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MAYOR

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FREDERICK DAVIE  
CHAIR

September 29, 2020

Police Commissioner Dermot Shea  
New York City Police Department  
1 Police Plaza  
New York, NY 10007

Dear Commissioner Shea,

On August 30, 2020, the New York City Police Department (“NYPD”) released its draft Disciplinary Matrix (“Matrix”), a system for determining penalties for members of the NYPD who committed misconduct. The Matrix is based on a progressive system of discipline,<sup>1</sup> and designates presumptive penalties for specific misconduct ranging from training to termination. The NYPD defines “presumptive penalty” as “the assumed penalty or penalty range generally deemed appropriate for a specific proscribed act.”<sup>2</sup> The Matrix identifies aggravating and mitigating factors to be considered alongside the presumptive penalty when making a discipline recommendation.

The NYPD stated it would accept comments about the Matrix for 30 days but scheduled no public hearings. In order to give the public a full and fair opportunity to express opinions about the Matrix, on September 17, 2020, the Civilian Complaint Review Board (“CCRB”) held a public hearing to obtain feedback on the proposed Matrix.<sup>3</sup> Various non-profit organizations, elected officials, NYPD representatives, and members of the general public participated in the hearing. Below is a summary of the relevant public testimony<sup>4</sup>.

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<sup>1</sup> Progressive discipline is the process of imposing increasingly greater levels of discipline when an officer continues to engage in the same acts of misconduct and/or fails to correct their behavior after being given a reasonable opportunity to do so. All of the presumptive penalties in the Matrix are deemed appropriate for the first instance of a specific proscribed act. Some misconduct is sufficiently serious that termination is the presumptive penalty.

<sup>2</sup> NYPD Matrix, p. 12.

<sup>3</sup> The CCRB’s Power Point presentation can be found on our website. Written testimonies from other participants are attached to this letter.

<sup>4</sup> The speakers included: New York City Councilmember Donovan Richards, New York State Assemblymember Rodnyse Bichotte, First Deputy Public Advocate Nick Smith on behalf of Public Advocate Jumaane Williams, Center for Constitutional Rights Senior Staff Attorney Darius Charney, , New York Civil Liberties Union Lead Counsel, Michael Sisitzky, and members of the general public. The CCRB also appreciates the participation of NYPD Chief Matthew Pontillo and First Deputy Commissioner Jeffrey Schlanger, who provided meaningful insight into the Matrix creation process and engaged in productive conversations with the other speakers throughout the hearing.

## Common Themes

There were several common themes raised by participants during the CCRB public hearing.

### ***Inappropriate Legal Standards***

There was significant testimony related to the frequent use of the “objectively reasonable mistake of fact or law” standard to justify the imposition of a lower presumptive penalty for many Fourth Amendment violations such as stop, question, frisk, search and unlawful entries. There is no definition of this concept anywhere in the Matrix. The Center for Constitutional Rights (“CCR”) and the Legal Aid Society (“LAS”) both stated that this term is most often associated with the qualified immunity doctrine and that including it in the Matrix conflates legal liability with appropriate standards for police discipline.

### ***Force Should Be Analyzed Based on Conduct Rather Than Outcome***

Many of the force categories in the Matrix are broken into sub-categories based on the nature of the injury to the civilian. In order to maintain fair and uniform discipline, the focus should be on the propriety of the officer’s excessive use of force; the nature of the injury sustained by the civilian should only be considered as an aggravating or mitigating factor.

### ***Aggravating and Mitigating Factors***

Many of the aggravating and mitigating factors identified in the Matrix are vague or subjective. Some factors can even be both aggravating and mitigating depending on the circumstances. It will be difficult to build public trust in the efficacy and transparency of the discipline process without a written explanation from the NYPD detailing which factors were considered and how each was weighted anytime there is a deviation from the presumptive penalty.

The Matrix includes several mitigating factors that reward officers for simply performing their required job functions. For example, cooperating with an investigation and testifying truthfully is expected of a police officer—it should not be a factor in reducing a presumptive penalty. Likewise, having no prior record of misconduct is considered a mitigating factor. However, in a progressive disciplinary system, the presumptive penalty is already based on the first instance of misconduct. Reducing the presumptive penalty for no prior disciplinary history is redundant and completely inapposite to a progressive disciplinary system.

