



January 6, 2021

Civilian Complaint Review Board  
Attn: Heather Cook, Esq.  
100 Church Street, 10<sup>th</sup> Floor  
New York, NY 10007

Dear Ms. Cook,

The New York Civil Liberties Union (NYCLU) and the American Civil Liberties Union (ACLU) submit these comments supporting the Civilian Complaint Review Board's (CCRB) proposed sexual misconduct rules. Police sexual misconduct is pervasive, it is imperative that the CCRB assert jurisdiction over such misconduct, and the CCRB has the statutory authority to do so. These comments also recommend a few areas where the rules' definitions of sexual misconduct and sexual humiliation could be strengthened.

The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with over 180,000 members. The NYCLU defends and protects the civil rights and civil liberties embodied in the United States Constitution, New York State Constitution, and state, city, and federal law. The NYCLU is committed to police accountability and transparency as well as to the due process rights of police officers. The NYCLU has regularly engaged with the CCRB from its inception through public reporting, written correspondence, and participation in public meetings and has consistently urged the Board to effectively and fairly investigate police misconduct and to promote police transparency and accountability.<sup>1</sup> The NYCLU also advocates for

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<sup>1</sup> See e.g., The New York Civil Liberties Union, *Mission Failure: Civilian Review of Policing in New York City 1994-2006* (2007), [https://www.nyclu.org/sites/default/files/publications/nyclu\\_pub\\_mission\\_failure.pdf](https://www.nyclu.org/sites/default/files/publications/nyclu_pub_mission_failure.pdf) (analyzing the CCRB's failures and making recommendations for improvements in order to strengthen police accountability); The New York Civil Liberties Union, *Report: Five Years of Civilian Review: A Mandate Unfulfilled* (1998), <https://www.nyclu.org/sites/default/files/publications/NYCLU%20-%20Five%20Years%20of%20Civilian%20Review%20-%20A%20Mandate%20Unfulfilled%20July%205%2C%201993-%20July%205%2C%201998.pdf>; The New York Civil Liberties Union, *Report: Civilian Review of Policing: A Case Study* (1993), <https://www.nyclu.org/sites/default/files/publications/NYCLU.CivilianReviewPolicing.CaseStudyRep.1993.pdf> (recommending creation of independent CCRB and putting forth specific recommendations for its structure and function); The New York Civil Liberties Union, *Police Abuse: The Need for Civilian Investigation and Oversight* (1990),

transparency in judicial and adjudicative administrative proceedings, particularly where law enforcement is implicated in events involving use of force or potential misconduct.<sup>2</sup> In addition, the NYCLU is deeply committed to eliminating discrimination against women and lesbian, gay, bisexual, and transgender people (LGBT), who are disproportionately the victims of police sexual misconduct.

The ACLU is a nationwide, non-partisan organization of more than a million members dedicated to preserving the Constitution and civil and human rights. The ACLU Women's Rights Project, founded in 1972 by Ruth Bader Ginsburg, has been a leader in legal battles to ensure women's full equality in American society. Through litigation, advocacy, grassroots mobilization, and public education, the Women's Rights Project pushes for change and systemic reform in those institutions that perpetuate discrimination based on gender. The ACLU Women's Rights Project has worked to strengthen police accountability for sexual violence, including successfully advocating for the Department of Justice to issue guidance on gender-biased policing of domestic violence and sexual assault and promoting reforms of other police departments.

### **Police Sexual Misconduct is Rampant**

Through these proposed rules, the CCRB responds to a pervasive problem. According to the CATO Institute, police sexual misconduct nationwide is the second most reported form of police misconduct after use of force.<sup>3</sup> Although no entity currently collects reliable data on the scope of NYPD sexual abuse of civilians, the complaints filed with the CCRB to date and the many high-profile reports of officers caught in flagrant acts of sexual misconduct portray a city where police officers regularly abuse the authority their badges confer upon them to sexually harass and abuse civilians.

