

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

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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-Profilng Reform Mandated After Diallo Shooting*, Nov. 30, 2006, <https://www.nyclu.org/en/press-releases/wake-bell-shooting-nyclu-protests-nypd-failure-comply-racial-profilng-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-profilng-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-gfshakzdonebjdioebiohzzmi-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>.