### ***Compliance with Body-Worn Cameras (“BWC”)***

The presumptive penalties for BWC offenses are inadequate as they fail to address instances where officers turn their cameras on too late or turn them off before an incident has concluded. There are also no penalties for officers who fail to accurately log their footage at the end of the tour or misclassify the videos, making it more difficult to access the videos for misconduct investigations. Overall, the penalties that address BWC infractions are also too low to generate any meaningful compliance with the BWC program.

## Summary of Public Testimony

### ***Civilian Complaint Review Board (“CCRB”)***

The CCRB identified several issues that must be clarified before the agency can utilize some or all of the Matrix in its disciplinary recommendations.

- CCRB needs access to the Central Personnel Index (“CPI”), or a summary thereof, of every member of service for whom it is making a disciplinary recommendation. Without knowledge of an officer’s complete employment history, it is impossible for the CCRB to fully evaluate all aggravating and mitigating factors and recommend a penalty consistent with the progressive discipline system outlined in the Matrix.
- The main issues for clarification included:
  - The subjective nature of aggravating and mitigating penalties
    - The Matrix also rewards officers by considering “Respondent’s level of cooperation” and the “veracity of the Respondent’s testimony” as mitigating factors. Cooperating with investigations and testifying truthfully is a requirement of the job, not a mitigating factor.
  - The reasons that committing one of the 15 prohibited acts of force does not carry a presumptive penalty of termination.
  - The reason for the Justification paragraph at the end of the Force section.
  - Penalties specifically for unlawful Taser use.
  - Comprehensive coverage of the Right to Know Act (“RTKA”)
    - “Failing to Provide a Right to Know Act Business Card,” is specifically mentioned in the Matrix, but there is no category for failure to comply with other provisions of The Right to Know Act (“RTKA”) such as the request for consent and documentation of consent. It is unclear whether the NYPD will analyze these cases under the general unlawful entry and search categories or has simply failed to address these altogether.
  - Matrix does not address uniformity among penalty recommendations when anything other than the presumptive penalty is imposed.
    - Deviations from presumptive penalty should include an explanation of the aggravating/mitigating factors and how they were applied.
    - There is no indication how the effectiveness of the Matrix will be measured, what percentage of deviations from the presumptive penalty will be acceptable, and how the NYPD will ensure that penalties are consistent across precincts and boroughs.
  - What “Training” as a penalty means
    - There are no details as to when, how, and what type of training will be imposed. To ensure transparency and demonstrate that the NYPD is retraining officers who exhibit a lack of understanding of Department policies and rules, the Matrix must elaborate on the length, subject matter, and relevance of training to each act of misconduct it proposes to address.
  - An explanation of when penalties for multiple allegations will run concurrent or consecutive

### ***New York City Councilmember Donovan Richards***

Councilmember Richards expressed concern about the Police Commissioner having sole decision-making power over the NYPD discipline system, including this Matrix.

### ***New York State Assemblymember Rodneyse Bichotte***

Assemblymember Bichotte's concerns about the Matrix are:

- There must be a mechanism for collecting data on racial profiling.
- Penalties for officers who fail to identify themselves or cover their badges, should be significantly higher than those listed in the Matrix.

### ***Public Advocate Jumaane D. Williams***

First Deputy Public Advocate, Nick E. Smith made the following recommendations:

- The Police Commissioner should also determine whether the officer's actions violated NYC Administrative Code § 14-115, which allows for discipline where an officer's actions are "injurious to the public peace or welfare, or immoral conduct, or conduct unbecoming of an officer."<sup>5</sup>
- Regardless of rank, an officer who is on any type of probationary status should be subject to termination if the nature of the misconduct is serious.
- Misconduct against vulnerable populations such as elderly, disabled and LGBTQIA+ should be considered an aggravating factor.
  - Specifically, misgendering and deadnaming of transgender individuals as well as failing to provide necessary accommodations for elderly and disabled civilians during police interactions.