As part of the research process that led the CCRB to announce its February 2018 resolution to investigate complaints of sexual misconduct by the NYPD, the Board's Policy and Advocacy Unit reviewed the complaints of sexual misconduct that it had received and forwarded to the NYPD's Internal Affairs Bureau (IAB) between January 2016 and June 2017.<sup>4</sup> Over this 18-month period, the Board received 117 complaints of sexual misconduct,<sup>5</sup> a rate of 6.5 complaints per month. Notably, this represents complaints filed before the CCRB had announced its review of such complaints, suggesting that the number of allegations of NYPD sexual misconduct would be higher following these rules'

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<https://www.nyclu.org/sites/default/files/publications/Police%20Abuse%20The%20Need%20for%20Civilian%20Investigation%20and%20Oversight.pdf> (advocating for a CCRB independent of the NYPD).

<sup>2</sup> See, e.g., *New York Civil Liberties Union v New York City Police Dep't* 148 AD3d 642 (1st Dept 2017) (Article 78 petition seeking the written opinions of administrative judges in department trials of NYPD officers, where the misconduct allegations were substantiated by the CCRB).

<sup>3</sup> The CATO Institute, *National Police Misconduct Reporting Project 2010 Annual Report* 1 (Feb. 17, 2013), <https://www.leg.state.nv.us/Session/77th2013/Exhibits/Assembly/JUD/AJUD338L.pdf>.

<sup>4</sup> See CCRB, Memorandum Accompanying Public Vote Re: Sexual Misconduct Allegations, at 2-3 (Feb. 14, 2018) (NYSCEF Doc. No. 57).

<sup>5</sup> *Id.* at 2.

promulgation. Indeed, between February 14, 2018 and early May 2018, the first months after the Board announced its policy of investigating these complaints and before the Appellate Division nullified the CCRB's resolution,<sup>6</sup> the CCRB reportedly received 28 complaints of sexual misconduct, a rate of over 9 complaints per month, representing a 43 percent increase.<sup>7</sup>

Likewise, records of CCRB closed cases involving substantiated misconduct allegations, released by ProPublica in July, establish police sexual misconduct. Girls for Gender Equity analyzed these records for cases involving girls or young women and highlighted a number of disturbing instances of police sexual misconduct.<sup>8</sup>

In addition to complaints filed with the CCRB, a long list of high-profile NYPD sexual misconduct has made headlines in recent years. For example, outlets nationwide covered an alleged rape of an 18-year-old woman by on-duty NYPD officers in a police van.<sup>9</sup> According to her allegations, after two NYPD detectives pulled over the woman and her two friends for driving in a public park after dark, they searched the car and found marijuana and anti-anxiety medicine, at which point they arrested the woman, handcuffed her, and put her in the back of their unmarked van. The detectives allegedly proceeded to force her into sexual activity under threat of criminal charges, and they ultimately plead guilty to bribery and official misconduct.<sup>10</sup> Though abhorrent, this incident is far from an aberration. High profile accounts of NYPD officers committing sexual assault have become commonplace.<sup>11</sup> And,

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<sup>6</sup> *Lynch v. New York City Civilian Complaint Review Board*, 183 AD3d 512, 518 (1st Dept 2020).

<sup>7</sup> Thomas Tracy, *CCRB eyes 28 NYPD sex-misconduct claims*, NY DAILY NEWS, May 10, 2018, <http://www.nydailynews.com/new-york/ccrb-eyes-28-nypd-sex-misconduct-claims-article-1.3981165>.

<sup>8</sup> Girls for Gender Equity, *Overlooked in Plain Sight: Documenting Police Violence Against Girls of Color* (July 2020).

<sup>9</sup> See, e.g., Andrea J. Ritchie, *How Some Cops Use the Badge to Commit Sex Crimes*, WASH. PO., Jan. 12, 2018, [https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842\\_story.html?noredirect=on&utm\\_term=.9c5dc670cb04](https://www.washingtonpost.com/outlook/how-some-cops-use-the-badge-to-commit-sex-crimes/2018/01/11/5606fb26-eff3-11e7-b390-a36dc3fa2842_story.html?noredirect=on&utm_term=.9c5dc670cb04).

