

**Comments of the New York Civil Liberties Union
Regarding Proposed Revisions to the New York Police Department’s
Disciplinary Matrix**

June 17, 2023

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following comments regarding revisions that the New York Police Department (“NYPD”) has proposed for incorporation into its disciplinary matrix. 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.

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 investigating abusive officers and holding them accountable for misconduct. Unfortunately, those systems have long been broken in New York City.

The changes envisioned by the draft proposal now under consideration would further undermine these already ineffective systems. The NYPD, through its continued practice of flouting Civilian Complaint Review Board (“CCRB”) recommendations – even those based on the NYPD’s own matrix – and its proposals here to “punish” officers with mere training when they commit misconduct lay bare the NYPD’s unwillingness to prioritize accountability.

Because of our longstanding concerns regarding the NYPD’s approach to discipline, the NYCLU historically called for the creation of a disciplinary matrix, and we supported legislation passed by the New York City Council in June 2020 that mandated the creation of such a matrix.¹ Used effectively, a disciplinary matrix has the potential to provide for more objective standards in evaluating and responding to officer misconduct and, in theory, place guardrails around the unrestrained exercise of discretion in disciplinary decision-making. As a public-facing document, a disciplinary matrix can also send a powerful signal about the NYPD’s commitment – or lack thereof – to accountability when its officers commit misconduct.

In October 2020, the NYCLU submitted comments to the NYPD on the first draft of what would become the Department’s disciplinary matrix,² and we



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¹ See Local Law 69 of 2020.

² New York Civil Liberties Union, *Comments Regarding the New York Police Department’s Proposed Disciplinary Matrix*, Oct. 9, 2020, https://www.nyclu.org/sites/default/files/field_documents/2020109-comments-nypddisciplinarymatrix.pdf.



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provided further comments to the CCRB in January 2021.³ While some of the issues we identified for the Department were addressed in the matrix as adopted, our broader concern – that absent a culture that aggressively pursues misconduct charges, any promises of accountability are illusory – persists. Since the Department first adopted its disciplinary matrix, we have seen little evidence that it has led to an improved culture of accountability. Indeed, the NYPD and the Adams administration more broadly have signaled their willingness to shield officers who engage in misconduct from serious penalties.

In December 2022, the NYPD Commissioner boasted that she had overturned more CCRB recommendations than her predecessors and informed officers that she intended to revise the disciplinary matrix to provide greater lenience for violations of Department rules and even legal obligations.⁴ An analysis by the Legal Aid Society found that the NYPD had overturned more than half of the CCRB’s disciplinary recommendations in 2022, meting out lower penalties than recommended or imposing no discipline at all for officers found to have engaged in misconduct against members of the public.⁵ Pursuant to a memorandum of understanding with the NYPD, the CCRB applies the NYPD’s disciplinary matrix guidelines when recommending penalties for substantiated acts of misconduct to the Department.⁶ These departures, therefore, reflect an NYPD that is unwilling to apply its own rules consistently and that is uninterested in submitting itself to independent oversight.

Against this backdrop, the NYPD now proposes to further weaken the guidelines that it purports to follow. Many of the changes contemplated in these draft revisions propose lowering the assigned penalty amount when mitigating factors are present. The NYCLU is deeply concerned with the message that these changes would send to officers, particularly given the current administration’s embrace of aggressive, broken windows policing tactics that have historically led to widespread targeting of Black and brown communities while doing nothing to advance real public safety.

³ New York Civil Liberties Union, *Comments Before the Civilian Complaint Review Board Regarding the NYPD Disciplinary Matrix*, Jan. 29, 2021, https://www.nyclu.org/sites/default/files/field_documents/20210129-comments-disciplinarymatrix.pdf.

⁴ Graham Rayman, *NYC Police Commissioner Sewell Overruled More than 70 CCRB Discipline Rulings in 2022; “We Should Not Punish Good Faith Errors,”* N.Y. Daily News, Dec. 14, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-keechant-sewell-ccrb-overturned-decisions-20221214-7453y6qdrjhs5bk45opqupay6a-story.html>.

