



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

PUBLIC COMMENT OF FIRST DEPUTY PUBLIC ADVOCATE NICK E. SMITH TO THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD'S SPECIAL PUBLIC MEETING ON NYPD DISCIPLINARY MATRIX SEPTEMBER 17, 2020

Good afternoon. My name is Nick E. Smith, and I am the First Deputy Public Advocate, in the Office of Public Advocate for the City of New York. I'm pleased to present this testimony on behalf of our city's Public Advocate, Jumaane D. Williams.

I want to thank members of the Civilian Complaint Review Board for inviting New Yorkers to submit their thoughts on police accountability and this proposed matrix at a time when our communities have witnessed week after week the troubling and systemic problem of police misconduct in this nation. Our office is charged with acting as an ombudsperson for all residents of New York City, serving as a connective link between the City's residents and their government to ensure that services are provided in a timely manner and that their needs and problems are addressed. This includes how we hold the New York Police Department (NYPD) accountable in any instances of alleged police misconduct.

I want to applaud the steps taken by the Civilian Complaint Review Board to enlist the feedback from the public for their recommendations to NYPD, particularly under existing restraints. As a government agency charged with investigating, mediating, and prosecuting complaints of misconduct on the part of NYPD, the CCRB must continue to incorporate the feedback, comments, and concerns of all complainants and targets of police violence alike.

All across our country, calls for a more just and equitable policing are being highlighted for the Nation. I appreciate that New York City's Mayor and Police Commissioner too are listening to our community members to develop a penalty guideline for instances of police misconduct and brutality. However, it was the Council that pushed this forward, by a bill sponsored by Council Member Richards, and we thank him. While advocates have called for these changes for as long as I can remember, it could not be more important to build trust and safety for all our communities in this moment. Ensuring better policing and safe streets at the same time is an attainable goal.



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These past few months have been very hard for all New Yorkers experiencing the pandemic. Sadly, communities of more color have had to simultaneously deal with a disproportionate impact of COVID-19 and visibly excessive policing in enforcement of new orders around the virus. Even as officers themselves ignore them. Enforcement of wearing masks is a good example. We have also seen very questionable use of force during protests for Black Lives over the last several months. For these reasons, in my office's review of would like to propose the following:

First, although the New York Administrative Code gives the police commissioner discretion in determining whether or not a police officer has violated the "rules" established in the NYPD patrol guide,¹ we have seen several instances² where the Police Commissioner has determined that NYPD officer's actions against protestors were not a violation of the NYPD guidelines. **I recommend the Police Commissioner, in accordance with section 14-115 of the civil service code, in addition to determining whether a police officer has violated the rules, also determines whether the actions of said officer has, per the law, engaged in "conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming [of] an officer."**³ For example, using an NYPD car to run over protests may be **immoral** even if it did not violate the use of force guidelines. Similarly, an officer seen pummeling a homeless man on the subway station would constitute an immoral act yet, according to Commissioner Shea, would likely only result in more training. This is particularly important because we know that not all police conduct these few months have been advantageous to the welfare of the public, or even becoming of an officer, but were ruled to have not violated police guidelines, particularly the use-of-force guidelines. The rules established in the police patrol guide will mean very little if the rules allow for immoral or injurious conduct with no penalties.

¹ https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf

² <https://thehill.com/homenews/state-watch/503967-nypd-commissioner-officers-who-drove-into-protesters-did-not-violate-use>

³ <https://nycadmincode.readthedocs.io/t14/c01/index.html>



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Additionally, as the recent NYCLU⁴ database has shown us, accusations of police misconduct occur throughout all ranks within the police department. I must therefore recommend that regardless of rank, all officers within the probationary period, depending on their mode of misconduct, such as criminal mischief or criminal activity, be susceptible to termination should the occasion call for it. It is not enough that, for example, a sergeant who engages in certain domestic violence incidents would,⁵ during their probationary period, only be demoted. I want to also note that the database also indicates that officers who were found to have violated minor guidelines, such as dress codes and timeliness, received far harsher punishments than those with severe violations, which speaks to the importance of this matrix but also how we do not take all matters seriously.

Finally, I would be remiss should I not acknowledge that all of the written aggravating factors must always include “vulnerable populations,” who often fall victim to police misconduct in a unique way correlated with their identities. The NYPD disciplinary guidelines must be specific in ensuring the aggravating factors including misconduct against our aging, disabled and LGBTQIA+ and TGNC communities, and those who live within these intersections, are intentionally outlined in the disciplinary matrix. A consistent finding in the Floyd Monitor⁶ reports includes the astounding fact that the NYPD has consistently substantiated zero instances of biased policing on the basis of race. These lacking substantiated claims are not only indicative of a refusal to come to terms with racial biased policing but highlight the fact that New Yorkers living at the intersections of different identities may experience biased policing that is not stated in this matrix. I recommend explicitly naming instances of these biases including but not limited to misgendering and deadnaming of our transgender New Yorkers and failing to provide necessary accommodations in police’s interactions with our aging and disability communities.

Addressing accountability and transparency in a real way, not only helps better serve the community, it also helps the people who come to work every day with every intent to serve with Courteous, Professionalism and Respect. These people are willing to risk their lives on a

⁴ <https://www.nyclu.org/en/campaigns/nypd-misconduct-database>

⁵ Page 9-11 https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf

⁶ <http://nypdmonitor.org/monitor-reports/>



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moment's notice. We also owe it to them to put forth the best policing model we can. One that truly engenders trust and respect from the communities they've taken oaths to protect

I again want to thank the CCRB for conducting this public comment period. I hope that moving forward, there will also be a continued effort to publish when police officers have been disciplined in accordance with this disciplinary guideline, so there are checks and balances in not just holding the NYPD accountable, but ensuring that the forthcoming adopted disciplinary matrix will be enforced and strengthened by all New Yorkers.