



Monday, March 27, 2023

**STATEMENT OF DIRECTOR MICHAEL CLARKE
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY**

**COUNCIL CHAMBERS
MARCH 27, 2023**

Good morning Speaker Adams, Chair Hanks and members of the Council. I am Michael Clarke, the Director of Legislative Affairs for the NYPD. I am joined here today by Chief Matthew Pontillo, the Chief of Professional Standards, and Allison Arenson, Director of the Department's Body Worn Camera Unit. On behalf of Police Commissioner Keechant L. Sewell, I am here to testify before your committee regarding the Department's commitment to transparency and to comment on the bills being heard today.

The New York City Police Department does not fear transparency, we embrace it. Transparency, oversight and well-informed public scrutiny, on the whole, leads to not just safer and fairer policing, but better, more effective policing. The Department issues dozens of reports and publishes significant troves of information that are accessible through public-facing online dashboards such as the use of force dashboard, the hate crimes dashboard, the Department personnel demographics dashboard, and the "how did we do?" dashboard. We publish a profile on every officer in the NYPD which includes their disciplinary history, the trainings they have completed, Department recognitions and awards, and arrests processed. Moreover, we publish our crime statistics for every precinct on CompStat 2.0 as well as traffic collisions with our Traffic Safety Forum. We hold dozens of monthly meetings citywide, including meetings in every precinct and every Police Service Area, where we provide data and answer questions from the community. I think it's safe to say that there is no agency in this city – and quite frankly any police department in the world -- that is more transparent than the New York City Police Department.

It is important to acknowledge that this level of openness with the public comes, in part, from our work with the Council. We have successfully worked together many times to negotiate and pass bills that increase transparency and that are implemented in a way that is operationally feasible. These partnerships between the NYPD, the Council and the communities you represent have proven to be an invaluable tool in effective Neighborhood Policing while fostering a policing infrastructure based around trust and communication today, and into the future.

I would now like to turn to the bills being heard today.

Intro. 938 would require the Department to give CCRB direct access to its body-worn camera system. The Department opposes this legislation. The bill itself acknowledges that there are videos that the Department cannot provide CCRB, such as videos depicting arrests that have been sealed and videos containing images of sexual assault victims, as providing such footage would violate

state law. In 2022, the Department recorded more than 9 million videos via body-worn cameras. Moreover, cases could be sealed at any time, which means that the NYPD must conduct not only a one-time review, but must continuously review the roughly 24 million videos currently in the NYPD system. It would be an insurmountable obstacle to give CCRB direct access to our body-worn camera system while ensuring that they do not have access to any videos that are required by state law to be kept confidential. It is an absolute barrier to this legislation. The NYPD and CCRB have worked together to ensure that requests from the CCRB are prioritized; and that the CCRB is provided videos related to their investigations in a timely manner. Currently, the NYPD has an average turnaround time of three to four days for the nearly 3,000 video requests received each year.

Intro. 585 would require that the Department provide access to body-worn camera videos to the Department of Investigation (“DOI”) and the Department of Records and Information Services (“DORIS”) within 120 hours of recording any law enforcement activity. This bill would present similar obstacles as Intro. 938 in that the operational burden would be insurmountable and would severely affect privacy rights, including those of sexual assault victims and those with sealed records. The intent of this bill is to presumably make videos available for public inspection. Allowing members of the public to inspect videos of individuals, possibly having one of the worst moments of their lives, is highly problematic and should be discouraged. Body-worn camera video is maintained by the NYPD for an agreed-upon period of time, ranging from 39 months to permanent. Providing DORIS with access to the video does not further the goal of police accountability and is operationally infeasible for the NYPD. Moreover, we have an active and collaborative relationship with the DOI. Where permitted by law, the NYPD will provide any body-worn camera video if it is requested by the Department of Investigation.

Intro. 586 would require the Department to report each and every investigative encounter conducted by the NYPD, including Level 1 and 2 encounters. At the outset, I feel it is important to define the scope of this bill. This bill has been quixotically named the “How Many Stops Act,” yet would require reporting on interactions that are **not** police stops. The levels of encounters defined in this bill are utilized by courts to determine the nature of interactions between officers and members of the public.

Level 1 encounters are the most basic interactions between officers and members of the public. This includes everything from speaking to witnesses when responding to a 911 call, to canvassing for video after a crime, to assisting sick passengers on the subway, to asking New Yorkers whether they have seen a missing child. During Level 1 encounters, people are free to ignore officers and walk away. The objective is to gather information and not to focus on the person as a potential suspect. These encounters are not stops. Level 2 encounters occur when an officer has founded suspicion that the individual has engaged in criminal activity. While officers may request explanatory information at this level, members of the public are still free to leave. Level 3 encounters are stop, question and frisk encounters, also known as Terry stops. Officers may initiate a Level 3 encounter when they have reasonable suspicion that the person has committed a crime. At this point, the individual is stopped and their freedom is curtailed for a brief period to investigate a crime. The NYPD already reports information related to Level 3 stops on our website and to the council. (<https://www.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page>)

To be clear, Level 1 and 2 encounters are not stops and individuals are free to leave. They can refuse to answer questions and walk away. The NYPD responded to more than 7 million 911 calls last year, many of which would have at least one Level 1 encounter. Reporting on these encounters would require an officer to take time away from responding to other calls or conditions to fill out detailed reports on each response, and demographic information for each individual encountered. These lower level interactions should not be treated on the same level as a stop, where police are detaining a person.

Let us look at a couple of examples to illustrate just how onerous this requirement would be, and how irrelevant much of the information gathered would be to any serious accounting of police activities. A citizen calls 911 to report a fight between two groups of people in a park. Multiple units respond and find the melee over and multiple people injured. Officers would begin providing aid to the victims and conducting a canvass for suspects. The officers would be required to take the demographic information of each person they provide assistance to and for the possibly dozens of witnesses they talked to when they could be canvassing the area for suspects.

How about a case involving a missing 5-year-old child, for example, which maybe the most time-sensitive investigation one can imagine? Dozens or hundreds of officers are dispatched and dozens or hundreds of everyday New Yorkers are asked if they have seen the missing child. To ensure accuracy of the reports, the officers would need to stop and take down each witness's demographic information. This would invariably slow down the investigation and, as such, would hinder officers from obtaining valuable information that may lead to finding that child.

What possible value would taking this information have toward the goal of providing police accountability? In fact the bill is detrimental to building community and police relations, as it disincentivizes officers from approaching people who might need their help. The former Federal Monitor in the Floyd/Davis/Ligon case himself argued in his report against this level of detailed reporting on low-level encounters because “the burdens of that documentation outweigh the benefits.” The Monitor did not just acknowledge the extreme burden to the Department, but also recognized that even if the data “would show disparities ... it would not show discrimination” because “the critical task is to identify the relevant population at risk of being stopped. For first-level encounters, however, there is no way to identify the relevant population for whom an officer might have an objective credible reason to approach. Because there are so many different kinds of encounters with the shared label of Level 1, there is no similarity among them, and therefore, there is no standard for determining whom ‘should have been’ encountered assuming there was no discrimination.... Without knowing what opportunities the officers declined to follow, there is no way to say anything meaningful about selective enforcement.”

Because of the federal monitorship, we began requiring the recording of Level 1 investigative encounters on body-worn camera video. We agreed to classify the body-worn camera video as a Level 1 video whenever there is at least one Level 1 encounter and there is no higher level of interaction. In 2022, officers classified 3,223,987 videos as Level 1 encounters. Because of the way Level 1 encounters were counted, the number of videos undercounts the total number Level 1 encounters that were initiated. This is merely the number of videos categorized as a Level 1 encounter. Officers can respond to calls that have dozens of Level 1 encounters as they canvass for witnesses and video of an incident, but it would still count as only one encounter in our data.

Moreover, the data would not count, for example, a video where officers respond to a 911 call, have Level 1 encounters with one or more witnesses and ultimately find and arrest a suspect. That video would be categorized as an arrest. The body-worn camera system was not designed to report on these Level 1 encounters and in order to comply with this bill if enacted, officers would be required to fill out a form for each and every person they interact with, which would take significant time away from patrolling our streets and keeping the public safe.

Turning to **Intro 538**, the law currently requires the Department to report on the number of consent searches conducted disaggregated by apparent race, ethnicity, gender, age and precinct. Intro. 538 would also require the Department to report those instances where consent was sought to search a person, vehicle, home or property, or to collect a forensic sample, and the number of times consent to search was denied, including whether the subject had limited English proficiency, whether interpretation services were used, and if so, the type of interpretation service used. The Department already collects and reports the number of times consent to search was sought and denied, and it is currently part of our policy to ensure individuals with limited English proficiency are apprised of their right to deny consent, and to employ interpretation services where needed. The Department looks forward to further discussions as to the most effective way to achieve the bill's intent.

Intro. 443 would require that the NYPD provide the Commission on Human Rights ("CHR") all records related to closed bias-based policing complaints. In 2021, the City Council passed a law granting the responsibility for investigating bias-based profiling complaints against police officers to the CCRB. While the law took effect on January 20th of last year, CCRB finalized their rules related to bias-based policing in October of 2022. This oversight authority was given to CCRB because CCRB is an entity that was created for the sole purpose of providing oversight on policing, while CHR has a much broader mandate. It is premature to undermine the new scheme that has not even had 6 months to operate.

Intro. 386 would require that the Department provide a monthly report on the number of misconduct complaints received including, but not limited to, misuse of force, harassment and offensive language, and any response, including investigation or discipline. While the NYPD does not oppose reporting on discipline, it should be noted that these categories fall within the ambit of the CCRB and are currently reported monthly by them. Requiring the NYPD to report on these same redundant categories would be a misuse of valuable resources that would provide no benefit beyond what CCRB currently provides.

Intro. 948 would increase the time period and publicize the reporting requirements under Administrative Code 14-150. Tripling and quadrupling the number of reports that is required under this law would pose significant challenges, considering the breadth of information that is currently required to be reported. Additionally, there are portions of the report, such as disclosing deployment information, which it may not be appropriate to be publicized on our website. I would also like to note that many of the new reporting requirements concerning overtime require detail on such a granular level that they would be onerous and extremely difficult to track. We look forward to discussions on how we can achieve this bill's intent.

Intro 638 would require the Department to report on donations received that have an aggregate value of more than 1 million dollars. This bill expands on existing reporting that is required by rules promulgated by the Conflicts of Interest Board. The department looks forward to working with the council on this legislation.

Intro. 781 would require that the Department amend our public vehicle reports, by requiring that the Department report on the basis for each stop. We look forward to working with the council on this bill.

Thank you for the opportunity to testify about these important bills, and we look forward to answering any questions you may have.



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ARVA RICE
INTERIM CHAIR

**Full Testimony of Arva Rice, Interim Chair of the Civilian Complaint Review Board, before the Public Safety Committee of the New York City Council
March 27, 2023**

Good afternoon,

My name is Jonathan Darche and I use he/him pronouns. I will be reading the following statement on behalf of CCRB Interim Chair Arva Rice.

City Council Members, I am grateful to have the opportunity to address this council for the third time this month. Today, I have been asked to testify in regards to proposed bill Int 938 that would grant the CCRB direct access to BWC footage as well as Resolution 3149 which is in favor of exempting the CCRB from sealing statutes. These are both key issues the Agency has long advocated for.

After the 2013 case *Floyd v. City of New York* found that the NYPD's use of stop, question and frisk was unconstitutional, the Court ordered a one-year body-worn camera program. In December 2014, the Department launched a volunteer BWC pilot program before implementing the Court ordered program in April 2017. In May of that year, the CCRB made its first request and by June had received its first BWC footage.

BWC footage became an important tool the CCRB used to determine whether misconduct occurred at an incident. In 2020, the CCRB released a report analyzing the use of BWC footage in investigations and determined that BWC footage more than doubles the CCRB's ability to reach a conclusion as to whether misconduct occurred. Both the rate of substantiations and exonerations go up with BWC footage.

With the increase of footage, there was an increase of requests. The way that NYPD shares BWC footage with CCRB has evolved. In the first two years of the program, the CCRB received about half of the footage requested. Soon after, NYPD response times doubled, reaching a peak in 2020 with a backlog of 1,012 requests. While investigating the 2020 protests, the Agency was told footage did not exist that then turned up later. Furthermore, the Agency was sometimes given hours of footage that were not relevant to our requests.

The Police Department and the CCRB have come together many times to optimize this process. In 2019, both agencies signed an MOU with targeted plans to improve the process,

including having a room CCRB investigators could use and access all footage so long as a member of the NYPD was present. When COVID hit, this was no longer practical.

The pandemic was a large disrupter for both agencies and we worked together to resolve the backlog. Today there is an average of 7 days to fulfill a request and the backlog has shrunk to 137 requests. While the process is working better now, it would still be an important improvement for the CCRB to have direct access to BWC footage.

The most qualified people to search through BWC footage and identify what is relevant to a CCRB investigation are CCRB investigators. Our investigators have been specifically trained on how to analyze BWC footage using specialized software. They are the ones speaking to civilians for an hour, sometimes two, in order to best understand the incident they are looking for. At present, an investigator has to summarize that conversation into a few lines which get sent to someone at NYPD to interpret and search for footage.

Presently, the NYPD and CCRB maintain largely duplicative databases of body worn camera footage. The agencies both carry staff dedicated to, in the case of CCRB creating BWC requests, following up and tracking the requests, receiving footage, and distributing it to the relevant investigative squad; and, in the case of NYPD, to receive requests, search video databases that are stored in the cloud, mark responsive video, and deliver it to CCRB by electronic or physical delivery.

The CCRB will redeploy staff currently engaged in the document and data exchange process and delegate searching to the individual investigators. Furthermore, NYPD and CCRB replicate data storage: the CCRB stores it physically on its premises while the NYPD stores in the Axon cloud. By sharing BWC footage in the Axon cloud, the CCRB and NYPD could avoid the double cost of video storage. This structure would have a negligible, if any, impact on the cost of NYPD's Axon contract and eliminate the need for CCRB to maintain its own Axon databases and help to minimize CCRB's on premises storage needs. CCRB storage costs the Agency \$100,000 a year and becomes more expensive the more storage we need.

In fact, the need for rapid access to evidence goes beyond BWC footage: it includes all evidence in possession of the NYPD. This need became increasingly clear with the creation of our Racial Profiling and Bias-Based Policing Investigations Unit. The City Charter mandates that the NYPD provide information that is relevant and necessary for two types of investigations: first, complaints of racial and other profiling as abuses of authority under Section 440 of the City Charter; and second, complaints of bias-based policing for individuals who have already been found to have committed acts of bias or severe bias under Section 441.

In the summer of 2022, months before the Agency began investigating profiling and biased policing complaints, the CCRB informed the NYPD of the types of data and documents it would need to complete under both types of investigations. With regard to investigations pursuant to Section 440, in order to thoroughly investigate and assess allegations of racial profiling and biased

policing, investigators need to review subject officers' profiling and biased policing complaint histories, EEO complaint histories, and related documents, as well as subject officers' enforcement activity for the year prior to the incident to look for potential patterns of bias. These are different and larger datasets than the Agency has required in its traditional FADO investigations but are the same materials that the NYPD instructed its own investigators to use in their internal investigations into profiling. Since beginning to investigate profiling cases under Section 440 in October 2022, the CCRB submitted well over 100 data and document requests to the NYPD—all of which have been rejected—that are key to our current racial profiling and bias-based policing investigations. In order to avoid further case backlogs or cases passing the statute of limitations, we hope our requests will be honored as soon as possible.

Sealing statutes are another cause of case delays. The CCRB is currently barred access from documents in sealed records. Assembly Member Catalina Cruz has proposed a bill that would exempt the CCRB from sealing statutes, which would grant us access to key evidence. Being blocked from accessing sealed evidence has negatively impacted investigations in various ways.

For instance, the case against officer Wayne Isaacs has been delayed for over a year and a half because of sealed records. In 2016, Officer Isaacs killed Delrawn Smalls. The Attorney General commenced a criminal proceeding against Officer Isaacs that resulted in an acquittal. In 2018, the CCRB received a complaint about the incident and commenced an investigation. The CCRB analyzed the available evidence and substantiated misconduct against Officer Isaacs. In his many attempts to delay the administrative prosecution, Officer Isaacs claimed that he should not face a disciplinary trial as a result of the acquittal, implying that there was evidence not examined by the CCRB that would show he did not commit misconduct. As a result, in October 2021, the CCRB submitted a motion to unseal the evidence from Officer Isaac's criminal case in order to be fully prepared for our own trial. Just a few weeks ago, the judge ruled in the CCRB's favor to unseal the evidence. The CCRB was ready to move forward with this case and get closure for Delrawn Smalls' family, however, Officer Isaacs has now filed an appeal and the case will be further delayed.

Sealing statutes also affect our ability to access BWC footage. The CCRB is currently investigating an abuse of force incident that circulated on social media platforms. We received many complaints from civilians, yet investigators are unable to track the alleged victim or the witness who recorded the incident. Investigators were, however, able to identify the officer involved and submitted a request for BWC footage of the incident. While IAB found the footage, the CCRB's request was denied because NYPD sealed the arrest. The investigation cannot move forward without the BWC footage, and, without an identified victim, the CCRB is unable to obtain consent to view the sealed footage. This is just one example of how sealing statutes prevent the CCRB from fully investigating complaints of misconduct.

It emphasizes not only the Agency's need for an exemption from sealing statutes but the need for direct access to BWC footage as well.

Direct access to the NYPD's BWC footage platform would not be unique. Other independent, civilian oversight agencies in the United States have direct access. We are the largest Civilian oversight board in the country overseeing the largest police force. We often lead the nation in civilian oversight, but we fall behind when it comes to Body Worn Cameras. In a report published in November 2021, the Department of Investigation's Office of Inspector General for the NYPD found that, of the 20 largest police departments in the United States, four of them have oversight agencies with similar functions as the CCRB. Of these four, two of them – the Office of Police Complaints in Washington, D.C., and the Civilian Office of Police Accountability in Chicago – have unfettered, read only, direct access to their police departments' BWC footage. There are civilian agencies that oversee smaller police departments that also have direct access to their departments' BWC footage platforms. The Office of the Independent Police Auditor that oversees the Bay Area Rapid Transit Police and the Civilian Police Oversight Agency that oversees the Albuquerque Police Department both have direct access to their police departments' platforms as well.

In 1993, Mayor Dinkins and the City Council voted to restructure the CCRB because they decided our independence was paramount to having a trusted oversight board. Depending on NYPD for every single piece of evidence removes some of that independence. The most important piece of evidence we can find is in the hands of the people being investigated. Civilians will have less confidence knowing that we are only getting footage PD has passed on to us.

I will end by reiterating that having BWC footage improves investigation outcomes substantially, increasing both the rate of substantiation and exoneration. In 2022, the Board was able to close cases with a definitive outcome 75% of the time for cases with BWC footage, while cases without BWC footage were only closed on the merits 37% of the time. Direct access will help New York City hold officers who have committed misconduct accountable and exonerate officers who were within NYPD guidelines.

We thank the City Council for championing this bill, which would have a profound impact on the CCRB's ability to investigate cases efficiently. Thank you for your time.

**STATEMENT OF MURIEL GOODE-TRUFANT
FIRST ASSISTANT CORPORATION COUNSEL
NEW YORK CITY LAW DEPARTMENT
BEFORE THE NEW YORK CITY COUNCIL
COMMITTEE ON PUBLIC SAFETY**

MARCH 27, 2023

Good Afternoon. My name is Muriel Goode-Trufant and I am privileged to serve as the First Assistant Corporation Counsel. I am pleased to be here to offer the Law Department's comments regarding Int. 944 which is before you today. I am joined by Eric Eichenholtz, Managing Attorney of the Law Department, Beth Nedow, Deputy Chief for Practice Management in the Litigation Support Division and Nancy Savasta, the Deputy Chief of the Tort Division in charge of Risk Management.

Int. 944 would impose new requirements upon the Law Department to compile and upload particular information regarding certain civil actions filed in state or federal court against the Police Department, individual police officers, or both. As proposed, the amendment would mandate reporting within fifteen days of receipt of new cases and/or case dispositions, meaning that the Law Department would be required to post information every business day of the year. Similarly, in keeping with the notice requirement of Administrative Code Section 7-114, on every business day notices would be sent to the Department of Investigation, the Comptroller, the Police Department, the Civilian Complaint Review Board and the Commission to Combat Police Corruption concerning case activity. Further, on a quarterly basis, the number of new civil actions alleging improper police conduct and the number of case resolutions would be disclosed to the same entities.

In compliance with Administrative Code Section 7-114, since 2018 the Law Department has posted on our public facing website information on certain cases which includes claims

involving the use of force, assault and battery, malicious prosecution, and false arrest or imprisonment. The posted information includes the court in which the civil action was filed, the name of the law firm representing the plaintiff, the name of the law firm or agency representing each defendant, the date the action was filed, the kind of improper police conduct alleged in the action, and, if the action has been resolved, the date of its resolution, the manner in which it was resolved, whether the resolution included a payment to the plaintiff by the City and, if so, the amount of such payment.

The Law Department has been supportive of the Council's intent to provide more transparency. We have successfully increased transparency through the Law Department's publishing of five--year summaries of case dispositions in matters with alleged improper conduct by police twice a year. In order to ensure accuracy, the Law Department conducts extensive reviews, research, and quality assurance to make these biannual reports as accurate as possible. The proposal to require posting fifteen days after each complaint is received or a lawsuit is settled would ensure that posted information would be inaccurate, frustrating the very purpose of the public disclosure.

The Law Department is handling approximately 5,114 state and federal cases with allegations of alleged police improper conduct. For the first six months of this fiscal year, approximately 546 new cases were received and 552 were disposed. Overall, our Office represents the Police Department and individual members of service in more than 7,000 cases. Often we receive complaints with officers named as John Does, or with misspelled or commonplace names.

When the Law Department receives a complaint, we review the allegations in the pleading and work to obtain necessary records to understand the factual and legal underpinnings

of this case. This process invariably takes time and publicizing information about cases in a period as short as 15 days would lead to premature and inaccurate information. For example, unless there is a conviction in the underlying criminal case that is the subject of the complaint, the Law Department must secure a release from the plaintiff pursuant to NY Criminal Procedure Law Section 160.50 in order to access sealed arrest records. In the United States District Court for the Southern District of New York, plaintiffs are required to serve a 160.50 release with their civil rights complaint. Thereafter, in recognition of the time required to access police records, identify the involved officers and make representation decisions, answers to complaints are due eighty (80) days after the service of the complaint. Releases are not required to be served with complaints in state court actions and thus identification of the officers can take, at best, many months. Further, both parties and claims are added and dropped as civil discovery progresses. A malicious prosecution claim against several unnamed police officers may change into a false arrest case against two named officers. Thus, information that might be posted by the Law Department with fifteen days of the receipt of a complaint would invariably be inaccurate or simply wrong, because a party was erroneously named in the complaint.

Problems would also arise in reporting case dispositions within fifteen days of resolution. After the parties agree to settle a case, the Comptroller's Office has up to ninety (90) days to pay the settlement. During that ninety-day period, there are various lien checks, including for outstanding child support, that are conducted. As a result, the settlement amount and the amount paid to the plaintiff by the City may be different. A settlement reported within fifteen days of the agreement may not reflect what the City ultimately pays to the plaintiff.

Moreover, the current time frame of publication every six months ensures proper vetting of the relevant data for accuracy. This vetting is both time consuming and necessary. We urge

the Council not to implement a fifteen day reporting period which would require daily uploads of flawed and often premature information to a public website.

With respect to the proposal for the quarterly report of statistical data, the Law Department could furnish such data and we look forward to working with Council on that aspect of the bill.

Thank you for the opportunity to provide comments on Int. 944. My colleagues and I would be pleased to answer any questions you may have.



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**STATEMENT OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON PUBLIC SAFETY
MARCH 27, 2023**

Good afternoon,

My name is Jumaane D. Williams, and I am the Public Advocate for the City of New York. I would like to thank Chair Hanks and the members of the Committee on Public Safety for holding this important hearing.

Every day, New Yorkers are stopped by the NYPD. Sometimes, this results in a search—a level three stop, where an officer has legal authority to detain someone and prevent them from leaving, colloquially known as “stop-and-frisk.” The NYPD is required to report on these stops, so we know that Black and Brown people are disproportionately stopped: Black and Latinx New Yorkers made up 91 percent of reported stops as of 2020.¹ Motor vehicle stop data for 2022 revealed similar disparities.² The NYPD also disproportionately frisked and used force against Black and Latinx people.³ As we have seen all too often, these stops can escalate quickly to violent or even deadly situations.

We still, however, do not have the full picture of who is being stopped by the NYPD, as they are not currently required to report on level one and level two stops. Despite being lower-level stops, the feeling of being stopped, questioned, and possibly searched by police is indistinguishable from the experience of level three stops. That is why I have introduced Intro 0586-2022, which would require the NYPD to report on all levels of police stops and encounters, including the location where they happened, the demographic information of those stopped, the factors that led to the interaction, and whether the encounter leads to any use of force or enforcement action.

According to the New York Civil Liberties Union, in 2022, 49 percent of drivers arrested following traffic stops were Black, and 39 percent were Latinx. I have introduced Intro 0781-2022, which would require the NYPD to include in vehicle encounter reports the justification used by an officer to conduct a vehicle stop, if an observed offense was cited as the justification for a vehicle stop, and whether the offense was at the level of an infraction, violation, misdemeanor or felony. In order to effectively address racial bias in policing, we need to know the full scope of the problem—and in a time where Mayor Adams has resurrected the NYPD’s notorious Street Crime Unit, now called Neighborhood Safety Teams, this information is crucial.

¹ https://www.changethenypd.org/sites/default/files/docs/final_hmsa_fact_sheet_01.5.23.pdf

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<https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-car-stop-data-20230220-m6vmsv25gfcfdduqryrliipd2oa-story.html>

³ <https://www.nyclu.org/en/closer-look-stop-and-frisk-nyc>

In addition to underreporting on stops, the NYPD has historically shirked responsibility when it comes to granting access to body-worn camera footage. This lack of compliance with requests for access to body-worn camera footage seriously impedes investigations by oversight agencies, including the CCRB and the Department of Investigation's OIG-NYPD. The NYPD has falsely denied that footage exists, or refused to turn over footage, citing embellished privacy issues, and have been generally slow to respond to requests.⁴ While many other cities give their police oversight bodies direct access to body-worn camera footage, New York City does not, causing delays and roadblocks in the CCRB and OIG-NYPD's investigations.⁵ These delays deny justice for victims of police abuse and brutality, and increase New Yorkers' fear and distrust of the police.

My bill, Intro 0585-2022, and a bill I have sponsored with Speaker Adams, Intro 0938-2023, seek to increase and expedite oversight agencies' access to body-worn camera footage. Intro 585 would require the NYPD to share all body-worn camera footage with OIG-NYPD and the Department of Records and Information Services within 5 days of the recording. Intro 938 would grant the CCRB direct access to all footage recorded by officer body-worn cameras. The CCRB would have real-time connectivity to network servers hosting digital files of body-worn camera footage, allowing them to search, view, and use files for the purpose of investigating and prosecuting allegations of police misconduct.

We have seen time and time again that the NYPD cannot be trusted to act without bias, and they have consistently impeded any effort to hold them accountable by oversight agencies, elected officials, and members of the community. Increasing police presence in our communities will never increase public safety when the people in those communities only associate police with trauma, fear, discrimination, and abuse. I look forward to working with the City Council, the CCRB, and OIG-NYPD to ensure that the NYPD complies with the bills heard today.

Thank you.

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<https://www.propublica.org/article/police-watchdog-calls-for-full-access-to-body-cam-footage-the-nypd-say-s-no>

⁵ <https://www.nyc.gov/assets/doi/press-releases/2021/November/21BWCRelease.Rpt.11.05.2021.pdf>



OFFICE OF THE BROOKLYN BOROUGH PRESIDENT

ANTONIO REYNOSO

Brooklyn Borough President

**City Council Committee on Public Safety
Testimony on Intro 586 and Intro 538 - the How Many Stops Act
March 27, 2023**

Thank you, Chair Hanks and Speaker Adams for holding this important hearing today. Today we are here to discuss transparency, and why, despite being a taxpayer funded agency, the NYPD does not demonstrate accountability to the same public that funds them.

I support all the bills being heard today and any efforts to compel the NYPD to comply with the many reporting requirements to which they are already subject. However, today I want to focus on Intro 586 and Intro 538, the How Many Stops Act.

In 2017, we passed the Right to Know Act. Now, in most situations when an officer stops someone, that officer must identify themselves and the reason for the stop; give a business card with their name, ID, and badge number; and obtain informed and voluntary consent in order to conduct a search. A key provision is that the officer must convey that the person stopped has a right to refuse the search in a language that person understands.

When these bills passed, we believed they would be transformative in improving police-civilian interactions. Yet we know that under Mayor Adams, the number of stops has increased more than 20%, while Commissioner Sewell has repeatedly reduced or dismissed penalties for non-compliance with the bills' mandates. We also know, thanks to data we *do* have, that NYPD is still stopping Black and Brown people at much higher rates – 87% of all reported stops in 2021.