<sup>10</sup> *Id.*; EJ Dickson, *Two Cops Accused of Raping a Teen in Custody Got Probation, Not Jail Time*, ROLLING STONE, Aug. 30, 2019, <https://www.rollingstone.com/culture/culture-news/nypd-officers-eddie-martins-richard-hall-plea-deal-878651/>.

<sup>11</sup> See, e.g., Michael Brick, *Officer Is Found Guilty of Sexually Abusing Women While on Duty*, NY TIMES, Sept. 18, 2017, [https://www.nytimes.com/2007/09/18/nyregion/18cop.html?\\_r=0](https://www.nytimes.com/2007/09/18/nyregion/18cop.html?_r=0) (reporting that an NYPD officer was found guilty of sexual abuse and official misconduct, including making “women submit to searches that turned into unwanted groping” while responding to noise complaints and traffic violations and, in one instance, restraining a woman and masturbating in front of her); Ben Yakas, *Woman Sues City for \$150M Claiming Cop Raped Her & Gave Her Black Eye*, GOTHAMIST, June 6, 2014, [http://gothamist.com/2014/06/06/rape\\_cop\\_drugs\\_woman.php](http://gothamist.com/2014/06/06/rape_cop_drugs_woman.php) (describing allegations that an NYPD officer coerced a woman into a date after arresting her for drunk driving, then drugged her, raped her, and gave her a black eye); John Eligon, *Officer is Convicted of Abusing Power in Seeking Sex*, NY TIMES, Jan. 15, 2010, <https://www.nytimes.com/2010/01/16/nyregion/16cop.html> (reporting that an NYPD officer was found guilty of “telling an 18-year-old that he would destroy a summons he was issuing her in exchange for oral sex”); U.S. Attorney’s Office, Eastern District of New York, *New York City Police Department Detective Arrested on Federal Civil Rights Charges for Sexual Misconduct*, May 18, 2010, <https://archives.fbi.gov/archives/newyork/press-releases/2010/nyfo051810.htm> (announcing the FBI’s

because police sexual assault is rarely reported and prosecution of such crimes is uncommon, these accounts may only scratch the surface of the police sexual misconduct problem in New York City. The number of New Yorkers who survive such abuse is likely staggering.

For example, one study, which surveyed almost 1,000 youth in New York City, found that two out of five young women had been sexually harassed by police officers; these young women repeatedly described the inappropriate comments and touching during police stops as “stop and grope.”<sup>12</sup> LGBT youth are more than twice as likely as their heterosexual and cisgender peers to report police sexual misconduct with transgender, non-binary, and gender nonconforming New Yorkers reporting unlawful searches to assign gender, frequently in the context of street stops.<sup>13</sup> In fact, 12% of LGBT youth report being inappropriately touched during NYPD searches.<sup>14</sup>

### **CCRB Review of Police Sexual Misconduct Is Essential**

In the face of such widespread abuse, CCRB investigation of complaints of police sexual misconduct is a critical step towards promoting police accountability, reducing rampant sexual misconduct by New York City Police Department officers, and increasing trust between civilians and the NYPD. CCRB investigation of these complaints is all the more important because the NYPD, which had previously investigated such complaints internally, has shown itself to be a fundamentally inhospitable place for effective and fair sexual misconduct investigations.

First, the NYPD has no official policy, either in its patrol or administrative guides, prohibiting police from engaging in sexual misconduct against civilians, and no policy provides guidance as to how sexual misconduct complaints against officers are handled.<sup>15</sup> In

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arrest of an NYPD detective on charges of “violating the civil rights of three women through sexual misconduct,” including forcing one to perform oral sex under threat of losing her children); Brendan Brosh, *NYPD captain who exposed himself in subway station gets to keep pension*, NY DAILY NEWS, Aug. 11, 2009, <http://www.nydailynews.com/news/crime/nypd-captain-exposed-subway-station-pension-article-1.398687> (reporting that a Transit Bureau Captain pled guilty to exposing himself to a 20-year-old man while on-duty in a Queens subway station for which he was docked 11 vacation days but retained his full pension).

