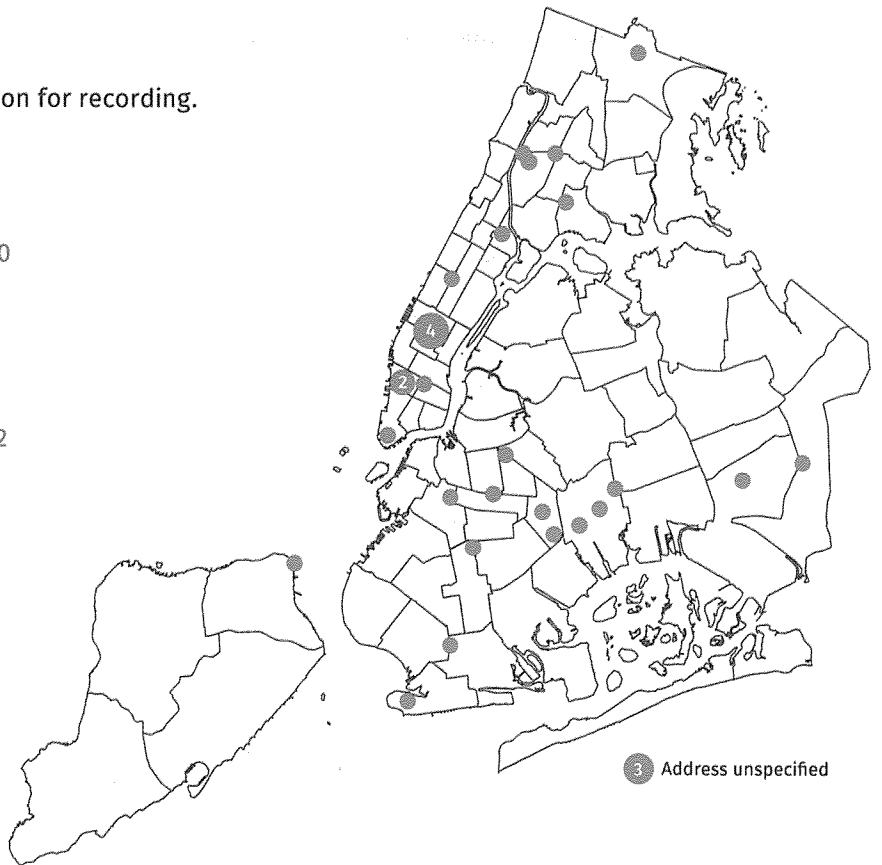
- 47 75<sup>th</sup> Precinct
- 19 73<sup>rd</sup> Precinct
- 16 6<sup>th</sup> Precinct
- 16 81<sup>st</sup> Precinct
- 15 79<sup>th</sup> Precinct
- 14 40<sup>th</sup> Precinct
- 14 44<sup>th</sup> Precinct
- 14 46<sup>th</sup> Precinct
- 14 71<sup>st</sup> Precinct
- 12 67<sup>th</sup> Precinct
- 11 34<sup>th</sup> Precinct
- 11 41<sup>st</sup> Precinct
- 11 George R. Vierno Center
- 10 103<sup>rd</sup> Precinct
- 10 120<sup>th</sup> Precinct



## Retaliation for Recording

32 lawsuits allege retaliation for recording.

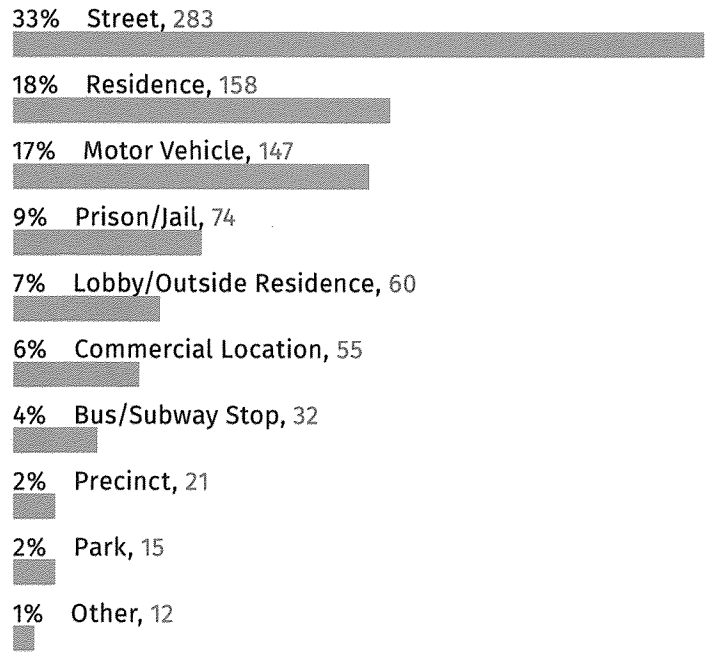
- 34% Kings, 11
- 31% New York, 10
- 19% Bronx, 6
- 6% Queens, 2
- 6% Richmond, 2



## Stop Location

89% of the lawsuits specified where the initial interaction leading to the lawsuit occurred.