The How Many Stops Act will help us accomplish a few goals. Intro 586 will bring transparency to many more types of stops than is already required. The public deserves to know who is being stopped, where, and why so that we can identify patterns and hold the NYPD accountable for profiling and harassment. Intro 538 will expand reporting requirements on consent searches, so we will know not only when searches happen, but also when they are requested and refused. We'll also get data on NYPD's use of consent searches to obtain DNA, and we'll know whether officers are using interpretation services as required. A secondary goal aside from transparency is the hope that knowing that they must report on their interactions will inspire a positive change in officer behavior.

Thank you again to the Council for holding this hearing today. I want you to know that I continue to be an ally in this work to change the way NYPD interacts with our communities, and I look forward to working with you on this and other reform efforts.

Testimony of Michael Sisitzky
On Behalf of the New York Civil Liberties Union
Before the New York City Council Committee on Public Safety
Regarding the How Many Stops Act and Other Proposed Legislation

March 27, 2023

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony regarding the How Many Stops Act (Intros. 538 and 586) and other proposed legislation related to police transparency. The NYCLU, the New York affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU’s mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.



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Defending New Yorkers’ right to be free from discriminatory and abusive policing is a core component of the NYCLU’s mission. Protecting this right requires robust systems for ongoing oversight of police practices, including ensuring that the public has access to critically important data on the full scope of police interactions in their communities. It also means ensuring that our city’s independent oversight entities have the tools they need to better investigate and hold officers to account for misconduct. Our testimony today focuses on the legislative proposals that most closely relate to the NYCLU’s transparency and accountability priorities.

The How Many Stops Act: Intro. 538 and Intro. 586

Accurate, comprehensive data collection and reporting on New York Police Department (“NYPD”) activity plays an essential role in any public conversation on policing. It enables policymakers to engage in meaningful oversight; equips advocates and the communities most impacted by policing with information that can better inform public debate on our laws, policies, and budget priorities; and it can expose abusive and discriminatory practices that would have otherwise remained shrouded in secrecy.

The NYPD’s stop-and-frisk practices provide a textbook example of the utility of and need for data on police activities. In 2001, the New York City Council passed a law requiring the NYPD to begin reporting data on stop-and-frisk activity, so that city officials could better identify and respond to any patterns of racial profiling.¹ This measure was part of the city’s response to the 1999 killing of Amadou Diallo by officers assigned to the NYPD’s notorious Street

¹ 2001 N.Y.C. Local Law No. 55, Intro. 910-2001 (Vallone), <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=435969&GUID=8C26CFA-B-49F2-41FC-A019-457D520D9FE2>.



Crime Unit, whose aggressive tactics and patterns of racial profiling came under increased scrutiny in the wake of Diallo’s killing and which was disbanded in 2002. The law required quarterly reporting of stop-and-frisk activity to the City Council, but in 2006, the NYCLU learned that the NYPD had been ignoring this requirement and that it had failed to provide the Council with comprehensive data since 2003.² The following year, after mounting public pressure and legal challenges, the NYPD finally began releasing the data, and the NYCLU began our own regular analysis of the data – an analysis that we continue to do today.

The numbers were shocking; hundreds of thousands of people, overwhelming Black and Latinx men, were being stopped each year, many of them repeatedly, and with the vast majority never being charged with any criminal wrongdoing. With the data now made public, it became impossible to deny the reality of the situation: the NYPD was engaging in a vast program of racial profiling.

The data played a central role in subsequent legal and legislative efforts to respond to and curtail the NYPD’s abuses. In *Floyd v. City of New York*, a federal judge found the NYPD’s stop-and-frisk practices unconstitutional and ordered the establishment of a monitor to oversee a series of reforms to the NYPD’s policies and practices.³ The City Council also responded to the stark racial disparities that emerged from the data by passing – and overriding a mayoral veto of – the Community Safety Act, a package of bills that included provisions to enhance and give teeth to a ban on bias-based profiling as well as to create a new inspector general with oversight authority over the NYPD’s operations.⁴

Today, stop-and-frisk activity is far below the recorded levels of its height during the Bloomberg era, though racial disparities remain deeply embedded.⁵ But the reported stop numbers do not reflect the true scope of all NYPD investigative encounters in communities, nor do they even fully reflect the true scope of stop-and-frisk activity more specifically. To the latter point, the monitor overseeing the NYPD’s stop-and-frisk reforms has repeatedly found

² NYCLU, *In Wake of Bell Shooting, NYCLU Protests NYPD Failure to Comply with Racial-Profiling Reform Mandated After Diallo Shooting*, Nov. 30, 2006, <https://www.nyclu.org/en/press-releases/wake-bell-shooting-nyclu-protests-nypd-failure-comply-racial-profiling-reform>.

³ Joseph Goldstein, *Judge Rejects New York’s Stop-and-Frisk Policy*, N.Y. Times, Aug. 12, 2013, <https://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html>.

⁴ J. David Goodman, *Council Reverses Bloomberg Veto of Policing Bills*, N.Y. Times, Aug. 22, 2013, <https://www.nytimes.com/2013/08/23/nyregion/council-overrules-bloomberg-on-police-monitor-and-profiling-suits.html>.

⁵ NYCLU, *Stop-and-Frisk Data*, <https://www.nyclu.org/en/stop-and-frisk-data>.



that the NYPD has not been reporting on the full extent of stop activity, with the data being subject to significant undercounts.⁶

Other gaps in the data stem from the way that NYPD investigative encounters are classified under the law. New York case law recognizes four different “levels” of police investigative encounters, stemming from a landmark Court of Appeals case known as *People v. DeBour*.⁷ Under the *DeBour* framework, a “stop” within the context of stop-and-frisk is “level three,” constituting an encounter in which a reasonable person would not feel free to leave, and it requires that an officer have reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor.

Below the level of a formal reasonable suspicion stop are level one encounters, in which an officer can approach someone in order to request information (including things like the person’s name, address, where they are going, etc.) so long as the officer has an “objective credible reason” for doing so, and level two encounters, which enable officers to engage in a “common law right of inquiry,” in which the officer is permitted to ask a person more pointed and accusatory questions (including requesting consent to search the person) based on an officer’s “founded suspicion that criminal activity is afoot.” Level four, meanwhile, is where an officer has probable cause to make an arrest.

The above framework may be useful for letting officers know what conduct may or may not be permissible when interacting with the public, but for a member of public who has been asked to produce identification (which an officer can do at level one, two, or three) or who has been asked to consent to a search of their backpack (which an officer can do at levels two or three but not at one), what matters is the fact that an officer has interrupted their day and targeted them for some kind of investigation. And the need for transparency and for ensuring that officers are adhering to the legal requirements to justify these encounters is no less important at levels one and two than it is for level three reasonable suspicion stops.

Indeed, the NYCLU has long been concerned that the lack of transparency with respect to these lower-level encounters makes it harder to identify and expose misconduct. In 2017, the NYCLU withdrew our support for a City Council bill

⁶ Arun Venugopal, *Federal Monitor: NYPD Is Not Reporting All Stop and Frisk Cases*, Gothamist, May 8, 2022, <https://gothamist.com/news/federal-monitor-nypd-is-not-reporting-all-stop-and-frisk-cases>; Al Baker, *City Police Officers Are Not Reporting All Street Stops, Monitor Says*, N.Y. Times, Dec. 13, 2017, <https://www.nytimes.com/2017/12/13/nyregion/nypd-stop-and-frisk-monitor.html>; J. David Goodman & Al Baker, *New York Police Department Is Undercounting Street Stops, Report Says*, N.Y. Times, July 9, 2015, <https://www.nytimes.com/2015/07/10/nyregion/some-new-york-police-street-stops-are-going-undocumented-report-says.html>.

⁷ *People v. De Bour*, 40 N.Y.2d 210, 352 N.E.2d 562 (1976).



that had – at the NYPD’s insistence – been watered down to remove level one encounters from the definition of “law enforcement activity,” with the effect being that officers would be under no obligation to identify themselves, state the reason for an encounter, or proactively offer people business cards when approaching them during a level one investigative encounter.⁸ Our concern then, as it is now, is that the potential for profiling and abuse increases in the absence of any mechanism for oversight and transparency.

The How Many Stops Act aims to shed much needed light on these low-level encounters that have long gone unreported. Intro. 586 would require the NYPD to document and report on all level one and level two investigative encounters, including demographic and location information, so that the public will finally have a comprehensive picture of all NYPD investigative and enforcement encounters that take place in their communities. While these encounters may be legally distinct from one another, there is no reason why the line for basic transparency and reporting should be drawn only at level three reasonable suspicion stops. All of these encounters represent instances in which NYPD officers are engaging members of the public, with all the same risks of racial profiling, bias, and potential for escalation as any police-civilian interaction. The public has a clear interest in knowing just how many of these interactions are taking place throughout our city and which communities experience them the most.

The How Many Stops Act’s second component, Intro. 538, would strengthen existing reporting measures around instances in which an officer asks a person for consent to be searched when an officer does not otherwise have a legal justification for that search. This measure builds upon existing reporting requirements passed in 2017 as part of the Right to Know Act, which requires NYPD officers to explain a person’s rights with respect to consent searches, including the person’s right to refuse consent, and which requires that officers convey this information in a clear, non-threatening manner and that they utilize interpretation services when seeking consent from a person with limited English proficiency.⁹

At the time that the Right to Know Act was passed, the law only required that the NYPD publicly report on consent searches that were agreed to and that actually took place, leaving out of the statutory language any requirement to report on the *total number of requests* for consent search, including those requests that are ultimately refused.¹⁰ To its credit, the NYPD agreed to provide broader reporting than mandated by the text of the law and has

⁸ NYCLU, *NYCLU Statement on Current Status of the Right to Know Act*, Dec. 14, 2017, <https://www.nyclu.org/en/press-releases/nyclu-statement-current-status-right-know-act>.

⁹ N.Y.C. Admin. Code § 14-173.

¹⁰ *Id.*



included data in its reporting on all requests for consent to search, including those that are agreed to and those that are declined. Intro. 538 would codify the existing practice of providing data on all such requests and update the law to conform to that reality. It would also expand the scope of existing reporting by requiring the NYPD to document and report on instances in which officers utilize language access services in interactions with those with limited English proficiency as well as to specify whether consent was sought to search a person, vehicle, home, or to obtain a forensic sample. This additional data will shed new light on these interactions and provide additional measures by which to gauge the NYPD's adherence to city laws and its own policies.

The data that the How Many Stops Act will generate is particularly vital given this administration's approach to policing. Early in his administration, Mayor Adams announced the creation of "Neighborhood Safety Teams," a revival of the disbanded Street Crime Unit and its similarly disbanded successor, the anti-crime units.¹¹ The teams have a new uniform and a new name, but they continue to have an aggressive enforcement mandate, and from the limited public data on their activities, they have focused primarily on low-level offenses.¹² These are precisely the types of dangerous units – and the types of enforcement encounters – for which this level of data is especially necessary.

The administration has also continued to promote so-called "quality of life" or broken windows policing – which prioritizes the enforcement of low-level offenses and too often criminalizes poverty and homelessness – as a central pillar of its public safety strategy,¹³ despite evidence that these Giuliani-era tactics do not, in fact, make communities safer.¹⁴

At a time when we continue to overinvest in law enforcement to the exclusion of alternative investments to address and improve community safety and well-being, we do not even have a comprehensive accounting of what that overinvestment translates to in terms of the full scale of police investigative

¹¹ Troy Closson, *NYPD Rolls Out New Version of Anti-Gun Unit with Violent Past*, N.Y. Times, Mar. 14, 2022, <https://www.nytimes.com/2022/03/14/nyregion/nypd-anti-gun-unit.html>.

¹² Sara Dorn, *NYPD's Neighborhood Safety Teams are Mostly Making Low-Level Arrests, Data Shows*, City & State New York, Apr. 8, 2022, <https://www.cityandstateny.com/politics/2022/04/nypds-neighborhood-safety-teams-are-mostly-making-low-level-arrests-data-show/365450/>.

¹³ Rocco Parascandola, *Broken Windows is Back: NYPD Announces New Crackdown on Quality-of-Life Crimes as Mayor Adams Pushes Police Brass*, N.Y. Daily News, Mar. 23, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-broken-windows-policing-crime-nypd-adams-sewell-quality-of-life-20220323-gfshakzdonebjdioebiohzzrmi-story.html>.

¹⁴ Office of the Inspector General for the NYPD, *An Analysis of Quality-of-Life Summonses, Quality-of-Life Misdemeanor Arrests, and Felony Crime in New York City, 2010-2015* (2016), https://www.nyc.gov/assets/doi/reports/pdf/2016/2016-06-22-Pr18oignypd_qualityoflife_report.pdf.

and enforcement interactions in our communities. The How Many Stops Act, by itself, won't put an end to our overreliance on policing nor the administration's commitment to the continued use of broken windows tactics, but it will better equip New Yorkers with more complete information with which to push back on the seemingly ever-expanding scope of policing in New York City. And once we understand that scope more fully, we will be better positioned to identify and advocate for alternatives that better meet New Yorkers' needs.

These bills are common-sense transparency measures that bring much needed oversight to encounters that have previously been all too easy to sweep under the rug. The NYCLU urges the Council to move swiftly to pass these measures into law.



CCRB Access to Body Camera Footage: Intro. 938

The NYPD has long proven incapable of policing itself and holding its officers to account for misconduct. The NYPD has also long been accused of frustrating efforts by the Civilian Complaint Review Board ("CCRB") to investigate and pursue disciplinary action against officers accused of misconduct. In recent years, a central point of contention has involved access to officer body-worn camera footage, which is controlled and maintained by the NYPD.

The CCRB has long noted both the value of video evidence in its investigations and the challenges it has faced in obtaining body-worn camera footage from the NYPD. In July 2019, a CCRB memo noted that the agency had 788 unfilled requests for body camera footage, some of which had been pending for months.¹⁵ By June 2020, the backlog of outstanding requests had ballooned to 1137, with at least 40 percent of those requests having been pending for more than 90 days.¹⁶ As the agency rightly noted:

[Body camera] footage is readily and easily used against members of the public, being immediately electronically linked to an arrest report for the easier prosecution of civilian crimes, but the situation for New York city oversight of police has steadily grown worse during the duration of a [body camera] program intended primarily to aid oversight.¹⁷

While this extreme backlog has since been reduced, the structural barrier presented by the NYPD's complete control over the footage remains in place.

¹⁵ Civilian Complaint Review Board, Memorandum Re: BWC and Document Request Issues with the NYPD, July 5, 2019, https://brooklyneagle.com/wp-content/uploads/2019/07/20190710_boardmtg_BWC_memo-2-1.pdf.

¹⁶ Civilian Complaint Review Board, Memorandum Re: BWC Landscape, June 26, 2020, <https://www.documentcloud.org/documents/6980787-CCRB-Memo-on-Body-Cam-Footage.html>.

¹⁷ *Id.*



If, for example, the CCRB were to experience a surge in complaints in the future like that seen arising from the summer 2020 protests, it is not difficult to imagine a scenario where the agency would once again be overwhelmed and would struggle to obtain footage in a timely manner.

Unlike the NYPD's protocols with prosecutors, who receive complete, unedited footage from body cameras through "a proprietary management system used by the NYPD that automatically transmits footage once an officer plugs their camera into a docking station and registers an arrest," the agency tasked with civilian oversight of the police is left without a direct means of obtaining footage that is critical to resolving misconduct complaints.¹⁸

As an investigative and oversight agency tasked with holding officers to account for misconduct, the CCRB should generally be afforded direct access to footage needed for its investigations, as is the case in places like Chicago and Washington, DC.¹⁹ Intro. 938 would establish such a framework for direct access here, granting CCRB access to body camera footage on a level equivalent to the NYPD's own Internal Affairs Bureau and requiring that the NYPD not limit CCRB access to that footage unless such restrictions are required by law.

The disconnect between the speed with which the NYPD provides footage to prosecutors for use as evidence against civilians and the sluggishness with which the Department has responded to requests for footage that could shed light on official misconduct undercuts the promise of body cameras as a tool for accountability and suggests that the NYPD views the technology primarily as just another gadget to collect evidence for use in criminal prosecution. The City Council can act to restore part of the initial promise of body cameras in promoting transparency and accountability by removing any local barriers to access to that footage for the CCRB.

Data on Vehicle Stop Justifications: Intro. 781-A

In 2021, the City Council passed legislation requiring the NYPD to collect and report data on vehicle stops.²⁰ The NYCLU enthusiastically supported this measure at the time, noting that it aimed to fill a key gap in existing data on police enforcement activity and to shed light on police interactions that, while common, had received less attention than pedestrian stops.²¹ With this law

¹⁸ Ethan Geringer-Sameth, *Vast Difference in NYPD Provision of Body Camera Footage to District Attorneys Versus Police Watchdog*, Gotham Gazette, Nov. 12, 2019, <https://www.gothamgazette.com/city/8880-nypd-body-camera-footage-districtattorneys-ccrb>.

¹⁹ See Office of the Inspector General for the NYPD, *Sharing Police Body Worn Camera Footage in New York City* (2021), <https://www.nyc.gov/assets/doi/press-releases/2021/November/21BWCRelease.Rpt.11.05.2021.pdf>.

²⁰ N.Y.C. Admin. Code 14-191.

²¹ NYCLU, *Testimony Regarding the City Council's Police Reform Proposals*, Feb. 16, 2021, https://www.nyclu.org/sites/default/files/field_documents/20210216-testimony-public_safety_0.pdf.

now in place and a full of year of vehicle stop data now available for review, it is clear that these encounters are deserving of even more scrutiny.

The NYCLU analyzed the vehicle stop data released by the NYPD, consisting of nearly 675,000 such stops in 2022. Our analysis found deeply alarming racial disparities, particularly with respect to searches and arrests. Nearly 60 percent of those stopped and 90 percent of those searched and arrested during a vehicle stop were Black and Latinx.²² The NYCLU is currently pursuing litigation against the NYPD for its failure to turn over its full set of underlying records regarding vehicle stops in 2022, which would enable a much more detailed level of analysis concerning these encounters.



One of the most pernicious aspects of vehicle stops is the fact that courts have given wide latitude to police officers to stop any driver on suspicion of an alleged traffic infraction, no matter how minor and no matter whether the officer had another actual motive for initiating the encounter (so-called “pretext stops”).²³ Given the sheer number of traffic laws on the books, it takes very little effort for an officer who wants to stop someone to find a pretextual reason for so doing.

Intro. 781-A will add to the existing reporting on vehicle stops by requiring the NYPD to include data on the specific justification for a stop. Currently, the NYPD is required to publicly report on specific offenses only if an arrest is made in connection with a vehicle stop – providing us with information on the back end of these encounters, but nothing about what justified the stop to begin with. Requiring the NYPD to include information on any offenses observed when initiating the encounter in the first place will provide a fuller picture with respect to these encounters, generally, and will aid policymakers and the public in better assessing the extent to which the NYPD is using traffic enforcement as a mechanism for criminal enforcement.

Reporting on Police Misconduct Complaints: Intro. 386

The NYCLU has long supported efforts to make records of police misconduct and discipline more transparent and accessible. We joined with partners around the state in advocating for the June 2020 repeal of Section 50-a, which had kept records of police misconduct hidden, and have worked tirelessly since then to obtain these records from departments across New York, including the NYPD. In August 2020, the NYCLU published a searchable database of nearly 300,000 CCRB complaints dating back to the 1980s,²⁴ and in December 2021, we issued a report analyzing complaints filed between 2000 and early 2021,

²² NYCLU, *Black, Latinx People Were 90 Percent of Those Arrested in NYPD Traffic Stops*, Mar. 24, 2023, <https://www.nyclu.org/en/news/black-latinx-people-were-90-percent-those-arrested-nypd-traffic-stops>.

²³ See *Whren v. United States*, 517 U.S. 806 (1996).

²⁴ NYCLU, NYPD Misconduct Complaint Database, <https://www.nyclu.org/en/campaigns/nypd-misconduct-database>.



painting a clear picture of the NYPD’s disregard for civilian oversight and its unwillingness to impose meaningful discipline on its officers.²⁵

To that end, we are generally supportive of efforts meant to increase transparency and reporting on police misconduct. Intro. 386 would require monthly reports from the NYPD on the number of complaints received, disaggregated by precinct, and with information on any actions taken by the NYPD in response to those complaints. While more data is always useful, we note that this bill is a reintroduction of a measure first heard by the Council in 2019, predating the repeal of 50-a.²⁶ At the time, we offered testimony to this Committee on suggested additions to this legislation, including more detailed reporting on the type of misconduct alleged and clearly requiring the Department to provide updates on actions taken by the NYPD in response to pending complaints on an ongoing basis.²⁷

While those additions would still be useful now, it is worth emphasizing that the repeal of 50-a has greatly expanded the universe of misconduct and disciplinary information that is now legally accessible. Thus, we encourage the Council to think bigger with respect to any proactive reporting mandates. Even with 50-a’s demise, the NYPD has thus far been reluctant to fully embrace the full promise of transparency. The Department’s “Officer Profile” portal, for instance, contains only a narrow slice of officer misconduct and disciplinary histories.²⁸ To the extent the Council is considering reporting mandates with respect to NYPD misconduct going forward, we encourage a more comprehensive approach to such reporting, and the NYCLU is happy to work with the sponsor and the Council as a whole in pursuit of those efforts.

Conclusion

The NYCLU thanks the Committee for the opportunity to testify, and we welcome the opportunity to work with the Council on these and other measures to promote meaningful police transparency and accountability in New York City.

²⁵ NYCLU, *Cop Out: Analyzing 20 Years of Records Proving NYPD Impunity* (2021), https://www.nyclu.org/sites/default/files/field_documents/nyclu-2021-crbdata-report.pdf.

²⁶ See Intro. 1105-2018, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3673424&GUID=93B1F016-D63F-4086-8A14-0A70208CF7FA&Options=ID%7cText%7c&Search=1105>.

²⁷ NYCLU, *Testimony Regarding New York City Police Discipline*, Feb. 7, 2019, <https://www.nyclu.org/en/publications/testimony-regarding-new-york-city-police-discipline>.

²⁸ Jake Offenhartz, *New NYPD Database Offers “Narrow” Glimpse at Police Disciplinary Records*, *Gothamist*, Mar. 9, 2021, <https://gothamist.com/news/new-nypd-database-offers-narrow-glimpse-police-disciplinary-records>.



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Testimony from the New York City Anti-Violence Project (AVP)

To the Committee on Public Safety

Submitted March 27, 2023

Good afternoon, my name is Hadeel Mishal and I am the Lead Organizer at the New York City Anti-Violence Project (AVP). Our mission at AVP is to empower lesbian, gay, bisexual, transgender, queer, gender non-conforming, and HIV-affected communities and allies to end all forms of violence through organizing, education, advocacy, and counseling. We know all too well that police violence is a common violence that impacts our communities. That’s why we are here today, to testify in support of passing the How Many Stops Act. |

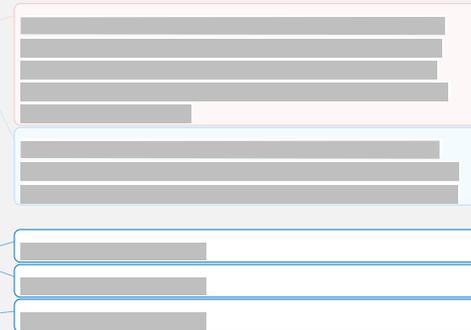
The communities AVP serves have historically been profiled and targeted by law enforcement- LGBTQ people, especially Black and Latine trans women, are subject to unrelenting harassment by both police and other New Yorkers. Although the so-called “Walking While Trans Ban” was repealed at the state level in 2021, the NYPD continues to harass BIPOC who they perceive as gender non-conforming, and the Passage of the How Many Stops Act would support greater transparency and accountability. A 2020 investigation by ProPublica revealed that nearly everyone arrested for misdemeanor prostitution offences like loitering were non-white: 89% of the 1,800 charged with prostitution – this racialized and gendered harassment directly harms LGBTQ New Yorkers. |

Passing the How Many Stops Act is one step forward in repairing the damage that the NYPD has caused by their escalatory and violent practices. When level 1 and 2 stops go undocumented, a piece of the story for how policing truly looks in our city goes missing. It is easier to hide abuse of power and violence in these instances, because the NYPD simply does not have to report on them. We need to hold the NYPD accountable for the way they engage with our citizens.

Police accountability is critical right now. Data collection on all NYPD stops can serve as a preventative measure for police escalation and violence. I’m sure many of us have read recently that NYPD Commissioner Sewell disregarded the CCRB’s recommendations on at least 425 civilian complaints in 2022. How can our communities have faith and trust in this system when it lacks accountability from the top down?

Serving New York’s Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities

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The NYPD's budget for fiscal year 2023 is 10.8 billion dollars. A larger budget than some countries' militaries. When nonprofit organizations get city funding, there is a system of accountability to keep track of how the money is spent, where it is spent, and that the work is done and done well. Why don't those same systems of accountability apply to the NYPD? Once again, passing the How Many Stops Act will serve as a means of accountability for the NYPD. We entrust the NYPD to keep our city safe, but it's a problem when our communities don't feel safe with them because of their biased, violent policing practices. The City Council has the power to hold NYPD accountable and should therefore do right by our communities. Thank you for your time.



Often times, New Yorkers are afraid when approached by NYPD. They are not aware of their rights, NYPD does not inform them of their rights, and NYPD often takes advantage of this lack of knowledge to abuse their power. Intro 538 would ensure that officers are documenting their use of interpretation services when seeking consent to search from people with limited English proficiency, require that the NYPD report on any consent search requests for sensitive genetic information, like saliva swabs to collect DNA samples, and require informing people of their right to refuse requests for DNA samples.

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Verbal Testimony

Good afternoon Chair Hanks, the Committee on Public Safety, and comrades. My name is Hadeel Mishal and I am the Lead Organizer at the New York City Anti-Violence Project (AVP). Our

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New York City Anti-Violence Project

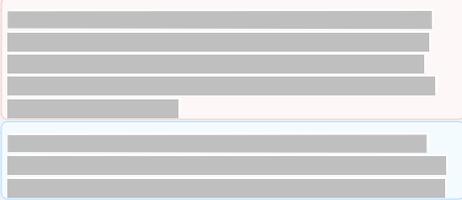
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212.714.1141 *24-hour hotline*

mission at AVP is to empower lesbian, gay, bisexual, transgender, queer, gender non-conforming, and HIV-affected communities and allies to end all forms of violence through organizing, education, advocacy, and counseling. We know all too well that police violence is a common violence that impacts our communities. That’s why we are here today, to testify in support of passing the How Many Stops Act.

The communities AVP serves have historically been profiled and targeted by law enforcement. LGBTQ people, especially Black and Latine trans women, are subject to unrelenting harassment by both police and other New Yorkers. Although the so-called “Walking While Trans Ban” was repealed at the state level in 2021, the NYPD continues to harass BIPOC who they perceive as gender non-conforming, and the Passage of the How Many Stops Act would support greater transparency and accountability. A 2020 investigation by ProPublica revealed that nearly everyone arrested for misdemeanor prostitution offences like loitering were non-white: 89% of the 1,800 charged with prostitution – this racialized and gendered harassment directly harms LGBTQ New Yorkers.

Passing the How Many Stops Act is one step forward in repairing the damage that the NYPD has caused by their escalatory and violent practices. When level 1 and 2 stops go undocumented, a piece of the story for how policing truly looks in our city goes missing. It is easier to hide abuse of power and violence in these instances, because the NYPD simply does not have to report on them. We need to hold the NYPD accountable for the way they engage with our citizens.

Police accountability is critical right now. Data collection on all NYPD stops can serve as a preventative measure for police escalation and violence. I’m sure many of us have read recently that NYPD Commissioner Sewell disregarded the CCRB’s recommendations on at least 425 civilian complaints in 2022. How can our communities have faith and trust in this system when it lacks accountability from the top down? The City Council has the power to hold NYPD accountable and should therefore do right by our communities.



Serving New York’s Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities

www.avp.org

TESTIMONY OF:

Jacqueline Gosdigian, Senior Policy Counsel

BROOKLYN DEFENDER SERVICES

Presented before

New York City Council

Committee on Public Safety

Oversight Hearing on the NYPD's Strategic Response Group

March 27, 2023

My name is Jackie Gosdigian and I am a Senior Policy Counsel at Brooklyn Defender Services (BDS). BDS provides comprehensive public defense services to approximately 22,000 people each year who are accused of a crime, facing the loss of liberty, their home, their children, or deportation. We thank the Committee on Public Safety, Chair Hanks, and Speaker Adams for the opportunity to address the Council about the oversight of the New York Police Department (NYPD) and the legislation being introduced today.

For over 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with the educational needs of our clients or their children, housing and benefits advocacy, and immigration advice and representation.

Police transparency is an essential measure for holding the NYPD, and other law enforcement agencies, accountable for the discriminatory and abusive policing practices they employ. These practices criminalize and harm New Yorkers, disproportionately Black and brown New Yorkers, LGBTQIA+ New Yorkers, and New Yorkers experiencing homelessness. Discriminatory and abusive policing practices make all New Yorkers less safe. In order to make our city safer for all of our community members, the City Council must take action now and ensure greater transparency and accountability.

Background on Broken Windows Policing

In the early 1990s, under the Dinkins and Giuliani administrations, the NYPD first began to employ “broken windows” policing policies and tactics. Operating under the false assumption that the proliferation of low-level offenses leads to more serious offenses, officers were given leeway to intervene in communities across the city at their own discretion. Officers quickly became more assertive in addressing what they saw as crimes, and the common standard of “probable cause” was reduced to “reasonable suspicion.” This, in turn, evolved into stop-and-frisk, or the practice of stopping and searching pedestrians on the street, often in New York City’s most vulnerable communities.

Unsurprisingly, stop-and-frisk had the greatest impact on Black and brown New Yorkers, as well as other marginalized groups. At the height of the NYPD’s stop-and-frisk abuses, hundreds of thousands of Black and Latine New Yorkers were stopped each year—many of whom had committed no crime at all. The legacy of stop-and-frisk remains; the NYPD continues to stop thousands of New Yorkers of color each year. In 2020, Black and Latine New Yorkers made up 91% of reported stops.

Unlawful Police-Citizen Encounters are Still Happening in NYC.

After a Federal Court ruled that stop-and-frisk practices were unconstitutional in 2013, the NYPD has employed a variety of other tactics to harass, detain, and ultimately arrest Black and brown New Yorkers. Across the city, vulnerable New Yorkers are subjected to constant police presence and surveillance; these same New Yorkers are also our community members who are most likely to be subjected to abuse at the hands of the NYPD. The NYPD has a long history of establishing specialty groups, task forces, and response teams to address perceived issues and crises in New York City. With a lack of oversight and supervision, these groups have a shared history of employing egregious violence against communities of color and low-income communities in our city.

The NYPD’s Vice Squad, which is tasked with policing sex work, is one such example of a specialty group with a long history of both egregious behaviors and a lack of direct oversight within the NYPD. In fact, a 2021 investigation by ProPublica found numerous allegations of misconduct, abuse, coercion, and exploitation by the NYPD’s vice unit. The report also found that over 90% of the New Yorkers arrested on the charge of patronizing a sex worker were nonwhite.¹ This is not representative of our population and, in fact, cannot be representative of who is paying for sex in New York City; it is also clear that this number is a result of the racialized way the city polices sex work.

¹ Joshua Kaplan and Joaquin Sapien, As New York City Moves to Address Racialized Policing of Sex Work, Advocates and Lawyers Say It’s Not Enough, *ProPublica*, 2021, Available at <https://www.propublica.org/article/as-new-york-city-moves-to-address-racialized-policing-of-sex-work-advocates-and-lawyers-say-its-not-enough>.

The abuses committed by units such as these, which often operate with minimal to no oversight, are not unique to specialized operations but seem to proliferate within them. These units exemplify the most destructive tendencies of policing, most frequently perpetrated against the most vulnerable members of our communities.

As part of his mayoral campaign, Mayor Adams promised to reduce gun violence and crime in New York City by reestablishing the NYPD's Anti-Crime team². In 2022, these plainclothes police teams were relaunched and rebranded as "Neighborhood Safety Teams," despite the concerns of activists, advocates, and community members³. Plainclothes officers—from the anti-crime team and other units—have long been accused of using aggressive and violent tactics. While plainclothes officers make up a small portion of the overall police force, they were found to have been involved in nearly one-third of killings by police in 2018.⁴ Because of this, the anti-crime team was disbanded in 2020, for the second time, after being disbanded in the 1990s. Despite the controversy surrounding the unit at the time, which included multiple lawsuits and a federal investigation, many of the officers from within the Street Crime Unit (SCU), as it was then known, were reassigned to other anti-crime teams, many of which utilized the exact same egregious policing tactics that had gotten the SCU disbanded in the first place.⁵

The Importance of Data Collection and Police Oversight Bills.

Public defenders usually become aware of police misconduct in connection with an encounter that results in an arrest. It is only after an arrest that someone is brought to court and speaks with their attorney about what happened to them. The vast majority of police-citizen encounters that do not result in an arrest go unreported or are overlooked. That is why **Int 586-2022** is a critical piece of legislation. This bill would require the NYPD to provide quarterly reports detailing information on level one, two, and three investigative encounters between the police and civilians, including the race/ethnicity, age, and gender of the civilian approached by the police, the factors that led to the interaction, and whether the interaction led to a summons or use of force incident. The data obtained as a result of this bill will assist the city and the public in monitoring and regulating the actions of the NYPD. This is especially important given the increase in their budget and staffing

² George Joseph and Gabriel Sandoval, Eric Adams Wants To Bring Back The NYPD's Most Controversial Unit, *The City*, 2021, Available at <https://www.thecity.nyc/2021/4/27/22404899/eric-adams-bring-back-anti-crime-unit>

³ Sara Dorn, NYPD's Neighborhood Safety Teams are mostly making low-level arrests, data shows, *City and State*, 2022, Available at <https://www.cityandstateny.com/politics/2022/04/nypds-neighborhood-safety-teams-are-mostly-making-low-level-arrests-data-show/365450/>

⁴ George Joseph and Liam Quigley, Plainclothes NYPD cops are involved in a staggering number of killings, *The Intercept*, 2018, Available at <https://theintercept.com/2018/05/09/saheed-vassell-nypd-plain-clothes>

⁵ Rachel Holliday Smith and Eileen Grench, Know Your Rights With the NYPD's New 'Neighborhood Safety Teams', *The City*, 2022, Available at <https://www.thecity.nyc/justice/2022/3/21/22990229/eric-adams-neighborhood-safety-teams-plainclothes-cops-nypd-rights>

numbers, and near constant presence in primarily Black, brown, and low-income neighborhoods.⁶ **Int 443-2022** will also alert the city to the use of discriminatory police tactics, as this legislation will require the NYPD to send records of closed complaints and investigations of bias-based policing to the Commission on Human Rights.

In addition to pretextual stop-and-frisk tactics, NYPD also regularly relies on consent searches, as opposed to obtaining a search warrant, or obtaining enough evidence to amount to probable cause to search. Many New Yorkers do not know they have the right not to consent to a search when asked by a police officer. In other cases, people are searched unlawfully even after declining a search. **Int 538-2022**, will require NYPD to report on instances in which an individual denies consent to a search, and information pertaining to circumstances involved in such attempts to obtain consent to search. Any data that the city can collect about NYPD's use of consent searches will assist the Council and the public in holding NYPD accountable.

Oversight of Body Worn Camera use is Crucial for Police Accountability

Body worn cameras, if utilized properly, can shed light on the thousands of law enforcement interactions many New Yorkers, particularly Black and Latine people, experience each day. Police misconduct continues to go unmonitored and unchecked. The secrecy of police disciplinary systems perpetuates this misconduct and precludes public scrutiny of law enforcement. Research has shown that officers wearing body cameras were involved in fewer use-of-force incidents and body worn cameras can also increase the likelihood that an officer acting on racial biases—or committing misconduct—will be discovered, investigated, and disciplined.⁷

Body cameras are only a useful tool to assist in transparency and accountability if they are used properly and judges, prosecutors, and law enforcement officers investigate and carry out disciplinary measures for incidents of misconduct. This is why BDS supports **Int 585-2022**, because this bill would require the New York City Police Department to share all body-worn camera footage with the Department of Investigation's Inspector General for the NYPD and the Department of Records and Information Services within 5 days of the recording. We also support **Int 0938-2023**, which would require the NYPD to provide the Civilian Complaint Review Board (CCRB) with direct access to all footage recorded by officer body-worn cameras. This access will greatly assist the CCRB in investigating and prosecuting allegations of police misconduct.

⁶ See Also [Int 0781-2022](#). This bill would require the New York City Police Department to include in vehicle encounter reports the justification used by an officer to conduct a vehicle stop and if an observed offense was cited as the justification for a vehicle stop whether the offense was at the level of an infraction, violation, misdemeanor or felony. See Also [Int 0386-2022](#). This bill would require the NYPD to make monthly reports of the number of complaints of police misconduct that it receives, by precinct, and any action taken by the NYPD in response to such complaints.

⁷ See Murphy, Julian R., *Is It Recording? Racial Bias, Police Accountability, and the Body-worn Camera Activation Policies of the Ten Largest U.S. Metropolitan Police Departments in the USA*, 9 Column. J. Race & L. 141 (2018).

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However, it is important to note here, that because the police commissioner retains veto power over any internal findings and recommendations for discipline by the CCRB, there is no meaningful mechanism in place for holding the NYPD accountable.

The ever-increasing budget of the NYPD is not only concerning to public defenders, but should be concerning to all New Yorkers. New York City has already invested more than \$1 billion in a twenty-year surveillance infrastructure building program.⁸ The city is blanketed in surveillance.⁹ No police department in the country has more military-grade surveillance resources than the NYPD. These tools have done nothing to stop or ameliorate the claimed spike in violence. All they have accomplished is expanding a burgeoning surveillance state, repeatedly infringing on New Yorkers' dignity, privacy, and First Amendment freedoms.¹⁰ **Int 638-2022** would require an annual report on the donations for all donors who, in aggregate, donate more than \$1 million dollars in value to the New York Police Department within a year. The NYPD accepts millions of dollars each year in private donations, much of which comes through the non-profit Police Foundation.¹¹ It would also require information on programs or projects to which the NYPD applied those donations. Transparency in funding for NYPD is necessary for the city to have meaningful oversight of the department¹² and information on surveillance technology that is available to the NYPD.¹³

We Must Hold NYPD Accountable.

⁸ Ali Watkins, How the N.Y.P.D. is using Post-9/11 Tools on Everyday New Yorkers, *NYTimes* (Sept. 8, 2021) at <https://www.nytimes.com/2021/09/08/nyregion/nypd-9-11-police-surveillance.htm>

⁹ See, e.g., Amnesty International, Inside the NYPD's Surveillance Machine at <https://banthescan.amnesty.org/decode/>.

¹⁰ See, e.g., Elizabeth Daniel Vasquez, Dismantle NYC's Mass Surveillance Project – Start with Jail Recordings, *Truthout.org* (June 1, 2021) at <https://truthout.org/articles/dismantle-nycs-mass-surveillance-project-start-with-jail-recordings/>; James Vincent, NYPD used facial recognition to track down Black Lives Matter activist, *TheVerge.com* (Aug. 18, 2020) at <https://www.theverge.com/2020/8/18/21373316/nypd-facial-recognition-black-lives-matter-activist-derrick-ingram>; Jan Ransom and Ashley Southall, N.Y.P.D. Detectives Gave a Boy, 12, a Soda. He landed in a DNA Database, *NYTimes* (Aug. 15, 2019) at <https://www.nytimes.com/2019/08/15/nyregion/nypd-dna-database.html>.

¹¹ Greg Smith, NYPD Backs Bill to Disclose How it Spends Private Donations–But Isn't Divulging Yet, *The City* (March 29, 2023) at <https://www.thecity.nyc/2023/3/29/23661122/nypd-police-foundation-law-enforcement>.

¹² See Also Int 0948-2023. The bill would increase the frequency and expand the scope of existing reports required to be produced by the New York City Police Department ("NYPD"). Such reporting includes, but is not limited to, disclosure of information and data related to the NYPD's use of stop-question-and-frisk, its deployment of officers and use of overtime spending, and crime status information, such as data on criminal complaints, arrests, and summons issued. Additionally, all such reports would be required to be publicly posted on the NYPD's website.

¹³ "[The Police Foundation's] 2019 filing describes funding that "provides equipment, expertise, training and technical services to upgrade the NYPD's technological capabilities," including "installing cutting-edge software and upgrading database security and infrastructure." at Greg Smith, NYPD Backs Bill to Disclose How it Spends Private Donations–But Isn't Divulging Yet, *The City* (March 29, 2023) at <https://www.thecity.nyc/2023/3/29/23661122/nypd-police-foundation-law-enforcement>.

Brooklyn ^(BDS) Defenders

It is impossible to divorce modern American policing from its roots in racist and classist enforcement. The New York City Police Department was formed in 1845 in direct response to workers' rights demonstrations, an influx of immigrant populations, and demands by elites to crack down on so-called quality-of-life behaviors associated with these communities. These formative directives and punishment paradigms are still present today. Neighborhoods that are subjected to constant police presence and surveillance are also home to community members who are most likely to be abused at the hands of the NYPD. They are also the exact neighborhoods in which the NYPD chooses to deploy teams of plainclothes officers, like Neighborhood Safety Teams.

As defenders, we see the direct results of two salient data-backed trends that are consistent with this bias in enforcement: Black and brown New Yorkers are disproportionately targeted for stops and arrests, and individual officers who engage in racist, biased, or hateful behavior remain on the job. It is imperative that we recognize racist policing includes instances that do not involve direct statements of racist intent. We cannot allow the biases displayed by these specialized units and the egregious practices they employ to continue to entangle Black and brown New Yorkers in the criminal legal system.

Conclusion: A Return to Broken Windows Policing.

Overall, the creation of these specialty groups, task forces, and response teams represents a covert return to broken-windows policing and the stop-and-frisk abuses of the late 1990s and early 2000s. Through them, the NYPD has created a new locus for police-citizen encounters, one that not only lacks oversight and increases the number of unnecessary stops New Yorkers are subjected to, but also one that poses an increased risk of violence for vulnerable New Yorkers. We are hopeful that the data reporting, information sharing, and oversight measures included in this package of bills will assist the city in regulating and controlling the city's police force, which continues to trample on the rights of the citizens it has sworn to protect.

Thank you again to the Committee on Public Safety, Chairs Hanks, and Speaker for the opportunity to address the Council about the NYPD's Strategic Response Group. Please reach out to me at jgosdigian@bds.org with any questions.



MEMORANDUM OF SUPPORT

Intro. 0938-2023

A Local Law to amend the administrative code of the city of New York, in relation to requiring the New York city police department to provide the civilian complaint review board with direct access to officer body-worn camera footage and to establish related procedures

March 27, 2023

Summary of Provisions

Intro. 0938-2023 (Adams) would require the New York City Police Department to provide the Civilian Complaint Review Board (CCRB) with direct, real-time connection to its body-worn camera footage servers, which would include, at minimum, the ability to remotely access, search, and store the footage. The Police Department would be forbidden from limiting the CCRB's access unless otherwise required by law. Additionally, the bill would require the NYPD segregate its sealed body-worn camera footage in accordance with relevant laws. It would add a new section to Title 14 of the administrative code.

Statement of Support

Citizens Union supports Intro. 0938-2023 because it would expedite and improve the quality of investigations into police misconduct and wrongdoing, thus strengthening appropriate oversight and accountability of the NYPD. The bill would reduce the limitations investigative agencies face in accessing police officers' body-worn camera footage through codifying the timing, type, and uses of such access. By providing prompt and full access to body-worn camera footage, Intro. 0938-2023 would ensure the CCRB arrives at a clear and fair interpretation of events in a timely manner and prevent the Police Department from unjustifiably denying access to effective investigative resources.

Details of Position

Pursuant to the New York City Charter, the Civilian Complaint Review Board (CCRB) has the power to "compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation of matters within its jurisdiction."¹ In practice, however, the New

¹ Charter Chapter 18-A, § 440(c)(3)

York City Police Department (NYPD) withholds significant, relevant information from the CCRB or produces it after substantial delays and often with redactions.²

The NYPD provides limited access to body-worn camera footage

The NYPD's failure to provide prompt access to relevant materials for investigations is especially apparent in the use of body-worn camera (BWC) footage. Since the introduction of body-worn cameras in 2014, the NYPD has resisted and delayed efforts by the CCRB to obtain the needed footage. In 2019, the two agencies agreed to a cumbersome procedure in a memorandum of understanding (MOU) for providing access to CCRB investigators, which still gave the NYPD control of the footage and significantly hindered the CCRB.

Although the MOU established a timeline for the NYPD to produce BWC footage to the CCRB once that footage has been located by NYPD staff, it did not set a deadline by which the NYPD must begin the search for BWC footage, leading to significant backlogs and delays.

Further delays are caused by the NYPD comingling sealed and unsealed records on their BWC footage system. Under state law, arrest records must be sealed in several cases and accessible only to authorized individuals.³ Because sealed and unsealed records are not separated – a practice that may be in violation of the law⁴ – NYPD Legal Bureau attorneys need to review and screen each search request from outside agencies prior to their production.

Although the MOU between the CCRB and NYPD created the conditions to allow individual CCRB investigators the ability to request access and review BWC footage in full and unedited, it also allowed the NYPD to deny, edit or redact any BWC footage request for production to the CCRB on any grounds so long as it provides a rational for doing so.

The NYPD justifies its failure to provide the CCRB with prompt access to documents and other relevant materials based on a myriad of claims of privilege and privacy concerns, some based on statutes designed to protect innocent civilians, not police officers accused of misconduct. It is easy to get lost in the competing legal arguments involved, but for the most part, the NYPD's arguments against sharing materials with the CCRB do not appear to be well supported, and in any case, it should be the Corporation Counsel, not the NYPD, who makes the legal judgment as to whether there are any current legal impediments to the NYPD sharing all relevant materials with the CCRB. Intro. 0938-2023 would

² See for example, the Department of Investigation's report into NYPD Response to the 2020 George Floyd Protests, demonstrating NYPD resistance to the production of information not only to the CCRB but also to the Inspector General for the Police Department and the Mayor's Commission to Combat Police Corruption (<https://www.nyc.gov/assets/doi/reports/pdf/2020/DOIRpt.NYPD%20Reponse.%20GeorgeFloyd%20Protests.12.18.2020.pdf>), See also, Eric Umansky and Mollie Simon, The NYPD Is Withholding Evidence From Investigations Into Police Abuse, Pro Publica (Aug. 17, 2020), <https://www.propublica.org/article/the-nypd-is-withholding-evidence-from-investigations-into-police-abuse>

³ Including when the prosecution drops charges, the case is dismissed or the offender is a juvenile, and sometimes in the case of a conviction. See more at <https://www.nycourts.gov/courthelp/criminal/sealedRecords.shtml>

⁴ Sharing Police Body Worn Camera Footage in New York City, Office of the Inspector General for the NYPD (OIG-NYPD), November 2021 <https://www.nyc.gov/assets/doi/press-releases/2021/November/21BWCRelease.Rpt.11.05.2021.pdf>

clarify the legal framework in such cases by requiring the NYPD to segregate its sealed body-worn camera footage in accordance with relevant laws.

We note that a similar problem faces other agencies that require independent access to BWC footage to fulfill their mandates for oversight over the NYPD. The Office of the Inspector General for the NYPD (OIG-NYPD) at the Department of Investigations, which is charged by Charter §808 to “collect and evaluate information regarding allegations or findings of improper police conduct and develop recommendations relating to the discipline, training, and monitoring of police officers,”⁵ has an express interest in also being provided access to BWC footage. Other §808 agencies, including the Law Department, the Comptroller, the Commission to Combat Police Corruption, and the Commission on Human Rights, may also need some level of access to body-worn camera footage.

Limited access to footage impedes investigations into police misconduct

These limitations present substantial obstacles to investigations of complaints of police misconduct. Since its introduction in 2014, the NYPD’s BWC program has become the largest in the country, with 24,000 of its members equipped with the technology.⁶ The result of years of unconstitutional “stop and frisk” policing – through which the NYPD disproportionately targeted and infringed on the civil rights of Black and Hispanic communities – BWC footage has played a critical role in producing video evidence crucial to the exoneration and protection of citizens as well as members of the NYPD.

The footage allows the CCRB to resolve conflicting testimonies and receive a clearer interpretation of the circumstances of an encounter. They have been especially effective in getting fully investigated complaints closed “on the merits,” allowing the CCRB to determine whether an officer’s actions are misconduct. CCRB data shows that the rates of both “substantiated” and “unfounded” findings significantly increased in investigations with BWC footage.⁷

In fact, one of the key reasons for the agency’s inability to complete investigations of complaints related to the 2020 protests was problems with getting BWC footage, including “delayed responses, false positives (NYPD turned over footage that was either incorrect or irrelevant in response to a video request), false negatives (the NYPD reported that queries for the requested video footage did not return any results, but the footage was later discovered), and inconsistent responses by the NYPD.”⁸

The delays also run counter to the city’s stated goals for the CCRB, as set by the Mayor’s Management Report, including improving the timeliness of investigations.⁹ They also contribute to a high rate of “non-concurrence” in disciplinary actions between the CCRB recommendations and the Police Commissioner’s

⁵ Charter Section 808(b)

⁶ CCRB Semi Annual Report 2022 https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_semi_annual.pdf

⁷ For example, in the first half of 2022, 78% of complaints without video evidence closed “not on the merits”, i.e. because the CCRB did not have enough evidence to determine the outcome, compared to 24% of investigations with BWC evidence. (CCRB Semi Annual Report 2022)

⁸ CCRB Semi Annual Report 2022 https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_semi_annual.pdf

⁹ Mayor’s Management Report, CCRB, Goal 1a

decision; the Police Department justifies dismissing many CCRB recommendations by citing delays in the disciplinary process.¹⁰

There has been some progress made in providing footage. Under a new protocol, the Police Department's Legal Bureau is now responsible for fulfilling the CCRB's request, locating and passing along BWC footage. The average business days it took for the NYPD to respond to CCRB footage requests dropped from 48 in 2019 and 58 in 2020 to 8 days in 2021 and 4 days in the first half of 2022. Most recent data shows that 70% of CCRB investigations include BWC footage.¹¹

However, the basic point is that the city currently runs two parallel systems for disciplining police officers. One is run by the NYPD through its Internal Affairs Bureau and has access to all relevant information in the possession of the Police Department. The other is run by the CCRB and has access only to the materials that the NYPD decides to turn over. This situation is intolerable.

The best way to ensure the safe and democratic application of policing is to strengthen and streamline systems of oversight and accountability. The CCRB should have prompt and full access to footage from body-worn cameras and all other NYPD documents and materials relevant to its investigations.

For more information, please contact Ben Weinberg, Director of Public Policy, at bweinebrg@citizensunion.org

¹⁰ Testimony of Police Commissioner Keechant L. Sewell. New York City Council Committee on Public Safety, Preliminary Budget Hearing, 03/20/23

¹¹ CCRB annual and semi-annual reports, 2020, 2021, 2022



Kelly Grace Pricel Founder; E-Mail: gorgeous212@gmail.com Web: <http://www.CloseRosies.org>

March 27, 2023

To: Councilmember Kamillah Hanks, Chair, Committee on Public Safety; NYC Council Speaker Adams; NYC Council Member Caban

cc: Council Committee Members; NYC Council staff; Jeremy Whitman

via Email: NYC Council Public Safety Committee

Ref: NYC Public Safety Committee hearings March 27, 2023: Int 0386-2022; Int 0443-2022; Int 0538-2022; Int 0585-2022; Int 0586-2022; Int 0638-2022; Int 0781-2022; Proposed Int. No. 781-A; Int 0938-2023; Int 0944-2023; Int 0948-2023; T2023-3149

Dear Chair Hanks, Speaker Adams, Council Member Caban and members of the Committee:

Congratulations on this slate of bills meant to tighten up gaps and sneaky holes in oversight mechanisms aimed at improving public safety and effectiveness of the NYPD to those ends. [My comments are specifically pointed to address Intro 944.](#) I'm grateful to the council for taking-up the issue of non-compliance with Local Law 166 of 2017 so quickly. As you may know I've been working for months to identify the true scope of litigation settlements paid out with NYC tax dollars to people harmed by the NYPD and DOC. I've been engaged with every City Agency with a horse in this race to evaluate data and analyze it: CCRB, the Law Department, the NYPD, the Comptroller and members of the present and former City Council. From my analysis of data gained by FOIL and court dockets, 8461

other torts filed against the NYPD and settled since 2013 were never reported on the mandatory litigation outcome summaries required to be published bi-annually by the Law Department. All tallied, [my analysis](#) reveals the NYC Law Department has only revealed slightly more than 40% (~838M) of the settlements paid out by New York City to resolve NYPD and DOC civil litigations over the last decade. The output mandated by the City Law Department as per NYC Administrative Code § 7-114: Civil Actions Regarding the Police Department [requiring reporting on NYPD litigations and settlements](#) in comparison with Federal and State court records and others reveals 59% of NYPD litigation settlements from 2013-2023 or **\$1,092,500,163.00 were not reported of \$1,931,585,319.00 actually settled or awarded at trial** against the police department and its employees.

I noted [that yesterday the head of the NYC Law Department, Hon. Sylvia O. Hinds-Radix, was not completely forthcoming in her answer to Council Member Hanks](#) [minute 00:57:00 in video] **when asked a simple question: “How much did the City pay out to settle NYPD officer misconduct complaints in 2022?” The answer: “For fiscal year 2022: the amount attributed to misconduct payments was: \$143,203, 132.00.” But this is not true. [The Law Department paid out ~\\$220 million in litigation settlements in fiscal year 2022.](#)** The lack of candor is astonishing.

A strictly textual reading of [Local law 166 of 2017](#) only includes:

a five year look back for section 1) of the law (new litigation filed) and not for section 3) (settlements made for all cases filed).

The City Law department’s interpretation of the law has produced inaccurate reporting since the law first went into effect in 2018:

- Section 3) of Local laws 166 and 137 of 2017 is/are not a subset(s) of section 1): it is an individual independent datapoint that mandates all settlements be reported as they occur.
- Instead what has been produced is information on settlements for cases commenced within the past five years of the report’s date.
- The Law Department has also failed to include settlements of wrongful death cases

as these cases are “settled” on one date but “disposed” of many years later when Surrogates’ Court proceedings are finalized which is often YEARS after settlement dates.

- Additionally, the law department doesn’t include cases settled with a non-disclosure agreement attached to them.
- The Law Department also “curates” settlements from the reports for no reason at all: approximately \$63 million in settlements stemming from litigation filed vs the NYPD and/or its members did not fall into any of the above categories. The settlements were just left off “because...”

Even if Local Laws 166 and 137 of 2017 are to be interpreted in the narrow scope the Law Department has framed them in, still unexplained are 215 lawsuits tallying over 63 million that were omitted from the Law Department’s reporting. In 2013 [Yanahit Padilla Torres](#) and six other women sued the NYPD claiming they were discriminated against when, as survivors of domestic violence, they were not provided Spanish-language interpreters when attempting to file their ‘61’ reports of intimate partner abuse. The suit was quietly settled in 2017 for over \$750k. [Ariel Russo](#)’s parents were awarded a mere 500k for the death of the four year old after their 2013 filing. The award was reduced to \$225k in 2014 but only \$149k was eventually paid to her heartbroken family. The wife and mother of the children of [Bryon Hearst](#) sued the NYPD and Officer Shamik Walton in 2013 after Byron was shot three times in May of 2005 during a dispute over unpaid rent by an NYPD Internal Affairs Investigator, Mr. Walton, who also happened to be his landlord (the civil proceedings were delayed while the [criminal proceedings](#) against Officer Walton played out). The suit was settled in 2015 for 500k. Likewise, In 2017, 20 year old [Mohammad Saber](#) was killed when his vehicle was totaled by an SUV that was fleeing from an NYPD vehicle pursuing it at high speed without its turret and siren on at the intersection of Livonia and Georgia Avenues in Brooklyn. Mohommad’s family filed a wrongful death lawsuit in September of 2017 that was settled in March of 2022 for \$550,000.00. Likewise, [Richard Caputo’s 10 million dollar](#) settlement in 2020 springing from a lawsuit filed in 2019; the family of [Avonte Oquendo](#)’s \$2.7 million settlement in 2017; [Kheil Coppin’s family](#)’s \$3.3 million dollar settlement in 2022; the family of Police Officer [Michael C Williams’ \\$1.5million](#)

settlement in 2018 of their 2015 wrongful death lawsuits were among those omitted that fall into a category of lawsuits filed after 2013 and settled within five years that haven't reason for being "left off" the law department's mandatory reporting.

As the Law Department has openly-flouted the language of the previous law and the reporting has suffered I can't stress enough how important it is to get the exact language of the legislation correct this time around. I'd like to discuss the following specific changes in language I think will tighten-up and leave nary any room for further "curation" of the reports that will make Intro 944 into the honest reporting mechanism we need it to be.

- I. Law Department Hindrance in Data sharing;**
- II. DOC Settlement Reporting "Curations" by the Law Department**
- III. The ;language of the proposed revision only asks for litigations "In State, or Federal Courts," however, there are actions filed courts other than State or Federal against the NYPD.**
- IV. The language of the proposed legislation needs to be specific about what "settlement date" means.**
- V. The language of the proposed legislation needs to include all settlements for litigations with a Non-disclosure Agreement (NDA) attached to them**
- VI. Other Data Points tracked by the Law Department:**
- VII. The NYPD claims to not track litigation settlements. However, officers with high litigation settlements in their names are assigned to rough and tumble NYPD Units while; officers without litigation amounts accrued to their names are assigned to plush units such as the Bronx Zoo unit, the leadership training unit or the marine unit.**

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I Law Department hindrance in sharing of true data: the Law Department in particular has hindered every attempt to attain the true settlement amounts and details of civil actions filed against the NYPD and DOC. After much fighting over FOIL data, the law department dumped a set of disgustingly dirty data onto NYC OPEN DATA which I was able to scrub and clean and analyze. I need to say from the outset that throwing dirty data onto a public portal in response to a FOIL is a particularly prickly and a**-holish way to respond to a FOIL. I think they thought I would fail to be able to make meaningful use of the kluge of scrambled information proffered under the guise of a FOIL response. I used to work in tech—for Bill Gates at a company now defunct called Corbis Images and my spreadsheet skills are on point. I noticed that the data I was able to pull from NYC Open data (that included the data on lawsuits not reported on under local law 166 of 2017 and the data from the 166 reports) was presented in a way that made it almost impossible to separate out litigation settlements by individual officers. This seemingly was the point of the creation of the law(s) in the first place. Why make it almost impossible to see through the data? The answer is this is precisely the point: obfuscation of truth.

[When former City Council Speaker, Melissa Mark Viverito, Introduced the original law that Intro 944 is meant to cure in 2016 she said \[00:11:12- 00:11:50\]:](#) “it is time to take our criminal justice system out of the shadows and finally address the institutional racism our city has suffered for far too long...Far too many people are not being protected and are having their rights violated. This bill seeks to shed light on how frequently that is happening; by whom; against whom and; alert the public and the appropriate agencies and to make sure that it is stopped.”

But the data presented by the Law Dept on its own website and on NYC Open Data makes it almost impossible to obtain a list of individual police officer’s settlement liability totals. How do we “shed light on how frequently [people are having their rights violated]” if we can’t track individual officer, precinct and unit settlements?

Even when individual officers’ names are sorted-out there are tricks and pitfalls to dealing with the information that are built-into the data entry by the Law Department. For instance: the Law Department adds blank spaces before AND AFTER officer’s names in the

cells in the “Defendant” column and after semicolons separating the previous name. The result is when you parse out individual officer names from the “defendant” column in the data output of the law department’s reporting it is almost impossible to sort by officer name and get real data. This is because at the data-entry stage there are varying numbers of blank spaces entered (before and after NYPD Officer names) that prohibit sorting the output by “officer name” unless you know to “trim whitespace” after you have run a formula to create a new row in your spreadsheet for each defendant. This seems like a ludicrous observation to make but I think it's important to share with this committee. Someone in the law department is at every stage thinking-through how to obfuscate true data being disseminated. I noted that more whitespaces were added before officer names for each litigation they are named in; so there is a pattern and practice at play in the data obfuscation.

II DOC Settlement Reporting “Curations” by the Law Department: Likewise to the shortcomings of Local Law 166 of 2017 requiring reporting on NYPD litigations, the Law Department has only reported \$137,341,045.48 of \$209,331,997.00 paid out by NYC taxpayers to settle civil lawsuits against the Department of Correction between 2013 and Jan of 2023; leaving-off \$109,297,626.8 or 52% of the litigation dispositions off of the reporting required [by Local Law 137 of 2017](#). We need a bill curing the same issues with Local Law 137 of 2017 for Department of Correction lawsuit under-reporting as well.

III The Language of the proposed revision only asks for litigations “In State, or Federal Courts,” however, there are actions filed in other types of courts other than State or Federal against the NYPD. There are many civil litigations filed in municipal city courts that will be omitted from the reporting because of this language. There may even be litigations filed against the NYPD in foreign courts as the NYPD brags that it has personnel stationed globally. Over the past ten years cases have been filed in:

Supreme Court - Bronx
Supreme Court - Richmond
Supreme Court - Kings
Supreme Court - Queens
Supreme Court - New York
Civil Court - Queens
U.S. District Court - Southern District NY
Civil Court - Kings
U.S. District Court - Eastern District NY
Civil Court - New York
Civil Court - Bronx
District DC
Civil Court - Richmond
Small Claims Court - Queens
Small Claims Court - New York
Supreme Court - Suffolk
Division of Human Rights - New York State
Small Claims Court - Bronx
Supreme Court - Albany
U.S. District Court - District NJ
Supreme Court - Westchester
Supreme Court - Sullivan
District Court - 1st District Nassau
Small Claims Court - Kings
Supreme Court - Clinton
Court of Common Pleas
Supreme Court - Nassau
U.S. District Court - Eastern District MI
U.S. District Court - Northern District NY
U.S. District Court - District CT

Small Claims Court - Richmond
Superior Court of New Jersey - Bergen
U.S. District Court - Northern District CA
Surrogates Court - New York
U.S. District Court - Central District CA
Superior Court of New Jersey - Monmouth
Equal Employment Oppty Comm. - United States
Contract Dispute Resolution Bd - City of New York
Supreme Court - Franklin
U.S. District Court - Southern District FL
U.S. District Court - Western District NY
Superior Court of New Jersey - Hudson

The proposed language is very specific: “The law department shall, within 15 days of receipt of any information in paragraph (2) or (3), post on its website in a searchable and machine-readable format, and provide notice of such posting to the individual responsible for implementing the duties set forth in paragraph one of subdivision c of section 803 of the charter, the comptroller, the police department, the civilian complaint review board, and the commission to combat police corruption the following ***information regarding civil actions filed in state or federal court*** against the police department or individual police officers, or both, resulting from allegations of improper police conduct, including, but not limited to, claims involving the use of force, assault and battery, malicious prosecution, or false arrest or imprisonment.”

But there are many litigations filed in municipal city parts/small claims courts and also filed around the country. There may be litigations filed in foreign countries too. ***Perhaps change the language to “Information regarding civil actions filed in ANY court: municipal; state; federal; or foreign.”***

IV The language of the proposed legislation needs to be specific about what

“resolved” means. Ref: “3. if an action has been resolved: (i) the date on which it was resolved; (ii) the manner in which it was resolved; and (iii) whether the resolution included a payment to the plaintiff by the city and, if so, the amount of such payment.”

The Law Department has also failed to include many settlements of wrongful death cases in the Local Law 166 of 2017 reports as these cases are “settled” or “resolved” on one date but “disposed” of many years later when Surrogates’ Court proceedings are finalized which is often YEARS after settlement dates. It may be prudent to add categories to the reporting in lieu of “resolved” instead perhaps write into the language “Date Case Settled” and “Date Case Disposed” so that surrogate’s court proceedings and the timeframes added to cases because of them are denoted in the reporting.

VIII. The language of the proposed legislation needs to include all settlements for litigations with a Non-Disclosure Agreement (NDA) attached to them

When 20 year old Ronald Herrera was killed [in 2012 by an NYPD](#) cruiser driven by (now Special Response Group Squad 1 Manhattan member) Officer Sabrina Alicea his family sued and the lawsuit was settled in 2017. But the public never heard about the case disposition. The \$750k settlement and the \$3.5m payout to his friend, Leonel Cueves, who was maimed in the incident, should have been included in the Law Department’s required statutory reporting of litigation outcomes filed against the NYPD to the public, the City Council, the Board of Correction and Comptroller: but they weren’t. The Herrera family’s attorney, Philip Newman, told me that the Law Department required his clients to sign a non-disclosure agreement in order to settle their litigation against the NYPD.

Also assigned to the Special Response Group in Brooklyn after a large litigation settlement against his name is Detective Hector Torres. Torres was pursuing an alleged perpetrator in a high speed chase in 2014 along with five other officers in his squad, whom had all been ordered by their precinct CO and Chief Maddy to cease the high-speed chase, when the car of 19 year old college student [Natalie Ferber](#) was smashed by the pursuer's vehicle. Natalie, the daughter of two NYPD sergeants, was permanently paralyzed. The [lawsuit](#) her parents brought in Kings County Supreme court was settled quietly under a non-disclosure agreement in 2018 for \$8,112,000.00. The court records were sealed after a law

department attorney [was accused of coaching a witness to lie](#). Torres was transferred to the Special Response Group, Brooklyn, in 2020. The settlement was not reported on the Law Department's Local Law 166 of 2017 reports.

IX. Other Data Points tracked by the Law Department: the [NYC Open Data reveals](#) the Law Department tracks much more information per case than is disclosed on the Local Law 166 of 2017 reports such as: appellant court and name; total expenses paid to litigate lawsuit; BBL or site-location of incident in question; total final payout (sometimes different than settlement/trial award). From testimony by the Law Department in 2016 we also know that the Law Department tracks if the action was spurred by a facilities issue like a wet floor or broken step or by a member of personnel for Use of Force or civil rights violations, precinct, previous litigation settlements per officer, previous litigation per unit etc. It would be great to also have this information include these additional data points in section B of the revised language of intro 944.

X. The NYPD claims to not track litigation settlements. I heard a member of the NYPD's legal team say this in last week's Public Safety Budget hearing and [CM Caban memorialized the exchange in a tweet](#). This is not true. Officers with high litigation settlements in their names are assigned to rough and tumble NYPD Units while; officers without litigation amounts accrued to their names are assigned to plush units such as the Bronx Zoo Unit, the Leadership training unit or the marine unit. Here is the data linked: it is difficult not to see a distinct pattern within the NYPD command assignment matrix that accounts for litigation settlements:
https://docs.google.com/spreadsheets/d/1msj1ePLZGCgwoZkKHmtrVNe_qiuiBbw3lliuWlc4F4/edit?usp=sharing

Members of the NYPD law and communications departments keep repeating that regarding litigations: "the numbers have been, for a few years now, since 2017 ticking on a continuous downward trend." A member of the New York City Police department's legal staff just

repeated this last week at the budget hearing [in response to a question by CM Caban](#) regarding what the department had budgeted in its expectations for lawsuit settlement payouts in the coming year. But the NYPD didn't exactly tell the City Council the truth during its testimony under oath. Since the Law Department has been keeping track of civil litigation settlements against the NYPD in 1969 there have been a little over 3.1b in settlements and; 2.1billion has been incurred by the NYPD just from the past ten years alone. This data is not indicative of a "downward trend" and is also based on the settlement amounts released to the public in the truncated Local Law 166 of 2017 reporting—not the full picture of actual payouts including those "curated" from the reports.

Thank you for taking the time to read my written testimony. I look forward to working with the Council in ensuring Local Law 944 of 2023 doesn't unwittingly create similar loopholes for the Law Department to take advantage of that Local Law 166 of 2017 did.

Kelly Grace Price

Ft. George, Manhattan

March 27, 2023

www.CloseRosies.org

Good afternoon. My name is Keith Fuller, and I'm a youth organizer with Make The Road New York. As in my job title, I work with youth who come from and go to school in overpoliced communities. I'm here before you all because I'm concerned not only for their well-being and the community but also for myself. I'm concerned because whenever I see an officer on the street, I ask myself, am I next? I don't think about safety; I think about all the lives taken away due to police violence. I think about all the students I work with and have that same thought - am I next?

We know what's wrong; the city is doubling down on the same failed approach to public safety by expanding the power and presence of the NYPD in our neighborhoods and our schools - with no real accountability. It's our words against theirs when there must be a mechanism or tool in place that would allow us to track and analyze the people being stopped, what communities they come from, and what's the reasoning for doing so at what I know will disproportionately target black and brown communities. We know what policing in our communities looks like - it's time that everyone else knows. That is why we are here today demanding immediate action to pass the How Many Stops Act, a first and important step towards true community safety and accountability.

Earlier in the year, my best friend Nic was stopped on his way home from work around Union Square. He works in IT, so a lot of the equipment he needed to be effective at what he does was still in his backpack. Five officers surrounded him and interrogated him about what was in his bag and his reasoning for even being there. He's very reserved and was fearful of a problem escalating so he let them search his bag, knowing he wasn't in the wrong, but he had to act as if he was to make it back home safe. To not be next. When I heard this story, I almost broke down in tears because Tyre Nichols was stopped in Memphis just a few days earlier and beaten to death by police. Even when I think about it now, it frustrates me that someone I know who would never cause harm to anyone or anything could be made so helpless and afraid by those with a motto of protecting and serving. That is the story of many black and brown youth living in our communities, but these experiences have never been reported and documented for the public to see. And it's connected to the same systemic issues with policing that led to so many New Yorkers being killed by the NYPD - from Antonio Williams, Kawaski Trawick, Allan Feliz, Delrawn Small, Ronald Anthony Smith, Eric Garner and so many others.

There are relationships, families, and communities behind the faces of the people you stop. When you continue to police black and brown people in this way, you tell our loved ones and communities that this is a direct assault on our existence. We need you to hold officers responsible like they would me or anybody else in this room. The only way we can accomplish this is by first increasing the level of transparency and oversight of the NYPD and their interactions with people in our communities. Therefore, we need the How Many Stops Act signed into law. It is one of the many steps our coalition Communities United for Police Reform has taken in our fight to tackle the large-scale abuses of police power in New York and restore power to those who have been made helpless for many years in our city. Passing this legislation alongside advancing a budget that divests from policing and criminalization and invests in housing, mental health, education and services for Black and brown communities is necessary to change the direction of this city and create a path forward for true community safety.

TESTIMONY

The New York City Council
Committee on Public Safety

Re: Passage of Intro. 586 and Intro. 538, otherwise
known as the “How Many Stops Act.”

Legal Defense Fund
40 Rector Street, 5th Floor
New York, NY 10006

March 30, 2023

Dear Chairperson Hanks and Councilmembers of the Public Safety Committee:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we thank the committee for this opportunity to provide testimony regarding Introduction 586 and Introduction 538, collectively known as the “How Many Stops Act.” We strongly urge the City Council to pass these important measures for transparency and accountability.

I. Introduction

LDF is the nation’s first and foremost civil rights and human rights law organization. Since its founding over eighty years ago, LDF has worked at the national, state, and local levels to pursue racial justice and eliminate structural barriers for the Black community in the areas of criminal justice, economic justice, education, and political participation.¹ As part of that work, LDF has also forged longstanding partnerships with local advocates, activists, and attorneys to challenge and reform unlawful and discriminatory policing in New York City. In 2010, LDF, with co-counsel the Legal Aid Society and the law firm Paul, Weiss, Rifkind, Wharton & Garrison, LLP, filed *Davis, et al. v. City of New York, et al.*, on behalf of plaintiffs challenging the New York City Police Department’s (NYPD) policy and practice of unlawfully stopping and arresting New York City Housing Authority (NYCHA) residents and their visitors for trespass without the requisite level of suspicion and in a discriminatory manner.² In 2015, the *Davis* plaintiffs reached a settlement with the City that included full participation in the federal court monitoring of the NYPD that the court ordered in *Floyd, et al. v. City of New York*, the historic lawsuit that successfully challenged the NYPD’s unconstitutional stop-and-frisk policies and practices as racially discriminatory.

LDF remains concerned about the continued racial disparities and the potential unlawfulness of the NYPD’s practices. Because of LDF’s continued representation of the plaintiff class in *Davis*, we initially focus our testimony on the over-policing of public housing. We note, however, that racial disparities continue to exist in enforcement activities more broadly across New York City. Therefore, the How Many Stops Act is a necessary tool for transparency that can shed light on the full scope and scale of the police activities that are impacting the lives of Black and Brown New Yorkers every day.

II. NYCHA residents continue to be subjected to unlawful stops by the NYPD.

Officers are not allowed to randomly enter and patrol private residential buildings, but they are allowed to do this in NYCHA buildings.³ Abuse of this policy creates a second-class citizenship in public housing whereby residents of private buildings can live largely without police intrusion into their hallways and homes, while many NYCHA residents must live with constant police presence and often harassment. This circumstance leads to far too many police interactions for public housing residents, and far too many unlawful stops.

¹ *About Us*, Legal Def. Fund, <https://www.naacpldf.org/about-us/> (last visited Mar. 20, 2023).

² *Davis v. City of New York*, Legal Def. Fund, <https://www.naacpldf.org/case-issue/davis-v-city-new-york/> (last visited Mar. 20, 2019).

³ *NYPD Patrol Guide 212-60*, N.Y. City Police Dep’t (June 27, 2016), https://www.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg212-60-interior-vertical-patrol-housing-authority-bldgs.pdf.

A recent report by the independent monitor has shown that racial disparities in NYCHA policing has actually increased during the monitorship.⁴ In a sample of 350 stops conducted in NYCHA buildings after the implementation of body-worn cameras (BWCs), 33 percent of stops in NYCHA buildings were found to be unlawful.⁵ Furthermore, 71 percent of people stopped were Black, which is a 9 percent increase from the time before BWCs were implemented.⁶ For context, only 43 percent of NYCHA residents are Black.⁷

Unfortunately, the currently available information typically only pertains to stops deemed “Level III” or greater – meaning they involve a “detention” that triggers Fourth Amendment protections – because these are the only stops officers are required to document at this time.⁸ There are far too many Level I and Level II encounters that we do not have adequate information about. The How Many Stops Act is an important measure in closing that information gap, and it can shed much needed light on the police encounters that many NYCHA residents experience every day.

III. The NYPD should be required to report Level I and Level II encounters.

While Level I encounters only involve a “request for information,”⁹ it would be a mistake to consider them unintrusive or unimportant. Caselaw has recognized that these interactions can be invasive.¹⁰ They can target vulnerable people, including children without a legal guardian present.¹¹ They are often justified by police because they take place in “high crime areas” – which is often a thinly veiled euphemism for Black or Brown neighborhoods.¹² Community members have expressed concern that these inquiries are often fishing expeditions meant to serve other investigations. And often, Level I inquiries can quickly escalate into more serious encounters.¹³ In fact, the independent monitor noted that “improper escalation” was still a serious problem in NYCHA policing.¹⁴ These encounters, therefore, are certainly consequential.

⁴ See Seventeenth Report of the Independent Monitor: The Deployment of Body Worn Cameras on NYPD Housing Bureau Officers Assigned to Police Service Areas at 34, *Floyd v. City of New York*, No. 1:08-cv-01034-AT, (S.D.N.Y. Oct. 17, 2022) [hereinafter “Monitor’s 17th Report”].

⁵ *Id.*

⁶ *Id.*

⁷ N.Y. City Hous. Auth., Resident Data Book (2022), <https://www.nyc.gov/assets/nycha/downloads/pdf/Resident-Data-Book-Summary-2022.pdf>.

⁸ See, e.g., *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975) (“The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.”) (citations omitted).

⁹ See *People v. De Bour*, 40 N.Y.2d 210, 223 (1976).

¹⁰ See, e.g., *People v. Laviscount*, 116 A.D.3d 976, 978 (N.Y. App. Div. 2014) (the officer conducted an unlawful Level I encounter when he shone a flashlight into the defendant’s car, even though the only articulable reason for approaching the car was “that [it] was parked in the early morning in an area where cars usually were not parked, and that the defendant may have moved something from the dashboard and thrown it on the floor of his car.”)

¹¹ See, e.g., *In re Michael F.*, 84 A.D.3d 468 (N.Y. App. Div. 2011).

¹² *Id.*; see also *People v. Wallace*, 181 A.D.3d 1214 (N.Y. App. Div. 2020); *People v. Johnson*, 109 A.D.3d 449, 450 (N.Y. App. Div. 2013) (the encounter was unlawful notwithstanding the suspect being in a “drug-prone” location).

¹³ Emily J. Sack, *Police Approaches and Inquiries on the Streets of New York: The Aftermath of People v. De Bour*, 66 NYU L Rev 512, 520 (1991) (“[T]he multitiered structure of the *De Bour* model allows inadequately justified low-level intrusions to escalate quickly into inappropriate forcible stops and arrests.”); see e.g., *Wallace*, 181 A.D.3d at 1215-16 (a permissible Level I inquiry was escalated to an unlawful Level II inquiry through follow-up questioning).

¹⁴ Sixteenth Report of the Independent Monitor at 35, *Floyd v. City of New York*, No. 1:08-cv-01034-AT (S.D.N.Y. May 6, 2022).

Level II encounters are a “common law right of inquiry” that allow officers who lack reasonable suspicion needed for a detention to target individuals for “extended and accusatory” questions that “[focus] on possible criminality.”¹⁵ A major problem with these encounters is that the person being questioned might often feel as if they are being detained; the legal distinction between a Level II and Level III encounter can be very blurry.¹⁶ Consequently, there are likely many cases of individuals who have done nothing to create reasonable suspicion, but are functionally detained because of the intimidating nature of the Level II encounter. Presently, police are not required to report Level II encounters because of this ambiguous legal distinction. Moreover, the encounter, which an officer purports to be a Level II encounter and thus declines to document, may actually be a Level III detention that will be unreported due to the officer’s mistaken understanding. This Level III encounter will be unconstitutional if the officer did not have reasonable suspicion to justify the stop.

Even though there is usually no documentation of a Level I or II encounter, there is an emotional impact on the person who experienced it, who may feel violated or less secure in their building or in their city. There is an impact on that person’s family and community, who feel that law enforcement is there to persecute their community, not protect it. And, if the person experiencing the encounter reasonably believed that they were not free to leave, the encounter may be an unconstitutional yet undocumented Level III stop. Given the racial disparities that exist in the NYPD’s activity, there is ample reason to believe that these negative events disproportionately impact Black and Brown New Yorkers.

In order to get a full picture of how our communities are impacted by NYPD activities, and the full scope of the NYPD’s potentially unconstitutional conduct, we must have information about the interactions that are taking place every day, including these Level I and II encounters that are extremely common, and which have a lasting and profound impact on communities.

IV. Intro. 538 is necessary to shed light on the NYPD’s consent search practices.

Since the Right to Know Act was enacted in 2018, NYPD officers have been required to report on all instances in which requests for consent to search were granted.¹⁷ This was a step in the right direction, but it only reveals a portion of the NYPD’s consent search practices. It is equally important for New Yorkers to know about the requests that are denied.

Consent searches occupy an important place in police practices, as they provide officers with an exception to the warrant requirement of the Fourth Amendment.¹⁸ In fact, they are among “the most common type of warrantless searches law enforcement officers conduct.”¹⁹ There is also a staggering racial disparity in how the NYPD carries out these searches. In 2022, out of 5,103

¹⁵ *New York v. Hollman*, 79 N.Y.2d 181, 184-85, 191 (1992).

¹⁶ *People v. Moore*, 93 A.D.3d 519, 521 (N.Y. App. Div. 2012); *People v. Perez*, 31 N.Y.3d 964, 972 n.3 (N.Y. App. Div. 2018).

¹⁷ Right to Know Act, N.Y. City Council, Int 0541-2014 (2018).

¹⁸ *See, e.g., United States v. Cormier*, 220 F.3d 1103, 1112 (9th Cir. 2000) (“An individual may waive his Fourth Amendment rights by giving voluntary and intelligent consent to a warrantless search”) (internal citations omitted).

¹⁹ Daniel R. Williams, *Misplaced Angst: Another Look at Consent-Search Jurisprudence*, 82 Ind. L.J. 69, 69 (2007).

consent searches conducted in New York City, 88 percent were of Black and Latinx people, and only 4 percent were searches of White people.²⁰

There is much to learn if we have data about all consent search requests, including those that were denied. If Black and Latinx New Yorkers are asked for consent at a higher rate than people of other races – which appears to be the case – policy solutions may be needed to address this disparity, especially given how Black and Latinx people often feel coerced into giving consent because of their prior experiences with police.²¹ Furthermore, data about all consent search requests will give us important information about the kind of access police are seeking without a warrant. This could spark meaningful dialogue in this Council and around the country about the legitimacy of these searches, and about the kind of warrantless policing that takes place in our communities.

Lastly, this proposed law is also necessary because it closes important gaps in the Right to Know Act by ensuring that these requests are being made with proper language interpretation, and that the NYPD reports on requests for sensitive genetic information, like saliva swabs.²² This is particularly important in light of recent allegations that the NYPD collects and stores DNA samples of thousands of people, primarily Black and Brown, including many who have never been convicted of a crime.²³

* * *

Taken together, these bills are important measures that will shed much needed light on the interactions that are taking place between police and New Yorkers every day. History tells us these bills will likely reveal even more information about the racially disparate and at times unlawful conduct of the NYPD. We cannot hide from this information. We must seek it out so that we can work toward a more equitable City for all.

Thank you for your consideration. If you wish to discuss this matter further, please do not hesitate to contact David Moss, Legal Fellow at the Justice in Public Safety Project, at dmoss@naacpldf.org or by phone at (646) 983-0756.

Respectfully submitted,

David Moss
Legal Fellow, Justice in Public Safety Project
NAACP Legal Defense and Educational Fund, Inc.

Obi Afriyie
Community Organizer
NAACP Legal Defense and Educational Fund, Inc.

²⁰ *Consent to Search Reports*, N.Y. City Police Dep't, <https://www.nyc.gov/site/nypd/stats/reports-analysis/consent-to-search.page> (last visited Mar. 30, 2023).

²¹ Beau C. Tremiere, *The Fallacy of a Colorblind Consent Search Doctrine*, 112 Nw. U.L. Rev. 527, 545 (2017).

²² N.Y. City Council, Int 0538-2022 (2022).

²³ Troy Closson, *This Database Stores the DNA of 31,000 New Yorkers. Is It Illegal?*, N.Y. Times (Mar. 22, 2022), <https://www.nytimes.com/2022/03/22/nyregion/nyc-dna-database-nypd.html>.



Testimony of
New York County Defender Services

Before the
New York City Council
Committee on Public Safety

March 27, 2023

I. Background

New York County Defender Services (NYCDS) is a public defender office based in Manhattan that has represented more than half a million clients in criminal cases, the majority of whom are from marginalized communities. In an effort to provide holistic, specialized representation to our clients, the NYCDS organization is composed of a diverse staff of trial attorneys, social workers, investigators, paralegals, corrections specialists, and administrative staff. It is based on these decades of experiences practicing law in Manhattan’s criminal courts that we offer this testimony about the proposed legislation as it relates to the NYPD’s stop and frisk policies.

II. Introduction

Police/community relations in New York City have been broken for a very long time, especially in Black¹ and Brown² neighborhoods, but perhaps no single policy has been more damaging to the relationship between the NYPD and the communities in which it purports to serve than “Stop, Question & Frisk.” “Stop, Question & Frisk” (SQF) aka “Stop & Frisk” began decades ago but

¹ “Black” is “defined as sociocultural groups having ‘origins in any of the Black racial groups of Africa’ and recognizes the political impact of their origins in slavery and colonialism.” Sarah P. Chu, Frank S. Pezzella & Justice D. Evans, *Surveillance Load: A Burden of Search Borne by Black and Brown Bodies*, CRIT CRIM (2023), <https://link.springer.com/10.1007/s10612-022-09673-6> (last visited Mar 19, 2023); DOROTHY ROBERTS, FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY (2d ed. 2012).

² “Brown” is “defined as the broader Latin American diaspora and recognizes the political consequences of anti-terrorism agendas on people of Middle Eastern, South Asian, Arabic ancestry, or Muslim faith.” Chu, Pezzella, and Evans, *supra* note 8; ROBERTS, *supra* note 1.

saw a significant and unprecedented surge in use under the previous administration of former-Mayor Michael Bloomberg. As explained below, the policy proved to be a massive failure in terms of its own stated purpose – to reduce crime. In addition, this policy is responsible for widespread, lasting trauma to all those exposed to it. As reported by the *New York Times*, “we now know that students heavily exposed to Stop-and-Frisk were [more likely to struggle in school](#), that young men were more likely to [experience symptoms of anxiety and depression](#), that this exposure fostered [cynicism in policing and government writ large](#), and that it made residents [more likely to retreat from civic life](#).”³ This is to say nothing of all individuals, mainly Black and Brown young men, who were wrongfully arrested during this era and forced to endure the oppressive force of our criminal legal system.

While the NYPD has ostensibly curbed its SQF practices in light of enormous public outrage, heightened media scrutiny, a landmark federal lawsuit, and new legally required oversight, much work remains to be done in terms of transparency and accountability. Therefore, we urge the City Council to pass each of the bills proposed in today’s hearing in order to fully capture the extent of our police’s street encounters and begin to hold the Department accountable for its activities.

III. Legal Authority to Stop and Search Civilians

New York State allows law enforcement to stop and search individuals on a limited basis according to clearly circumscribed parameters delineated by both statute and caselaw. In *Terry v. Ohio*⁴, the United States Supreme Court held that police officers must “be able to articulate reasonable suspicion of ongoing, past, or future criminal behavior to initiate a stop.”⁵ Applying New York state constitutional law, *People v. DeBour*⁶ outlined four levels of permissible street encounters. In order to approach an individual and request information from them, a police officer must have an “objective credible reason.” To initiate a stop to ask more pointed or accusatory questions, an officer must possess “a founded suspicion that criminal activity is afoot.” A level 3 encounter, AKA a “*Terry* stop,” is a stop that involves a frisk or pat down, and this requires reasonable that a crime has been committed and the person stopped has committed it. The final level of police intrusion, an arrest, requires an officer to possess probable cause.⁷ In 2020, the Second Circuit of the United States Appeals Court has held that when the reasonable suspicion at the street encounter is no longer present, then the individual must be released and “the police may not continue to detain an individual for the purpose of determining whether there are any outstanding warrants.”⁸

Our Criminal Procedure Law codifies these constitutional tenets. Section 140.50 of the CPL informs that a police officer may stop a person where “he reasonably suspects that such person is committing, has committed or is about to commit either (a) felony or (b) a misdemeanor... and

³ Emily Badger, *The Lasting Effects of Stop-and-Frisk in Bloomberg’s New York*, *New York Times*, March 2, 2020, <https://www.nytimes.com/2020/03/02/upshot/stop-and-frisk-bloomberg.html>.

⁴ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁵ *Id.*

⁶ *People v. DeBour*, 40 N.Y.2d 210 (1976).

⁷ *Id.*

⁸ *United States v. Walker*, 965 F.3d 180 (2020); Barry Kamins, *Major Reform in Street Encounters Enacted by Police Department*, ALM, Feb. 6, 2023, <https://www.law.com/newyorklawjournal/2023/02/06/major-reform-in-street-encounters-enacted-by-police-department/?slreturn=20230219114505> (last visited May 19, 2023).

may demand of him his name, address and an explanation of his conduct.”⁹ Further, a police officer may frisk an individual when he “reasonably suspects that he is in danger of physical injury” and “may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury.”¹⁰

a. Background on the Spike in Stop, Question & Frisk Usage in NYC

In the City of New York, the practice of Stop, Question and Frisk (SQF) has been disproportionately used against Black and Brown people. The increasing usage of SQF by the New York Police Department (NYPD) started in the 1990s and continues well into the 21st century.¹¹ The practice of SQF grew to millions of stops “as a result of increased pressure on officers to meet their CompStat mandated quotas and the growing overall acceptance of stop and frisk as a common police practice.”¹² Certainly no other city in the world used SQF as comprehensively as the NYPD with five million stops recorded between the years 2004 and 2013.¹³

b. Inefficiency and Ineffectiveness of SQF

With millions of stops across more than a decade, one would expect research examining the efficiency and efficacy of the policy would show that SQF worked – the belief being that the dual aims of crime control and deterrence were met. But the opposite has shown to be true: high incidence rates of SQF had a low rate of return.¹⁴ Low arrest rates showed that *Terry* stops resulted in nine out of ten innocent people being detained and frisked. The policy also failed to reduce crime.¹⁵ While New York City did see a decline in crime during the implementation and continued use of SQF, importantly, studies do not support the connection between these two phenomena.¹⁶

c. Social Costs: Racial Discriminatory Use of SQF

Laws and policies are not applied equally. Studies have consistently shown that SQF has been applied inequitably and disproportionately based on a person’s race, ethnicity, and to a lesser extent, gender. The brunt of this disproportionate application has been borne by Black and brown New Yorkers.¹⁷ For example, in a study looking at race and non-weapon force against detained persons who were deemed non-compliant to police commands, people who are Black were 81% more likely to have non-weapon force used against them than people identified as White. Further, people who are Hispanic are 105% more likely to have non-weapon force used against them than

⁹ New York Criminal Procedure Law (C.P.L.) § 140.50 (2010).

¹⁰ *Id.*

¹¹ Henry F Fradella, Weston J Morrow & Michael D White, *An Empirical Analysis of the Racial/Ethnic and Sex Differences in NYPD Stop-and-Frisk Practices*, 21 *NEV. L.J.* 1151 (2021).

¹² David Clark, “*Stop and Frisk*” Under *Floyd v. City of New York: The Difficulty of Proving a Fourteenth Amendment Violation*, 25 *GEO. MASON U. CIV. RTS. L.J.* 341 (2015).

¹³ Fradella, Morrow, and White, *supra* note 10.

¹⁴ *Id.*, at 1167

¹⁵ Richard Rosenfeld & Robert Fornango, *The Relationship Between Crime and Stop, Question, and Frisk Rates in New York City Neighborhoods*, 34 *JUSTICE QUARTERLY* 931, 933 (2017).

¹⁶ Fradella, Morrow, and White, at 1170, *supra* note 10.

¹⁷ *Id.*

non-compliant/aggressive White suspects.¹⁸ Additionally, studies have shown that Black and Latino men are more likely to experience force than White men of any size category; and heavy and tall men are more likely to experience force by police than non-tall or heavy men.¹⁹

Use of force by law enforcement agents can have long-lasting effects. Looking at areas where SQF was assertively implemented, studies have found that those subjected to SQF have higher negative mental health outcomes, including psychological distress, feelings of nervousness, and feelings of worthlessness.²⁰ Additionally, trauma and anxiety present with higher frequency of SQF stops.²¹ The deleterious effects of having force used against an individual, being more likely to be stopped based solely on race/ethnicity, initiates a cascade of psychological symptoms, and, as a result, the unjust/unfair policy application has contributed to the current state of fragmented police/community relations.

IV. *Floyd v. City of New York*

The watershed case of *Floyd v City of New York*²² arose out of the discriminatory applications of SQF on people of color. Namely, of the over four million stops conducted between 2004 and 2012, over half of the stops were of Black people, and almost a third were of Hispanic people; only 10% were of White people.²³

In *Floyd*, the Southern District of New York held that:

The right to physical liberty has long been at the core of our nation’s commitment to respecting the autonomy and dignity of each person: No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of the law.²⁴

Further, the *Floyd* court reiterated the standards regarding *Terry* stops that must be followed. Specifically:

[I]n order to conduct a stop, an officer must have *individualized*, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime. The officer must be able to articulate facts establishing a minimal

¹⁸ Chelsea Farrell, *Use of Force During Stop and Frisks: Examining the Role of Suspect Demeanor and Race*, 82 J. OF CRIM. JUSTICE 1 (2022).

¹⁹ Adrienne N. Milner, Brandon J. George & David B. Allison, *Black and Hispanic Men Perceived to Be Large Are at Increased Risk for Police Frisk, Search, and Force*, 11 PLOS ONE 1 (2016).

²⁰ Fradella, Morrow, and White, *supra* note 10., at 1172; Abigail A. Sewell & Kevin A. Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J URBAN HEALTH 42 (2016).

²¹ Sewell and Jefferson, at 43, *supra* note 19.

²² *Id.*

²³ Clark, *supra* note 11.

²⁴ *Id.*, at 672 (internal citations omitted).

level of *objective* justification for making the stop, which means more than an inchoate and unparticularized suspicion or hunch.²⁵

Further, the *Floyd* court ruled on the place of race in the determination of street encounters:

[R]acially defined groups may not be targeted for stops in general simply because they appear more frequently in local crime suspect data. Race may only be considered where the stop is based on a specific and reliable suspect description. When an officer carries out a stop based on reasonable suspicion that a person fits such a description, the officer may consider the race of the suspect, just as the officer may consider the suspect’s height or hair color. When a stop is not based on a specific suspect description, however, race may not be either a motivation or a justification for the stop. In particular, officers must cease the targeting of young black and Hispanic males for stops based on the appearance of these groups in crime complaints. It may also be appropriate to conduct training for officers on the effect of unconscious racial bias.²⁶

In addition to recognizing the racial discriminatory practices, *Floyd* mandated the use of body-worn cameras on police officers, the creation of the New York Police Department Officer of the Inspector General and instituted a federal monitor. Since the implementation of these policies and offices, the number of *reported* SQF stops has dropped approximately 98%.²⁷ However, as explained below, because the NYPD’s SQF reporting standards significantly changed in the aftermath of *Floyd*, it is impossible to know the current breadth of all police encounters.

Notably, the reduction in SQF stops did not lead to higher crime rates.²⁸

V. Police Oversight

A number of agencies are involved in New York City’s police oversight. They include: the New York Police Department’s (NYPD) Internal Affairs Bureau (IAB), the Civilian Complaint Review Board (CCRB), the NYPD Office of the Inspector General (OIG), and the federal monitor put in place pursuant to *Floyd v City of New York*.²⁹

²⁵ *Floyd*, *supra* note 21 (italics in original).

²⁶ *Id.*, at 680.

²⁷ Fradella, Morrow, and White, *supra* note 10; John MacDonald & Anthony A. Braga, *Did Post-Floyd et al. Reforms Reduce Racial Disparities in NYPD Stop, Question, and Frisk Practices? An Exploratory Analysis Using External and Internal Benchmarks*, 36 JUSTICE QUARTERLY 954 (2019). Also worth noting: the data collected prior to 2015 in the UF-250 (the SQF form used by the NYPD) is different than the data collected after 2015. Specifically, police officers are explicitly instructed not to collect data on Level 1 or Level 2 stops; this prohibition does not seem to have been in place prior to 2015.

²⁸ *Id.*, at 1174.

²⁹ Greg B. Smith, *New NYPD Inspector General Faces Department Resistant to Recommended Reforms*, THE CITY, Aug. 4, 2022, <https://www.thecity.nyc/2022/8/4/23292414/nypd-inspector-general-charles-guria> (last visited May 19, 2023).

a. New York Police Department’s Internal Affairs Bureau

According to the NYPD IAB website, IAB “is dedicated to reserving integrity, which is critical to the function of the Police Department and fighting corruption within the NYPD...IAB helps to ensure that trust by detecting, investigating, and bringing to justice the small number of New York City police officers and civilians who engage in misconduct and corruption.”³⁰

b. Civilian Complaint Review Board

The CCRB is an agency that is independent of the NYPD, “empowered to receive, investigate, mediate, hear, make findings, and recommend action on complaints against New York City police officers alleging the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language.”³¹ The CCRB is staffed by non-law enforcement personnel and forwards its findings to the police commissioner.³² Further, the CCRB Board is comprised of 15 members: five of whom are appointed by the Mayor, five are appointed by the City Council, three are appointed by the NYPD Police Commissioner, one is appointed by the Public Advocate, and the last, the Chair, is appointed by the Mayor with the City Council.³³

c. New York Police Department Office of the Inspector General

The New York Police Department Office of the Inspector General came into creation following the *Floyd v City of New York* case. This watchdog body was designed to create recommendations for the NYPD to implement and address racial discriminatory practices. The first Inspector General (IG) was Philip Eure; he was appointed in March 2014.³⁴ The recently appointed IG is Charles Guria, a former Kings County prosecutor.³⁵

The NYPD-OIG is another agency that is independent of the NYPD. It’s mandate includes “investigating, reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs and practices of the NYPD.”³⁶ NYPD-OIG is part of the New York City Department of Investigations. In addition to its mandate, NYPD-OIG’s mission includes “enhance[ing] the effectiveness of the police department; increase[ing] public safety; protect[ing] civil liberties and civil rights; and increase[ing] the public’s confidence in the police force, thus building stronger police-community relations.”³⁷

Since its inception in 2014, the OIG has found that certain types of enforcement, specifically quality-of-life enforcement, was disproportionately being applied in precincts with a higher population of Black and Hispanic people.³⁸ Disappointingly, the NYPD regularly rejects

³⁰ New York Police Department. Internal Affairs Bureau.

<https://www.nyc.gov/site/nypd/bureaus/investigative/internal-affairs.page>.

³¹ Civilian Complaint Review Board. <https://www.nyc.gov/site/ccrb/about/about.page>.

³² Civilian Complaint Review Board. <https://www.nyc.gov/site/ccrb/about/about.page>.

³³ <https://nyc.gov/site/ccrb/about/the-board.page>

³⁴ Smith, *supra* note 30.

³⁵ *Id.*

³⁶ New York Police Department Office of the Inspector General. <https://www.nyc.gov/site/doi/offices/oignypd.page>.

³⁷ New York Police Department Office of the Inspector General. <https://www.nyc.gov/site/doi/offices/oignypd.page>.

³⁸ Smith, *supra* note 30.

recommendations made by the NYPD-OIG and has consistently done so over the last seven years.³⁹ Of relevance to this testimony, NYPD-OIG has recognized that certain applications of low-level crime law enforcement can have a damaging effect on police/community relations. To that end, the NYPD-OIG has recommended that the NYPD “assess the relative effectiveness” of how they issue summonses in quality-of-life crimes and “demonstrate statistically whether significant relationships exist.” The NYPD has rejected this recommendation.⁴⁰

d. Use of Body-Worn Camera

The use of body-worn cameras (BWC) was mandated pursuant to the decision in *Floyd v City of New York*. The theory behind the implementation of BWC is deterrence; it is believed that officers who are being filmed on the BWC will be deterred from violating the law and departmental policy because they are being recorded.⁴¹ However, research is mixed on its effectiveness. In a pilot study covering over 40 NYPD precincts and almost 4,000 NYPD officers, it was found that the officers who wore BWC had 21% fewer complaints lodged against them than officers who were not outfitted with BWC. However, those officers who had BWC filed almost 40% more SQF reports which involved people of color and did not lead to arrests or summonses. Finally, these stops were “more likely to be rated as not meeting constitutional justifications for stops, frisks, and searches.”⁴²

VI. **More Transparency Is Needed for Better Police Accountability and Bridge-Building in Impacted Communities**

The publication of the SQF data, the implementation of the NYPD-OIG, and the implementation of BWCs have made some progress in making our policing less discriminatory, less abusive, and less traumatizing for communities of color, especially teenagers and young people. But more work must be done. More transparency is necessary. Which is why NYCDS supports each of the proposals being considered today, all of which will be integral for transparency, accountability, and for improved police/community relations. We ask that you pass the following proposals:

- a. The New York City Council Should Pass Int 0386-2022, which would amend the Administrative Code of the City of New York, in relation to requiring the Police Department to submit reports on complaint of police misconduct.

We support this proposal without further comment.

- b. The New York City Council Should Pass Int 0443-2022, which would require the Police Department to provide records of complaints and investigations of bias-based profiling to the City Commission on Human Rights.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Anthony A. Braga, John M. MacDonald & James McCabe, *Body-worn cameras, lawful police stops, and NYPD officer compliance: A cluster randomized controlled trial*, 60 CRIMINOLOGY 124 (2022).

⁴² *Id.*

We support this proposal without further comment.

- c. The New York City Council Should Pass Int 0538-2022, which would require the Police Department to report on instances in which an individual denied an officer consent to search.

We support this proposal without further comment.

- d. The New York City Council Should Pass Int 0585-2022, which would grant access to the Police Department's body-worn camera footage to the Office of the Inspector General and Department of Records and Information Services.

We support this proposal with reservations. While we support increased oversight over NYPD practices, especially street encounters, we are concerned about the privacy of those who are targeted in these encounters and who are therefore featured prominently in these videos. Providing body-worn camera footage to the Department of Records and Information Services has the risk of bypassing and usurping the sealing statutes and further victimize those populations who have historically been disproportionately affected by policing policies. While the other Departments and agencies that are granted access to this footage are subject to public disclosure through FOIL requests, we are concerned that the Department of Records and Information Services may post this footage directly on a public database, thereby subjecting the civilians subject to these police encounters to invasive public exposure. We therefore object to granting access to the Department of Records and Information Services.

- e. The New York City Council Should Pass Int 0586-2022, which would require the Police Department to report on police-civilian investigative encounters, specifically detailing all Level One and Level Two stops.

We support this proposal without further comment.

- f. The New York City Council Should Pass Int 0938-2022, which would require the Police Department to provide the Civilian Complaint Review Board (CCRB) with direct access to the officer body-worn camera footage and to establish related procedures.

We support this proposal without further comment.

- g. The New York City Council Should Pass Int 0944-2023, which would evaluate civil actions alleging improper conduct by the Police Department.

We support this proposal without further comment.

- h. The New York City Council Should Pass Int 0948-2023, which would require the Police Department to report information and data regarding Police Department operations.

We support this proposal without further comment.

VII. Conclusion

More work remains to be done to pursue that aims of transparency and accountability. These proposals are a step in that direction.

Thank you for considering this testimony. Please feel free to contact our office at policy@nycds.org if there are any questions.



Center for Policing Equity Testimony Supporting How Many Stops Act (Intro 538 and 586)
New York City Council Public Safety Committee
March 27, 2023

My name is Michelle Feldman and I am the Director of Partnerships at the Center for Policing Equity. We are a national research and action organization that uses science to identify and reduce the causes of racial disparities in public safety.

CPE has worked with police departments and city governments in more than 60 jurisdictions to collect much of the same kind of data that would be required to be tracked in the How Many Stops Act. In doing so, we have seen firsthand how data analysis is a powerful tool to help shed light on how police activity is affecting a community—including, importantly, by measuring racial disparity in enforcement.

But data analysis isn't just about diagnosing the problem - it also allows for pinpointing opportunities to change policy and redirect resources to better achieve public safety. For example, our analysis of St. Louis Police Department data found that Black people in St. Louis were 2.3 times more likely to be stopped while walking than White pedestrians. That information led to further analysis, where data revealed issues with police deployment not aligning with neighborhood needs, and opportunities for redirecting 18% of calls to mental health responders.¹

Collecting, analyzing, and sharing policing data has the power to drive meaningful reforms that address racial disparities and improve public safety. By passing these bills, New York City would join an increasing number of localities who are mandating the reporting of essential police data.

The Center for Policing Equity has found that at least 20 states require reporting of all vehicle stops as of 2020.² In 2015 California passed a bill requiring all police departments in the state to collect comprehensive data on vehicle stops and pedestrian stops—including stops that would be defined as Level 1 or level 2 in Intro 586, and to report detailed information about what happens at such stops, as would be required in Intro 538. This data has generated significant policymaking action to limit police behavior, for example, through cities like Los Angeles and San Francisco restricting pretextual traffic stops on the basis of disparities observed through the data.³

¹ <https://policingequity.org/data-collection-insights/62-cpe-data-brief-putting-policing-data-to-work/file>

² https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf page 7

³ See, for example: <https://www.latimes.com/california/story/2022-03-01/new-limits-on-pretextual-stops-by-lapd-to-take-effect-this-summer-after-training>



For a decade, Connecticut has required similarly detailed collection of vehicle stop data and law enforcement officer use of force data.⁴ Virginia recently expanded its required data collection to include all investigatory motor vehicle stops and stop-and-frisk situations that are based on reasonable suspicion and for investigatory detentions that do not result in an arrest or summons. And Vermont conditioned state grant funding on compliance with existing requirements for reporting demographic and other information related to stops.^[1]

We are glad to see that Intro 538 would require officers to collect more data on their use of consent searches because data from other localities has shown that officers ask Black and Latinx drivers to conduct these searches at disproportionately high rates, and Black and Latinx drivers are more likely than White drivers to comply with the request, likely due to the heightened power imbalance between police and communities of color.⁵

The How Many Stops Act will bring New York City in line with national trends that require data collection to shed light on how police operate in our communities and promote accountability. We encourage the committee to pass these common sense measures. Thank you.

^[1] National Conference of State Legislatures. Law Enforcement Legislation: Significant Trends 2021. Oct 20, 2021 <https://www.ncsl.org/civil-and-criminal-justice/law-enforcement-legislation-significant-trends-2021>

⁴ <http://trafficstops.ctdata.org/>

⁵ <https://policingequity.org/traffic-safety/60-cpe-white-paper-traffic-safety/file> page 5-6



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**STATEMENT OF
NINA LOSHKAJIAN
LEGAL FELLOW
SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT (“S.T.O.P.”)**

**BEFORE THE COMMITTEE ON PUBLIC SAFETY,
NEW YORK CITY COUNCIL**

**FOR A HEARING ON
NYPD REPORTING BILLS**

**PRESENTED
March 27, 2023**

Good afternoon, Chair Hanks and members of the Committee on Public Safety. My name is Nina Loshkajian, and I am a Legal Fellow at the Surveillance Technology Oversight Project (“S.T.O.P.”), a New York-based civil rights and anti-surveillance group. S.T.O.P. advocates and litigates against discriminatory surveillance. I appreciate the opportunity to testify today on the bills in front of you, specifically Intros 585 and 938, relating to Body-Worn Camera footage access, and Intros 538 and 586, collectively known as the How Many Stops Act. These four bills are common-sense small steps towards bringing much-needed transparency and accountability to the NYPD.

I. Body-Worn Camera Footage Access (Int. 585 & Int. 938)

We oppose the use of Body-Worn Cameras (BWCs) in general as both a threat to public safety and to New Yorkers’ civil rights. BWCs systematically fail to promote accountability, being turned not on officers, but on the public they are sworn to serve. BWCs frequently capture a deceptive and incomplete view of police encounters, reinforcing the police narrative. At the same time, BWCs are increasingly a tool for tracking the public, not protecting them.

Officers exercise unchecked discretion over what encounters to record, failing to activate them or deliberately disabling devices prior to violent encounters.¹ Department leaders compound officers’ discretion by limiting public access to footage that captures police misconduct. According to one leaked internal memo, the NYPD refused to fulfill approximately half of the New York Civilian Complaint Review Board’s (CCRB’s) requests for BWC footage in June 2020.² Alarming, in more than 100 cases, the NYPD falsely claimed there was no video when footage did exist.³ Given that police encounters are particularly more dangerous for BIPOC Americans,⁴ police discretion over BWC footage disparately impacts these communities.

To fully protect New Yorkers, we would hope to see the use of BWCs end completely. BWCs fail in their goal of protecting citizens, and their use highlights the high risk of mass surveillance. But while they are in use, it is incumbent on lawmakers to respond to this data and protect the public by at least ensuring the NYPD loses its dangerous sole control over BWC footage. It has used this sole control to manipulate the narrative and prevent victims of police violence from seeking justice. Given this reality, at the very least the OIG and the CCRB must have direct access to BWC footage. This is standard in other cities using BWCs. Civilian oversight investigators in Washington, D.C., San Francisco, and New Orleans all have direct access to BWC footage.⁵ As the operator of the biggest

¹ Doha Madani, *Louisville Police Chief Fired After Officer Bodycams Found to be Off During Fatal Shooting*, NBC News (June 1, 2020), <https://www.nbcnews.com/news/us-news/louisville-police-chief-fired-after-officer-bodycams-found-be-during-n1221351>.

² Memorandum from Olas Carayannis, Deputy Chief of Special Operations, and Dane Buchanan, Deputy Chief of Investigations, Civilian Complaint Review Bd., to Senior Staff of the Civilian Complaint Review Bd. (June 26, 2020), <https://www.documentcloud.org/documents/6980787-CCRB-Memo-on-Body-Cam-Footage.html>.

³ Memorandum from Olas Carayannis, Dir. of Quality Assurance and Improvement, Civilian Complaint Review Bd., to Members of the Civilian Complaint Review Bd. 2 (July 5, 2019), https://brooklyneagle.com/wp-content/uploads/2019/07/20190710_boardmtg_BWC_memo-2-1.pdf.

⁴ Gabriel L. Schwartz and Jacquelyn L. Jahn, *Mapping fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities, 2013-2017*, 15 PLoS ONE (2020).

⁵ Cindy Rodriguez, *When it Comes to Police Misconduct, Body-Worn Camera Videos Are Slow to Come*, WNYC (July 22, 2019), <https://www.wnyc.org/story/police-misconduct-body-worn-camera-videos-slow-come>.

BWC program in the country,⁶ the NYPD should be at least as accountable as other police departments in the nation. Intros 585 and 938 are crucial transparency measures that the Council must adopt immediately to end NYPD's impunity.

II. How Many Stops Act (Int. 538 & Int. 586)

We support Intros 586 and 538, which would bring much needed transparency to how the NYPD interacts with the communities in our city.⁷

Intro 586 requires the NYPD to report on Level 1 and 2 police stops, investigative encounters in which officers ask questions but do not have reasonable suspicion of criminal activity. The current state of the law, with NYPD only required to report on Level 3 stops, in which officers have reasonable suspicion, leaves us with an incomplete picture of the police harassment and racial profiling that occurs daily across the city. These so called "low level" encounters going unreported makes it easier for the NYPD to be abusive. The Council must pass this law and make sure we have access to data on every single NYPD encounter with civilians.

Intro 538 requires the NYPD to report a fuller set of data about their use of consent searches, stops in which an NYPD officer asks permission to conduct a search of a person or their belongings. The bill will give the public needed insight into how searches impact New Yorkers. By requiring officers to document their use of interpretation services when seeking consent to search from people with limited English proficiency, New York will take a step towards protecting its residents from unconstitutional invasions of privacy. The bills also importantly requires that the NYPD report on any consent search requests for sensitive genetic information, like saliva swabs to collect DNA samples. We know that the NYPD has created a private, rogue DNA database and engages in dangerous and coercive practices of DNA collection. This means giving kids a glass of water, harvesting their DNA, and then using it for any purpose forever.⁸ Through these practices, they also overwhelmingly target Black and Latinx communities. Intro. 538 will expose whether or not the NYPD is following the law and informing people of their right to refuse requests for DNA samples.

The data these two bills could bring to light would be fundamental to knowing how the NYPD operates and the impacts it has in our communities.

Thank you for the opportunity to testify today.

⁶ New York City Civilian Complaint Review Board Semi-Annual Report 2022, 45, https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2022_semi_annual.pdf.

⁷ How Many Stops Act—Fact Sheet, Communities United for Police Reform, https://www.changethenypd.org/sites/default/files/docs/final_hmsa_fact_sheet_01.5.23.pdf.

⁸ Troy Closson, *This Database Stores the DNA of 31,000 New Yorkers. Is It Illegal?*, New York Times, (March 22, 2022), <https://www.nytimes.com/2022/03/22/nyregion/nyc-dna-database-nypd.html>.

**New York City Council
Committee on Public Safety**

Hearing re: Police Reporting Bills

March 27, 2023

Written Testimony of The Bronx Defenders

By Christine Rivera, Policy Counsel to the Criminal Defense Practice

Chair Hanks, my name is Christine Rivera, and I am a staff attorney and Policy Counsel to the Criminal Defense Practice at the Bronx Defenders. The Bronx Defenders (“BxD”) has provided innovative, holistic, and client-centered criminal defense, family defense, immigration representation, civil legal services, social work support, and other advocacy to indigent people in the Bronx for more than 20 years. Our staff of over 400 represents nearly 28,000 people every year and reaches thousands more through community outreach. The primary goal of our model is to address the underlying issues that drive people into the various legal systems and to mitigate the devastating impact of that involvement, such as deportation, eviction, the loss of employment and public benefits, or family separation and dissolution. Our team-based structure is designed to provide people seamless access to multiple advocates and services to meet their legal and related needs.

Today, I want to explain why it is necessary that the NYPD be required to report all police encounters and all consent searches.

I. A Disturbing Trend in Illegal Searches

As public defenders, we see on a daily basis how the City’s police department interacts with its residents. Through reviewing body worn camera footage, speaking with those who have been accused of crimes, and litigating the legality of searches in court, we have an up-close view of what these street encounters entail. These interactions have historically been problematic. But lately, we have noticed a truly disturbing trend of increased illegal searches. This trend coincides with the Adam’s administration’s decision to bring back the controversial anti-crime unit (rebranded as the “anti-gun unit”).¹ I would like to share a few examples with you to help illustrate the issue.

¹ <https://www.nytimes.com/2022/03/14/nyregion/nypd-anti-gun-unit.html>

A. Mr. A's Case

In March of 2022, our client Mr. A – a father, brother and home care aid to his 80-year-old mother – was walking home with his best friend when he was abruptly stopped, frisked, and pushed up against the wall of his apartment building. He was arrested and charged with criminal possession of a weapon. Bail was set at an amount his family simply could not afford, and he was sent to Rikers Island.

A review of the body worn camera revealed some serious issues related to the stop and frisk in Mr. A's case. At the suppression hearing, his legal team argued that there was nothing about his appearance or behavior that justified the officers stopping and frisking him on the night in question. The judge agreed and found that the officers had illegally searched Mr. A. The case was dismissed a month later, but only after Mr. A had spent nine months at Rikers Island waiting for his day in court.

What makes Mr. A's case even more disturbing is the fact that the officers who testified at the hearing provided untruthful testimony under oath. The officer who stopped and frisked Mr. A told both the grand jury and the suppression court that Mr. A positioned himself as if he was concealing a weapon. Fortunately, the body worn camera footage showed that Mr. A froze as soon as police approached him, placed his hands up in the air, and stood still while the officer patted down his pockets and shoved him against the wall. Not only did the judge find that the officers acted illegally, he indicated that he could not credit the officer's testimony.

While this was ultimately a favorable result for Mr. A, no one should have to sit in jail for nine months after police violate their constitutional rights. Any amount of time in jail can lead to devastating employment, housing, and immigration consequences. Moreover, unlike Mr. A, many individuals plead guilty rather than taking the risk of going to hearings and trial.

B. Other Examples

In another case from May of 2021, T.D. was stopped, chased, and subsequently arrested. The officers claimed that the left pocket of T.D.'s bubble jacket was hanging lower than the right, an observation that officers frequently rely on to justify pretextual stops. Bail was eventually set in his case, and T.D. spent seven months at Riker's Island waiting for his day in court. After a suppression hearing the judge found that the officers' actions in this case were unjustified and suppressed the evidence.

In a different case from last year, an officer approached a building as our teenage client was leaving and began asking him questions about why he was in the building. Our client raised his hands in the air, and one of the officers unzipped his jacket, frisked him, and lifted his sweater. After a review of the body worn camera, the court found that the officer's testimony was "wholly discredited by the video and audio." This case involved was ultimately removed to family court.

In yet another case, from July of 2021, an officer approached our client K.R. and asking him for his ID. When K.R. went to reach for his ID in his fanny pack the officer abruptly told him not to and grabbed his hand. K.R. was then pushed against a fence, and his bag was unzipped and searched. The judge found that she “could not credit much of the officer’s testimony,” concluded that the stop was unlawful, and suppressed the evidence. The case was dismissed in July of 2022.

II. The Numbers

These examples are part of a disturbing trend borne out by our own internal data. Since the beginning of 2022, when the Adams administration began, BxD has represented over 350 people charged with possession of a firearm. Thus far, about one-third of these cases have been resolved. Of the resolved cases, over 60% were dismissed or adjourned in contemplation of dismissal. Let’s be clear – these dismissals were not the result of district attorneys being unable to meet their discovery obligations. They were due to insufficient evidence to proceed with the case. Furthermore, in half of those dismissed cases, people had bail set on them at arraignments, meaning they spent some amount of time in the custody of the Department of Correction while waiting for their day in court.

The findings are clear: a significant majority of the gun arrests we’ve seen that were made under this administration do not hold up in court. This is not a coincidence. This is stop and frisk, and we should be very wary. These bad stops have lasting consequences – not only do they erode trust with the community, but they also cost the city millions of dollars in settlement money.

A report from 2022 shows that New York City paid out \$121 million in police misconduct settlements last year. This amount represents the highest amount in five years (in 2021, the city paid out \$87 million). These are millions of dollars that could have been invested into our schools, housing, and health care.

III. Illegal Stops and Searches Make Us Less Safe

Illegal stops of this nature not only erode trust between the community and NYPD, but also leave individuals with traumatic experiences and lingering feelings of fear that would not exist had the officers conducted themselves in accordance with the law. We know from research on stop and frisk that surveillance and constant forced interaction with the NYPD inflicts harm and real emotional distress, overwhelmingly on Black and Latinx New Yorkers, as well as other communities of color, LGBTQ/GNC people, non-citizens, people experiencing homelessness, religious minorities, low-income people, and youth.²

² <https://ccrjustice.org/stop-and-frisk-human-impact>

Young people ages 18-24 years old were disproportionately impacted by the NYPD's stop and frisk practices, representing over a third of all stops from 2003-2021.³ Young people ages 15-17 represented an additional 13 percent of all stops. Black young people were disproportionately impacted, being stopped at a rate nearly double that experienced by white people.

Research shows that distrust for police begins at a young age for many, and illegal stops like the ones described above only exacerbate the lack of trust young New Yorkers feel. When it comes to young people, interactions like those described above have a lasting impact. Studies show that Black middle-school students exposed to more aggressive policing were more likely to have lower test scores, to later drop out of school and less likely to enroll in college.⁴

At the Bronx Defenders, we only see searches when an arrest is made – a fraction of the police interactions that occur every day in our city. The reporting bills that are being debated would provide data that allows us to see the fuller picture. We know that the most successful solutions are informed by data and research. This information is necessary in order to address the issues that continue to persist between the NYPD and community.

At the end of the day, everyone in this city wants to feel and be safe. But we cannot achieve true public safety without a clear understanding of the police's interactions within the communities that they are supposed to serve. The City must acknowledge the impact of over-policing on our communities and require the NYPD to document a much broader range of its low-level enforcement activities.

³ <https://www.nyclu.org/en/closer-look-stop-and-frisk-nyc#:~:text=Young%20People%20are%20Disproportionately%20Impacted&text=In%20the%20last%20two%20decades,2%2C115%20stops%20per%201%2C000%20people.>

⁴ <https://www.nytimes.com/2020/03/02/upshot/stop-and-frisk-bloomberg.html>

New York City Council, Public Safety Committee’s Hearing
Testimony of Carmen Perez-Jordan, President and CEO of The Gathering for Justice
March 27, 2023

Thank you for the opportunity to testify today. My name is Carmen Perez-Jordan. I am the President and CEO of The Gathering for Justice. I am here today to testify on Intro. 568 and Intro. 538, which collectively create the “How Many Stops Act.” These two bills will bring critical and urgent transparency to the NYPD’s daily activities in New York City communities.

Stop and Frisk has long been a highly debated and controversial issue regarding an individual's constitutional right to be free of unreasonable searches and seizures. Two decades of data analyzed by NYCLU shows that those who are stopped and frisked by the NYPD are most likely to be people of color, and disproportionately likely to be young and Black.¹ Despite the drop in overall stops since the early 2010s, for over a decade, Black and Latinx New Yorkers consistently represented over 80 percent of stops each year, making up 87 percent of the stops in 2021.²

In the August 2000 United States Commission on Civil Rights (“the Commission”) Police Practices and Civil Rights in NYC report, the Commission recommended that the NYPD take steps to ensure that indicators of racial profiling—which expressly violates the law and undermines the public confidence in the police—do not occur when conducting stops.³ Among other steps, the Commission expressly stated that the NYPD should establish a “departmental system of records to permit the consistent collection and evaluation of data to determine whether racial profiling is occurring.”⁴ Eric Adams, himself, testified in the 1999 hearing on police practices, which informed this report, that in NYC, only 1 of 30 stop and frisks are reported and that the number of stops recorded on file were “mere child’s play” given the number of people “harassed by the [NYPD].” That was over 20 years ago and the issue still remains the same, and under his own Mayoral administration.

Even more recently, in 2013, U.S. District Court Judge Shira Scheindlin issued a landmark order ruling that the NYPD “was routinely violating the civil rights of Black and Latinx New Yorkers through its institutionalized overuse of stopping and frisking citizens for no apparent reason other than their race or ethnicity.”⁵ This ruling was meant to establish the blueprint for reform and yet the same issues from the early 2000s persist to current day.⁶

Before his passing, Peter Zimroth, the federal monitor overseeing the NYPD’s compliance with stop and frisk reforms, repeatedly noted that the NYPD is not properly documenting and reporting stops, citing internal NYPD Quality Assurance Division reports that found 36 percent

¹ A Closer Look at Stop-and-Frisk in NYC. *NYCLU*. <https://www.nyclu.org/en/closer-look-stop-and-frisk-nyc>

² Stop-and-Frisk Data. *NYCLU*. <https://www.nyclu.org/en/stop-and-frisk-data>

³ Police Practices and Civil Rights in New York City, Chapter 5 Stop, Question, and Frisk. *United States Commission on Civil Rights*. <https://www.usccr.gov/files/pubs/nypolice/ch5.htm>

⁴ *Ibid.*

⁵ *Floyd v. City of New York*, 08 Civ. 1034. August 12, 2013.

<https://ccrjustice.org/sites/default/files/assets/Floyd-Remedy-Opinion-8-12-13.pdf>

⁶ With NYPD Stop and Frisk Case at Crossroads, Civil Rights Groups Demand Monitoring Reforms. *The City NYC*. February 7, 2022. <https://www.thecity.nyc/2022/2/7/22920620/nypd-stop-frisk-case-crossroads>

of the stops made by NYPD officers in 2018 and 2019 were not reported.⁷ He also stated in his September 2021 report that there is “substantial evidence suggesting that many NYPD officers did not submit reports documenting all of their stops of civilians in years 2016 to 2019,” and that the number of reported stops is unreliable “given the likelihood of significant numbers of unreported stops.”

The history, data, and reports are all clear—NYC and the NYPD lack accurate and complete data on stops in NYC and this needs to be corrected. Passing and implementing the two bills associated with the How Many Stops Act would do just that. Requiring the NYPD to report on level 1 and 2 encounters and the number of consent searches, and requests thereof, will close these data gaps and make sure that every encounter is documented and reported on. I urge the New York City Council to immediately pass the How Many Stops Act to ensure full transparency of the NYPD’s daily activities and any abusive power by its police officers. Transparency is the first step towards accountability and true community safety.

Thank you for your time.

⁷ With NYPD Stop and Frisk Case at Crossroads, Civil Rights Groups Demand Monitoring Reforms. *The City NYC*. February 7, 2022. <https://www.thecity.nyc/2022/2/7/22920620/nypd-stop-frisk-case-crossroads>

THE LEGAL AID SOCIETY

Justice in Every Borough.

TESTIMONY

New York City Council
Committee on Public Safety

March 27, 2023

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INTRODUCTION

The Legal Aid Society submits this testimony to the New York City Council’s Committee on Public Safety concerning Ints. 386-2022 (Cabán), 538-2022 (Hudson), 585-2022 (Williams), 586-2022 (Williams), 781A-2022 (Williams), 938-2023 (Adams), 944-2023 (Hanks), and 948-2023 (Louis). We thank Councilmember Kamillah Hanks, Chair of the Committee on Public Safety, for holding this hearing and allowing us to testify on behalf of the communities we serve.

THE HOW MANY STOPS ACT

Legal Aid expresses full and enthusiastic support for amending the City’s Administrative Code to require the New York Police Department (NYPD) to report on the use of consent searches (Int. 538-2022) and on police-civilian investigative encounters (Int. 586-2022), together known as the “How Many Stops Act” (HMSA). These bills, sponsored by Councilmember Crystal Hudson and Public Advocate Jumaane Williams, were developed in consultation with our fellow member organizations of Communities United for Police Reform, a coalition campaign to end discriminatory policing in New York. The How Many Stops Act addresses urgent needs for increased police transparency and accountability in the ways the NYPD engages with New Yorkers in investigative encounters and consent searches.

I. Int. 586-2022 (Williams): Reporting on Level 1 and Level 2 Stops

Legal Aid urges members of the Public Safety Committee and the full New York City Council to support and swiftly pass Int. 586, a bill that requires the NYPD to report on certain police-civilian investigative encounters that currently go unreported, creating a dangerous loophole that allows officers to evade review and accountability on the lawfulness of their encounters with the public.

A. The Four *De Bour* Levels of Police Encounters

In New York, the legal framework that currently governs policing tactics like stop, question, and frisk comes from a 1976 Court of Appeals decision, *People v. De Bour*, which classifies investigative encounters with the public into one of four levels.¹

¹ *People v. De Bour*, 40 N.Y.2d 210, 223 (1976).

A lawful Level 1 encounter occurs when officers approach a person to request information so long as the officers have an “objective credible reason,” though the basis does not necessarily need to be indicative of criminality.² The Court of Appeals provided an example of a Level 1 encounter: “[i]f the individual is carrying something that would appear to a trained police officer to be unusual, the police officer can ask about the object.”³ However, once the officer’s questions become “extended and accusatory,” then the encounter escalates and is no longer merely a request for information at Level 1.⁴

At Level 2, or what is also called the common-law right of inquiry, officers are permitted to ask accusatory questions, but this type of questioning is only permitted when officers have “a founded suspicion that criminal activity is afoot.”⁵ As an example, a New York appellate court determined that officers had founded suspicion to ask accusatory questions when a person they asked to speak to responded by putting an object into his mouth and walking away, causing the officers to suspect that he was hiding contraband.⁶

Level 3 stops are encounters in which a person is not free to leave while police investigate a crime, but the person is also not under arrest (arrests are classified as Level 4 encounters and must be based upon probable cause that a crime has been committed).⁷ Level 3 stops are only allowed to occur only when the officers have reasonable suspicion to believe the person has committed a crime, and they are meant to be brief and for purposes of confirming or dispelling the officer’s suspicion.⁸ For example, courts have agreed that an officer had reasonable suspicion to stop a person when the officer observed the person exchange a small item for money in an area with a large volume of drug sales.⁹

These standards come directly from constitutional law, and it makes sense: New Yorkers shouldn’t be stopped just because an officer feels like it, or worse, because the officer is targeting

² *Id.*

³ *People v. Hollman*, 79 N.Y.2d 181, 191 (1992).

⁴ *Id.*

⁵ *People v. Moore*, 6 N.Y.3d 496, 498 (2006); accord *De Bour*, 40 N.Y.2d at 223.

⁶ *People v. Bethea*, 67 A.D.3d 502, 504 (1st Dep’t 2009).

⁷ *De Bour*, 40 N.Y.2d at 223.

⁸ *Id.*

⁹ See, e.g., *People v. Murphy*, 267 A.D.2d 254 (App. Div. 2nd Dep’t. 1999)

people based on race, age, and neighborhood.¹⁰ However, we know that, too often, this is exactly what happens.¹¹

B. Background on the NYPD Stop, Question, and Frisk Monitorship

Over a decade ago, The Legal Aid Society and our co-counsel at the NAACP Legal Defense Fund joined several organizations in filing a series of cases that challenged the NYPD's unconstitutional and racially biased campaign of stop and frisk as well as trespass enforcement. *Floyd, et al. v. City of New York, et al.*, (“*Floyd*”) brought by the Center for Constitutional Rights and Beldock Levine & Hoffman LLP, challenged the NYPD's racially discriminatory stop and frisk program.¹² *Davis, et al. v. City of New York, et al.*, (“*Davis*”) brought by Legal Aid Society and the NAACP Legal Defense Fund, challenged the NYPD's racially discriminatory trespass enforcement and stop-and-frisk practices in NYCHA buildings.¹³ *Ligon, et al. v. City of New York, et al.*, (“*Ligon*”) brought by the New York Civil Liberties Union, LatinoJustice PRLDEF, and the Bronx Defenders, challenged ‘Operation Clean Halls’, a program that implemented stop and frisk and racially biased trespass enforcement in the common areas of private apartment buildings.¹⁴

Following a trial in the *Floyd* case, a federal court ruled that the NYPD's stop and frisk practices violated the Fourth Amendment's requirement of reasonable suspicion to conduct a Level 3 stop and the Fourteenth Amendment's Equal Protection Clause due to pervasive racial discrimination.¹⁵ As a result of this decision, along with the outcomes of the *Davis* and *Floyd* cases, the federal court appointed a monitor to oversee the NYPD's reform process and report on its progress towards compliance with the laws governing trespass enforcement and stop and frisk.¹⁶

¹⁰ *De Bour*, 40 N.Y.2d at 223; *Terry v. Ohio*, 392 U.S. 1 (1968)

¹¹ The monitor's most recent audit of a sample of stop reports found that the NYPD failed to adequately justify nearly 30% of Level 3 stops in NYCHA buildings. Monitor's Sixteenth Report, *Davis v. City of New York*, Dkt. No. 614-1 at 34, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.614.1.pdf>. This likely represents only a fraction of stops due to NYPD underreporting of stops. Additionally, the CCRB has substantiated over 700 allegations of improper stops, questions, searches, and frisks during the past five years. The Legal Aid Soc'y, *Law Enforcement Lookup*, <https://legalaidsoc.org/law-enforcement-lookup/> (displaying data from <https://www.nyc.gov/site/ccrb/policy/MOS-records.page>).

¹² *Floyd, et al. v. City of New York, et al.*, No. 08-cv-01034 (S.D.N.Y.) [hereinafter *Floyd* Dkt.]

¹³ *Davis v. City of New York*, No. 1:10-cv-00699 (S.D.N.Y.) [hereinafter *Davis* Dkt.]

¹⁴ *Ligon, et al. v. City of New York, et al.*, No. 1:12-cv-02274 (S.D.N.Y.) [hereinafter *Ligon* Dkt.]

¹⁵ *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013)

¹⁶ Stip. of Settlement & Order, *Davis* Dkt. No. 330-1 at 10-14, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.330.1.pdf>.

Plaintiffs’ counsel for the three cases, including Legal Aid, continue to play an active role in the remedial process being overseen by the monitor.

In a recent letter updating the Court, the monitor commended the NYPD for “com[ing] a long way since the monitorship began,” but noted that “accountability is the difficult ‘last mile problem’ that the Department must address to live up to its obligation to ‘protect[] the rights and liberties of all New Yorkers.’”¹⁷ The monitor raised concerns about the NYPD’s elimination of its commander-level reviews on their precinct’s compliance progress (RISKS reviews), a lack of any mechanism for internal monitoring of 14th Amendment compliance, and decreasing NYPD compliance rates in stops, frisks and searches in the last quarter of 2021.¹⁸ These concerns suggest that the NYPD, despite approaching its tenth year of the monitorship, still has much work ahead to reach compliance in how it conducts stop and frisk as well as trespass enforcement.

C. Reporting on Level 1 and Level 2 Encounters is Necessary to Assess the Lawfulness of Current NYPD Stop-and-Frisk Practices

In keeping with the monitor’s findings of ongoing compliance issues, our Legal Aid clients and frontline public defenders in our Criminal Defense Practice regularly provide anecdotal evidence that illegal stops and searches continue to happen across all five boroughs. Often, when we meet clients in arraignments, their case does not represent their first contact with members of the NYPD. Many of our clients live in neighborhoods with heavy police presence and many have experienced numerous prior street encounters with the NYPD that were unrelated to their arrest, often for no discernible reason except the person’s race, age, and neighborhood. The persistence of legally dubious stops despite the NYPD having already overhauled its policies and trainings on stops evidences the challenges of organizational change in an entity as large as the NYPD. The Department’s culture and ingrained practices have at least as significant of an impact on officer conduct as do policies and trainings. These challenges make thorough and consistent oversight to identify and address unlawful conduct critical to ensuring compliance.

One way that the federal monitor and the NYPD’s internal auditing program—the Quality Assurance Division (“QAD”)— attempt to root out unlawful and discriminatory stops is by

¹⁷ Monitor’s Ltr., *Davis* Dkt. No. 628 at 8, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.628.0.pdf>.

¹⁸ *Id.* at 3-5. At the time of writing, the monitor was waiting on 2022 stop data from the NYPD.

checking stop reports, in which officers are required to articulate the basis of each Level 3 stop.¹⁹ Currently, officers must complete a stop report for each Level 3 stop but need not document Level 1 and 2 encounters. QAD and the monitor also review whether NYPD command-level leadership identified unlawful Level 3 stops in self-inspections and whether they took appropriate action, ranging from instructions to the officer to imposing discipline for illegal stops, frisks, and searches.²⁰ While body-worn camera (BWC) footage can help with assessing the legality of a Level 3 stop, stop reports are critical because the *De Bour* legal framework requires an assessment of whether the totality of information that the officer relied upon as a basis for making the stop amounted to reasonable, articulable suspicion based on the facts of the situation.²¹

However, the NYPD's audits have found that many Level 3 stops go unreported. The monitor notes that the NYPD's failure to fulfill reporting requirements makes "any assessment of compliance with the Court's remedial orders [] impossible."²² There are likely many reasons why officers fail to report Level 3 stops, ranging from forgetting about the requirement to intentionally evading accountability for unlawful stops by not creating a paper trail. As described above, Officers currently only need to fill out paperwork for Level 3 stops—not for Level 1 and 2 encounters, which Int. 586 would require. As a result, officers can avoid documenting Level 3 stops by claiming they are Level 1 or 2—a major loophole in the reporting system that the How Many Stops Act would close.

While the QAD and the monitor have access to other means of reviewing encounters not documented by officer reports—such as BWC footage²³—communities and advocates do not. And without officer reports, *no one*, including the monitor, commanding officers, and QAD, has access to officers' subjective reasoning for initiating the encounters they label Level 1 or 2. So while those tasked with oversight of NYPD stops may be able to identify some unreported Level 3 stops,

¹⁹ Remedial Order, *Davis* Dkt. No. 330-1 at 74, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.330.1.pdf>; Monitor's Sixteenth Report, *Davis* Dkt. No. 614-1 at 14-15, 17-18, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.614.1.pdf>.

²⁰ Monitor's Sixteenth Report, *Davis* Dkt. No. 614-1 at 17-18, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.614.1.pdf>.

²¹ Remedial Order, *Davis* Dkt. No. 330-1 at 20-22, 27-29, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.330.1.pdf>.

²² Monitor's Sixteenth Report, *Davis* Dkt. No. 614-1 at 14, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.614.1.pdf>.

²³ Remedial Order, *Davis* Dkt. No. 330-1 at 27-29, <https://storage.courtlistener.com/recap/gov.uscourts.nysd.357782/gov.uscourts.nysd.357782.330.1.pdf>.

they are missing a major piece of the puzzle in determining whether the stops were made in compliance with the law.

While some officers may use this loophole to purposefully evade Level 3 reporting requirements, other officers may be mistaking encounters that courts would determine to be Level 3 stops as a Level 2 or even Level 1 encounters. New York state case law is littered with decisions where appellate courts disagreed with officers', prosecutors', and trial court judges' classification of investigative encounters as Level 1 or Level 2 when, upon appellate review, the encounter was determined to be an unlawful Level 3 stop.²⁴ These misclassifications, whether intentional or not, likely contribute to a massive undercount of Level 3 stops, hindering NYPD leadership, police oversight agencies, the monitor, and the public from assessing the constitutionality of the stops that the NYPD is making. Int. 586 addresses this issue by requiring all investigative encounters, and the officers' reasoning giving rise to the encounter, to be reported.

D. Transparency is Needed to Ensure Level 1 and Level 2 Encounters are Lawful

The lack of reporting requirements for Level 1 and Level 2 encounters not only leads to underreporting of stops that should be classified and reviewed as Level 3 stops, but it also obscures potential abuses in the ways the NYPD is conducting these lower-level encounters. Level 1 encounters are meant to be innocuous, and people are supposed to be free to leave at Level 2 versus what is understood to be a more serious stop at Level 3, in which the person is detained. However, the lack of reporting requirements, transparency, and oversight for Level 1 and Level 2 encounters leaves the public without any way to ensure that they are being conducted lawfully and are as inoffensive as the NYPD claims.

One of the key distinctions between a Level 2 and a Level 3 stop is that the person being engaged by the officer is free to leave at Level 2, which courts determine by considering whether a reasonable person would have felt free to leave given the circumstances.²⁵ If a reasonable person would not feel free to leave, it is not a Level 2 encounter and has escalated to become a Level 3 stop, with the level of suspicion determining whether it was lawful or not. The line between *De*

²⁴ See e.g., *People v. Major*, 115 A.D.3d 1 (1st Dep't. 2014); *People v. Jones*, 174 A.D.3d 1532 (4th Dep't. 2019) (both reversing a lower court decision because officers had performed a Level 3 stop without possessing reasonable suspicion).

²⁵ *Brendlin v. California*, 551 U.S. 249, 255 (2007) ("a seizure occurs if in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave").

Bour Level 2 and Level 3 is murky at best on when a reasonable person would feel free to leave (what is in the court-imagined reasonable person’s mind during the police encounter)²⁶ and fails to take into account how the person’s individual experiences and identities, including their race, age, sex, disability, among others, might inform whether they feel free to leave.²⁷ That Black and Latinx people experience incidents of police violence at disproportionate levels is well-documented, but not reflected in the Fourth Amendment analysis, which “fails to meaningfully consider the ways in which a person’s race can influence their experience with law enforcement.”²⁸ In practice, this means that many Black people and other people of color may experience encounters with the police as stops in which they are not free to leave, but which courts classify as Level 2 encounters.

Determinations of whether a reasonable person would feel free to leave and if the officer had a sufficient basis for their suspicion are highly dependent on the facts of each case, which has led legal experts to criticize “[t]he mere existence of *De Bour* Level 2, and the inevitable difficulty of clearly distinguishing” a Level 2 encounter from a Level 3 encounter, which “creates problems of administrability” and “may lead police to perform a large number of stops... without the minimal foundation in reasonable suspicion required by the U.S. Constitution.”²⁹ Indeed, even the author of the *De Bour* decision, former Chief Judge Sol Wachtler suggested that the *De Bour* framework needed to be revised to better reflect “the change in communities, the change in morality, [and] the change in our sense of justice.”³⁰

²⁶ See *People v. Perez*, 31 N.Y.3d 964, 980 n.3 (2018) (Rivera and Wilson, JJ., dissenting); *People v. Britt*, 34 N.Y.3d 607, 617-30 (2019) (Wilson and Rivera, JJ., dissenting); cf. *People v. Gates*, 31 N.Y.3d 1028, 1029 (2018) (Garcia, J., dissenting).

²⁷ See, e.g., *State v. Sum*, 199 Wash. 2d 627, 656, 511 P.3d 92, 109–10 (2022) (“Today, we formally recognize what has always been true: in interactions with law enforcement, race and ethnicity matter.”); *State v. Spears*, 429 S.C. 422, 839 S.E.2d 450 (2020) (Beatty J., Dissenting); Scott Astrada & Marvin L. Astrada, *The Enduring Problem of the Race-Blind Reasonable Person*, AM. CONST. SOC’Y BLOG (May 11, 2020), <https://www.acslaw.org/expertforum/the-enduring-problem-of-the-race-blind-reasonable-person/>.

²⁸ *Spears*, 429 S.C. at 449 (Beatty J., Dissenting). See also *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).

²⁹ *Ligon v. City of New York*, 925 F.Supp.2d 478, 533 n. 398 (S.D.N.Y. 2013); *People v. Perez*, 31 N.Y.3d 964, 980 n.3 (2018) (Rivera and Wilson, JJ., dissenting); Emily J. Sack, *Police Approaches and Inquiries on the Streets of New York: The Aftermath of People v. De Bour*, 66 NYU L. REV. 512, 520, 548–53 (1991) (observing that “the courts routinely conflate the De Bour standards and use inappropriately low levels of suspicion to justify police intrusions,” and that “the multitiered structure of the De Bour model allows inadequately justified low-level intrusions to escalate quickly into inappropriate forcible stops and arrests”).

³⁰ Andrew Denney, *After 40 Years, ‘De Bour’ Author Sees Need for a Fresh Look*, N.Y.L.J. (May 23, 2016), <https://www.law.com/newyorklawjournal/almID/1202758274433/> (quoted in *Perez*, 31 NY3d at 980 n.3.).

While complex and often contentious legal standards apply to the various types of stops, the reality is that, for many New Yorkers, any level of questioning by NYPD officers is frightening and disruptive. Regardless of an officer's intent, many New Yorkers do not feel free to leave when an officer approaches and may worry about their safety should they not comply with an officer's questioning. This is likely of even greater concern to Black and Latinx people who experience disproportionate levels of police violence. As a result, Level 1 and Level 2 encounters can have the same type of negative effects on individuals and communities experiencing high rates of these encounters as those most impacted by stop-and-frisk.³¹ However, under current City law, the public does not have the comprehensive data needed to understand the frequency, focus, and scope of these investigative police encounters, including warning signs of racial discrimination and other civil rights violations. Int. 586 would fill the existing gaps in this data by requiring the NYPD to report on all levels of police stops and encounters, including where they happen, demographic information on the person stopped, the reason for the encounter, and whether the encounter leads to any use of force or enforcement action.

For these reasons, we urge the Council to swiftly pass Int. 586 to close the current stop reporting loophole and make available necessary and more comprehensive data on stops to New Yorkers.

II. Int. 538 (Hudson): Reporting on Consent Searches

In addition to our support of Int. 586, Legal Aid urges the NYC Council to amend the City's Administrative Code to require the New York Police Department (NYPD) to report on the use of consent searches (Int. 538-2022).

A. Legal Framework for Consent Searches

When police officers do not have a warrant or other legal basis to perform a search of a home, vehicle, or person, they nonetheless may legally conduct a search if given consent.³²

³¹ Emily Badger, *The Lasting Effects of Stop-and-Frisk in Bloomberg's New York*, N.Y. TIMES (Mar. 2, 2020), <https://www.nytimes.com/2020/03/02/upshot/stop-and-frisk-bloomberg.html#:~:text=We%20now%20know%20that%20students,likely%20to%20retreat%20from%20civic.> (“We now know that students heavily exposed to stop-and-frisk were more likely to struggle in school, that young men were more likely to experience symptoms of anxiety and depression, that this exposure fostered cynicism in policing and government writ large, and that it made residents more likely to retreat from civic life.”).

³² *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973).

Consent to a search must be entirely voluntary and not the product of “official coercion, actual or implicit, overt or subtle.”³³ Courts stress the complexity of determining consent and the heavy burden on police officers to prove it.³⁴ A New Yorker might give verbal or non-verbal consent,³⁵ but a lack of objection to a search or even verbal assent does not necessarily amount to consent.³⁶ This uncertainty makes consent searches a legally thorny issue and all too easily abused by police.³⁷

In 2017, this Council passed the consent search law of the Right to Know Act (RTKA) to end the NYPD’s practice of coercing New Yorkers into allowing searches of their homes, vehicles, and persons when there was no legal justification for a search, aside from an individual’s implied “consent.” Broadly, the consent search law requires that NYPD officers notify New Yorkers of their right to decline such searches to help ensure that consent, when given, is voluntary and informed. While the RTKA made strides in ensuring that NYPD officers conduct consent searches in compliance with the Constitution, Legal Aid Criminal Defense attorneys and our clients across all five boroughs report that the NYPD continues to conduct deceptive and coercive searches supposedly based on consent.

At the time of the Right to Know Act’s passage, sponsors negotiated an administrative agreement with then Mayor de Blasio to ensure that the reporting would include instances when New Yorkers declined to give consent. Int. 538 would codify into law the administrative agreement to report all requests to search. These data are essential for providing oversight on the use of consent searches. Without these data, communities and advocates would be in the dark about the demographics of the populations the NYPD targets for searches and even the total number of people subject to consent search requests. Further, comparing data on the full universe of requests to search with data on the instances in which the request was granted will yield valuable insights on the overall rate of refusal and any differences in rates among vulnerable populations.

³³ *People v. Gonzalez*, 39 N.Y.2d 122, 128 (1976).

³⁴ *See, e.g., Matter of Daijah D.*, 86 A.D.3d 521, 522 (1st Dept. 2011) (listing nuanced factors to be analyzed in determining whether consent was obtained); *Gonzalez*, 39 N.Y.2d at 128.

³⁵ *People v. Bunce*, 141 A.D.3d 536, 537 (2d Dept. 2016).

³⁶ *People v. Freeman*, 29 N.Y.3d 926, 928 (2017) (no consent where the defendant was under arrest and apparent consent was a capitulation to authority).

³⁷ *See generally* Roseanna Sommers & Vanessa K. Bohns, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, 128 YALE L. J. 1962 (2019). *See also* *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting) (discussing how identity shapes experience with police and whether a person believes they can refuse an officer’s requests).

B. Reporting on DNA Consent Searches

Importantly, Int. 538 would clarify that the consent search reporting requirements apply to NYPD collection of DNA samples when such collection is premised on the consent of the person whose DNA is sampled. Int. 538's addition of DNA sample collection to the consent search reporting requirements will provide important data on how often the NYPD is seeking consent to obtain, and how often people are refusing to provide, DNA samples.

While we do not have the data on how often, and on what legal basis, the NYPD collects DNA samples—something Int. 538 will help address in regards to DNA collection by consent search—what we do know about the NYPD's DNA collection practices is alarming.³⁸ For example, in a high-profile investigation of the killing of a jogger in Howard Beach in 2016, top NYPD officials ordered officers to round up 360 Black and Latinx men who had previously been arrested near the neighborhood to collect their DNA.³⁹ Many of the men targeted had previously been arrested for only low-level misdemeanors like shoplifting and driving without a license, and had no connection whatsoever to the case, amounting to a racially-biased dragnet.⁴⁰ The NYPD's problematic DNA collection practices do not stop at violating the civil rights and genetic privacy of adults in murder investigations, however. In 2020, the NYPD admitted in a hearing before this Committee to collecting DNA samples from juveniles despite having asked for, and been denied, consent from a parent or guardian.⁴¹ Instead of seeking consent, officers often surreptitiously collect DNA samples by offering people being questioned, including children as young as 11 years

³⁸ Legal Aid is currently challenging this practice for violating a host of state and federal laws in the case *Leslie v. City of New York*, 22-cv-2305 (S.D.N.Y.), <https://www.courtlistener.com/docket/63176263/leslie-v-city-of-new-york/>.

³⁹ *See Men Caught in NYPD Dragnet Say They Feel Targeted, Harassed*, WNYC (May 10, 2019), <https://www.wnyc.org/story/men-caught-nypd-dragnet-say-they-feel-targeted-harrassed/>; Graham Rayman, *NYPD Detectives Demanded DNA Swabs from Hundreds of Black and Latino Men while Hunting Killer of Howard Beach Jogger* (May 10, 2019), <https://www.nydailynews.com/new-york/nyc-crime/ny-men-caught-up-in-nypd-jogger-dna-dragnet-object-to-the-tactic-20190510-h4i4q7p4wzhtbpmjmdilvxsc5u-story.html>.

⁴⁰ Graham Rayman, *NYPD Detectives Demanded DNA Swabs from Hundreds of Black and Latino Men while Hunting Killer of Howard Beach Jogger* (May 10, 2019), <https://www.nydailynews.com/new-york/nyc-crime/ny-men-caught-up-in-nypd-jogger-dna-dragnet-object-to-the-tactic-20190510-h4i4q7p4wzhtbpmjmdilvxsc5u-story.html>.

⁴¹ *Oversight Hearing T2020-5738: DNA Collection and Storage in NYC*, 152-164 2020 (statement of Bob Barrows, NYPD Legal Director).

old, a beverage or chewing gum, which they later use to obtain a DNA sample without the person knowing or consenting,⁴² a practice which Legal Aid is currently challenging in federal court.⁴³

While our lawsuit focuses on surreptitious collection—and not cases in which consent was sought—the abuses being challenged in this lawsuit, along with the above examples, highlight the need for more transparency, oversight, and accountability in how the NYPD collects DNA samples generally. Int. 538 helps to address this need by bringing to light more information on consent searches for DNA samples, which Legal Aid fully supports. Additionally, we would welcome the opportunity to work with the Council in the future on legislation that would address additional transparency needs related to the collection and use of DNA by the NYPD and other city agencies that fall outside of the scope of this bill.

We enthusiastically support Int. 538 and emphasize that it is critical to capturing important data on the NYPD’s use of consent searches in a variety of contexts, including DNA, and that increased transparency is a critical first step to ensuring the lawfulness of the NYPD’s consent search practices.

ADDITIONAL LEGISLATION UNDER CONSIDERATION

I. Int. 386-2022 (Cabán): Reporting on Complaints of Misconduct

Legal Aid wholeheartedly supports the purpose of the proposed legislation to increase transparency on police misconduct and the NYPD disciplinary system. We believe that Int. 386 could be strengthened by incorporating amendments codifying a requirement to maintain public databases of police misconduct records, specify the types of case-level records that must be disclosed in those databases, and impose timelines for updating the databases to ensure that they remain current. We would welcome an opportunity to collaborate with the bill’s sponsors to accomplish the intent of the bill while best responding to the current needs of police transparency advocates.

⁴² See *Oversight Hearing T2020-5738: DNA Collection and Storage in NYC*, 29 2020 (statement of Emmanuel Katranakis, Deputy Chief Commanding Officer of Forensics) (admitting that more than 50% of DNA samples collected by the NYPD are collected surreptitiously, or without consent).

⁴³ See Compl. *Leslie v. City of N.Y.*, 1:22-cv-02305 (S.D.N.Y. 2022); *NYPD Accused of Collecting DNA for ‘Rogue’ Database*, ASSOCIATED PRESS (Mar. 22, 2022), <https://apnews.com/article/technology-science-crime-police-new-york-df99577889d617a4df48cd346dc38251>.

Legal Aid has long advocated for increased transparency and accountability on issues of police misconduct.⁴⁴ Along with Communities United for Police Reform, we successfully lobbied for the repeal of New York’s police secrecy law, Section 50-a⁴⁵, which exempted law enforcement disciplinary records from public disclosure under New York’s Freedom of Information Law (“FOIL”).⁴⁶ Section 50-a shrouded police misconduct in secrecy, leaving victims of police abuse in the dark on whether abusive officers would be held accountable. With the historic repeal of Section 50-a in June 2020, the New York State legislature and then Governor Cuomo made clear that law enforcement misconduct records must be made available to the public.

Following the repeal of Section 50-a, New Yorkers have a right, under FOIL, to the types of misconduct information that Int. 386-2022 would make available. However, thanks to the breadth of FOIL, which makes *all* records of city and state agencies presumptively public unless specifically exempted, New Yorkers have a right to significantly more information than the aggregate statistical reports that Int. 386-2022 would provide. This includes the full records of almost all police misconduct, provided certain redactions are made for the privacy of victims of police misconduct.⁴⁷

Robust case-level data beyond aggregate statistics on police misconduct—including allegations against specific officers by name, badge number, and tax ID, whether the allegation was substantiated or not, and any disciplinary actions taken by the NYPD—are critical for tracking the misconduct of individual police officers as well as analyzing and assessing the overall problems with the NYPD disciplinary system at large. Such records are particularly useful for criminal defense attorneys as impeachment material against corrupt officers, civil rights attorneys when making a case against the individual officers who abused their clients, and victims of police violence and their loved ones when seeking accountability and the removal of officers with long histories of violence.

While the repeal of Section 50-a made case-level police misconduct records available to the public under FOIL, the process of filing and potentially litigating FOIL requests can be

⁴⁴ See Cop Accountability Project, Legal Aid Society, <https://legalaidnyc.org/programs-projects-units/the-cop-accountability-project/>.

⁴⁵ N.Y. Civ. R. L. § 50-a.

⁴⁶ Tom Robbins, *How a Coalition of New York Activists Revealed Police-Department Secrets* (July 17, 2020), <https://www.newyorker.com/news/our-local-correspondents/how-a-coalition-of-new-york-activists-revealed-police-department-secrets>.

⁴⁷ N.Y. Pub. Off. L. §§ 87; 86 (9).

burdensome and challenging. Further, the FOIL process creates opportunities for the NYPD, like other police departments in the state, to attempt to shirk its responsibility to making these records public through delays, citing FOIL exemptions not intended to shield the records, and ultimately fighting individual records requests in court.⁴⁸ Anticipating these sorts of challenges to obtaining records which rightfully belong to the public, Legal Aid joined others, including the former Comptroller, in advocating for the proactive disclosure of police misconduct records on city agency websites and NYC Open Data.⁴⁹ Proactive disclosure of disciplinary records not only eases the burden on members of the public seeking the records, but it can also save tax dollars by easing the burden on the agencies' records access officers tasked with responding to individual FOIL requests.⁵⁰

In response to the repeal of Section 50-a and calls for proactive publication of disciplinary records, the Civilian Complaint Review Board (“CCRB”) announced plans to launch a portal containing complaints it received, including the name of the officer, type of allegation, CCRB determination and disciplinary recommendation, and final NYPD discipline for each complaint.⁵¹ This prompted a group of police, corrections, and fire unions to file a lawsuit challenging the proactive disclosure of misconduct records in July 2020.⁵² Communities United for Police Reform intervened to join as a party in the case,⁵³ and many organizations and elected officials working on issues of police accountability and good government, including Legal Aid, filed amicus briefs to protect the legislative intent of the repeal of Section 50-a and the City’s responsibility to disclose police misconduct records.⁵⁴ The district court sided with transparency advocates, interpreting the

⁴⁸ See, e.g., NYCLU on First Appellate Decisions Reaffirming 50-a Repeal and Police Transparency (Nov. 10, 2022), <https://www.nyclu.org/en/press-releases/nyclu-first-appellate-decisions-reaffirming-50-repeal-and-police-transparency>.

⁴⁹ Ltr. from Tina Luongo, Legal Aid Society, to Mayor Bill De Blasio and City Council Speaker Corey Johnson (June 15, 2020), available at: <https://www.courtlistener.com/docket/17351193/33/3/uniformed-fire-officers-association-v-deblasio/>; Ltr. from Comptroller Scott Stringer to Mayor de Blasio & Speaker Johnson (June 13, 2020), available at: <https://comptroller.nyc.gov/wp-content/uploads/2020/06/6.13.20-Letter-to-Mayor-de-Blasio-and-Speaker-Johnson-1.pdf>.

⁵⁰ Stringer Ltr., *supra* note 49.

⁵¹ See Compl. *Uniformed Fire Officers Ass'n v. De Blasio*, 20-cv-5441 at 2 (S.D.N.Y.). [hereinafter *UFOA Dkt.*]

⁵² *Id.*

⁵³ See Order, *UFOA Dkt. No. 41*, available at: <https://www.courtlistener.com/docket/17351193/33/2/uniformed-fire-officers-association-v-deblasio/>

⁵⁴ See Amicus Briefs, *UFOA Dkt. Nos. 118, 120, 129, 131, 139, 140, 150, 152, 161, 164.*

intent of 50-a repeal to allow the proactive disclosure of disciplinary records.⁵⁵ In a victory for police accountability advocates and champions of the 50-a repeal, the police unions withdrew their lawsuit after the Second Circuit Court of Appeals allowed the CCRB to move forward with publishing police misconduct records.⁵⁶

In the years since the repeal and police union lawsuit, both the CCRB and NYPD have implemented some form of proactive publication of related records.⁵⁷ The CCRB maintains a regularly updated public database of complaints received after the year 2000 that is searchable by officer.⁵⁸ While this dataset appears to be a complete accounting of all complaints received with few exceptions,⁵⁹ New Yorkers are entitled to more robust information about the complaints and CCRB's handling of the investigations, including investigator closing reports, which the CCRB is currently in the process of redacting and adding to its website.

In contrast to the CCRB, the NYPD has implemented little meaningful proactive disclosure of misconduct records. The NYPD's website now publishes disciplinary trial decisions⁶⁰ and a database of officer profiles which includes rank history, department recognition and awards, trainings attended, arrest statistics, and disciplinary history statistics.⁶¹ But the disciplinary information contained in the NYPD officer profiles is woefully incomplete, failing to disclose what we believe are the vast majority of internal NYPD disciplinary records (misconduct investigated internally, whether within the officer's command, the NYPD's Internal Affairs Bureau, the Force Investigation Division, or other unit within the NYPD rather than by the CCRB), based on our comparison of records in the portal with records Legal Aid attorneys have obtained through other means, including FOIL.

While much progress has been made since the days before the repeal of Section 50-a, more needs to be done to ensure the purpose of the repeal—increased police transparency and accountability—is accomplished. Former Mayor de Blasio's promise of making police misconduct

⁵⁵ Order, *UFOA* Dkt. No. 197. The order reflects a dispute at the time as to whether some records should be withheld from publication due to possible expungement. Following discovery and further briefing from the parties, the Court found for transparency advocates, leading to the police unions to withdraw their case.

⁵⁶ Stip. of Voluntary Dismissal, *UFOA* Dkt. No. 261.

⁵⁷ NYPD Member of Services Histories, <https://www.nyc.gov/site/ccrb/policy/MOS-records.page> (last visited Mar. 29, 2023); Officer Profile, <https://nypdonline.org/link/2> (last visited Mar. 29, 2023).

⁵⁸ NYPD Member of Services Histories, *supra* note 56.

⁵⁹ The CCRB does not publish complaints that resulted in mediation between the officer and complainant.

⁶⁰ Trial Decisions Library, <https://nypdonline.org/link/1016> (last visited Mar. 29, 2023).

⁶¹ Officer Profile, *supra* note 56.

records public⁶² remains only partially realized, as records that should belong to the public are the subject of FOIL disputes and delayed production by overburdened records access officers at both the NYPD and CCRB, and currently, there is no city law mandating the content, frequency of updates, and maintenance of these online databases. Without a mandate from Council that contains specific direction, experience shows that the NYPD will find ways to disclose the minimum of information and to delay required disclosures.

Int. 386 is a good first start and could be strengthened by codifying a requirement to maintain public databases of police misconduct records that specify the types of case-level records that must be disclosed and timelines for updating the databases to ensure that they remain current. Codifying these requirements would ensure that the CCRB continues its proactive disclosure of important data and would force the NYPD to implement more meaningful and accurate disclosure of records that rightfully belong to the public. Legal Aid welcomes the opportunity to work with the sponsors of Int. 386 to help update and strengthen the bill to achieve greater police transparency and finally deliver on the promise of the repeal of 50-a in New York City.

II. Int. 585-2022 (Williams): Granting Access to BWC Footage to OIG-NYPD

Legal Aid supports Int. 585-2022, a bill which would require the NYPD to share all body-worn camera footage with the Department of Investigation's Office of the Inspector General for the NYPD (OIG-NYPD), and suggests amendments described below to improve the bill.

Under the New York City Charter, OIG-NYPD is tasked with investigating, reviewing, studying, auditing, and making recommendations related to the operations, policies, programs, and practices of the NYPD.⁶³ In order to carry out this mission, OIG-NYPD, as with all inspectors general within the Department of Investigation, is entitled to broad access to agency records that may support its investigations.⁶⁴

Body-worn camera footage undoubtedly falls within the scope of records to which OIG-NYPD is entitled and therefore we applaud Int. 585 for addressing this issue. However, this bill

⁶² See Michael Gartland, Mayor de Blasio vows to make NYPD cop records public 'in a matter of days'—pending court approval, NYDN (February 17, 2021), <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-nyc-nypd-50a-records-de-blasio-20210217-ofxlphzevndnfogazziq5enu34-story.html>.

⁶³ N.Y.C Charter § 803(c)(1).

⁶⁴ Exec. Order 16 § 4(a) (1978) (“the Commissioner shall have authority to examine, copy or remove any document prepared, maintained, or held by any agency except those documents which may not be so disclosed according to law. Inspectors General shall have the same authority in their respective agencies.”).

could be improved by amendments that would provide OIG-NYPD with direct access to the NYPD's BWC footage platform rather than requiring the NYPD to "provide access to all body-worn camera footage ... within 120 hours of the recording of such footage."⁶⁵ While Int. 585 as written would effectively grant OIG-NYPD access all NYPD body-worn camera footage, it does not explicitly provide for the complete and timely access to footage in the manner that only direct access to the NYPD's BWC platform would achieve. Given the sheer volume of BWC footage that is recorded in New York City daily, requiring the NYPD to continuously provide OIG-NYPD with all footage within 120 hours would pose a significant administrative and technological burden.

We therefore propose amending Int. 585 to provide OIG-NYPD with direct access to the NYPD's body-worn camera platform in the same manner contemplated by Int. 938-2023 (Adams), which defines direct access as "real time connectivity to the network servers hosting digital material which is provided to remote users for the purpose of accessing such information."⁶⁶ With the above amendments, Int. 585-2022 will give the OIG-NYPD a necessary tool to better deliver on its stated mission of enhancing the effectiveness of the police department, increasing public safety, protecting civil liberties and civil rights, and increasing the public's confidence in the police force, thus building stronger police-community relations.⁶⁷

III. Int. 781A-2022 (Williams): Reporting on Justification for Vehicle Stops

Legal Aid expresses support for Int. 781A-2022, a bill which would require the NYPD to include the justification used by officers for conducting vehicle stops. This bill enhances vehicle traffic stop reporting requirements added by Local Law 45 (2021), which Legal Aid joined other advocates, including Communities United for Police Reform and the New York Civil Liberties Union, in supporting when it was passed in December 2021.⁶⁸

⁶⁵ Int. 585-2022.

⁶⁶ Int. 938-2023.

⁶⁷ Inspector General for NYPD, <https://www.nyc.gov/site/doi/offices/oignypd.page>.

⁶⁸ See Thomas Tracy, NYPD to document all vehicle stops to accommodate NYC law aimed at curbing racial profiling, NYDN (Dec. 28, 2021), <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-to-document-all-car-stops-20211228-ypydqvtlt5c7xfyannazoj3udi-story.html>. ("Advocates said the law will help the public know if police officers consider motorists' race when they stop vehicles, said Christopher Dunn, legal director of the New York Civil Liberties Union. 'This change closes a large reporting loophole that allowed the NYPD to evade accountability for vehicle stops. The public now will know whether, as we suspect, racial profiling fuels police stops of cars just as it has fueled police stops of pedestrians,' Dunn said.")

As mandated by Local Law 45 (2021), the NYPD began releasing quarterly reports on vehicle stops in 2022,⁶⁹ and have since released reports on vehicle stops through the 4th quarter of 2022.⁷⁰ The data released so far is informative—and potentially concerning—for police accountability and civil rights advocates, as it reveals stark racial disparities in traffic stops.⁷¹ More information, including the justifications for these stops, as required by Int. 781A-2022, will help advocates and oversight entities assess the lawfulness of vehicle traffic stops.

IV. Int. 938-2023 (Adams): Granting BWC Access to the CCRB

Legal Aid expresses full support for Int. 938-2022, a bill which would require the NYPD to provide the CCRB with direct access to officer body-worn camera (BWC) footage, and we thank Speaker Adams and her co-sponsors for taking a needed step towards increased police accountability and addressing a culture of impunity within the NYPD that allows police abuses to persist.

Int. 938 seeks to address a perennial issue faced by City agencies tasked with conducting independent oversight of NYPD: securing prompt and reliable access to the NYPD records necessary for each agency to effectively carry out its mandate. Unfettered access to law enforcement records is among the key principles of effective police oversight,⁷² and unnecessary overreliance on the overseen police department for records weakens the independence of the oversight agency. As this Council is aware, the NYPD regularly obstructs oversight investigations conducted by both the Civilian Complaint Review Board (CCRB) and Office of the Inspector General for the NYPD (OIG-NYPD) by delaying and/or denying records requests.⁷³ This issue is

⁶⁹ New York City Police Department, NYPD Announces Release of First Quarterly Report on Citywide Vehicle Encounters (May 20, 2022), <https://www.nyc.gov/site/nypd/news/p00048/nypd-release-first-quarterly-report-citywide-vehicle-encounters>.

⁷⁰ New York City Police Department, Vehicle Reporting, <https://www.nyc.gov/site/nypd/stats/reports-analysis/vehicle-stop-reports.page>.

⁷¹ See, e.g., Rebecca Greenberg, Report: 88% of drivers arrested by the NYPD during traffic stops in 2022 were Black or Latino (Feb. 21, 2023), <https://www.nyl.com/nyc/all-boroughs/public-safety/2023/02/22/report--88--of-drivers-arrested-by-the-nypd-during-traffic-stops-in-2022-were-black-or-latino>.

⁷² Michael Vitoroulis, Cameron McEllhiney, and Liana Perez, *Civilian Oversight of Law Enforcement: Report on the State of the Field and Effective Oversight Practices*, 66-7, Office of Community Oriented Policing Services.

⁷³ See, e.g., Eric Umansky, *The NYPD Isn't Giving Critical Bodycam Footage to Officials Investigating Alleged Abuse*, ProPublica (July 3, 2020), <https://www.propublica.org/article/the-nypd-isnt-giving-critical-bodycam-footage-to-officials-investigating-alleged-abuse>; Rachel Vick, *NYPD Delays Hinder CCRB Investigations, Report Finds*, Queens Daily Eagle (Nov. 5, 2021), <https://www.propublica.org/article/the-nypd-isnt-giving-critical-bodycam-footage-to-officials-investigating-alleged-abuse>; Topher Sanders, *Inspecting The NYPD "Puzzle Palace"*, ProPublica (April 15, 2021), <https://www.propublica.org/article/inspecting-the-nypd-puzzle-palace>.

particularly acute with respect to body-worn camera (BWC) footage, which has had a significant impact on the CCRB's ability to thoroughly investigate allegations of police misconduct in a timely manner.⁷⁴

At last week's Public Safety Committee hearing on the FY2024 budget, NYPD Commissioner Sewell admitted to dismissing CCRB recommendations for discipline in 346 cases in 2022 because she claims that the CCRB's recommendations were received too close to the statute of limitations for her to take any disciplinary action.⁷⁵ While this assertion is debatable,⁷⁶ the length of time that CCRB investigations take is undoubtedly a problem for victims of police misconduct and their advocates. At the same hearing, CCRB Executive Director Jonathan Darche testified that one of the main reasons leading to delays in CCRB investigations are delays in access to critical evidence, including BWC footage, echoing concerns raised to this Committee during past hearings.⁷⁷

Int. 938-2022 would greatly improve the functioning of civilian oversight by ensuring that CCRB investigators have access to BWC footage without undue delays. This will eliminate unnecessary back-and-forth between the CCRB and NYPD in disputes over access to BWC footage, saving staff time and tax dollars and allowing the CCRB to conclude investigations, issue its findings, and advance cases more quickly. While this alone will not resolve other problems plaguing NYPD accountability systems, including other forms of obstructing civilian oversight, a slow-moving NYPD disciplinary trial process⁷⁸ and the Commissioner's frequent downgrading of

⁷⁴ Civilian Complaint Review Board, *Strengthening Accountability: The Impact of the NYPD's Body-Worn Camera Program on CCRB Investigations*,

https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWCReport.pdf

⁷⁵ Testimony of NYPD Commissioner Keechant Sewell, NYC Public Safety Committee, Mar. 20, 2023. Video available online: <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1081360&GUID=9BCBD908-D217-4E65-9032-0AA79767D289&Options=info&Search=>

⁷⁶ Importantly, the statute of limitations had not passed in 346 number of these cases, and they were received with an average of three weeks before to the SOL. Some that were dismissed landed on her desk with more than 50 days, and yet the Commissioner chose not to act and let the clock run out. See Ltr. from Corey Stoughton, Legal Aid Society, to Mayor Adams, (Mar. 15, 2022), <https://legalaidnyc.org/wp-content/uploads/2023/03/2023-3-14-Letter-to-Mayor-re-NYPD-Discipline-Departures.pdf>.

⁷⁷ Testimony of CCRB Executive Director Jonathan Darche, NYC Public Safety Committee, Mar. 20, 2023, [; Testimony of CCRB Executive Director Jonathan Darche, NYC Public Safety Committee, Nov. 22, 2021, <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=901425&GUID=F4B2624B-C245-498B-B77F-0502D35C8C3B&Options=info&Search=>.](https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1081360&GUID=9BCBD908-D217-4E65-9032-0AA79767D289&Options=info&Search=)

⁷⁸ Mary Jo White, et al., *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department*, 51 (2019).

the CCRB’s disciplinary recommendations⁷⁹, it stands to make an important and needed contribution to improving the NYPD’s disciplinary system.

V. Int. 944-2023 (Hanks): Reporting on Civil Lawsuits Alleging NYPD Misconduct

Legal Aid supports and suggests strengthening amendments for Int. 944-2023, a bill that would require the NYC Law Department to report on civil lawsuits filed against NYPD officers within 15 days of being informed of the action, and to make quarterly reports on new lawsuits and lawsuit that have reached a disposition, including the amounts of payments made to plaintiffs by the City. Legal Aid welcomes enhanced reporting on civil actions against the NYPD officers and offers suggestions below to strengthen the bill and further transparency on police misconduct matters.

Int. 944-2023 takes important steps to improve the City Law Department’s reporting on lawsuits against NYPD officers. By requiring prompt disclosure of new lawsuits and quarterly reporting on lawsuit updates and dispositions—rather than the current reporting requirement of just twice per year—Int. 944 will increase transparency on NYPD abuses of civil rights that give rise to lawsuits and cost taxpayers’ money in paying for their defense and settlement payouts. Additionally, more regular reporting will empower those seeking accountability in individual cases—such as defendants who are accused of crimes by officers whose lawsuit allegations reveal have a history of making false arrests or falsifying evidence, or the victims of police violence and their loved ones seeking accountability for an officer with a track record of violence.

While Int. 944 makes important changes to the reporting of civil actions against NYPD officers, it could be improved in two ways. First, the bill could require the Law Department to maintain a more user-friendly database, similar to the CCRB’s Member of Service Histories⁸⁰, where individuals could look up lawsuits against specific officers by name or other identifiers in addition to lawsuits that name the City of New York as a defendant. This would aid members of the public in researching officer misconduct without requiring individuals to sift through large spreadsheet files. Further, a searchable database of lawsuits should include the actual lawsuit

⁷⁹ See Maria Cramer, *NYPD Rejected Over Half of Review Board’s Discipline Recommendations*, N.Y.T. (Mar. 16, 2023), <https://www.nytimes.com/2023/03/16/nyregion/nypd-discipline-recommendations.html>.

⁸⁰ *NYPD Member of Service Histories*, Civ. Complaint Rev. Bd, <https://www.nyc.gov/site/ccrb/policy/MOS-records.page>.

complaint so that members of the public are not required to register for the federal court system’s electronic filing system and incur fees to review complaints against NYPD officers.⁸¹

Second, the bill could be strengthened to capture a more complete accounting of the City’s civil liability for NYPD misconduct by expanding the bill to include a requirement for the Comptroller to report on claims settled without commencing a civil action in state or federal court. Before filing a lawsuit against the City of New York for certain kinds of claims based in state law, victims of police misconduct must file a Notice of Claim with the New York City Comptroller and undergo a 50-H Hearing, in which the Comptroller’s office assesses the claim and decides whether or not to make a pre-litigation settlement offer.⁸² This practice allows the Comptroller to settle likely meritorious claims out of court and avoid the high cost of litigation. While the Comptroller reports on total pre-litigation settlements each year, these aggregate numbers do not tell the full story of police misconduct, and the individual, case-specific misdeeds of officers—which the City pays to settle—are not reported anywhere. This bill has an opportunity to remedy this oversight so that New Yorkers can better understand the full scope of misconduct of which NYPD officers are accused as well as the settlements paid by the City for these claims. Int. 944 enhances current reporting on lawsuits against NYPD officers, which we support and would gladly work with the sponsors to strengthen the bill to be even more responsive to the needs of police accountability advocates and the public.

VI. Int. 948-2023 (Louis): NYPD Reporting Requirements

Legal Aid expresses support for Int. 948-2023, a bill that would increase the frequency and expand the scope of existing reports required to be produced by the NYPD and disclosed to the public, including data related to the NYPD’s use of stop-question-and-frisk, its deployment of officers and use of overtime spending, and crime status information, such as data on criminal complaints, arrests, and summons issued.

Int. 948 would enrich and expand multiple categories of policing data. Most significantly, Int. 948 requires reporting on currently unavailable details of police overtime, including the type of policing activities involved in recorded overtime. The NYPD is on track to spend over \$800

⁸¹ See *PACER Pricing: How Fees Work*, Public Access to Court Electronic Records (PACER), <https://pacer.uscourts.gov/pacer-pricing-how-fees-work>.

⁸² N.Y. Gen. Mun. L. Ch. 24, Art. 4 § 50-E; N.Y. Gen. Mun. L. Ch. 24, Art. 4 § 50-H.

million in overtime this fiscal year,⁸³ while other city agencies have seen their budgets slashed. New Yorkers, especially those targeted by the police, deserve to know exactly where their tax dollars are going. Legal Aid Society clients and their communities are also well-aware of the link between overtime and misconduct.⁸⁴ More detailed overtime data would allow communities and advocates to better describe and target the problem. For these reasons, we encourage the Public Safety Committee and NYC Council to pass Int. 948-2023 to make more data on policing practices available to the public.