<sup>12</sup> Deanna L. Wilkinson, *Local Social Ties and Willingness to Intervene: Textured Views Among Violent Urban Youth of Neighborhood Social Control Dynamics and Situations*, 24 JUST. Q. 185, 189 (2007) (hereinafter “Wilkinson Study”).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> The closest the NYPD Patrol Guide comes to addressing complaints of sexual misconduct is in its policy regarding sexual assault and sexual harassment of prisoners. But even this procedure fails to explicitly refer to NYPD officers. 2020 NYPD Patrol Guide, Procedure No. 210-01 (“The Department has a zero tolerance policy toward all forms of sexual assault and sexual harassment of prisoners by other prisoners or any other person.”). The IAB website provides no clarity as to complaint procedures, merely providing: “The bureau can receive complaints from the public and NYPD service members by telephone, email, and mail” with no further specificity about the types of complaints

fact, in a recent annual report reviewing investigations conducted by IAB into complaints against NYPD officers, the Commission to Combat Police Corruption made the following recommendation:

Due to police officers' inherent authority and the possible coercive nature of any relationship between a member of the service and the civilians with whom he or she comes in contact during the course of his or her job performance, these types of relationships can negatively affect criminal cases and incur civil liability for the City of New York. Although the Department disapproves of these types of contact, there are currently no uniform guidelines detailing what is impermissible. The Commission continues to recommend that the Department should set forth a list of rules to put members of the service on notice that engaging in social and intimate relationships with victims, defendants, or witnesses in cases to which they are assigned, at least during the pendency of the investigation and the criminal prosecution, are strictly prohibited. If there are permissible forms of contact, outside the scope of the investigation, these should also be specified.<sup>16</sup>

The NYPD's complete lack of internal guidelines either prohibiting sexual misconduct by police officers or setting forth procedures for how complaints of such abuse are handled demonstrates the Department's fundamental disregard for these allegations. An agency that does not see the need to prohibit its officers from sexually harassing civilians surely cannot be trusted to fairly investigate their complaints.

Second, the NYPD's handling of investigations of sexual assault committed by civilians against other civilians does little to inspire confidence that the Department is capable of fair and impartial investigations when it comes to complaints of police sexual misconduct. A March 2018 NYC Department of Investigation Report found that the NYPD understaffs and under-resources the Special Victims Division, the unit tasked with investigating sex crimes, including sexual assault, and that, as a result, "many sexual assault cases are not properly investigated."<sup>17</sup> The press release accompanying this report described the systemic failures of the NYPD in this area as causing "re-traumatiz[ation] [of] victims" and as "negatively impact[ing] the reporting of sex crimes, thereby adversely affecting public safety."<sup>18</sup> The report itself describes a culture of sexual assault investigation that

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that it investigates or what the investigation procedures entail NYPD, *Internal Affairs*, <https://www1.nyc.gov/site/nypd/bureaus/investigative/internal-affairs.page> (last visited Jan. 5, 2021).

<sup>16</sup> NYC Commission to Combat Police Corruption, *Eighteenth Annual Report of the Commission* (Aug. 2017), <http://www1.nyc.gov/assets/ccpc/downloads/pdf/18th-Annual-Report.pdf>.

<sup>17</sup> New York City Department of Investigation's Inspector General for the NYPD, *An Investigation of NYPD's Special Victims Division—Adult Sex Crimes* at 1 (Mar. 27, 2018), [http://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDReport\\_32718.pdf](http://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDReport_32718.pdf) (hereinafter "DOI Report").

<sup>18</sup> The City of New York Department of Investigation, *DOI Investigation Finds NYPD Has Routinely Understaffed and Neglected the Special Victims Division, Negatively Impacting Sexual Assault*

disrespects survivors and pushes them away from engaging with the criminal legal system:

Service providers and victim advocates described numerous instances in which inexperienced detectives or police officers responded insensitively, dismissively, or incredulously during some victim interviews and infrequently updated victims on the status of their case. [Special Victims Division] retirees, prosecutors, victim advocates, and service providers universally attributed these lapses to understaffing and/or inexperience. Further, service providers, victim advocates, and sex crimes prosecutors identified these kinds of failures as the primary reason victims disengage from the investigative process.<sup>19</sup>

A survivor of police sexual misconduct is already unlikely to report such incidents to the NYPD itself, and the failure of the NYPD to adequately investigate reports of sexual abuse and harassment further discourage survivors from reporting. CCRB investigation of these complaints will provide a much-needed independent avenue for accountability, help combat rampant underreporting of such abuses, and promote policy change to curb police sexual misconduct.