### ***The Center for Constitutional Rights ("CCR")***

Darius Charney, Senior Staff Attorney for CCR, raised four (4) main concerns about the Matrix:

- Inappropriate mitigating factors
  - Using disciplinary history as a mitigating factor in a progressive disciplinary system is inappropriate because the presumptive penalty is already deemed appropriate for the first instance of misconduct.
  - Several of the mitigating factors inappropriately focus on the behavior of the civilian rather than the conduct of the officer. Even if a civilian is intoxicated or using rude or hostile language, officers should be held to a higher standard of conduct.
- The "weight of the evidence" standard is only appropriate when determining whether an allegation should be substantiated. It should have no bearing on penalty decisions, nor should it be considered an aggravating or mitigating factor.

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<sup>5</sup> New York City Administrative Code § 14-115: *Discipline of members*

The commissioner shall have power, in his or her discretion, on conviction by the commissioner, or by any court or officer of competent jurisdiction, of a member of the force of any criminal offense, or neglect of duty, violation of rules, or neglect or disobedience of orders, or absence without leave, or any conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming an officer, or any breach of discipline, to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force; but no more than thirty days' salary shall be forfeited or deducted for any offense....

- Training as the presumptive penalty for improper stops/frisks/searches/seizures based on an “objectively reasonable mistake of fact or law”
  - The term “objectively reasonable mistake of factor or law” is used numerous times in the Matrix but is never defined. The Matrix already considers “good faith or reasonable mistake of fact or law” and “complexity of legal analysis as applied to facts,” as mitigating factors, which renders the “objectively reasonable mistake of law or fact” sub-category unnecessary.
- Failure to include all (“BWC”)-related misconduct such as turning on the BWC too late in the incident, turning off the BWC before the incident concludes, and not properly tagging and categorizing the BWC footage at the end of a tour.

### ***The Legal Aid Society***

Staff Attorney of the Cop Accountability Project, Jennvine Wong, outlined several concerns about the Matrix, including:

- Failure to include penalty ranges and memorialize escalating penalties
  - There should be fixed minimum as well as fixed maximum penalties, which include consideration of aggravating factors.
  - There should be clearly established penalties for repeated misconduct, including guidance on how penalties will increase with each additional act of misconduct.
- Ambiguous aggravating and mitigating factors
- Failure to include penalties for failing to intervene in non-force related misconduct
- Failure to include perjury in the list of offenses that would result in termination for officers on entry-level or dismissal probation
  - A finding of incredibility by a court or prosecutor should be an aggravating factor.
- Focusing on the outcome of the use of force rather than the propriety of the force itself
- Inappropriate use of “reasonable mistake of fact or law” as a mitigating factor
- Failure to include clear procedural requirements to maintain consistency and transparency of discipline process.

### ***New York Civil Liberties Union (“NYCLU”)***

Michael Sisitzky, Lead Policy Counsel, detailed the following issues with the Matrix:

- The usefulness of the Matrix is only as strong as the Department’s willingness to implement the guidelines.
- There should be a minimum and maximum penalty range for deviations based on aggravating and mitigating factors.
- Overall, the presumptive penalties are too low.
- NYPD should engage in a meaningful comment period, hold public hearings and give full, good faith consideration to the public recommendations.

### ***General Public***

Members of the public expressed the following opinions:

- The NYPD should publish an explanation of why it is or is not adopting public comments
- Training is an insufficient as a penalty for misconduct.
- Stop, Question and Frisk allegations should not be parsed out by intent.

- The penalties for chokeholds, sexual misconducts and failing to obtain medical treatment are inadequate.

This letter is just a summary of the hearing testimony, the full recording of which can be found on the CCRB's website. I encourage you to watch the hearing in its entirety to get a more detailed understanding of the issues raised by the public. We look forward to continuing to work with the Department to incorporate these comments and concerns into the Matrix before the guidelines are finalized.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Davie', enclosed in a light blue rectangular border.

Frederick Davie  
Chair  
NYC Civilian Complaint Review Board

**TESTIMONY OF DARIUS CHARNEY  
CENTER FOR CONSTITUTIONAL RIGHTS  
TO THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD  
REGARDING THE NEW YORK POLICE DEPARTMENT'S  
PROPOSED DISCIPLINARY MATRIX**

**September 17, 2020**

Good afternoon. My name is Darius Charney, and I am a senior staff attorney at the Center for Constitutional Rights. I would like to thank the Board for providing me this opportunity to offer CCR's views on the New York City Police Department's proposed discipline matrix.

