



WRITTEN TESTIMONY OF THE NEW YORK CITY BAR ASSOCIATION

NEW YORK CITY COUNCIL COMMITTEE ON PUBLIC SAFETY

OVERSIGHT HEARING T2021-7023: THE CITY'S POLICING REFORM PROCESS

January 11, 2021

On behalf of the New York City Bar Association (City Bar), we respectfully request that the appended report be included in the written record for the oversight hearing being conducted by the New York City Council Committee on Public Safety regarding the City's policing reform process. The report, entitled "Police Reform Efforts in New York State and New York City: More to Do," argues that "substantial and systemic change is the only appropriate response to address abusive – and sometimes deadly – use of force by police officers, often deployed without consequence, and the only way to ensure that police officers are held to the highest standard as public servants," and outlines several areas in which policymakers should focus on reforms.¹

The report is divided into two sections: Section I focuses on the reactive processes and policies that follow allegations of police misconduct; Section II focuses on proactive policies and makes recommendations intended to reduce violence and police misconduct.

On November 19, 2020 the City Bar hosted an expert panel -- including representatives from the Mayor's Office, Bronx Defenders and Communities United for Police Reform, and the First Deputy Commissioner of the NYPD -- to discuss the various proposed pathways and approaches to address historic policing problems. The panel discussed some of the principal tensions confronting our society today and address the challenges of advancing change in how policing and law enforcement is carried out by the NYPD. A video of the event is available on our website.²

We hope these resources can be helpful to the Committee as it reviews New York City's approach to policing reform. We stand ready to assist and, as always, thank you for your consideration.

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¹ A copy of this report can be found online at <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/additional-police-reform-efforts-ny-abuse-and-violence>.

² See <https://www.nycbar.org/media-listing/media/detail/policing-black-and-brown-communities-in-nyc-reckoning-with-the-past-and-envisioning-a-better-future>.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world. www.nycbar.org



POLICE REFORM EFFORTS IN NEW YORK STATE AND NEW YORK CITY: MORE TO DO

“Through our criminal justice system, we show what is important to us and who is important to us.”

- *Former U.S. Attorney General Loretta Lynch
July 22, 2020, New York City Bar Association*

“[S]afety and fairness are not in conflict, but mutually reinforcing.”

- *Eric Gonzalez, Brooklyn District Attorney, and Rev. David K. Brawley, Senior Pastor of St. Paul Community Baptist Church and member of the Governance Board and Strategy Team of East Brooklyn Congregations.
August 13, 2020, Gotham Gazette**

**REPORT BY THE CIVIL RIGHTS COMMITTEE,
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE,
CRIMINAL COURTS COMMITTEE,
CRIMINAL JUSTICE OPERATIONS COMMITTEE,
NEW YORK CITY AFFAIRS COMMITTEE AND
PRO BONO AND LEGAL SERVICES COMMITTEE**

SEPTEMBER 2020

INTRODUCTION

In the wake of the killing of George Floyd and nationwide public protests, New York State and New York City have seen an unprecedented number of police reform bills pass, some even with bipartisan support.¹ On a broader scale, there is a growing and collective determination to have difficult – and sometimes uncomfortable – conversations in an effort to right past wrongs committed against Black and Brown communities, particularly in criminal justice, law enforcement and policing.

One of those conversations occurred at the (virtual) City Bar on July 22, 2020, at which City Bar President Sheila S. Boston moderated a discussion, *The Policing of Black and Brown Bodies*, with former U.S. Attorney General Loretta Lynch; former U.S. Attorney for the District of New Jersey, Paul Fishman; Nicole M. Austin-Hillery, Executive Director, U.S. Program, Human Rights Watch; J. Scott Thomson, former Chief of the Camden County Police Department and former President of the Police Executive Research Forum (PERF); and Lorenzo M. Boyd, Vice President for Diversity and Inclusion, Chief Diversity Officer, University of New Haven, and a former police officer (the “July 22 Panel”).² The City Bar intends to play a continuing role in convening and facilitating these conversations, as well as to offer policy recommendations when appropriate.

To that end, and in furtherance of the City Bar’s work to support a fair, equitable and anti-racist criminal justice system,³ this report is offered to policymakers to identify a few areas that we believe call for additional consideration and action. It is not meant to be an exhaustive list; rather, we focus on policing/law enforcement reform proposals at the state and local levels, and we limit ourselves to what represents a consensus among our committee members who occupy a wide variety of law-related positions in the criminal justice field.

In sum, we argue that substantial and systemic change is the only appropriate response to address abusive – and sometimes deadly – use of force by police officers, often deployed without consequence, and the only way to ensure that police officers are held to the highest standard as public servants. Policymakers have attempted in the past to make modest changes to our policing forces,⁴ but video after video has revealed that, even in the midst of protests about police violence

* Eric Gonzalez, Rev. David K. Brawley, “Opinion: The Path to Better Policing and Safer Communities in Brooklyn and Beyond,” Gotham Gazette, Aug. 13, 2020, https://www.gothamgazette.com/opinion/9677-more-justice-better-policing-stronger-communities-brooklyn-da-new-york-city?mc_cid=db7b85142e&mc_eid=1f2b70501e (all websites last visited Sept. 18, 2020).

¹ See Appendix. In particular, we applaud the repeal of Civil Rights Law 50-a, which acted to keep police misconduct records shrouded in secrecy. Press Release: City Bar Applauds Repeal of CRL 50-a, June 9, 2020, <https://www.nycbar.org/media-listing/media/detail/crl-50-a-city-bar-applauds-repeal>.

² Audio and video recordings of this program are available at <https://www.nycbar.org/media-listing/media/detail/the-policing-of-black-and-brown-bodies>.

³ See <https://www.nycbar.org/member-and-career-services/committees/criminal-justice-police-reform-and-civil-rights>.

⁴ Some of these changes are related to or arise out of the work of oversight agencies which, if given the proper independence, tools, enforcement power and funding, can play an important role in reforming policing policies. For the NYPD, this includes the Office of the Inspector General for the NYPD (OIG-NYPD) and the Civilian Complaint

and calls for racial justice, one can clearly see unnecessary and abusive use of force aimed by the police at protesters. In order to permanently alter this cycle, sweeping changes are required, bolstered by the commitment of individuals who occupy leadership positions in the field.

First, though, as noted by *every* speaker at the July 22 Panel, the success of any reform measures depends on the involvement and leadership of the community members most impacted by over-policing and the use of force. The reforms identified below are based, in large part, on the experiences of lawyers representing individuals in those communities, as well as lawyers representing the State and the City, and working at other government agencies, in academia, and in private practice. We recognize, however, that no conversation on police reform is complete without the important voices of police officers and community members themselves. We offer these suggestions with that understanding and in the spirit of adding to, and hopefully advancing, the larger conversation.

This memorandum is divided into two sections: Section I focuses on the process that occurs after police misconduct⁵ has been alleged, and makes recommendations regarding police discipline, investigations of misconduct, and information-sharing among District Attorneys. Section II focuses on proactive policies and makes recommendations to reduce violence and police misconduct, including, creating and funding alternatives to police, shifting priorities of the New York City Police Department (NYPD), enhanced police training, and the continued decriminalization of low-level offenses.

I. REACTIVE POLICIES: AFTER POLICE MISCONDUCT HAS OCCURRED

a. Discipline Process

Outside of New York City - in most counties, towns and in the state police - the discipline process of police officers is subject to union negotiation; within New York City, decisions regarding police discipline, ultimately, reside with the Commissioner of the NYPD. Both forms of discipline are beset by inordinate delays and, often, a failure of consequence for police misconduct. We hear, again and again, that police leadership and rank-and-file officers support the discipline and removal of “bad apples,” but the actual results fall well short and public trust suffers.

Review Board (CCRB). While many believe that a reform agenda must include ways to improve the efficacy and increase the independence of these agencies, such measures are outside the purview of this report, although as a general matter, the City Bar fully embraces the function of independent oversight bodies as an important accountability measure. At a minimum, any conversations around police reform should include these agencies and utilize their knowledge, data collection, statistical findings and any previously recommended policy changes (whether implemented or not). For example, the OIG-NYPD released a report in April outlining the status of its recommendations made to the NYPD since 2015. *See* Annual Report 2020, OIG-NYPD, April 2020, https://www1.nyc.gov/assets/doi/reports/pdf/2020/OIGNYPD_SixthAnnualReportFinal_4.9.2020.pdf (hereafter “OIG-NYPD Report”).

⁵ The term “police misconduct” used in this report is meant to cover actions by police officers that deprive an individual of his or her rights, such as, false arrest, unreasonable or excessive use of force, abuse of power, unlawful searches and seizures, perjury, etc. It is not meant to cover low level issues, such as failure to be on time or wear appropriate uniform attire or other internal/administrative-type infractions.

The State Legislature should immediately conduct public hearings⁶ to examine whether the State should ban from collective bargaining the process of disciplining officers for misconduct.⁷ The goal should be to create a modern, fair and transparent system for investigating and disciplining officers accused of misconduct.⁸ Using various research studies as a tool for inquiry and policy proposals, public hearings can explore studies that have found: (i) that collective bargaining by law enforcement officers regarding discipline leads to an increase in violence and incidents of misconduct;⁹ (ii) that the largest predictor of a police officer's use of force is whether the officer has been found to use excessive force in the past;¹⁰ and (iii) that unchecked use of force is contagious, and that officers who use excessive force create a culture that leads others in their immediate team to use excessive force as well.¹¹ Allowing for discipline structures that insulate

⁶ In light of COVID-19 concerns, public hearings on the discipline process, or on any issue discussed in this report, can and should be conducted virtually until it is safe to resume in-person hearings.

⁷ While a critical first step, public hearings are the bare minimum that should be undertaken and we urge legislators and other elected officials to comprehensively address this issue through the various means at their disposal. Changing culture and laws around policing requires persuasion and consequence. For example, Governor Cuomo recently issued an Executive Order, entitled "New York State Police Reform and Reinvention Collaborative." It authorizes the Division of Budget to withhold funds from any local government that does not undertake a series of steps to address, among other things, "the particular needs of the communities served by such police agency and promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color." See Executive Order 203, June 12, 2020, <https://www.governor.ny.gov/news/no-203-new-york-state-police-reform-and-reinvention-collaborative>.

⁸ Nebraska has enacted a version of this law which restricts State Patrol's union contract from interfering with police accountability. Neb. Rev. Stat. 81-1377 and 81-1425 (2018), available at <https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB791.pdf>. We urge hearings to discuss and consider a more comprehensive law that bans police union contracts statewide from including language regarding misconduct investigations and discipline.

⁹ Dhammika Dharmapala, Richard H. McAdams, and John Rappaport, "Collective Bargaining Rights and Police Misconduct: Evidence from Florida," University of Chicago Law School (2018), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2145&context=public_law_and_legal_theory. It is worth noting that Florida is unique in its ability to study this issue because collective bargaining was banned for a period of time, and then permitted, which allowed for a direct comparison.

¹⁰ Researchers with the University of Chicago "found that the most potent predictor of adverse interactions in a given year was an officer's own history. Cops with many instances of adverse interactions in one year were the most likely to have them in the next year." See Rob Arthur, "We Now Have Algorithms To Predict Police Misconduct," FiveThirtyEight, March 9, 2016, <https://fivethirtyeight.com/features/we-now-have-algorithms-to-predict-police-misconduct/>. Derek Chauvin, who has been charged with the murder of George Floyd, has a long history of use of lethal force; see Derek Hawkins, "Officer charged in George Floyd's death used fatal force before and had history of complaints," The Washington Post, May 29, 2020, <https://www.washingtonpost.com/nation/2020/05/29/officer-charged-george-floyds-death-used-fatal-force-before-had-history-complaints/>. One of the officers who shot and killed Breonna Taylor has a history of allegations of sexual misconduct; see Janelle Griffith and Doha Madani, "Louisville police investigating sexual assault accusations against officer in Breonna Taylor shooting," NBC News, June 10, 2020, <https://www.nbcnews.com/news/nbcblk/louisville-police-investigating-sexual-assault-accusations-against-officer-breonna-taylor-n1228896>. An officer in Florida who was suspended after shoving a kneeling protester "had been reviewed by internal affairs for using force 79 times in his roughly three-and-a-half years on the force." See Charles Rabin, "Lauderdale officer suspended for shoving protester has history of using force, drawing weapons," Miami Herald, June 3, 2020, <https://www.miamiherald.com/news/local/crime/article243234261.html>.

¹¹ See *i.e.* Thibaut Horel, Trevor Campbell, Lorenzo Masoero, Raj Agrawal, Andrew Papachristos and Daria Roithmayr, "The Contagiousness of Police Violence," The University of Chicago The Law School, 2018, https://www.law.uchicago.edu/files/2018-11/chicago_contagiousness_of_violence.pdf; Katherine J. Wu, "Study

officers who abuse their power harms not only communities, but also police forces themselves, which suffer from public perception that officers are not held accountable for unwarranted use of force. One can be a supporter of organized labor while also recognizing that we “need a release valve to get bad officers out.”¹²

In New York City, the law already provides that NYPD discipline is not subject to collective bargaining.¹³ Although the process is lengthy (with many arguing that delays are largely attributed to the NYPD moving slowly), the Commissioner ultimately has the authority to discipline and fire officers. When he wants to move quickly, he can. The problem is that, in many cases substantiated by the Civilian Complaint Review Board (CCRB), the NYPD does not discipline officers beyond providing verbal admonishments or additional training or departs downward from the discipline recommended by the CCRB, and even internal NYPD recommendations, with little to no transparency.¹⁴ An independent report from 2019 provides a good overview of NYPD discipline issues and provides a comprehensive guide to smart policy recommendations.¹⁵ Although NYPD implemented some of these recommendations,¹⁶ policymakers, other agencies and members of the public should continue to make inquiries and hold NYPD accountable so that all of the report’s recommendations are implemented or, at a minimum, publicly addressed by NYPD.¹⁷

finds misconduct spreads among police officers like contagion,” NOVA, PBS.org, May 27, 2019, <https://www.pbs.org/wgbh/nova/article/police-misconduct-peer-effects/>.

¹² Statement of Mr. Boyd at July 22, 2020 City Bar program, *supra* note 2.

¹³ Press Release: Court of Appeals Rules That All Police Disciplinary Matters Are Reserved to the New York City Police Commissioner and Not Subject to Collective Bargaining, New York City Law Department Office of the Corporation Counsel, <http://www.nyc.gov/html/law/downloads/pdf/pr032806.pdf>.

¹⁴ See Preliminary Report on the New York City Police Department’s Response to Demonstrations Following the Death of George Floyd, New York State Office of the Attorney General, July 2020, at 41. See also N.Y. City Civilian Complaint Review Bd., 2018 Annual Report, Appendix, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2018_annual-appendix.pdf; see also John Teufel, “Opinion: Time to Fire NYC’s Bad Cops,” City Limits, June 30, 2020, <https://citylimits.org/2020/06/30/opinion-time-to-fire-nycs-bad-cops/>; *infra* note 20. Notably, in cases where CCRB conducts an administrative trial, the NYPD concurred with the recommended discipline in only 21 % of cases. CCRB 2019 Bi-Annual Report, at 51, https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2019_semi-annual.pdf.

¹⁵ “The Report of the Independent Panel on the Disciplinary System of the New York City Police Department,” Jan. 25, 2019, <https://www.independentpanelreportnypd.net/>.

¹⁶ Press Release: NYPD Announces 60-Day Update on Disciplinary System Reforms, New York City Police Department, April 1, 2019, <https://www1.nyc.gov/site/nypd/news/pr0401/nypd-60-day-on-disciplinary-system-reforms#/0>.

¹⁷ See also NYPD-OIG Report *supra* note 4 at 8 (“Complaints of Biased Policing in New York City: An Assessment of NYPD’s Investigations, Policies, and Training”) and 48 (“Addressing Inefficiencies in NYPD’s Handling of Complaints: An Investigation of the ‘Outside Guidelines’ Complaint Process”).

One of those recommendations was that NYPD consider adopting a disciplinary matrix, a recommendation that was supported by the City Council¹⁸ and which NYPD recently acted on.¹⁹ The NYPD's proposed disciplinary matrix was released for public comment and reflects "presumptive penalties to be imposed for specific offenses, with potential aggravating and mitigating factors that may be considered when assessing a disciplinary penalty, in order to meet the goals of the disciplinary system."²⁰ The proposal suggests penalties for different types of misconduct and criminal activities, but ultimately leaves the decision for any penalties to the NYPD Commissioner.²¹ On September 17, 2020, the CCRB held a public board meeting at which NYPD officials discussed the matrix and heard responses and feedback from CCRB staff and board, public officials, advocacy organizations, and members of the public. Most speakers applauded the matrix as a positive first step, but the nature of the feedback reveals several areas that require further study, deliberation and consideration by the NYPD, including the decision to leave final disciplinary determinations with the Commissioner.²²

b. Independent Prosecutor for Police Misconduct

The State should establish an independent office that investigates all allegations of on-the-job criminal activity by police officers, and not just police shootings resulting in death. District Attorneys (DAs) tasked with prosecuting officers are often placed in an untenable situation because normally DAs are required to partner with these same officers to fulfill their duties. Regardless of whether there is an actual conflict of interest that impacts the decisions of DAs, the

¹⁸ Local Law No. 69 [2020] of City of New York, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3786105&GUID=419AD715-FF13-4932-85DE-4C7E18DCF723&Options=&Search=>.

¹⁹ Draft Policies for Public Comment, New York City Police Department, <https://www1.nyc.gov/site/nypd/about/about-nypd/public-comment.page>.

²⁰ "Disciplinary System Penalty Guidelines: Draft for Public Comment," New York City Police Department, https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf (hereafter "Proposed Discipline Matrix").