### **CCRB Review of Police Sexual Misconduct Falls Squarely within the CCRB's Statutory Mandate**

Police sexual misconduct is inherently an abuse of authority and has been consistently recognized as such by researchers and law enforcement organizations, falling squarely within the CCRB's statutory mandate. The City Charter gives the CCRB the power to investigate complaints against the NYPD that "allege misconduct involving . . . abuse of authority."<sup>20</sup> Police officers commonly take advantage of the enormous authority, power, and control afforded them by their badges to sexually harass and assault civilians.<sup>21</sup>

Police officers hold positions of immense authority in our society. They are empowered to enforce our laws, to stop individuals, to physically confine them, and to order cooperation. In fact, doing the job of a police officer effectively requires asserting authority over civilians. As a result, when, in the course of these assertions of authority, police officers make sexual comments or propositions, inappropriately touch a person in a sexual manner, or sexually assault them, such behavior abuses the authority conferred on them. As one study on police sexual misconduct explained, police sexual abuse is structurally tied to police officers' abuse of their authority:

[O]pportunities [for sexual misconduct] derive from the context of police

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*Investigations*, Mar. 27, 2018,

[http://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDReport\\_32718.pdf](http://www1.nyc.gov/assets/doi/reports/pdf/2018/Mar/SVDReport_32718.pdf).

<sup>19</sup> DOI Report at 28.

<sup>20</sup> NY City Charter § 440(c)(1).

<sup>21</sup> *See supra* pp. 2 – 4.

work—the same framework that provides the basis for legitimate policing. Police routinely operate alone and largely free from any direct supervision, either from administrators or fellow officers. Police commonly encounter citizens who are vulnerable, usually because they are victims, criminal suspects, or perceived as “suspicious” and subject to the power and coercive authority granted to police. Police-citizen interactions often occur in the late-night hours that provide low public visibility and ample opportunities to those officers who are able and willing to take advantage of citizens to commit acts of sexual deviance and to perpetrate sex crimes.<sup>22</sup>

Police sexual misconduct also tends to target vulnerable individuals, further underscoring the dynamic of abuse of authority inherent in such interactions. “The targets of reported police sexual violence are overwhelmingly women, and typically women of color who are or are perceived to be involved in the drug or sex trades, or using drugs or alcohol, as well as people with prior arrest records, immigrants, people with limited English proficiency, people with disabilities, and people who have previously been targeted for police sexual violence.”<sup>23</sup> Police sexual misconduct often involves officers abusing their role as protectors by sexually assaulting victims of domestic violence and others who seek their help.<sup>24</sup>

The City Charter mandates that “investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough and impartial, . . . conducted fairly and independently, and in a manner in which the public and the police department have confidence.”<sup>25</sup> The CCRB’s proposed rules advance this interest by ensuring fair, independent, thorough, and impartial review of police sexual misconduct and by removing exclusive jurisdiction over such behavior from agency that has already failed New Yorkers when it comes to sexual assault and harassment.

In addition, because the City Charter requires the CCRB to issue public reports and because the CCRB’s mission requires it to “report relevant issues and policy matters to the police commissioner,” the CCRB’s exercise of jurisdiction over complaints of police sexual misconduct will also help to shape NYPD policy, which, as of now, does nothing to address police sexual misconduct.

The CCRB’s investigation of complaints of NYPD sexual misconduct is both lawful and immensely important. The proposed rules are clearly permitted by the City Charter and

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<sup>22</sup> Philip M. Stinson et al., *Police sexual misconduct: A national scale study of arrested officers*, Criminal Justice Faculty Publications 2 (2014), [https://scholarworks.bgsu.edu/crim\\_just\\_pub/30/](https://scholarworks.bgsu.edu/crim_just_pub/30/).