↳ Of the 89% reported:

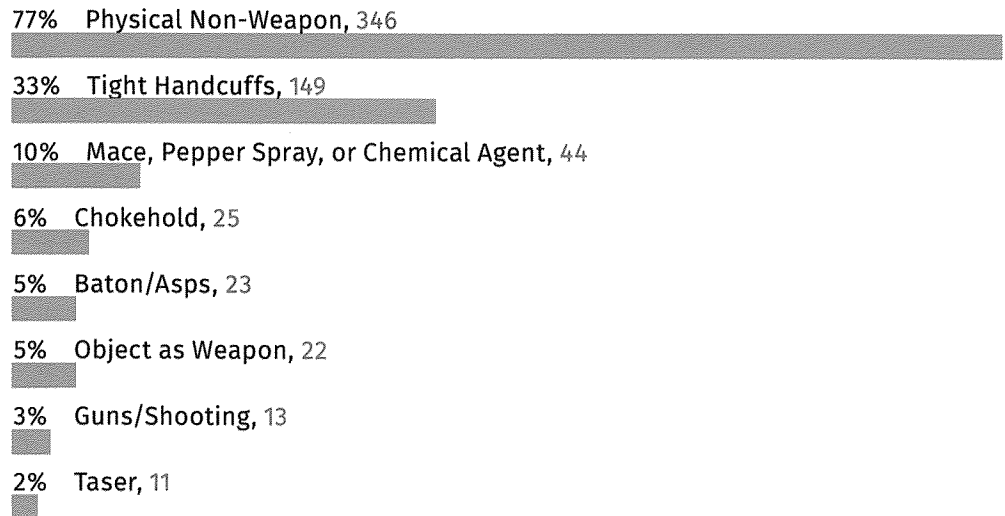


## CHARGES

### Use of Force

The use of force by officers was alleged in 47% of the lawsuits.

↳ Of the 47% reported:



In 64% of cases where force was reported the Plaintiff sustained injuries that required hospitalization.



## Charges

61% of cases reported charges against the plaintiff. Most lawsuits listed more than one charge.

↳ Of the 61% of cases reported, count of lawsuits by charge against plaintiff:

125	205.30	Resisting Arrest
117	240.20	Disorderly conduct
87	195.05	Obstructing Governmental Administration in the second degree
80	220.03(06,09,16,18,21)	Criminal possession of a controlled substance- any degree
72	None*	
68	265.01(02,03,04)	Criminal possession of a weapon- any degree
48	240.26	Harassment in the second degree
43	221.05	Unlawful possession of marijuana
41	221.1(15,20,25,30)	Criminal possession of marijuana- any degree
38	220.31(34, 39, 41, 43)	Criminal sale of a controlled substance- any degree
34	120.05	Assault in the second degree
33		Other Administrative Code
32		Not Specified- Drugs
29		Other Traffic Violation
28	120.00	Assault in the third degree
23	221.35(40,45,50,55)	Criminal sale of marijuana- any degree

\* None means that the Plaintiff was arrested (or not free to leave) by police but was let go without any charges being filed against him/her.

**Cause  
of Action**

Lawsuit causes of action, listed at least 100 times:

- 759 False Arrest/False Imprisonment
- 442 Failure to Intervene
- 432 Malicious Prosecution
- 405 Excessive Force
- 372 Municipal Liability
- 309 Negligent Retention Hiring Supervision and/or Training
- 286 Unlawful Stop/Search
- 276 Assault and Battery
- 265 Denial of a Fair Trial
- 239 Monell
- 164 Intentional Infliction of Emotional Distress
- 163 Respondeat Superior
- 162 Negligence
- 161 Abuse of Process
- 160 Deprivation of Substantive Due Process
- 117 Fabrication of Evidence
- 115 Negligent Infliction of Emotional Distress
- 112 Supervisor Liability

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/28/16

(PLEASE PRINT)

Name: Thomas Covanni, Chief of Staff

Address: 56+ Lexington Ave

I represent: NYC Law Dept

Address: 100 Church St

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 119-C Res. No. \_\_\_\_\_

in favor  in opposition

Date: June 28, 2016

(PLEASE PRINT)

Name: Nancy Savasta Deputy Chief

Address: Tort-Risk

I represent: NYC Law Dept

Address: 100 Church St

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/28/16

(PLEASE PRINT)

Name: PATRICIA MILLER / DIVISION CHIEF

Address: NYC LAW DEPT / 100 CHURCH

I represent: NYC LAW

Address: 100 CHURCH

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 119-C Res. No. \_\_\_\_\_

in favor  in opposition

Date: 06.28.2016

(PLEASE PRINT)

Name: Beth Nedow  
Address: Director of Practice Mgmt, Lit Support  
I represent: NYC Law Dept.  
Address: 100 Church St.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 119C Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/28/2016

(PLEASE PRINT)

Name: Natasha Merle w/ Legal Aid  
Address: 40 Rector St  
I represent: NAACP Legal Defense & Educational Fund  
Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 119-C Res. No. \_\_\_\_\_

in favor  in opposition

Date: 6/28/16

(PLEASE PRINT)

Name: Cynthia Conti - Cook  
Address: 199 Water St 6<sup>th</sup> fl  
I represent: Legal Aid Society w/COF  
Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms