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**THE COUNCIL OF THE CITY OF NEW YORK**

**BRIEFING PAPER OF THE JUSTICE DIVISION**

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**COMMITTEE ON PUBLIC SAFETY**

**Hon. Donovan Richards, Jr., Chair**

**May 22, 2020**

**Oversight: NYPD Enforcement of Social Distancing**

1. **INTRODUCTION**

On May 22, 2020 the Committee on Public Safety, chaired by Council Member Donovan Richards, Jr. will hold an oversight hearing to examine the New York City Police Department’s (“NYPD” or “the Department”) policies and practices related to social distancing enforcement during the COVID-19 pandemic. Among those expected to testify include representatives from the NYPD, advocates, and members of the public.

1. **BACKGROUND**

In response to the COVID-19 pandemic, Governor Cuomo has issued several Executive Orders.[[1]](#footnote-2) The main components of these orders, which together constitute “New York State on PAUSE,” prohibit non-essential gatherings of any size, require businesses deemed non-essential to close, and mandate that individuals wear masks in public when social distancing of 6 feet or more cannot be maintained.[[2]](#footnote-3) Similarly, New York City Mayor Bill de Blasio has issued orders and declared a state of emergency. The violation of any locally issued state of emergency is a misdemeanor under state[[3]](#footnote-4) and local law.[[4]](#footnote-5) New York City Mayor Bill de Blasio charged the NYPD with enforcing these orders.[[5]](#footnote-6)

In addition to patrol officers who respond to violations they observe during routine patrol, the NYPD diverted approximately 700[[6]](#footnote-7) officers to a Citywide All-Out Task Force (“Task Force”) dedicated to social distancing enforcement.[[7]](#footnote-8) The NYPD informed the Council that the Task Force has been primarily deployed to locations such as parks, playgrounds, transit hubs, houses of worship, supermarkets, restaurants, and shopping areas, among others.[[8]](#footnote-9) In addition, Task Force members have been deployed to “areas designated by precinct borough commanders.”[[9]](#footnote-10)

Pursuant to a memorandum issued by the Department on March 27, officers were instructed to issue reminders to individuals gathering on public or private property, and non-essential businesses operating in violation of executive orders.[[10]](#footnote-11) Officers have been instructed to use summonses and arrests as a last resort for egregious violations.[[11]](#footnote-12)

Business operators who fail to comply with lawful orders to close can be issued a criminal court summons for violating an emergency measure established by the mayor.[[12]](#footnote-13) According to the NYPD, if an enforcement action escalates or amounts to an egregious violation of the directives, the operator may be arrested and issued a desk appearance ticket, either for the same offense, or for Obstructing Governmental Administration (OGA).[[13]](#footnote-14) If customers refuse to leave an establishment, they may be issued a criminal summons for Disorderly Conduct[[14]](#footnote-15), and if acting “disorderly” or impeding an officer from carrying out a directive, may also be arrested for any of the above offenses.[[15]](#footnote-16)

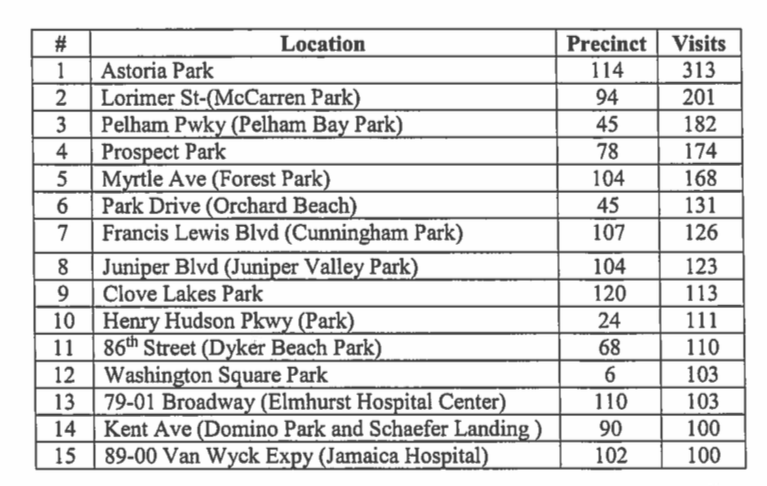
Individuals who fail to comply with “several lawful directives” to disperse on public property may be issued a criminal court summons for Disorderly Conduct.[[16]](#footnote-17) For those who refuse to disperse on private property, officers may issue a criminal court summons for violating an emergency measure established by the Mayor.[[17]](#footnote-18) Anyone who “impedes the ability” of an officer to disperse a group may be arrested for OGA.[[18]](#footnote-19)

