

**Comments of the New York Civil Liberties Union  
Regarding Draft New York Police Department Impact and Use Policy  
for Electromagnetic Weapons Detection System**

**May 10, 2024**

The New York Civil Liberties Union (“NYCLU”) writes in response to the draft impact and use policy for a proposed Electromagnetic Weapons Detection System issued by the New York Police Department (“NYPD”) on March 28, 2024, as required by the Public Oversight of Surveillance Technology Act.

The NYCLU is the New York affiliate of the American Civil Liberties Union. It is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 95,000 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. A core component of our work is protecting New Yorkers’ right to privacy against unwarranted surveillance and police intrusions.

The NYCLU urges the NYPD to abandon its plan to acquire and pilot a weapons detection system, such as Evolv.<sup>1</sup> Simply put, these systems do not work. The NYPD’s draft impact and use policy starts by asserting that these systems “can distinguish weapons from personal items,” but experience has shown that these systems, and Evolv in particular, have repeatedly failed to do just that. New Yorkers should not be subjected to intrusions on their right to privacy nor needless interruptions to their daily commutes just so the NYPD can experiment with the latest technological iteration of snake oil.

We note, at the outset, that this planned pilot was announced shortly after Governor Hochul unveiled a so-called “subway safety plan,” deploying National Guard troops and New York State Police to conduct bag searches in the transit system. This deployment was in response to what the Governor herself admitted was the *perception* of crime as opposed to any statistically meaningful increase in criminal offenses.<sup>2</sup> The perception that the subway system is unsafe is only reinforced – not assuaged – by the security theater that these deployments and the proposed weapons detection system represent. The actual data shows that, although there have been recent increases in some categories

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<sup>1</sup> Although the NYPD has yet to confirm the specific system it will use, the announcement of the planned pilot involved a demonstration using Evolv scanners. Hurubie Meko & Ana Ley, *New York Will Test Gun-Detecting Technology in Subway System, Mayor Says*, N.Y. Times, Mar. 28, 2024,

<https://www.nytimes.com/2024/03/28/nyregion/nyc-subway-gun-detector.html>.

<sup>2</sup> Rebecca Lewis, *Hochul Says Subway Crime “Not Statistically Significant, but Psychologically Significant,”* City & State New York, Mar. 7, 2024,

<https://www.cityandstateny.com/politics/2024/03/progressives-and-civil-liberties-groups-criticize-hochuls-plan-put-national-guard-subways/394770/>.



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of crime, overall crime in the transit system has been decreasing and remains near historic lows.<sup>3</sup>

Much of the Governor’s and the Mayor’s rhetoric on safety in the transit system is centered on the presence of – and need for police intervention to remove – unhoused people and people with mental health needs. Rather than offer solutions that are tailored to address and meet the needs of these populations, we are offered only expanded surveillance and criminalization. Instead of sinking limited city resources into invasive and ineffective surveillance tools like Evolv or other systems, New York City should be investing in social and health supports that will actually improve conditions for every person within our transit system.

That the city would expend resources on technology like Evolv instead of pursuing better tailored interventions is all the more alarming given what we know about Evolv’s effectiveness, or lack thereof. Evolv has continuously evaded independent audits or testing of its weapons detection system. The absence of rigorous external assessments of a system that has the potential to disrupt the lives of the millions of New Yorkers who use the subway system every day is alarming.

What we do know about Evolv’s track record from reviewing available data on real-world deployments is no less disturbing, as those deployments have revealed troubling rates of false positives that call into question the practicality of using these systems to detect weapons. For instance, during a pilot program in an Illinois school district, the scanners incorrectly identified Chromebooks as firearms in 60-70% of cases.<sup>4</sup> Here in New York City, the Jacobi Medical Center tested the technology over the course of 7 months, resulting in an obscene number of false positives: every fourth person was flagged as a threat, with the vast majority being false flags.<sup>5</sup> It should be clear to anyone reviewing these numbers that the technology does not work as advertised and that successes are incidental at best. The company even faces a class action lawsuit by its own shareholders for making false and misleading statements and is under investigation by the U.S. Securities and Exchange Commission and the Federal Trade Commission.<sup>6</sup>



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<sup>3</sup> *Id.*

<sup>4</sup> Michael Elsen-Rooney, *Mayor Adams Explores New Tech to Detect Weapons in Schools, but Security Expert Raises Questions*, N.Y. Daily News, Mar. 22, 2022, <https://www.nydailynews.com/2022/03/20/mayor-adams-explores-new-tech-to-detect-weapons-in-schools-but-security-expert-raises-questions/>.

<sup>5</sup> Felipe De La Hoz, *NYC Has Tried AI Weapons Scanners Before. The Result: Tons of False Positives*, Hell Gate, Apr. 2, 2024, <https://hellgatenyc.com/nyc-ai-weapons-scanners-pilot-false-positives>.

<sup>6</sup> Jason Koebler, *Shareholders Sue AI Weapon-Detecting Company, Allege It “Does Not Reliably Detect Knives or Guns,”* 404 Media, Mar. 29, 2024, <https://www.404media.co/shareholders-sue-evolv-ai-weapon-detecting-company-because-it-fails-to-detect-weapons/>.

This high rate of misidentification is not just a minor inconvenience; in the context of the subway system, where millions of people rely on the service daily, it could lead to a staggering number of unwarranted stops, searches, and possible detentions. We further note that, although the NYPD's draft impact and use policy claims that the products "does not" utilize biometric recognition, Evolv, has specifically advertised the ability to integrate such functionality.<sup>7</sup> This raises questions about the potential for troubling applications of these systems beyond those currently being touted by the Department.

Lastly, the NYPD's use of this flawed electromagnetic weapons detection system to conduct suspicionless searches of individuals entering the subway system would violate the Fourth Amendment. As the Supreme Court stated in *City of Indianapolis v. Edmond*, "A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing."<sup>8</sup> While the draft policy references the special needs doctrine, it plainly does not apply here. The special needs doctrine is a narrow exception to the Fourth Amendment's protections and does not cover the garden-variety law enforcement contemplated by the draft policy. The ineffectiveness of this technology coupled with the absence of any legal justification should counsel the NYPD to abandon its planned acquisition and deployment of any weapons detection system at all.

The NYCLU appreciates the opportunity to provide comments on the proposed impact and use policy and reiterates our recommendation that the NYPD not move forward with its plan to deploy this invasive, ineffective, and unwarranted technology in our transit system. We welcome the opportunity to continue to engage with the Department as it reviews and responds to public feedback in the coming weeks.



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<sup>7</sup> *Evolv Technology Completes National Safe Skies Alliance Evaluation for Weapons Detection System*, Evolv, Oct. 9, 2018, <https://www.evolvtechnology.com/resources/press-releases/evolv-technology-completes-national-safe-skies-alliance-evaluation-for-weapons-detection-system>.

<sup>8</sup> *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000).