⁵ Maria Cramer, *NYPD Rejected Over Half of Review Board’s Discipline Recommendations*, N.Y. Times, Mar. 16, 2023, <https://www.nytimes.com/2023/03/16/nyregion/nypd-discipline-recommendations.html>.

⁶ Memorandum of Understanding Between the New York City Police Department and the New York City Civilian Complaint Review Board Concerning the NYPD Discipline Matrix, Feb. 3, 2021, https://www.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-ccrb-discipline-matrix-mou-final.pdf.



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The draft revisions would reduce the mitigated penalty for “Unlawful Search/Entry Premises (entry involves substantial physical presence and/or remaining on the premises)” from 5 days to training. At the outset, we note that “training,” while considered a disciplinary penalty by the NYPD, is not a meaningful form of discipline. It is simply not a *punishment* for officers to receive training or instructions on the very departmental rules or legal requirements to which they must adhere as part of their jobs. Even more troubling, these changes implicate concerns that have been at the center of NYCLU litigation in *Ligon v. City of New York*, which challenged the NYPD’s practice of unlawfully stopping New Yorkers in buildings enrolled in the Trespass Affidavit Program (“TAP”). Although the NYPD claimed that TAP had ended in 2020,⁷ a March 2023 report from the Monitor overseeing the NYPD’s compliance with stop-and-frisk reforms found evidence that TAP enforcement persists.⁸ With the NYPD continuing to engage in enforcement activity at TAP locations, including vertical patrols inside these buildings, reducing the penalties for officers found to have engaged in an unlawful search or entry into a premises casts serious doubt on the Department’s commitment to following through on the reforms arising out of the stop-and-frisk litigation and to preventing future instances of New Yorkers being unlawfully harassed and discriminated against in their homes.

Similarly, the draft revisions would reduce the mitigated penalty for “Fail[ure] to prepare a required report,” from 3 days to training. Again, this implicates core concerns arising out of the stop-and-frisk litigation and ongoing issues identified by the Monitor overseeing compliance with stop-and-frisk reforms with respect to NYPD reporting practices, which necessarily impact the Monitor’s ability to assess the NYPD’s progress with implementing those court-ordered reforms. Although stop-and-frisk activity today is far below the recorded levels of its height during the Bloomberg era, there has been a recent increase in stop activity during the Adams administration, and the available data reveals that racial disparities remain deeply embedded.⁹ But these numbers do not reflect the true scope of stop-and-frisk activity across the city. The Monitor has repeatedly found that the NYPD has not been reporting on the full extent of stop activity, with the data being subject to significant undercounts.¹⁰ Most recently, the Monitor raised serious concerns about the

⁷ Ali Bauman, *An Unconstitutional Overreach? CBS2 Investigates NYPD Continuing Banned Practice of Patrolling Private Buildings*, CBS New York, May 18, 2023, <https://www.cbsnews.com/newyork/news/an-unconstitutional-overreach-cbs2-investigates-nypd-continuing-banned-practice-of-patrolling-private-buildings/>.

⁸ Mylan Denerstein, *Eighteenth Report of the Independent Monitor: Monitor’s Audit of the Trespass Affidavit Program*, Mar. 2023, <https://www.nypdmonitor.org/wp-content/uploads/2023/03/NYPD-Monitors-18th-Report-re-TAP.pdf>.

⁹ Rocco Parascandola, *NYC Residents Stopped More Often by Police than in 2022; Minorities Still More Likely to Be Searched*, N.Y. Daily News, June 6, 2023, <https://www.nydailynews.com/new-york/nyc-crime/ny-street-car-stops-nyclu-nypd-20230606-lrr54kf3n5bitedyjk744o5fme-story.html>.

¹⁰ 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*



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underreporting of stops by some Neighborhood Safety Teams, suggesting that these units – a revival of previously disbanded anti-crime units notorious for their aggressive approach to stopping New Yorkers and who have been deployed as a central pillar of the Adams administration’s policing strategy – are operating without consistent oversight.¹¹ Accurate and comprehensive data on NYPD stop activity is essential for assessing the NYPD's compliance with court-ordered reforms to its stop-and-frisk activities and to guarding against a return to an era of mass, unconstitutional policing practices. Reducing the penalty for officers who fail to prepare required reports may worsen existing underreporting problems, as officers will know that they face no real consequence for such failures. And on a broader level, this change signals that the Department itself is unwilling and uninterested in addressing the long-standing, known issue of incomplete and inaccurate reporting.