²¹ Rocco Parascandola and John Annese, "NYPD creates new 'discipline matrix', required by city law, to make penalties for officer misconduct less arbitrary," NY Daily News, Aug. 31, 2020, <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-discipline-matrix-20200831-mg6rfl3mkfgbxe7uspedkenvpq-story.html> (also referencing a seven-month study by the Daily News in 2019 which "showed the NYPD was wildly inconsistent in how it punishes errant cops, and offenses against the public were punished with slaps on the wrists, while protocol violations resulted in heavier punishment." See Thomas Tracy, "Probe finds inconsistent disciplinary punishments give rogue NYPD cops wrist slaps for harming everyday people," NY Daily News, May 28, 2019, <https://www.nydailynews.com/new-york/nyc-crime/ny-no-method-to-maddening-discipline-results-nypd-20190528-jdmdw5y6indkfmixc54mwp4lk4-story.html>).

²² Testimony from the Sept. 17, 2020 hearing is available at <https://www1.nyc.gov/site/ccrb/about/news/previous-board-meetings.page>. See also Thomas Tracy, "New NYPD disciplinary matrix gets mixed results," NY Daily News, Sept. 6, 2020, <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-discipline-matrix-20200831-mg6rfl3mkfgbxe7uspedkenvpq-story.html>; Christopher Robbins, "NYPD's New 'Discipline Matrix' Would Recommend, For The First Time, Specific Penalties For Misconduct," Gothamist, August 31, 2020, <https://gothamist.com/news/nypds-new-discipline-matrix-would-recommend-first-time-specific-penalties-misconduct>.

public perceives that there is a conflict, undermining public trust in both DAs and law enforcement in general. An independent body is needed to effectively, and objectively, investigate these cases.

This body should also be tasked with reviewing annual use of force statistics²³ and recommending changes, as appropriate, to reduce use of force by law enforcement throughout the state.²⁴ The independent office could reside within the Attorney General's Office or be an independent body with an independent appointment process and commissioner. The importance of creating this position and giving it substantial authority to investigate and punish police misconduct should outweigh any political considerations.

Of course, an independent prosecutor is charged with investigating incidents after the fact. As discussed below, internal discipline and other proposals related to hiring, training, and department mission are equally, if not more, important. This is especially true because the criminal law is an imperfect tool for reining in and deterring police misconduct. The law gives officers wide latitude to use force,²⁵ which creates a significant gap between what is legally permitted and what is good practice.

c. Require Information Sharing Among District Attorney's Offices in New York City

New York City is unique in that the jurisdiction of individual DAs' offices is narrower than that of local law enforcement. Thus, when an individual DAs' office determines that a law enforcement officer has acted in a manner that requires disclosure to defense counsel, that information remains within the county where that determination is made. Typically, such incidents may include individual case-based determinations that an officer has been untruthful even if perjury cannot be proved, or instances in which a judge found an officer not credible when the officer testified. If that officer then conducts an arrest in another county, the other District Attorney's office is likely to be unaware of the determination made by the first District Attorney's office or the judge in the other county, and therefore is unable to act accordingly.

²³ Teri Weaver, "NY creates use-of-force database to track police actions," Syracuse.com, April 4, 2019, <https://www.syracuse.com/news/2019/04/ny-creates-use-of-force-database-to-track-police-actions.html>. See also OIG-NYPD Report *supra* note 4 at 33 ("An Investigation of NYPD's New Force Reporting System").

²⁴ The City Bar has supported efforts in the past to increase oversight over the NYPD. See *i.e.* Report in support of Int. 1079-2013, creating an Inspector General for the NYPD, Civil Rights Committee, June 2013, <http://www2.nycbar.org/pdf/report/uploads/20072424-CreationofanNYPDInspectorGeneral.pdf>. Over twenty years ago, the City Bar issued a report calling for the appointment of special prosecutors in cases of police corruption and severe police brutality, see "Need for a Special Prosecutor for Criminal Justice", Criminal Law Committee, Feb. 1993, http://www2.nycbar.org/pdf/report/uploads/93001-the_need_for_a_special_prosecutor_for_criminal_justice.pdf. See also "The Authority of the New York Attorney General When Police Abuse their Authority", Civil Rights Committee, May 2002, <http://www.nycbar.org/pdf/report/Report%20on%20the%20Auth%20of%20the%20AG.pdf>. In response to a 2015-16 Executive Budget proposal, we noted that the question of a special prosecutor is one worthy of further exploration because it would provide an important reform, see Report on 2015-16 Executive Budget Proposal, the Criminal Justice Reform Act of 2015, March 2015, <http://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/report-on-2015-16-executive-budget-proposal-the-criminal-justice-reform-act-of-2015>.

²⁵ Whether and how use-of-force policies should be modified is beyond the scope of this report.

DAs' offices in the City that have discoverable material relating to an NYPD officer should be required to share that information with other DAs' offices in the city. We recommend that the New York City Council pass a law requiring information-sharing among DAs' offices in the five boroughs when they determine that an officer has acted in such a way that disclosure of his or her actions may be required under the law in future cases.²⁶

II. PROACTIVE POLICIES: REDUCING VIOLENCE AND RETHINKING PUBLIC SAFETY

a. Create Alternatives to Police and Invest in Communities²⁷

Policymakers, in consultation with all stakeholders and experts, should establish alternative responses to numerous categories of circumstances that police officers currently respond to, including welfare checks, behavioral health responses, noise complaints and many other categories.

Here in New York City, police officers are often required to respond to situations outside their areas of expertise or training. Specialized personnel such as violence interventionists, social workers, mediators, trained community members and mental health care professionals are better positioned to answer routine calls that currently are handled by the NYPD. Circumstances that require the response of armed personnel should be carefully considered.

New York City, as the home of the largest police force in the country, should pilot further programs that seek to reduce the necessity of sending armed police officers to respond to routine calls from thousands of individuals who are currently forced to rely unnecessarily on police for assistance. New York City should undertake, with the input of all stakeholders, a comprehensive study and informed re-thinking of the NYPD so that its resources can be put to the best use.