For more than two decades, CCR, in close collaboration with our grassroots partners in the New York City police accountability movement, has used legal, legislative and administrative advocacy to challenge the abusive and discriminatory practices of the NYPD and push for a police department that is more transparent and accountable to the people of New York City. We took part in the legislative campaigns to pass the Community Safety and Right to Know Acts in the New York City Council and more recently were part of the successful statewide campaign to repeal New York Civil Rights Law 50-a, one of the broadest police secrecy laws in the nation. In addition, we have served for the past 12 years as lead plaintiffs' counsel in *Floyd v. City of New York*, the federal civil rights class action lawsuit that successfully challenged the NYPD's unconstitutional and racially discriminatory stop-and-frisk practices and resulted in a federal court injunction requiring, among other things, changes to the NYPD's procedures for disciplining officers found by the CCRB to have committed misconduct during pedestrian *Terry* stops, changes which, seven years later, the Department has unfortunately yet to fully implement.<sup>1</sup>

### **History of the NYPD's Disciplinary Matrix**

The proposed discipline matrix we are discussing today is the result of years-long efforts by those communities most heavily impacted by abusive and discriminatory policing in New York City to obtain real transparency and accountability through meaningful discipline of officers who have violated laws, NYPD policies, and New Yorkers' rights. These efforts include the two-year court-ordered community input process in *Floyd*, during which community members identified an officer disciplinary matrix as one of the priority reform recommendations that was submitted to the federal court in May 2018.<sup>2</sup> Though the current proposed discipline guidelines in this matrix give short shrift to this important context, any discipline matrix that the NYPD uses must reflect the concerns and priorities of those New York City communities that

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<sup>1</sup> See *Floyd v. City of New York*, 959 F.Supp.2d 668, (S.D.N.Y. 2013) (requiring that the NYPD Department Advocate's Office "improve its procedures for imposing discipline in response to the Civilian Complaint Review Board's ("CCRB") findings of substantiated misconduct during stops" through "increased deference to credibility determinations by the CCRB, an evidentiary standard that is neutral between the claims of complainants and officers, and no general requirement of corroborating physical evidence."). To date, the NYPD and Court-Appointed Monitor have yet to finalize and submit these new DAO protocols to the *Floyd* court for approval.

<sup>2</sup> See Ariel Belen, *et al.*, New York City Joint Remedial Process: Final Report and Recommendations at 224-25, *Floyd v. City of New York*, 08 Civ. 1034, Dkt # 597 (May 15, 2018).

have been disproportionately harmed by NYPD officer misconduct. However, in many respects, the proposed matrix does not reflect these concerns and priorities.

### **Global Problems with the Proposed Matrix**

Several of the guidelines in the proposed matrix that apply to all or most misconduct categories will likely undermine meaningful accountability by providing too much discretion or ambiguity and ultimately leading to inconsistent results and unwarranted downward departures from presumptive penalties. These include:

- Inappropriate Potential Mitigating Factors-
  - The proposed matrix repeatedly cites an officer’s “lack or low level of” prior disciplinary history as a mitigating factor that could warrant imposing a less severe disciplinary penalty than the presumptive penalty for the category of misconduct committed by the officer. This is inappropriate in a progressive discipline matrix where the presumptive penalty is already deemed appropriate for an officer’s first instance of misconduct and higher presumptive penalties are in turn set for repeated instances of misconduct by that officer within a given time period.<sup>3</sup> Moreover, all NYPD MOS are already duty-bound to always comply with the law and NYPD policy and to treat all civilians they encounter with courtesy, professionalism, and respect and should therefore not be afforded special treatment for doing what are mandatory requirements of their jobs.
  - The matrix also lists several potential mitigating factors that unduly or inappropriately focus and/or place blame on the characteristics or circumstances of the civilian victims of the subject officer’s misconduct. For example, dealing with an intoxicated person, or circumstances where individuals are using rude or “hostile” language. This sets a dangerous precedent and shifts the focus away from officers who are duty bound to behave properly and professionally in all circumstances and who should be held to a higher standard of conduct given their immense power over civilians.
- Use of “the weight of the evidence” to determine the presumptive penalty- In its introductory explanation of presumptive penalties, the proposed matrix specifies that “the weight of the evidence must be assessed and the availability of witnesses must be considered when contemplating the appropriate penalty in a case.” However, the weight of the evidence is only relevant to determining whether the preponderance of the evidence standard necessary for the CCRB to substantiate a misconduct allegation and/or for the subject officer to be found guilty at a Departmental disciplinary trial has been met. By contrast, using the weight of the evidence as a basis to decrease or eliminate a