<sup>23</sup> Andrea J. Ritchie, *Invisible No More* 112 (2017); see also Wilkinson Study (survey of New York City youth in which almost half of those who reported sexual harassment by police were black, Latina, or Asian).

<sup>24</sup> *E.g.*, Complaint ¶¶ 32, 46-59, *Montanez v City of Syracuse et al.*, No. 16-cv-00550 (NDNY filed May 11, 2016) (ECF No. 1) (A 2016 complaint alleged that a Syracuse police officer sexually assaulted one woman when he responded to her home in connection with a domestic dispute and another woman when he responded to her request for help finding her missing daughter).

<sup>25</sup> New York City Charter § 440(a).

further the CCRB’s mandate and mission. Although the Appellate Division struck down the CCRB’s February 2018 resolution asserting jurisdiction over police sexual misconduct, it did so on procedural grounds and suggested that jurisdiction could be properly established through the rulemaking proceeding the CCRB now undertakes.<sup>26, 27</sup>

Still, there are important edits the CCRB should make to the definitions in its proposed rules in order to ensure that the rules achieve their intended effect.

## Recommendations

We offer the following comments about the sexual misconduct definition contained in the proposed rule. We are happy to discuss these in further detail as the CCRB continues its work on the regulation.

### **1. The final rule should include explicit acknowledgement that sexual misconduct can be perpetrated while on-duty and off-duty.**

We strongly urge the CCRB to adopt a definition of sexual misconduct that clearly delineates conduct that is impermissible when a member of the Department is off-duty as well as on-duty. We refer the CCRB to the sample policy on police sexual misconduct developed by Andrea Ritchie and the Policing Subgroup of the LGBT/HIV Federal Criminal Justice Policy Working Group, which appears as Appendix B of James E. Copple & Patricia M. Dunn, U.S. Dep’t of Justice Office of Community Oriented Policing Services, *Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community* 45 (2017), <https://evawintl.org/wp-content/uploads/Gender-Sexuality-21stCPolicingCOPSreport.pdf> (hereinafter, “Sample Policy”). The Sample Policy describes five different categories of sexual misconduct, including sexual activity while on-duty, sexual activity while off-duty, sexually inappropriate material, unnecessary law enforcement activity, and discriminatory or sexual language or gestures. (Note: the last three categories could be folded into the definition of sexual misconduct on-duty, as they all relate to on-duty behaviors).

- In the Sample Policy, prohibited sexual activity on-duty is defined to include sexual activity or behaviors “while on duty,” “in a police vehicle under the control of the agency,” or “at a police or governmental facility,” and then further provides examples of prohibited sexual activity or sexually motivated behaviors while on-duty. We recommend that the CCRB clearly set out what types of activity are prohibited while on-duty.

The current proposed rule is somewhat ambiguous on this point. The examples of misconduct include “verbal sexual harassment; sexual

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<sup>26</sup> *Lynch v. New York City Civilian Complaint Review Board*, 183 AD3d 512, 518 (1st Dept 2020).

<sup>27</sup> We do not agree with the Appellate Division’s analysis. Nonetheless, the proposed rules comport both with the Appellate Division’s analysis and with our understanding of the law.

harassment using physical gestures; sexual humiliation; sexually motivated police actions such as stops, summonses, searches, or arrests; sexual or romantic propositions; and any intentional bodily contact of a sexual nature, including but not limited to, inappropriate touching, sexual assault, rape, and on-duty sexual activity.” It is not entirely clear whether all of the examples cover only conduct that an officer engages in while on-duty. The last clause that specifically lists “on-duty sexual activity” suggests that possibly some of the other examples would be prohibited while off-duty. However, that also raises questions, as “sexual or romantic propositions” should not qualify as misconduct unless an officer abused their authority in making the proposition. For these reasons and those listed in the discussion below, we recommend that the final rule explain the types of misconduct that are prohibited while on-duty.