Ultimately, it makes good policy sense to move away from having the police be the only government agency dispatched to respond to every manner of emergency, including those that they are not well-positioned to resolve. As so aptly put by Ms. Austin-Hillery during the July 22 Panel, we need to stop asking the police “to be the panacea for all that ails the country.” Routinely arresting, charging and imprisoning people is not a successful approach to solving societal ills and maintaining public safety and community trust. With this in mind, and in coordination with

²⁶ The City Bar has supported other efforts to increase information sharing about police conduct as a way to identify problem officers and provide a systematic view of misconduct; *see i.e.* Report in support of Int. 0119-2014, requiring the Inspector General of the NYPD to submit quarterly reports to the City Council, Comptroller and Civilian Complaint Review Board detailing the number of disposition of civil actions filed against the NYPD, New York City Affairs Testimony, May 2014, <http://www2.nycbar.org/pdf/report/uploads/20072720-SupportforRequiredQuarterlyReportsfromNYPDInspectorGeneral.pdf>; and “The Failure of Civil Damages Claims to Modify Police Practices, and Recommendations for Change”, New York City Affairs Committee, March 2000, http://www2.nycbar.org/Publications/reports/show_html_new.php?rid=32&searchterm=civilian%20complaint%20review%20board.

²⁷ Some refer to this as “defunding” the police. At the July 22 Panel, Ms. Austin-Hillery referred to it as “divesting and reinvesting” which is a better description of what is being sought, *i.e.*, the need for investment and economic opportunity in communities of color, considered also as a way to advance public safety (*supra* note 2).

community members and other stakeholders, the missions and mandates of the various units of the NYPD should be reconsidered and resources shifted as appropriate.

b. Review Mental Health and Ableist Practices

New York City must undertake a holistic review of the impacts of disability, ableism,²⁸ and audism²⁹ in its policing policies and practices and within the criminal justice system in conjunction with all stakeholders, including people with disabilities and mental illness and experts in the fields. Studies have shown that between one-third to one-half of those killed by police have disabilities.³⁰

Specifically, with respect to emergency calls involving mental health, New York City could follow the example of Eugene, Oregon, which established a Crisis Assistance Helping Out On The Streets (CAHOOTS) program.³¹ CAHOOTS sends a mobile crisis intervention team to respond to calls related to behavioral health. Right now, in New York City, conversations are ongoing as advocates and policymakers debate how best to respond to emergency calls implicating an individual's mental health or condition. The City Council, the Mayor's Office, and the Public Advocate, among others, have written, explored and debated proposals for several years, and there may now be political will to make beneficial changes.³²

We urge stakeholders to resolve the final issues surrounding emergency calls involving mental health concerns, which seem to be centered around when a police officer should be part of a response team, and when not. One approach could be to establish pilot projects in order to examine best practices, best results, and plans for more wide scale rollout.³³ In the end, the need

²⁸ Ableism is a set of beliefs or practices that devalue and discriminate against people with physical, intellectual, or psychiatric disabilities and often rests on the assumption that disabled people need to be 'fixed' in one form or the other." Center for Disability Rights, "#Ableism," <http://cdrnys.org/blog/uncategorized/ableism/>.

²⁹ "Audism is the belief that people who hear, and people who have the ability to behave like a hearing person, are superior to Deaf people." "Addressing Audism," Hearing, Speech and Deaf Center, Sept.17, 2019, <https://www.hsd.c.org/2019/09/equity-team-update-addressing-audism/>. "Deaf and hard of hearing people face audism every day, in the form of communication barriers, discrimination, or hostile attitudes." *Id.*

³⁰ Abigail Abrams, "Black, Disabled and at Risk: The Overlooked Problem of Police Violence Against Americans with Disabilities," Time Magazine, June 25, 2020, <https://time.com/5857438/police-violence-black-disabled/>.

³¹ See <https://whitebirdclinic.org/services/cahoots/>.

³² Caroline Lewis, "The NYPD Currently Responds To Mental Health Crisis 911 Calls. Advocates Have Another Approach," Gothamist, June 14, 2020, <https://gothamist.com/news/nypd-currently-responds-mental-health-crisis-calls-advocates-have-another-approach>.

³³ See also recommendations made in the OIG-NYPD Report *supra* note 4 at 50 ("Putting Training Into Practice: A Review of NYPD's Approach to Handling Interactions with People in Mental Crisis"). For example, the NYPD has implemented a Crisis Intervention Team (CIT) program, which provides officers with training to help them manage individuals in mental health crisis. However, while NYPD has enacted most of the training aspects of CIT, it has not implemented the program as a whole. "Most notably, NYPD's dispatch system could not direct individuals trained in the CIT approach to all crisis incidents. The assignment of officers to assist individuals in distress remained random, undermining the intention of the training to ensure universal access to first responders with CIT awareness." (OIG-NYPD Report at 50).

to change the role police play in responding to individuals with disabilities, particularly mental health issues, is essential.³⁴

c. Invest in Violence Intervention Programs

In addition, violence intervention strategies are an important component of any effort to reallocate resources and increase public safety. Programs like New York City's Cure Violence³⁵ should be supported and funded, and the State should consider implementing programs like Baltimore's Hospital Based Violence Intervention Program.³⁶ New York City hospitals have already successfully targeted those at risk of overdose by responding in the hospital setting. Similar steps should be taken to provide assistance in the hospital setting to those experiencing violence.³⁷

d. Reduce and Reimagine School Safety Officers

Schools in New York City provide another opportunity for change. The City Council has taken initial steps towards removing School Safety Officers from the purview of the NYPD. We support this step, and urge the Council to continue engaging all stakeholders, including school administrators, teachers, parents and students, in order to further the goal of reducing the number of school safety officers, changing the mandate of those that remain, and integrating them fully into schools as a resource for children rather than simply as law enforcement officers meant to police children in their schools.³⁸

e. Rethink Traffic Enforcement

Likewise, traffic enforcement agents could be moved out of NYPD and perhaps into the Department of Transportation. Such a move might help to address the longstanding problem of

³⁴ See "People with Untreated Mental Illness 16 Times More Likely to be Killed by Law Enforcement," Treatment Advocacy Center, <https://www.treatmentadvocacycenter.org/key-issues/criminalization-of-mental-illness/2976-people-with-untreated-mental-illness-16-times-more-likely-to-be-killed-by-law-enforcement->. Resolution of these issues will, of course, require adequate funding for mental health services in communities. For example, a youth may receive treatment for both mental health and trauma while in a juvenile detention center but, once released, the options for continuing treatment in the community are much harder to access. Mental Health Courts also present opportunities to ensure that individual receive the mental health treatment they need, as opposed to entering the criminal justice system

³⁵ Sheyla A. Delgado, Laila Alsbahi, Kevin Wolff, Nicole Alexander, Patricia Cobar, and Jeffrey A. Butts, "The Effects of Cure Violence in the South Bronx and East New York, Brooklyn," John Jay College of Criminal Justice Research and Evaluation Center, Oct. 2, 2017, <https://johnjayrec.nyc/2017/10/02/cvinsobronxeastny/>; <https://johnjayrec.nyc/>; Save Our Streets (S.O.S), Center for Court Innovation, <https://www.courtinnovation.org/programs/save-our-streets-sos>.

³⁶ Violence Intervention Program, University of Maryland Medical Center, <https://www.umms.org/ummc/community/classes-events/health-improvement/violence-intervention-program#:~:text=The%20VIP%20is%20a%20hospital,necessary%20resources%20and%20social%20support>.

³⁷ Although this statement is focused on state and local issues, as discussed by former Attorney General Loretta Lynch during the July 22 Panel, federal funding has an important role to play in supporting local police reform and initiatives such as those discussed here (*supra* note 2).

³⁸ We recognize that being part of a resource in the school environment may now require involvement in COVID-19 related safety protocols.

unlawful parking and the abuse of parking placards that allow members of the NYPD and other City officials to park their personal cars in areas off limits to others. Despite being granted this extraordinary privilege, there is overt noncompliance with the rules applicable to such placards and “neighborhoods across the city are plagued with cars that park with impunity, blocking sidewalks and bike lanes, in front of hydrants, double-parking,” as City Council Speaker Corey Johnson recently stated.³⁹ Civilian employees of the NYPD are not in a position to stop this practice and there is no reason that the other functions of traffic enforcement agents, such as writing parking tickets for expired meters, need to be part of the NYPD.

f. Change Priorities of the NYPD

The NYPD emphasizes the use of statistics in assessing the success of its precincts and officers.⁴⁰ Superior officers are required to describe the number of summons issued, arrests made, search warrants executed, use of electronic supervision, etc. These statistics are then used in promotion decisions. By prioritizing these statistics, the focus remains on maximizing enforcement and punishment, rather than on keeping communities safe and whole. Serious questions have been raised, for instance, as to whether the number of arrests should be a factor in promotional decisions. Recognizing that we live in a world that requires statistics and reporting of information, one approach is to exclude certain statistics from promotional decisions and change how statistics are prioritized overall so that more focus can be placed on solving reported crimes, not on arrests and citations. Further measures can be developed to track an officer’s positive interactions with a community. Ultimately, to the extent officers feel pressured to increase the number of summons, arrests and searches, this comes at great human cost. And, in the long run, this reward system does significant - and hard to reverse - damage to police-community relations and law enforcement’s ability to build trust, obtain community cooperation and solve crimes.⁴¹

g. Enhance Police Training

Police training hours should be readjusted so more hours are spent on learning concepts like de-escalation tactics, bias training and respectful community engagement. This sort of training is equally as important as hours spent on weapons training and other training related to how to use

³⁹ Shant Shahrigian, “NYC Council passes bills to crack down on parking placard abuse,” NY Daily News, Nov. 26, 2019, <https://www.nydailynews.com/news/politics/ny-placard-abuse-new-york-20191127-eibtb4xqizavjehgncqkwd2liu-story.html>.

⁴⁰ See, e.g., NYS Office of Attorney General, Preliminary Report on New York City Police Department’s Response to Demonstrations Following the Death of George Floyd, July 2020 at 34 (referencing letter by Chris Monahan, President of the Captains’ Endowment Association calling for the termination of CompStat, NYPD’s system for tracking crime data and arrest because it causes NYPD officers to unnecessarily target and arrest individuals in communities of color to satisfy implied arrest and ticket quotas.)

⁴¹ A related issue that calls for further action is the persistent lack of diversity at the top NYPD ranks. Three out of four police officials with a rank above captain are white, and 62% of captains are white. (Ranks above captain are based on merit, not civil service exams.) In addition, and affecting the pipeline to top positions, Black patrol officers have *decreased* from 18% to 15.5% representation between 2008 and 2020. An NYPD spokesperson points to the hampering effects of civil service rules and low turnover at the top ranks. See Greg B. Smith, “Number of Black Patrol Cops Falls as NYPD Upper Ranks Remain Majority White,” The City, June 24, 2020, <https://www.thecity.nyc/2020/6/24/21302335/number-of-black-cops-falls-as-nypd-upper-ranks-remain-white>.

force.⁴² And, although 60 hours of college credit are required to join the NYPD, there is no core set of courses all candidates have to take. Future officers could be required to take core courses such as Dispute Resolution, Effective Communication, and Ethics before joining the force, and a continuing training requirement could be instituted, perhaps one that educates officers on the intricacies of the disciplinary process and what takes place after a complaint is filed. Policymakers should work with police departments to support and fund efforts to make trainings more frequent, and trainings should be accompanied by explicit buy-in from precinct leadership.⁴³ When training is not followed, there should be discipline; otherwise, training is meaningless.

h. Demilitarize the Police and Reduce Use of Military Tactics During Protests

The right of citizens to engage in large-scale peaceful protests is fundamental. New York State should ban the use of military equipment and military tactics on protestors as crowd control measures, including the use of pepper spray, sound cannons⁴⁴ and tear gas.⁴⁵ Policymakers should examine the NYPD's response to the latest protests and determine – and publish - best practices for future protests so as to prevent the unnecessary escalation of violence and use of force.

Relatedly, policymakers should conduct hearings and give close scrutiny to the purchase of military equipment by law enforcement. Topics that can be explored during hearings include: the link between the use of military equipment by law enforcement and escalated violence during community interactions; when it is necessary – and *not* necessary – for the NYPD to carry and use military equipment; and, to the extent military equipment and SWAT-type tactics are used by police - what are they being used for, when can the use bring about escalated violence, and when should such use be absolutely banned. Even if one believes that certain military equipment is necessary under certain circumstances, its use should be narrowly circumscribed going forward.

⁴² While training is important, it is crucial that it not be the sole or primary method in which the City and State seek to change policing. For example, Garrett Rolfe, who has been charged with the murder of Rayshard Brooks, had a nine-hour de-escalation training less than three months before he killed Mr. Brooks. *See* Jorge L. Ortiz, “Lawful but awful”: Atlanta police had better options than lethal force in Rayshard Brooks shooting, experts say,” USA Today, June 15, 2020, <https://www.usatoday.com/story/news/nation/2020/06/14/rayshard-brooks-atlanta-police-killing-lawful-but-awful/3189478001/>.

⁴³ In recent years there have been many calls for both increased training and new types of trainings for police. Some of these trainings have been successfully implemented by NYPD, others remain incomplete or insufficient (*see generally* OIG-NYPD Report, *supra* note 4). We would urge policymakers and NYPD to take a comprehensive look at all of the Department's existing trainings to identify not only gaps, but areas that may be duplicative, need reform or need broader implementation.

⁴⁴ Nick Pinto, “NYPD Use Of Sound Cannons For Crowd Dispersal Can Qualify As Excessive Force, Judge Rules,” Gothamist, June 14, 2018, <https://gothamist.com/news/nypd-use-of-sound-cannons-for-crowd-dispersal-can-qualify-as-excessive-force-judge-rules>.

⁴⁵ NYPD reports that it does not use rubber bullets or tear gas as crowd control measures, though it does use pepper spray, but the use of all of these measures should be banned at the state level. To view the City Bar's recent writings on treatment of protestors, *see* <https://s3.amazonaws.com/documents.nycbar.org/files/2020726-LafayetteSquareInvestigationCongress.pdf> (concerning Lafayette Park protests) and <https://www.nycbar.org/media-listing/media/detail/statement-on-detention-of-legal-observers> (concerning detention of legal observers at protests in New York City).

Hearings could also explore, relatedly, the use of military equipment and tactics as part of the execution of “no-knock” warrants, where the police do not knock or identify themselves prior to entering someone’s premises. In New York State, no-knock warrants are authorized as a matter of course in most search warrants relating to drug-related crimes, out of fear that evidence might be destroyed if the police were to identify themselves. While it is true that evidence may be destroyed without the use of no-knock warrants, the destruction of drugs, on its own, is an insufficient reason to risk the loss of life that can stem from no-knock warrants. A better approach, and one that limits the risk of unwarranted violence, would be to limit no-knock warrants to only the most extreme circumstances involving unusual safety concerns.

i. Continue to Decriminalize Low-Level Crimes

There are tens of thousands of criminal court summons handed out by the NYPD on an annual basis, and there is extreme racial disparity in these summonses.⁴⁶ Relying on armed law enforcement personnel to enforce these low-level offenses creates unnecessary friction between community and police with no corresponding benefit to public safety.

In previous reports, the City Bar has argued that New York State should legalize marijuana,⁴⁷ repeal the law criminalizing loitering for the purposes of prostitution,⁴⁸ and that New York City should decriminalize failure to pay fares for public transportation,⁴⁹ all of which are disproportionately enforced to the detriment of communities of color without any corresponding public benefits. In addition, both the State Legislature and the City Council should examine those offenses for which summonses are given and hold public hearings in order to consider which offenses should be decriminalized or, at a minimum, remove enforcement of these low-level offenses from the purview of law enforcement.

⁴⁶ The NYPD publishes quarterly reports on summonses. For example, in the Fourth Quarter of 2019, the NYPD issued 9,879 summonses to individuals (an additional 8,535 were issued to businesses), 47% of which were issued to Black individuals, 33.3% to Hispanic individuals and only 10% to white individuals, despite the NYC population being 24.3% Black, 29.1% Hispanic and 32.1% White (QuickFacts, New York City, New York, U.S. Census Bureau, accessed Aug. 12, 2020, <https://www.census.gov/quickfacts/newyorkcitynewyork>). The most common summons was for federal motor vehicle safety registration (6,177 summonses) and Marijuana in the Second Degree (2,950 summonses). Other common summonses included Alcoholic Beverages in Public (307) and Non-Payment of Fare (428). Criminal and Civil Court Summons Reports, New York City Police Department, <https://www1.nyc.gov/site/nypd/stats/reports-analysis/c-summons.page>.

⁴⁷ Marijuana Legalization & Regulation resource page, New York City Bar Association, <https://www.nycbar.org/member-and-career-services/committees/marijuana-legalization-and-regulation>.

⁴⁸ A.654 (M. of A. Paulin) / S.2253 (Sen. Hoylman), 243rd Session (N.Y. 2019); *see* Repeal the “Walking While Trans” Ban, New York City Bar Association, Feb. 3, 2020, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/repeal-the-walking-while-trans-ban>.

⁴⁹ The Kings County District Attorney and the New York County District Attorney already decline to prosecute most arrests made for failure to pay subway and bus fares. *See e.g.* Maura Ewing, “Will New York Stop Arresting People for Evading Subway Fares?” *The Atlantic*, Aug. 4, 2017, <https://www.theatlantic.com/politics/archive/2017/08/new-york-subway-fares/535866/>. The City Bar supported the adoption of the Fair Fares program, *see* <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/support-for-the-fair-fares-campaign>.