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<sup>3</sup> See, e.g., Denver Sheriff Department, *Discipline Handbook: Conduct Principles and Disciplinary Guidelines* (Nov. 12, 2013), available at [https://www.denvergov.org/content/dam/denvergov/Portals/744/documents/handbooks/Handbook%20-%20Complete%20with%20Appendices%20-%20Revised%20November%2012%202013%20\(2\).pdf](https://www.denvergov.org/content/dam/denvergov/Portals/744/documents/handbooks/Handbook%20-%20Complete%20with%20Appendices%20-%20Revised%20November%2012%202013%20(2).pdf)

disciplinary penalty for an officer who the CCRB and/or an NYPD administrative trial judge has already found by a preponderance of the evidence has committed misconduct would perpetuate the very problem identified by the federal court in Floyd, which held that the DAO's practice of reducing penalties or refusing to discipline officers with CCRB-substantiated misconduct allegations because of supposed concerns about the weight of the evidence demonstrated the NYPD's deliberate indifference to unconstitutional stop-and-frisk behavior by its officers.<sup>4</sup> Thus, the weight of the evidence of an officer's misconduct should play no role in determining presumptive disciplinary penalty for an officer who the CCRB and/or an NYPD trial judge has found committed misconduct, nor should it be considered as a mitigating or aggravating factor.

### **Stop/Frisk/Search and Body-Worn Camera Issues**

- Training as the Presumptive Penalty for Improper Stops/Frisks/Searches/Seizures based on an "Objectively Reasonable Mistake of Fact or Law"- In the section on presumptive penalties for various misconduct categories involving "abuse of authority, discourtesy and offensive language," the proposed matrix lists "training" as the presumptive "penalty" for an improper pedestrian stop or frisk, vehicle stop or search, and search or seizure of a person that is based on a so-called "objectively reasonable mistake of fact or law," a term that is defined nowhere in the matrix. However, civil rights and police accountability advocates have seen this term before. It is a central component of the federal court-created qualified immunity doctrine,<sup>5</sup> which legal experts have long recognized as one of the primary obstacles to obtaining real accountability for police misconduct that violates fundamental constitutional rights.<sup>6</sup> The NYPD should not now adopt this standard to also shield officers from internal disciplinary accountability for improper stops, frisks and searches. Moreover, because the matrix also lists "good faith or reasonable mistake of fact or law" and "complexity of legal analysis as applied to facts" as potential mitigating factors for all ADO misconduct categories, these separate "objectively reasonable mistake" stop, frisk and search presumptive penalty categories are unnecessary and superfluous and should therefore be removed from the matrix altogether.
- Penalties for limited categories of body-worn camera violations- While the proposed matrix includes presumptive penalties for negligent and purposeful failure to record a

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<sup>4</sup> *Floyd v. City of New York*, 959 F.Supp.2d 540, 618-19 (S.D.N.Y. 2013).