- In the Sample Policy, prohibited sexual activity off-duty is defined to include any use of “agency facility or property, vehicle, or information system to initiate or participate in a sexual act with another or engage in voyeuristic behavior that is personally or sexually motivated” and use by members of “their official position, official identification cards or badges to coerce, persuade, force, or initiate sexual contact or penetration with anyone, or to solicit sexual conduct when off duty.” We recommend that these two categories of prohibited off-duty sexual activity be incorporated into the definition of sexual misconduct to ensure that officers do not abuse Department resources or authority to coerce sexual activity even when they are officially off-duty. The potential for an officer to abuse their position to perpetrate sexual misconduct does not end the moment their shift does, and it is important that these forms of misconduct be explicitly addressed in the rule.

## **2. The final rule should be clarified to adopt a broad understanding of sexual misconduct.**

The proposed definition of “sexual misconduct” includes a number of terms that are not separately defined.

For example, the definition references misconduct “of a sexual nature” and “sexually motivated police actions.” While we do not object to describing actions this way, it is vital that the CCRB recognize that proving actual sexual desire of an officer is not a prerequisite to finding sexual misconduct. Officers can engage in a wide range of sexual misconduct, including sexually harassing stops, searches, or arrests, even as they do not personally experience sexual desire for the target. Moreover, women experience gender-specific forms of humiliation and abuse during inappropriate police interactions, including feels of violation, embarrassment, or sexual intimidation that do not necessarily stem

directly from an officer's sexual desire, but from gender-based abuse of authority. We recommend that the definition of sexual misconduct be amended so that it acknowledges that personal sexual desire is not a required element of sexual misconduct. One approach might be to define sexual misconduct as encompassing "misconduct of a sexual nature or misconduct motivated in whole or in part by the civilian's actual or perceived gender." Likewise, the regulation could be amended to refer to "sexually motivated *or harassing* police actions."

With regard to "sexual harassment," we urge CCRB to make clear that it is relying on an understanding of "harassment" that is broad, rather than definitions that arise from the Penal Code or federal civil rights law. This approach is appropriate in this context, where the CCRB is providing oversight over police sexual misconduct, outside of criminal proceedings or civil litigation against a defendant. We also recommend that "verbal sexual harassment" be expanded to include "verbal, written, and digital harassment," given the range of ways sexual harassment can be communicated.

In addition, we recommend the inclusion of examples contained in the Sample Policy that are not currently described in the proposed regulation, including "inappropriate or unauthorized use of personal information, including telephone numbers, obtained from individuals in the course of duty," and "voyeuristic actions," such as taking unwarranted photographs or videos for other than legitimate purposes. These types of actions similarly involve abuse of an officer's authority to engage in improper sexual behaviors.

### **3. The final rule should amend the definition of "sexual humiliation."**

The proposed rule defines "sexual humiliation" to refer to "incidents in which an officer gratuitously shames or degrades a civilian in relation to their sexual organs or sexual behavior." We recommend that the word "gratuitously" be deleted, as "shames or degrades" is a sufficient description of the harmful behavior. We also recommend that the reference to "sexual organs" be replaced by "body in part or in whole or gender presentation or expression" as "sexual organs" does not encompass the range of sex-based shaming or degradation.

As amended, the definition would read:

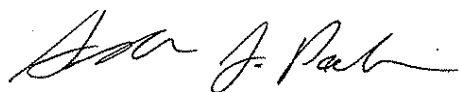
**Sexual Humiliation:** The term "Sexual Humiliation" refers to incidents in which an officer **shames or degrades a civilian in relation to their body (in part or in whole), their gender presentation or expression, or their sexuality.**

## **Conclusion**

In sum, we appreciate the opportunity to submit these comments supporting the CCRB's proposed sexual misconduct rules. In light of widespread allegations of NYPD mishandling of sexual misconduct investigations, the CCRB's independent investigation of these

complaints is essential to safeguarding the rights of survivors of sexual misconduct and to promoting police transparency and accountability. We commend the CCRB for taking the initiative to assert jurisdiction over police sexual misconduct, and we urge the CCRB to make the forgoing improvements to the definitions of sexual misconduct and sexual humiliation and to finalize the rules.

Sincerely,



Sandra Park  
Senior Staff Attorney, Women's Rights Project  
American Civil Liberties Union



Allison S. Bohm  
Policy Counsel  
New York Civil Liberties Union



Christopher Dunn  
Legal Director  
New York Civil Liberties Union