CONCLUSION

We applaud efforts to pass needed legislation on police transparency and accountability, especially Ints. 538-2022 (Hudson), 586-2022 (Williams), and 938-2023 (Adams) which stand to make important contributions on some of the most urgent NYPD oversight issues and urge Chair Kamillah Hanks to advance these bills through the Public Safety Committee and Speaker Adrienne Adams to bring them to a vote by the full NYC Council this spring.

Further, we believe Ints. 386-2022 (Cabán), 585-2022 (Williams), 781A-2022 (Williams), and 944-2023 (Hanks) can be strengthened with amendments described above to better advance the bills' efforts at increasing police transparency and accountability. We welcome the opportunity to work with the sponsors of these bills to address our concerns and suggested amendments.

ABOUT THE LEGAL AID SOCIETY

Since 1876, The Legal Aid Society has provided free legal services to low-income New Yorkers. Over the years, our organization has expanded to become the nation's largest and oldest legal services provider for low-income individuals and families. We specialize in three distinct practice areas – Criminal Defense, Civil, and Juvenile Rights – where we passionately advocate for our clients in their individual case, for their communities in our policy work, and for institutional change in our law reform litigation. Each year our staff handles over 300,000 cases throughout New York City, bringing a depth and breadth of perspective that is unmatched in the

⁸³ See Greg B. Smith, NYPD's Track Record on Overtime Spending Casts Doubt on Budget Claims, The City (Jan. 12, 2023), <https://www.thecity.nyc/2023/1/12/23552970/nypd-overtime-pay-increasing-nyc-budget-fiscal-2024>.

⁸⁴ See Fola Akinnibi et al., NYC Cops Log Millions of Overtime Hours. New Yorkers Don't Feel Safer, Bloomberg (Oct. 13, 2021), <https://www.bloomberg.com/graphics/2021-nyc-police-overtime-pay/>.

legal profession. The Society's law reform/social justice advocacy also benefits some two million low-income families and individuals in New York City, and the landmark rulings in many of these cases have a national impact. The Legal Aid Society provides comprehensive representation to many of the most marginalized communities in New York. We are a valuable piece of the New York City tapestry, and our work is deeply interwoven within the fabric of many low-income New Yorkers' lives.

Our Criminal Defense Practice is the city-wide public defender, practicing in each of the five boroughs and annually representing over 200,000 low-income New Yorkers accused of unlawful or criminal conduct on trial, appellate, post-conviction matters, and representing prisoners' rights in city jails and state prisons seeking to reform systems of incarceration. The Law Reform and Special Litigation Unit of the Criminal Defense Practice engages in affirmative litigation and policy advocacy on systemic legal issues affecting the rights of Legal Aid's criminal defense clients, including issues of police violence, harassment, and abuse. The Cop Accountability Project within the Special Litigation Unit at The Legal Aid Society works specifically to combat the police misconduct too many of our individual clients experience. Additionally, we maintain the most comprehensive set of NYPD misconduct records in a database called the Law Enforcement Look Up (LELU) on our website. In these capacities, and through our role as counsel in several civil rights cases, the Legal Aid Society is in a unique position to testify about the bills and resolutions introduced by the City Council today.

March 29, 2023

To: Committee on Public Safety - NYC Council
From: The 19th Precinct Community Council
Cc: Councilmember Julie Menin & Councilmember Keith Powers

Re: Written testimony on police reporting and body camera bills

Dear Committee Members:

We have significant concerns about these bills which increase reporting requirements as well as require records for stops and complaints. We are also concerned about the bills which require greater access of body camera footage to the CCRB, Inspector General and Office of Records and Information.

The bills increasing reporting requirements would be an unnecessary burden on the department and put additional strain on much needed manpower at a time when the city cannot afford to pull cops off the streets. This type of micromanagement will create unintended consequences for officers on the street who may hesitate to make valid stops because of bureaucratic requirements. We believe that these bills will make New Yorkers less safe and have marginal or no benefit in reducing aberrant police behavior.

We also oppose the bills which would grant broader access of body camera footage to the CCRB, Inspector General and Department of Records and Information Services. We have concerns that an expansion of access leads to greater chances of leaks and will reduce privacy protection.

These bills would serve to weaken our police department and its officers who have performed exceptionally well under the most difficult circumstances.

The broader question is whether any of these actions are necessary. The NYPD is one of the best trained and most restrained police forces in the country. In 2018 the NYPD recorded the lowest use of force since it began issuing comprehensive reports on officer conduct. From 2015 – 2019 NYC had the lowest number of civilians shot and killed per capita of any city in the US over 300k people. These facts show a highly disciplined police force. Instead of placing constraints and additional requirements on the police one could rightly say that other police departments should use NYC's police force as a model for how a department is run. No police department is perfect and we should always strive for improvement. In our view the most constructive remedies should focus on increased training, high standards of recruitment and provide sufficient supervisory support from senior officers in the department. These bills would be counterproductive to improving our police force and so we express our strong opposition.

Thank you for your consideration of our views.

Sincerely,

Nicholas Viest
President
19th Precinct Community Council
153 East 67th Street
New York, NY 10065

Testimony
New York City Council Committee on Public Safety
March 27, 2023

Althea Eboh
Justice Committee Member

My name is Althea Eboh, and I am a Black immigrant from London living in New York for almost 20 years. I came here with my two sons. I am submitting the testimony to call on the City Council to pass the How Many Stops Act immediately.

Although I myself have not experienced being stopped by the police, my older son has had multiple baseless encounters with the NYPD—They had no reason to stop my son other than him being a young Black man. These are experiences that could have had tragic consequences. I am thankful every day that he had the presence of mind to be calm and assert his rights.

When my son was in college, he and his friends were stopped outside a subway station. They were young Black men who were college students on their way home. They were all arrested for misdemeanor assault. My son received a desk appearance ticket. The police had no reason to arrest them other than they were young, Black and standing around talking. In other words - this should have been a level one street stop, but the NYPD escalated it. No one had a weapon, nor were any of them in possession of any drugs. They did not fit any descriptions of anyone wanted for a crime. This arrest could have had a very serious impact on our immigration status as we were in the process of getting Green Cards. This arrest could have led to his deportation. Fortunately, I was in the position millions of New Yorkers are not, to hire a lawyer to represent my son in court. We refused to accept any plea and were ready to go to trial. After numerous adjournments the case was dismissed as the DA did not have a case.

My son is now a Registered Nurse. The harassment has not stopped. He was accused of jumping the turnstile by some police officers at a subway station in the Bronx. My son of course

was in possession of a MetroCard - he always has one for work - and he challenged the officers to explain to him why they stopped him. Of course, they were reluctant to articulate a reason. His girlfriend at the time was scared as the cops were not happy that my son was asserting his right to know the reason for the stop. We all know how that kind of encounter can end.

My son was stopped on another occasion near Target in the Bronx. He was trying to buy diapers for his daughter who was staying over at my house. The reason the NYPD gave: he “looked” like someone who committed a crime and was walking “too fast”. In other words, walking while Black. My son declined to be searched and was held for an extended period of time while they “checked” his identity in their system.

These are just the encounters my son has made me aware of. He has alluded to stops and searches when he was in high school that he does not want to talk about. My son doesn't feel it is worth his time making complaints about these stops. He believes this part of his life - something that is “normal”.

All these experiences, in my opinion, are an abuse of authority. Had my son been added to that infamous list of Black men killed by police officers in this country, they would have claimed his actions were “threatening”. There is a total lack of accountability on the part of NYPD, but we as residents of the City have to tread on eggshells wondering when is the next time our rights will be violated at a whim.

The NYPD is supposedly supposed to protect and serve, but for people like my son, they are enforcers and abusers of authority. Passing the How Many Stops Act is not the only thing we

need to stop abuse but will add a layer of transparency so that New Yorkers will be able to see how often these kinds of baseless stops happen. This is an essential first step we need to change NYPD policy and behavior. -

Testimony

New York City Council Committee on Public Safety
March 27, 2023

Gladys Williams
Stepmother of Antonio Williams
Justice Committee Member

My name is Gladys Williams. I'm the stepmother of Antonio Williams, who was unjustly murdered by the NYPD on September 29, 2019. I am also a member of the Justice Committee, an organization that works with families who've lost loved ones to the police.

Antonio was a loving presence in our family. I remember the day he found out he was having a son, he recorded his reaction and shared that joy with us. Now there is a player missing in the basketball competitions with his father and brothers. There's a heartbreaking absence at holidays when the family is gathered together.

Antonio was simply waiting for a cab, not bothering anyone, when he was approached by plainclothes cops.

The NYPD has different definitions for level 1, 2 and 3 stops. If officers don't have reasonable suspicion you're involved in a crime, that's level 1 or 2 and you should be free to leave. Antonio should have been free to go.

But – the reality is, to us, the different levels of stops usually feel the same. NYPD doesn't tell you what level stop it is as they approach, or at any time. It's frightening. You feel like officers are detaining you. You feel like you are in danger. In the worst cases – the NYPD escalates these encounters and someone ends up beaten or killed, like what happened with Antonio.

If we had more transparency about how the NYPD is using low level stops to harass and abuse Black and Latinx New Yorkers before Antonio was killed, maybe he would still be here today. If officers are forced to report EVERY stop and *why*

they are making them, they'll be less likely to use these stops in illegal and abusive ways, because they know they'll be exposed.

That's why my family and other families who have lost loved ones to the NYPD are calling on the City Council to pass the How Many Stops Act immediately!

We are also calling for Mayor Adams and Commissioner Sewell to fire all of the officers involved in our sons' murder and disband Neighborhood Safety Teams.

We must take action to ensure what happened to our son does not happen again. The How Many Stops Act is one of several pieces that must come together for real NYPD transparency and community safety.

This City Council has the opportunity to move NYC away from a safety regime that relies on policing and criminalization to one that prioritizes safety, justice, and dignity for all. The first step you must take is passing the How Many Stops Act.

Thank you

City Council Hearing on Public Safety Budget

Hello, my name is Julie and as a resident of New York City, I want to urge the City Council to hold the NYPD's Strategic Response Group accountable for its abuses and disband the unit.

I testified at this City Council's hearing on disbanding the SRG unit on the first of March — which was notable due to the complete absence of the NYPD. I stated then and now — why should they show up for these hearings when there are no consequences for them if they don't? They think they are not accountable to anyone, elected or not, and can grab as much cash from the city budget as they want. I attended the first 2 hours of the NYPD testimony and all I heard was lies, obfuscation, denial, and “playing” dumb. So they show up only when they want the cash, refuse to answer simple questions, and lie. And that usually works for the NYPD, but that is not democracy. And I hope the City Council members can see right through their little game.

Why can the Mayor give BILLIONS of dollars of the city budget to the NYPD while simultaneously taking it away from schools, libraries, hospitals, housing for the homeless, and every other social program that actually HELPS people? One reason is the Mayor's constant propaganda about “rising crime rates” — which was echoed in this morning's testimony. (And, as an aside, in the US today, NYC ranks 5th in the list of the “safest large cities” and doesn't even make it in the top 15 “most dangerous large cities” to live in.) Tell me about those “rising crime rates” again?

But it helps to justify the bloated beached whale that is the budget of the NYPD, and, in particular, the Strategic Response Group. This unit must be disbanded and the millions of dollars (how many millions? At least \$133 million according to testimony this morning) re-invested in our communities. This unit that was originally created for “counter-terrorism” work (and apparently still is according to testimony this morning) is now a constant presence at every protest, big and small, around the city. They show a clear bias in who they deem “peaceful” and “violent,” and, tellingly, view racial justice protesters as “enemy combatants.”

Their training and implementation that focuses on force and violence against its own citizens is making it seem as though we are living in a war zone. And the SRG is a paramilitary unit that, if allowed to continue, will be deployed to target, harass, and brutalize the groups of people that the Mayor, billionaires, and others wants to criminalize, thus justifying even more violence. As an example, they were deployed to violently clear homeless encampments and arrest the people living there. Since when is homelessness an actual crime? Why is poverty being criminalized?

During the NYPD testimony this morning, it was stated that overtime is out of control because enough officers need to be available to respond to calls. In our neighborhood there is a person who occasionally goes off their medication. They have lived in our neighborhood for years. All the neighbors know about this person and know that they are not dangerous. A couple of weeks ago, this person again went through a cycle of mental health crisis. At least 6 cop cars, with 2 officers in each, responded to the call for this person when really they only needed mental health support.

Eventually they were taken to a hospital by ambulance. I have no idea if that trip was voluntary or involuntary — which is another one of the more shameful mayoral great ideas. But of those 12 cops who responded, I wonder how many of them were on overtime? They clearly were not necessary nor wanted, and they all just stood around or looked at their phones or chatted with each other. FOR 2 HOURS! If you want to cut overtime costs, it was obvious to me as I watched this event unfold.

Similarly, when the SRG is deployed to the Planned Parenthood clinic defense the first Saturday of every month, they outnumber the abortion rights activists by a factor of 10 on average. And, they show clear bias by escorting clinic harassers and actual Nazis (aka Proud Boys, but they're nazis!), in and around the church courtyard. An incredible waste of money.

And, finally, I'd like to offer a suggestion: since the city must bear the massive financial burden of settling the many, many lawsuits due to police brutality — from the SRG and the NYPD — (we don't have an actual number because the NYPD refused to answer that question) that the settlement money come directly from the NYPD's own inflated and overblown budget. If they had to pay out millions of "their" dollars, it might help them re-think their habit of acting with impunity, and possibly make them behave with more accountability. Additionally, individual officers should have to pay restitution monetarily to the victims of their abuse.

Thank you.

Testimony

New York City Council Committee on Public Safety
March 27, 2023

Samy Feliz
Brother of Allan Feliz
Justice Committee Member

My name is Samy Feliz. I am the brother of Allan Feliz, who was unjustly stopped in his car, beaten, tasered, shot and killed by NYPD Sgt. Jonathan Rivera and Officers Michelle Almanzar and Edward Barrett in the Bronx on Oct. 17, 2019. I am also a member of the Justice Committee, an organization that works with families who've lost loved ones to the police.

After Sgt. Rivera shot Allan, Officer Barratt yanked his limp body from the car, exposing his genitals in the process. None of the officers had the decency to cover Allan up. Instead they left him bleeding in the street, cuffed and exposed.

My family and I are calling on Mayor Adams and Commissioner Sewell to fire Sgt. Rivera and Officers Barrett and Almanzar for murdering my brother, Allan Feliz and I hope the City Council will stand with us in this.

Sadly, this kind of disrespect and violence is the rule, not the exception. Under Mayor Eric Adams, I've only seen it get worse. I don't even tell my mother about the times I get stopped, or detained anymore to keep her from the added trauma.

Along with losing my brother to the NYPD, I have been regularly profiled, harassed and unjustly stopped by the NYPD. Like too many other Black and Latinx New Yorkers, I have too many stories I could share.

These days, the NYPD is running rampant in my neighborhood in Washington Heights.

Just two weeks ago, I was pulled over for no reason, misidentified as my dead brother, and arrested, leaving me completely traumatized and insulted.

Only about 3 months ago, I was hanging out with a group of people when two NYPD vehicles showed up, one unmarked and one marked. I'm pretty sure the unmarked car was the Neighborhood Safety Team because the officers that came out didn't have full uniforms.

One of the NST officers started asking me questions and then asked to search me, but he kept his hand on his gun the whole time. I said yes because I felt like saying no could be deadly. The Right to Know Act law that New Yorkers fought for and won in 2017 requires officers to gain "voluntary, knowing and intelligent consent" to search you without probable cause. This was not consent. It was coercion and intimidation.

The NYPD's culture of violence and disrespect for Black and Latinx New Yorkers is not a problem of a few bad apples. It comes from a systemic lack of transparency and accountability.

With Mayor Adams flooding more and more officers into our communities, full transparency is more urgent than ever. That's why, I am standing with other families who've lost loved ones to the NYPD and organizations and communities from across the city to call you, the City Council, to immediately pass the How Many Stops Act!

Thank you.

Testimony

New York City Council Committee on Public Safety
March 27, 2023

Shawn Williams
Father of Antonio Williams
Justice Committee Member

My name is Shawn Williams. I'm the father of Antonio Williams, who was unjustly murdered by the NYPD on September 29, 2019. I am also a member of the Justice Committee, an organization that works with families who've lost loved ones to the police.

Antonio was a loving son, twin, brother and father. Because of the violent actions of the NYPD's Anti-Crime Unit, Antonio's babies have to grow up without their dad.

Antonio was simply waiting for a cab in the Bronx, when plainclothes officers drove up and jumped out at him. They had no legal justification to stop him. His only crime was "standing while being Black."

The NYPD had no reasonable suspicion for stopping Antonio. In other words, this was a level 1 or 2 stop and Antonio had the right to leave, but when he did, officers chased him, beat him, and gunned him down in a hail of 15 bullets. They were so reckless that when they shot at our son from over 50 feet away in the dark, they also murdered one of their own.

NYPD claims Antonio had a gun, but my son never pulled a gun and that gun was never fired. My son was never a threat to anyone.

The Anti-Crime unit that killed Antonio was disbanded the next year because of its brutality, but Mayor Adams brought it back and rebranded it as "Neighborhood Safety Teams". The Mayor has been patting himself on the back about these teams – but the truth is – this is the NYPD's version of the Memphis SCORPION unit that killed Tyre Nichols.

Now Mayor Adams wants to put these teams in more neighborhoods, which is why passing the How Many Stops Act is so urgent.

My son's murder started with a reasonable suspicionless stop. So did the NYPD murder of Eric Garner. These egregious and unjust acts of violence are both part of the NYPD's long history of racial profiling. Even though, in 2013, the courts ruled that the NYPD was making unconstitutional stops, the abuse has continued and, as my son's case proves this. The lack of systemic transparency in the NYPD is what allows these unjust practices to continue and as long as they do, there will just be more abuse and more lives will be lost. That's why passing the How Many Stops Act is a matter of life and death.

My name is Steve Kohut. I'm a native New Yorker who has lived my whole life in the Lower East Side in NYCHA's Lilian Wald Houses. Police violence is the norm for my community. That's why I joined the Justice Committee and represent JC in the Floyd v the City of New York Joint Remedies Process. It's also why I'm here to call for the immediate passage of the How Many Stops Act.

I grew up getting stopped and harassed by the NYPD. I vividly remember a February afternoon, when I was walking down my block. All of a sudden, a van came the wrong way down a one-way street, jumped the curb and stopped on the sidewalk right beside me. Three plain clothes officers jumped out. They put one gun up against my right temple, one against the left side of my neck, and one pointed at my chest. I was told if I moved, I would be shot. Never once did the officers tell me what their reasonable suspicion was for stopping me.

This is just one of many encounters I've had with the NYPD. I was never arrested on any of these occasions, but I have been told, "you got lucky today." The sad thing is, these were lucky days. Even so-called "low-level encounters" can mean death, like happened to Antonio Williams.

My building and neighborhood are patrolled by PSA 4 and the 7th and 9th precincts, so we are stopped by three separate commands. Most of these police encounters are not being reported because NYPD officers are classifying them as level 1 or 2 stops. The reality for the rest of us is – it doesn't matter if the NYPD calls the stops level 1, 2 or 3, because they all feel the same. They feel like you're not free to leave and your life is in danger.

I chose to represent JC in the Floyd JRP because these are life-or-death matters. Throughout the process, we advocated for the NYPD to publicly report aggregate data, including demographic information, on Level 1 and 2 encounters. The JRP Facilitator acknowledged the importance of reporting on Level 1 and 2 encounters in his final report, but the Court failed to implement this reform, which is why we must turn to the City Council.

With Mayor Adams bringing back the Anti-Crime Unit and stepping up police presence, conditions are getting worse in our communities.

Providing the police transparency New Yorkers deserve and the City needs in order to make informed decisions about public safety is in your hands. Please stand with New Yorkers by passing both bills of the How Many Stops Act immediately.

From: Tom Keough <info@sg.actionnetwork.org>
Sent: Thursday, March 23, 2023 11:05 AM
To: Hanks, Kamillah; Speaker Adams; Brannan, Justin; Edwards, Tanisha; Kotowski, Owen; NYC Council Hearings; Storey, Jack; Rosenberg, Jonathan; Wright, Eisha; Scimone, Paul; Obichere, Chima
Subject: [EXTERNAL] Testimony for 3/20 Public Safety Hearing: Safety Means #CareNotCuts & Cuts to NYPD Bloat!

Public Safety Council Committee,

Dear Speaker, Council Finance Chair, Committee Chair & staff:

I am submitting written testimony for public record. I support a #PeoplesBudget, and I believe safety means #CareNotCuts and cuts to NYPD bloat.

The NYPD is over budget, spending more than \$800 million on overtime and \$200 million on abuse and misconduct lawsuits, and Mayor Adams is paying for it by cutting more than \$600 million from public schools, \$30 million from libraries, \$169 million from CUNY colleges, and \$567 million from 3K pre-kindergarten and childcare. His priorities are upside down. The safest communities have the most resources, and the mayor's proposed cuts to our schools, libraries, and social services undermine public safety at the most basic level.

As we all know, social and housing services create real safety for our communities. City services and workforces that provide critical support to individuals and families who are struggling to make ends meet, ensuring that they have access to food, healthcare, and safe and affordable housing, keep people safe, secure, warm, and housed.

Any cuts to housing and social services and workforces will only exacerbate the existing inequalities and hardships faced by so many New Yorkers AND these cuts will make our city less safe. We saw this during the pandemic; when people are housing insecure, economically insecure, there is less safety for communities overall.

I urge the council to reject these harmful budget cuts and instead, invest in a real public safety budget. This budget would prioritize restorations to mental health, social, and housing services, while making cuts to NYPD's bloated budget, especially funds spent on overtime and misconduct, to reinvest in community safety solutions.

I also urge you to negotiate to reduce NYPD mission creep into areas like homeless outreach, and mental health outreach, and cut all currently vacant school police positions. This will not only save money but also redirect those resources to more effective solutions that will support our communities and youth.

By taking these steps, we can create a safer, more equitable city that works for ALL of its residents. I urge you to consider the well-being of all residents: reject proposed cuts to care-based programs and cut NYPD bloat instead.

Thank you.

Tom Keough
keoughnorgren@verizon.net
16th ST
Bklyn, New York 11215

Defending Right & Dissent supports the passage of the How Many Stops Act. We are a national civil liberties organization that advocates both of making the Bill of Rights a reality for everyone and for greater transparency around law enforcement. This bill would advance both.

The How Many Stops Act requires police to report the reason for a stop, the demographic information of the individual, and whether the encounter led to the use of force or enforcement actions. While stops based on reasonable suspicion (commonly known as “stop and frisk”) must be reported, the NYPD is not required to report data on two lower legal stops. This bill would change that.

Requiring NYPD to report low-level stops will give communities a fuller picture of who is targeted for stops and why. This transparency is essential in ensuring that communities have the data necessary to exercise oversight over policing. The passage of this bill would represent a necessary first step towards holding police accountable for their abuse of state power in our communities.

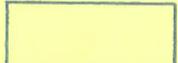
We know from the weight of evidence that stops based on reasonable suspicion have disproportionately impacted people of color. We lack similar data on these lower level stops, but given the racial disparities throughout policing and criminal law, one can anticipate that these biases will also exist here. These so-called lesser stops should be of no lesser-concern. Research documents the psychological impact of police stops on Black and Latinx communities, and the disparate impact of such stops is clear in policing data. But without fine-grained data, holding the NYPD accountable for bias in police stops is made more difficult

Defending Rights & Dissent strongly believes in the peoples’ right to know. The How Many Stops Act empowers the public and informs policy debates by requiring that information who’s stopped and why be made available to the public. This transparency legislation will be one step of many towards ensuring that policing powers are not weaponized against Black and Brown communities. We applaud the organizers fighting for this bill and urge the City Council to pass this necessary legislation.

cody@bordc.org

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 538+586 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: LEO FERGUSON
Address: 39 W. 67th Street NY NY 10023
I represent: SEWS FOR RACIAL + ECONOMIC JUSTICE
Address: N/A.

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Appearance Card



I intend to appear and speak on Int. No. 586 & 538 Res. No. _____

in favor in opposition

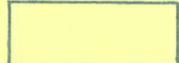
Date: 3/27/23

(PLEASE PRINT)

Name: David Moss
Address: _____
I represent: NAACP LEGAL DEFENSE FUND
Address: _____

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Appearance Card



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in favor in opposition

Date: 3-27-23

(PLEASE PRINT)

Name: Keith Fuller
Address: Evergreen Ave
I represent: Make The Food NY
Address: 301 Grove St



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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. all proposed Int. No. Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Nelly Kalnis

Address: _____

I represent: New York County Defender Association

Address: 100 William St. 20th floor New York, NY 10038

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4-23

(PLEASE PRINT)

Name: Shawn Williams

Address: Roosevelt Drive W. Haverstraw

I represent: _____ NY 10993

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 3-27-23

(PLEASE PRINT)

Name: Gladys A-Williams

Address: Roosevelt Dr W. Haverstraw NY 10993

I represent: Community for Police Reform

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 3/27/23

Name: Ibrahim (PLEASE PRINT) X - Impeded Individual

Address: Brooklyn, NY

I represent: Crown Heights

Address: Ralph Ave

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 5864538 Res. No. _____

in favor in opposition

Date: 3/27/2023

Name: Robert Willis (PLEASE PRINT)

Address: Fulton Ave Bronx N.Y. 10457

I represent: Latino Justice, PRLDEF

Address: 475 Riverside Dr, New York, N.Y.

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 586/538 Res. No. _____

in favor in opposition

Date: 3/27/23

Name: Christine Rivera (PLEASE PRINT)

Address: Russell Ave Elmont NY 11003

I represent: The Bronx Defenders

Address: 360 E. 161st St. Bronx NY 10451

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Appearance Card

I intend to appear and speak on Int. No. 538 & 586 Res. No. _____

in favor in opposition

Date: 03/27/23

(PLEASE PRINT)

Name: Rama JSSA - Ibrahim

Address: _____

I represent: Communities United for police reform

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 03-27-2023

(PLEASE PRINT)

Name: STEVE KOHUT

Address: E. HOUSTON ST.

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Kelli Young

Address: _____

I represent: _____

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jonathan Darche

Address: 100 Chmen Str

I represent: CCRB

Address: 11

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Appearance Card

I intend to appear and speak on Int. No. Intro 586 ⁵³⁸ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carmen Perez-Jordan

Address: Bennett Ave NY NY 10033

I represent: The Gathering for Justice

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Samah Sisay

Address: _____

I represent: Center for Constitutional Rights

Address: _____

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I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Michael Sisitzky

Address: _____

I represent: NYCU

Address: _____

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Appearance Card

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in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Brett Stovdt

Address: Public Screen Project

I represent: _____

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 586 + 538 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Maggie Hadley - Legal Aid Society

Address: _____

I represent: _____

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 5862 538 Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Michelle Feldman

Address: 935 Pacific Street Brooklyn

I represent: Center for Policing Equity

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 3/27/2023

(PLEASE PRINT)

Name: Sabrina Leon Johnson

Address: 120th Street NYC 10705

I represent: Justice Committee / Allan Felix Foundation

Address: 223 Buff at 105th St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 526 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Pilar DeJesus

Address: _____

I represent: Take Root Justice

Address: _____

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THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 538 Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: BEN WEINBERG

Address: _____

I represent: CITIZENS UNION

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Director Michael Clarke

Address: IPP

I represent: NYPD.

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

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in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Deputy Commissioner Amy Litwin

Address: IPP

I represent: NYPD.

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 3/27/23.

(PLEASE PRINT)

Name: Director Allison Aronson

Address: IPP

I represent: NYPD.

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Appearance Card

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in favor in opposition

Date: 3/27/23.

(PLEASE PRINT)

Name: Chief Matthew Pontillo

Address: IPP

I represent: NYPD.

Address: _____

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Appearance Card

I intend to appear and speak on Int. No. 585 Res. No. _____

in favor in opposition

Date: 3.27.23

(PLEASE PRINT)

Name: Sylvia Kollar

Address: 31 Chambers St. Suite 304

I represent: Dept. of Records + Information Services

Address: _____

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 944 Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Nancy Savasta

Address: 100 Church Street NY NY 10007

I represent: NYC Law Department

Address: 100 Church St NY NY 10007

**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: _____

(PLEASE PRINT)

Name: Christopher Leon Johnson

Address: Buffalo Avenue

I represent: SELF

Address: Buff 9101

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 944 Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Beth Nedow

Address: 100 Church Street

I represent: NYC Law Dept.

Address: 100 Church Street

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 944 Res. No. _____

in favor in opposition

Date: 3/27/2023

(PLEASE PRINT)

Name: Eric Eichenholz

Address: 100 Church Street, NY, NY 10007

I represent: NYC Law Department

Address: 100 Church Street, NY, NY 10007

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 944 Res. No. _____

in favor in opposition

Date: 3/27/23

(PLEASE PRINT)

Name: Muriel Goode-Trofan

Address: 100 Church Street

I represent: New York City Law Dept

Address: 100 Church Street

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