The draft revisions would also reduce the mitigated penalty for “Threat of Force/Police Enforcement/Notification to Outside Agency/Removal to Hospital – without Justification,” from 5 days to training. This move is particularly troubling given the administration’s November 2022 directive with respect to involuntary removals of people with perceived mental health needs.¹² As the NYCLU testified before the City Council in February, this policy of involuntary removal and forced hospitalization raises significant legal and constitutional concerns and risks exacerbating bias against unhoused New Yorkers and people with mental illness who need housing and accessible services, not criminalization.¹³ Weakening the penalties for unjustified threats of removals to a hospital at a time when the administration is actively pursuing a strategy of involuntary removals is an invitation for abuse, as officers may feel more emboldened to engage in legally dubious actions if they know that they will face no real consequence. Unjustly threatening to deprive New Yorkers of their liberty is an act that deserves serious consequences, not mere training. Reducing the mitigated penalty for this charge is an open invitation to officers to act with impunity in their interactions with unhoused people and those with mental health needs.

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>.

¹¹ Mylan Denerstein, Nineteenth Report of the Independent Monitor: Monitor’s Audit of the Neighborhood Safety Teams, June 2023, <https://www.nypdmonitor.org/wp-content/uploads/2023/06/NST-Report.pdf>.

¹² Andy Newman & Emma G. Fitzsimmons, *New York City to Involuntarily Remove Mentally Ill People from Streets*, N.Y. Times, Nov. 29, 2022, <https://www.nytimes.com/2022/11/29/nyregion/nyc-mentally-ill-involuntary-custody.html>.

¹³ New York Civil Liberties Union, *Testimony Regarding Oversight – Mental Health Involuntary Removals and Mayor Adams’ Recently Announced Plan*, Feb. 6, 2023, https://www.nyclu.org/sites/default/files/field_documents/230206-nycc9.41-oversighthearingtestimonyfinal_0.pdf.

Other proposed changes to the matrix raise similar concerns about the Department's commitment to meaningful discipline. The reduction in mitigated penalties for "Failure to Process Civilian Complaint," from 5 days to training suggests that the NYPD does not take civilian complaints seriously. And the reductions in mitigated penalties for "Discourtesy" and "Offensive Language" from 1 day to training and 10 days to 1 day, respectively, calls into question the Department's commitment to treating New Yorkers with dignity and respect, particularly as it relates to interactions in which officers are found to have used offensive language targeting New Yorkers on the basis of a protected class.

Further, the proposed changes to the Department's approach to settlement agreements removes language stating the NYPD's position of not bargaining away readily provable misconduct in order to resolve a disciplinary proceeding more quickly. This suggests that the NYPD may now be more willing to expedite the resolution of disciplinary proceedings by entertaining more lenient penalties than otherwise called for under the matrix via plea agreements.

In sum, and despite the commissioner's assertion that these changes are meant to promote "fairness," these changes reveal a department that is less interested in holding officers to high professional standards and to account for misconduct than it is shielding officers from the consequences of their violations of departmental rules and the laws that govern their conduct. As we noted in our October 2020 comments on the first draft of the NYPD's disciplinary matrix:

[T]he utility of any set of disciplinary guidelines is only as strong as the NYPD's willingness to actually follow those guidelines and to commit to holding officers accountable for misconduct. While we offer comments and suggestions related to the current draft below, the NYCLU notes that a culture change – not simply a set of guidelines – must occur within the Department if the NYPD is to credibly argue that it is committed to holding officers accountable for misconduct.¹⁴

These draft revisions make plain the fact that no such culture change has occurred.

The NYCLU appreciates the opportunity to provide comments on the proposed revisions to the disciplinary matrix and welcomes the opportunity to continue to engage with the Department as it incorporates public feedback.



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¹⁴ New York Civil Liberties Union, *Comments Regarding the New York Police Department's Proposed Disciplinary Matrix*, Oct. 9, 2020, https://www.nyclu.org/sites/default/files/field_documents/2020109-comments-nypddisciplinarymatrix.pdf.