In this moment it is incumbent on those in power to do everything they can to ensure that the protests and ensuing public debates do not end up being a squandered opportunity to create real change. Together we can achieve a systematic re-configuration of policing in New York State and New York City for the benefit of all stakeholders. The New York City Bar Association urges the State Legislature and City Council to act on these fundamental reforms and to continue to carefully and critically consider the future of policing in New York.⁵⁰

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⁵⁰ As discussed earlier, this memorandum focuses on items that we believe deserve continued consideration and action and is based on the experience and expertise of our members who work in the criminal justice field. It is not meant to be exhaustive or to suggest that these areas should be priorities over other reform proposals, some of which we may address in subsequent reports. For instance, areas not explored here include, (1) the issue of police officer health and wellness (like attorneys, officers in need of mental and behavioral health services should be supported, not stigmatized, and their needs addressed in a way that is confidential and responsive, as discussed in DOI's September 2019 report, "An Investigation of NYPD's Officer Wellness and Safety Services), https://www1.nyc.gov/assets/doi/reports/pdf/2019/sep/REVISED_FINAL_DOIOIGNYPD_OfficerWellnessandSafety_9242019.pdf; (2) the need to critically examine and reform policies (e.g., housing, education and mental and physical health care) that result in prioritizing the protection of white lives and property, and the attendant cost to Black and Brown communities, as discussed by the former Mayor of Minneapolis Betsy Hodges (*see* "Opinion: As Mayor of Minneapolis, I Saw How White Liberals Block Change," N.Y. Times, July 9, 2020, <https://www.nytimes.com/2020/07/09/opinion/minneapolis-hodges-racism.html>); (3) the crucial and continuing importance of post-arrest diversion models for drug charges and the need for buy-in from District Attorneys across the State (e.g., the "LEAD" model used in Albany, and elsewhere, which diverts people in lieu of arrest); (4) the question of residency requirements for New York City police officers; (5) how best to revise use-of-force policies; and (6) the doctrine of "qualified immunity" and how it is used to shield police officers from liability for their misconduct.

APPENDIX - RECENTLY ADOPTED POLICE REFORM RELATED LEGISLATION

As of July 16, 2020

NEW YORK CITY

BILL / LAW NUMBER	SUBJECT
Int. 0721B-2018, 2020/067	Affirms the right to film police activities generally, and establish a cause of action enabling individuals to sue in state court for any violation of this right.
Int. 0536B-2018, 2020/066	Criminalize the use of restraints that restrict the flow of air or blood by compressing another individual’s windpipe or arteries on the neck, or by putting pressure on the back or chest, by police officer making an arrest. This would cover chokeholds, as well as maneuvers like placing a knee on a person’s neck. Any officer found guilty of using such a restraint could be found guilty of a class A misdemeanor. Such an act would be criminalized only if used while the officer is trying to make an arrest – not, for example, acting in self-defense.
Int. 1962-2020, 2020/070	Require officers to display their shield number or rank designation at all times when the officer is performing their duties. This bill would also create a private right of action for individuals who are subject to refusal of officers to display a shield number or rank designation.
Int. 1309B-2018, 2020/069	Requires the NYPD to develop a “disciplinary matrix,” which gives a recommended range of penalties for each type of violation. The NYPD Commissioner would retain the ultimate discretion to override the recommendation of the matrix, but the Department would be required to report on how often the Commissioner deviated from the matrix. The bill also requires public reporting on the development of the matrix, including the factors that were considered.
Int. 0760B-2018, 2020/068	Requires the New York City Police Department (NYPD) to expand the categories of information included in its Early Intervention System (EIS) to include information like certain types of arrests made, incidents of excessive force, and ongoing disciplinary proceedings. The NYPD would also be required to increase transparency around its system by regularly reporting on the information included and how it’s utilized.
Int. 0487A-2018, 2020/065	Requires the reporting and evaluation of surveillance technologies used by the New York City Police Department (NYPD). The Department would be required to issue a surveillance impact and use policy about these technologies, including a description and capabilities, rules, processes and guidelines, and any safeguards and security measures designed to protect information collected. The Department of Investigation’s Inspector General for the NYPD would audit the surveillance impact and use policy to ensure compliance with its terms.

APPENDIX: RECENTLY ADOPTED POLICE REFORM RELATED LEGISLATION
As of July 16, 2020

NEW YORK STATE

BILL / LAW NUMBER	SUBJECT
A1531-B / S8492, Chp. 93	Establishes a private right of action for a member of a protected class when another person summons a police or peace officer on them without reason to suspect a crime or an imminent threat to person or property existed.
A1360-A / S3253-A, Chp. 100	Clarifies that a person not under arrest or in police custody has the right to record police activity and to maintain custody and control of that recording, and of any property or instruments used to record police activities.
A8226-B / S6601-B, Chp. 103	Amends the Civil Rights Law by adding a new section that affirms New Yorkers' right to medical and mental health attention while in custody
A10611 / S8496, Chp. 96	Repeals section 50-a of the civil rights law, allowing the disclosure of law enforcement disciplinary records
A10609 / S1830-C, Chp. 102	The Police Statistics and Transparency (STAT) Act, will require courts to compile and publish racial and other demographic data of all low-level offenses, including misdemeanors and violations. The bill also requires police departments to submit annual reports on arrest-related deaths to be submitted to the Department of Criminal Justice Services and to the Governor and the Legislature.
A1601-C / S2574-B, Chp. 95	Creates an Office of Special Investigation within the Department of Law, under the Attorney General, which will investigate, and, if warranted, prosecute any incident of a person whose death was caused by a police officer or peace officer.
A6144-B / S6670-B, Chp. 94	The "Eric Garner Anti-Chokehold Act" will prohibit the use of chokeholds by law enforcement and establish the crime of aggravated strangulation as a Class-C felony to hold officers accountable for using a chokehold and seriously injuring or killing a person in violation of the ban.
A10002-B / S3595-C, Chp. 104	Establishes the Law Enforcement Misconduct Investigative Office within the Department of Law to review, study, audit, and make recommendations regarding operations, policies, programs, and practices of local law enforcement agencies. The goal of this legislation is to enhance the effectiveness of law enforcement, increase public safety, protect civil liberties and civil rights, ensure compliance with constitutional protections and local, state, and federal laws, and increase the public's confidence in law enforcement.
A8674-A / S8493, Chp. 105	The New York State Police Body-Worn Cameras Program; will direct the Division of State Police to provide all State police officers with body-worn cameras that are to be used any time an officer conducts a patrol and prescribes mandated situations when the camera is to be turned on and recording.

APPENDIX: RECENTLY ADOPTED POLICE REFORM RELATED LEGISLATION

As of July 16, 2020

BILL / LAW NUMBER	SUBJECT
A10608 / S2575-B, Chp. 101	Requires state and local law enforcement officers, as well as peace officers, to report, within six hours, when they discharge their weapon where a person could have been struck, whether they were on or off duty.