1. **NYPD DATA ON SOCIAL DISTANCING ENFORCEMENT**

Between March 16 and May 10, 2020, the Department has engaged in over 1 million contacts with members of the public related to its social distancing enforcement efforts, issued 407 COVID-related criminal summons and conducted 125 COVID-related arrests.[[19]](#footnote-20)

Data on enforcement actions disaggregated by race was not made available by the Department through the first eight weeks of the COVID-19-related emergency orders, either to the public or to the Council despite repeated requests by the Council for such information. On May 7, the Brooklyn District Attorney’s office released information showing that of the 40 people arrested in Brooklyn, 35 were black, 4 were Hispanic, and one was white.[[20]](#footnote-21) Subsequently, the NYPD provided data to the Council indicating that 90% of the individuals arrested and 80% of the individuals summonsed for social distancing offenses were black or Hispanic, and 7% and 15%, respectively, were white. Approximately 32% of the New York City population is white, and 53% of the population is black or Hispanic.[[21]](#footnote-22) In addition, recent reports have indicated that most 311 complaints come from affluent areas of the city.[[22]](#footnote-23)

The extent to which the activities of the Task Force contributed to these racial disparities is unclear, because the Department has not provided comprehensive data on the frequency of the Task Force’s deployment to specific locations, neighborhoods, or establishments, despite a request for such information by the Council on May 8, 2020. The Department stated that between March 30 and May 10, the Task Force responded to 38,000 complaints at 12,000 locations Citywide.[[23]](#footnote-24) The Department also reported that during the first two weekends of May, the Task Force was deployed to patrol NYC Parks, and distributed over 132,000 face masks to the public.[[24]](#footnote-25) The Department also noted that it made over 100 visits to fifteen locations, suggesting that it is tracking the deployment of the Task Force[[25]](#footnote-26):



1. **PUBLIC DIALOGUE REGARDING SOCIAL DISTANCING ENFORCEMENT**

The release of information showing racial disparities in NYPD enforcement of social distancing prompted numerous media reports and statements by elected officials criticizing the NYPD’s practices, which some have compared them to the Department’s use of Stop, Question and Frisk.[[26]](#footnote-27) In addition, videos of several incidents depicting officers using force to enforce social distancing- including one video depicting an officer using excessive force against a bystander to a social distancing arrest, and another video depicting an officer forcefully arresting a mother in front of her child after she allegedly failed to wear a  face mask on the subway- have prompted significant public outcry.[[27]](#footnote-28) Media reports have noted the contrast of these images and videos to those of white New Yorkers in more affluent areas of the City violating social distancing rules in parks, in which NYPD officers were handing out facemasks, which has generated calls for the NYPD to cease enforcement of social distancing by prominent media outlets,[[28]](#footnote-29) elected officials.[[29]](#footnote-30) The Patrolmen’s Benevolent Association has stated that “the NYPD needs to get cops out of the social distancing enforcement business altogether.”[[30]](#footnote-31)

NYPD Commissioner Dermot Shea has acknowledged that these videos were “disheartening” while disputing any characterization of the Department as racist.[[31]](#footnote-32) The Commissioner has cited the relatively low number of enforcement actions compared to the number of outreach efforts conducted by officers as evidence of a lack of heavy-handed enforcement.[[32]](#footnote-33) The Commissioner also suggested that larger social issues outside the control of NYPD impact these disparities.[[33]](#footnote-34)

On May 15, Mayor de Blasio announced that the NYPD will no longer make arrests for failure to wear face masks, and would prioritize enforcement in cases of large gatherings of people.[[34]](#footnote-35) The City will also expand a program to hire ‘Social Distancing Ambassadors’ to conduct public outreach regarding the importance of social distancing.[[35]](#footnote-36)

Additional concerns have been raised over some officers’ failure to wear protective equipment, [[36]](#footnote-37) even while conducting social distancing enforcement.[[37]](#footnote-38) The Department has not mandated that officers wear face masks at all times while on duty.[[38]](#footnote-39)

1. **HISTORY OF RACIAL DISPARITIES IN NYPD ENFORCEMENT**

Despite the relatively low number of social distancing enforcement actions, the racial disparities in enforcement and images of violent arrests have reignited longstanding tensions with the Department over the manner in which certain communities have been policed. For some communities, recent enforcement trends are reminiscent of heavy-handed and oppressive tactics that the City has pledged to abandon.

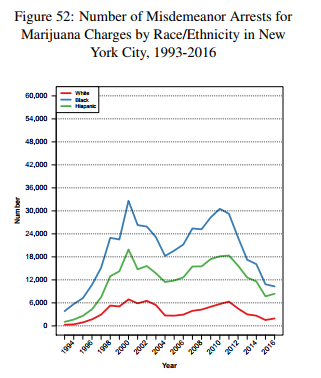
* 1. **Stop, Question and Frisk**

From 2004 to 2011, the number of stop, question and frisks (“stop-and-frisk”) in New York City rose each year, from just under 470,000 stops in 2007 to over 680,000 stops in 2011.[[39]](#footnote-40) At the height of stop-and-frisk in 2011, approximately 53% of those stopped were black, 34% were ispanic, and just 9% were white,[[40]](#footnote-41) while the population of NYC was 23% lack, 29% ispanic, and 33% white.[[41]](#footnote-42) In addition, few of the stops conducted between 2004 and 2012 actually resulted in the discovery of a weapon (1.5%) or contraband, (14%) an arrest (6%), or a summons (6%), raising questions about the efficacy of the tactic.[[42]](#footnote-43)

In *Floyd v. City of New York* (2013), the court found that the NYPD’s stop-and-frisk practices were unconstitutional.[[43]](#footnote-44) Since the *Floyd* ruling and the appointment of the federal monitor to oversee the remedial order over the NYPD’s stop-and-frisk practices, the number of individuals stopped under the stop-and-frisk program decreased dramatically. In 2017, the NYPD reported 11,629 stops—a 98% decrease from 2011.[[44]](#footnote-45) Although the number of stops has fallen significantly, stark racial disparities remain in the stops conducted. A 2019 report by the New York Civil Liberties Union found that out of 11,008 reported stops in 2018 and 13,549 stops in 2019, 88% were of black and Hispanic males.[[45]](#footnote-46)

* 1. **Marijuana Enforcement**

The possession and sale of recreational marijuana is illegal in New York State.[[46]](#footnote-47) NYPD arrests for marijuana possession have shown similar racial disparities to its Stop and Frisk practices, though the trend of disproportionately higher numbers of arrests of black and Hispanic New Yorkers for marijuana predates the increase of the use of Stop and Frisk.[[47]](#footnote-48) In addition, these racial disparities have remained consistent despite extreme fluctuations in the number of arrests for marijuana misdemeanor charges.[[48]](#footnote-49)

[[49]](#footnote-50)

In 1993, the arrest rate for marijuana charges for blacks was 20.9 times higher than the arrest rate for whites.[[50]](#footnote-51) That difference peaked at 23.3 times higher in 1994.[[51]](#footnote-52) In 2016, while the overall arrest rate had begun to decline, the arrest rate for blacks was still 7.8 times higher than for whites.[[52]](#footnote-53) A 2019 report from the New York City Department of Health and Mental Hygiene (DOHMH) found that more (24%) white New Yorkers reported marijuana use than black (14%) and Hispanic (12%) New Yorkers.[[53]](#footnote-54)

Even after the decrease in the use of Stop and Frisk and a major reduction in the total number of marijuana arrests, the racial disparity in those arrests continued.[[54]](#footnote-55) From January to March of 2018, 93 percent of people arrested for marijuana possession were people of color.[[55]](#footnote-56)

The NYPD has maintained it was enforcing marijuana laws in response to 911 and 311 calls and community complaints.[[56]](#footnote-57) However, call data suggested there was no correlation between arrests for marijuana and complaints made to the department through 911 and 311 calls.[[57]](#footnote-58)

In June 2018, Mayor Bill de Blasio announced that the NYPD would no longer make arrests for marijuana possession in most circumstances.[[58]](#footnote-59) While the number of total arrests decreased dramatically after this announcement, the same racial disparities in marijuana enforcement have persisted.[[59]](#footnote-60)

1. **ISSUES AND CONCERNS**

The racial disparity in social distancing enforcement actions raises serious questions about the manner in which the NYPD’s enforcement practices continue to have systemic impacts on certain racial groups. To date, the Department has not released data about its deployment of the City-wide All-out Task Force that could explain whether departmental policy decisions have affected the disproportionate rates of enforcement.

The Committee will examine the potential for employing mitigating strategies to reduce racial disparities in its enforcement practices. The Committee will evaluate the Department’s deployment patterns, and its mechanisms for ensuring that officers comply with guidelines from health experts while they are on duty, follow their instructions to avoid confrontation, and use arrests and summonses as a last resort. Finally, the Committee will explore whether the City can rely primarily on community partner organizations, social distancing ambassadors, and other non-law enforcement personnel to encourage social distancing in a manner that will minimize tension between communities and police officers and keep New Yorkers safe during this crisis.

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2. Executive Order No. 202, *available at*: <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york> [↑](#footnote-ref-3)
3. New York Executive Law § 24(5) [↑](#footnote-ref-4)
4. New York Administrative Code § 3-108 [↑](#footnote-ref-5)
5. “New York City Police Step Up Patrols to Enforce Social Distancing”, The Wall Street Journal, March 23, 2020, *available at:* <https://www.wsj.com/articles/new-york-city-police-step-up-patrols-to-enforce-social-distancing-11584997999> [↑](#footnote-ref-6)
6. Information provided by the NYPD to Council [↑](#footnote-ref-7)
7. NYPD Commissioner’s Letter to Committee on Public Safety Chair Donovan Richards, dated May 13, 2020. [↑](#footnote-ref-8)
8. *Id*. [↑](#footnote-ref-9)
9. *Id*. [↑](#footnote-ref-10)
10. NYC Finest Message dated March 27, 2020 [↑](#footnote-ref-11)
11. *Id.* [↑](#footnote-ref-12)
12. New York City Administrative Code § 3-108 [↑](#footnote-ref-13)
13. NYC Finest Message dated March 27, 2020; PL 195.05 [↑](#footnote-ref-14)
14. NYC Finest Message dated March 27, 2020; PL 240.20(6) [↑](#footnote-ref-15)
15. NYC Finest Message dated March 27, 2020; PL [↑](#footnote-ref-16)
16. NYC Finest Message dated March 27, 2020; PL 240.20(6) [↑](#footnote-ref-17)
17. *Id.* [↑](#footnote-ref-18)
18. *Id.*  [↑](#footnote-ref-19)
19. NYPD Commissioner’s Letter to Committee on Public Safety Chair Donovan Richards, dated May 13, 2020. For the purposes of reporting these statistics, the Department has defined COVID-related arrests to include arrests that originated as a warning for social distancing violations but resulted in an arrest for more serious conduct such as gun possession. The department has not provided the number of arrests solely related to violations of social distancing orders. [↑](#footnote-ref-20)
20. Ashley Southall, “Scrutiny of Social Distancing Policing as 35 of 40 Arrested are Black,” The New York Times May 7, 2020, *available at* <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html> [↑](#footnote-ref-21)
21. U.S. Census Bureau Estimates as of July, 2019, *available at:* <https://www.census.gov/quickfacts/newyorkcitynewyork> [↑](#footnote-ref-22)
22. “Mask Complaints Pour In From New York City’s Wealthiest Neighborhoods,” The Wall Street Journal, *available at:* <https://www.wsj.com/articles/mask-complaints-pour-in-from-new-york-citys-wealthiest-neighborhoods-11590013156?shareToken=st9f105a5ef8fc4e6cacb8e275dd98c4c6&reflink=share_mobilewebshare> [↑](#footnote-ref-23)
23. NYPD Commissioner’s Letter to Committee on Public Safety Chair Donovan Richards, dated May 13, 2020. [↑](#footnote-ref-24)
24. *Id.* [↑](#footnote-ref-25)
25. *Id.* [↑](#footnote-ref-26)
26. Ashley Southall,“Scrutiny of Social Distancing Policing as 35 of 40 Arrested are Black,” New York Times May 7, 2020, *available at* <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html> [↑](#footnote-ref-27)
27. “Video: NYPD Officer Beats Bystander, Kneels On His Head During Social Distancing Enforcement”, Gothamist, May 3, 2020,  *available at:* <https://gothamist.com/news/video-nypd-officer-beating-social-distancing-enforcement>; “NYPD Officers arrest woman for allegedly striking officer after she did not wear face mask as required, authorities say,” CNN, *available at:* <https://www.cnn.com/2020/05/15/us/nypd-arrest-woman-face-mask/index.html> [↑](#footnote-ref-28)
28. “Social Distancing, Without the Police,” NYTimes Editorial Board, May 18, 2020, *available at:* <https://www.nytimes.com/2020/05/18/opinion/nypd-coronavirus-arrests-nyc.html> [↑](#footnote-ref-29)
29. “Eric Adams Says Cops Should Not Enforce Social Distancing”, City Limits, May 7, 2020, *available at:* <https://citylimits.org/2020/05/07/eric-adams-says-cops-should-not-enforce-social-distancing/>; <https://twitter.com/NYCSpeakerCoJo/status/1260947740466589699?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1260947740466589699&ref_url=https%3A%2F%2Fabc7ny.com%2Fkaleemah-rozier-virla-video-nypd-coronavirus-nyc%2F6182382%2F> [↑](#footnote-ref-30)
30. PBA Statement on Social Distancing Enforcement, May 4, 2020, *available at:* <http://nycpba.org/press-releases/2020/social-distancing-enforcement/> [↑](#footnote-ref-31)
31. “NYC Commissioner Denies Racial Bias in Social Distancing Policing,” New York Times, May 13, 2020, *available at:* <https://www.nytimes.com/2020/05/13/nyregion/nypd-social-distancing-race-coronavirus.html> [↑](#footnote-ref-32)
32. NYPD Commissioner’s Letter to Committee on Public Safety Chair Donovan Richards, dated May 13, 2020. [↑](#footnote-ref-33)
33. “NYC Commissioner Denies Racial Bias in Social Distancing Policing,” New York Times, May 13, 2020, *available at:* <https://www.nytimes.com/2020/05/13/nyregion/nypd-social-distancing-race-coronavirus.html> [↑](#footnote-ref-34)
34. “New York Mayor Announces NYPD Will Scale Back Social Distancing Enforcement”, Time, May 15, 2020, *available at:* <https://time.com/5837596/new-york-mayor-announces-nypd-will-scale-back-social-distancing-enforcement/> [↑](#footnote-ref-35)
35. “NYC to Expand Number of Non-NYPD Social Distancing Ambassadors To 2,300 Following Viral Videos Of Arrests”, CBS New York, May 10, 2020, *available at:* https://newyork.cbslocal.com/2020/05/10/social-distancing-ambassadors/ [↑](#footnote-ref-36)
36. “NYPD Sending Mixed Messages on Social Distancing,” Gothamist, April 7, 2020, *available at:* <https://gothamist.com/news/nypd-sending-mixed-messages-social-distancing> [↑](#footnote-ref-37)
37. “Video Shows NYPD Commander Without Face Mask Overseeing Violent Arrests In East New York,” Gothamist, May 5, 2020, *available at*: <https://gothamist.com/news/video-shows-nypd-commander-without-face-mask-overseeing-violent-arrests-east-new-york> [↑](#footnote-ref-38)
38. Information provided to Council by NYPD [↑](#footnote-ref-39)
39. https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page [↑](#footnote-ref-40)
40. https://www1.nyc.gov/site/nypd/stats/reports-analysis/stopfrisk.page [↑](#footnote-ref-41)
41. *Floyd v. City of N.Y.* - 959 F. Supp. 2d 540 (S.D.N.Y. 2013), 572-575 [↑](#footnote-ref-42)
42. *Id.* [↑](#footnote-ref-43)
43. *Floyd v. City of N.Y.* [↑](#footnote-ref-44)
44. <https://www.nyclu.org/en/news/stop-and-frisks-plummeted-under-new-york-mayor-bill-de-blasio-racial-disparities-havent-budged> [↑](#footnote-ref-45)
45. <https://www.nyclu.org/en/stop-and-frisk-data> [↑](#footnote-ref-46)
46. See Penal Law Article 221 [↑](#footnote-ref-47)
47. Chauhan, P., Tomascak, S., Cuevas, C., Hood, Q. O., & Lu, O. (2018, February). Trends in Arrests for Misdemeanor Charges in New York City, 1993-2016. New York: New York. available at [http://misdemeanorjustice.org/wp-content/uploads/2018/01/2018\_01\_24\_MJP.Charges.FINAL.pdf](http://misdemeanorjustice.org/wp-content/uploads/2018/01/2018_01_24_MJP.Charges.FINAL_.pdf) [↑](#footnote-ref-48)
48. *Id.* [↑](#footnote-ref-49)
49. *Id.* [↑](#footnote-ref-50)
50. Chauhan, P., Tomascak, S., Cuevas, C., Hood, Q. O., & Lu, O. (2018, February). Trends in Arrests for Misdemeanor Charges in New York City, 1993-2016. New York: New York. available at <http://misdemeanorjustice.org/wp-content/uploads/2018/01/2018_01_24_MJP.Charges.FINAL_.pdf> (Herein Misdemeanor Justice Project Report) [↑](#footnote-ref-51)
51. *Id.*  [↑](#footnote-ref-52)
52. *Id.* [↑](#footnote-ref-53)
53. https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief117.pdf [↑](#footnote-ref-54)
54. “Marijuana arrests in city increased in 2016, with large racial disparities”, Politico, *available at* :<https://www.politico.com/states/new-york/city-hall/story/2017/02/marijuana-arrests-in-nyc-increase-in-2016-still-large-racial-disparities-109306> [↑](#footnote-ref-55)
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56. NYPD Testimony, Oversight Hearing: Enforcing Marijuana Laws, Feb. 26, 2018. [↑](#footnote-ref-57)
57. Cheney, Brenden “Data don’t show link between marijuana complaints and arrests” Politico March 7, 2018 *available at* <https://www.politico.com/states/new-york/city-hall/story/2018/03/07/data-dont-show-link-between-marijuana-complaints-and-arrests-294825> [↑](#footnote-ref-58)
58. https://www1.nyc.gov/site/nypd/news/pr0619/mayor-de-blasio-commissioner-o-neill-new-policy-reduce-unnecessary-marijuana-arrests [↑](#footnote-ref-59)
59. https://www1.nyc.gov/site/nypd/stats/reports-analysis/marijuana.page [↑](#footnote-ref-60)