<sup>5</sup> *See Ricciuti v. N.Y.C Transit Auth.*, 124 F.3d 123, 127 (2d Cir. 1997) ("The doctrine of qualified immunity shields police officers from being subject to personal liability for damages. . . insofar as it was *objectively reasonable* for such officials to believe, *even if mistakenly*, that their conduct did not violate [constitutional] rights.") (emphasis added);

<sup>6</sup> *See, e.g., Jamison v. McClendon*, 16-CV-595, 2020 WL 4497723 (S.D. Miss. Aug. 4, 2020); *Thompson v. Clark*, 14-CV-7349, 2018 WL 3128975 (E.D.N.Y. June 26, 2018) (Weinstein, J.); Hon. Jon O. Newman, "Here's a Better Way to Punish Police: Sue Them for Money," THE WASHINGTON POST, June 23, 2016, available at [https://www.washingtonpost.com/opinions/heres-a-better-way-to-punish-the-police-sue-them-for-money/2016/06/23/c0608ad4-3959-11e6-9ccd-d6005beac8b3\\_story.html](https://www.washingtonpost.com/opinions/heres-a-better-way-to-punish-the-police-sue-them-for-money/2016/06/23/c0608ad4-3959-11e6-9ccd-d6005beac8b3_story.html); Erwin Chemerinsky, "How the Supreme Court Protects Bad Cops," THE NEW YORK TIMES, August 26, 2014, available at <https://www.nytimes.com/2014/08/27/opinion/how-the-supreme-court-protects-bad-cops.html>

prescribed event on a body-worn camera (BWC), it does not address a myriad of other BWC policy-related violations which CCR has learned through its *Floyd* remedial work and the CCRB has learned through its FADO misconduct investigations are very prevalent and can significantly hinder internal and external efforts to detect and hold officers accountable for misconduct. These include officers' failing to record portions of mandatory recording events by turning the BWC on too late (e.g. after the officer has already begun questioning a person during a Terry stop) or turning it off too early (i.e. before the encounter with the civilian has ended). In addition, there continues to be a widespread problem throughout the Department of officers failing to properly tag and categorize the BWC videos they record on each tour, which, given the large number of videos an officer typically records on a given tour, makes it very difficult for NYPD supervisors and investigators to locate and review videos of particular incidents after-the-fact. Each of these failures is a violation of mandatory requirements of the NYPD's Body-Worn Camera Policy,<sup>7</sup> and the matrix should also include separate presumptive penalties for them.

**Conclusion:**

In sum, the aforementioned issues with the NYPD's proposed matrix undermine its stated goals and must be remedied before we can confident that the NYPD's disciplinary systems can meaningfully address the officer misconduct that continues to harm our most vulnerable communities in any meaningful way. Thank you.

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<sup>7</sup> See NYPD P.G. § 212-123 ¶¶ 4, 16-19.



Justice in Every Borough.

**NYC Civilian Complaint Review Board  
September 17, 2020 Board Meeting**

**Testimony of the Legal Aid Society  
Special Litigation Unit  
Cop Accountability Project**

Jennvine Wong  
Staff Attorney, Cop Accountability Project

Michael Vitoroulis  
Paralegal Casehandler, Special Litigation Unit

The Legal Aid Society  
199 Water Street  
New York, NY 10038

The Legal Aid Society thanks the Board for the opportunity to provide testimony on the New York Police Department’s proposed disciplinary matrix.

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles more than 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of low-income people prosecuted in the State court system. The Cop Accountability Project within the Special Litigation Unit at The Legal Aid Society works to improve police accountability and transparency through litigation and advocacy against problematic policing policies. In this capacity, and through our role as counsel in several civil rights cases, the Legal Aid Society is in a unique position to testify about the draft disciplinary matrix released for public comment by the NYPD.

### **BACKGROUND**

On July 15, 2020, the City of New York enacted the NYPD Accountability Package, a set of police reforms aimed at increasing transparency within the NYPD and addressing longstanding patterns of police harassment and violence predominantly affecting Black and Latinx New Yorkers. One of those reforms mandated the creation “a disciplinary matrix that sets forth an advisory schedule of violations, penalties, and mitigating and aggravating circumstances, or any other factors considered by the commissioner to be relevant”.<sup>1</sup> The NYPD published a proposed disciplinary matrix on August 31, 2020, which is open for public comment for 30 days until September 30, 2020.

Historically, the police department’s failure to impose swift and serious discipline on officers who commit misconduct, as well as the lack of transparency surrounding NYPD disciplinary decisions, has perpetuated police misconduct. Seemingly arbitrary and opaque decision-making in NYPD discipline has substantially eroded trust between the police department and the communities it serves.<sup>2</sup> One of the most egregious examples in recent memory is the disciplinary process surrounding Eric Garner’s death. For five years following Mr. Garner’s

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<sup>1</sup> Int. No. 1309-B

<sup>2</sup> MARY JO WHITE, ROBERT L. CAPERS & BARBARA S JONES, *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department* (2019), <https://www.independentpanelreportnypd.net/assets/report.pdf>.

death, none of the officers involved had been disciplined despite repeated calls from the family, advocacy groups, and elected officials. Recently, newly released data following the repeal of Police Secrecy Law 50a is starting to shed the light on dozens of high-ranking NYPD officers who have risen through the ranks and promoted despite multiple allegations of misconduct.<sup>3</sup>

While most other serious New York City employee disciplinary issues are handled by the New York City Office of Administrative Trials and Hearings (OATH) — an independent administrative tribunal — the NYPD is unique in that final discipline is vested in the Police Commissioner, who has complete discretion in determining which, if any, penalties are ultimately imposed for misconduct. The reluctance of NYPD leadership to discipline officers has led to a culture of impunity that has thrived within the department for decades. It has also bred mistrust and anger among New York families affected by police violence and harassment who no longer trust NYPD leadership to keep them safe and ensure they are treated fairly.

### **ANALYSIS OF NYPD'S DRAFT DISCIPLINARY MATRIX**

Police disciplinary matrices are intended to provide police departments, community members, and officers with clear and consistent expectations and guidance in the determination of penalties for substantiated allegations of misconduct.<sup>4</sup> Clear and trustworthy decision-making, along with transparency, may reduce tensions and mistrust between police and the community, as well as increase the overall fairness of the disciplinary process by eliminating secrecy and arbitrariness.<sup>5</sup> Fairness and transparency within police departments in turn may reduce misconduct, including officer support for excessive force.<sup>6</sup>

Given the deeply rooted culture of impunity within the NYPD, including the well-established and long-standing reluctance of police and City leaders to impose meaningful discipline on officers found to have committed even gross misconduct, it is up for debate whether any disciplinary matrix can bring procedural or substantive justice to the NYPD's disciplinary

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<sup>3</sup> “McCormack is just one of dozens of high-ranking NYPD officers who have risen despite allegations of misconduct in their records.” Joaquin Sapien, Topher Sanders, and Nate Schweber, *Over a Dozen Black and Latino Men Accused a Cop of Humiliating, Invasive Strip Searches. The NYPD Kept Promoting Him*, ProPublica (September 10, 2020) <https://www.propublica.org/article/over-a-dozen-black-and-latino-men-accused-a-cop-of-humiliating-invasive-strip-searches-the-nypd-kept-promoting-him>

<sup>4</sup> Jon M. Shane, *Police Employee Disciplinary Matrix: An Emerging Concept*, 15 POLICE Q. 62–91, 72 (2012).

<sup>5</sup> Darrel W. Stephens, *Police Discipline: A Case for Change*, NEW PERSPECT. POLIC. 27 (2011).

<sup>6</sup> Rick Trinkner, Tom R. Tyler & Phillip Atiba Goff, *Justice from Within: The Relations Between a Procedurally Just Organizational Climate and Police Organizational Efficiency, Endorsement of Democratic Policing, and Officer Well-Being.*, 22 PSYCHOL. PUBLIC POLICY LAW 158–172 (2016).

system. The Legal Aid Society has long called for the City’s civilian oversight agencies to play an active role in officer discipline, and continues to urge the City’s elected officials to significantly strengthen the oversight roles of the Civilian Complaint Review Board (CCRB) and Office of the Inspector General for the NYPD (OIG-NYPD) by expanding their jurisdiction and authority, increasing their independence, providing them with adequate resources, and ensuring that they have direct and unfettered access to NYPD databases, personnel, and facilities. We have also supported calls to move NYPD disciplinary matters to an independent and impartial agency such as OATH, bringing it in line with the system used for adjudicating discipline for nearly every other New York City employee. However, to the extent that a matrix can improve upon the current system, even in a world where the NYPD retains internal control over discipline decisions, the current proposed matrix will fail to accomplish that goal.

Our analysis of the NYPD’s proposed disciplinary matrix draws from the collaborative efforts of large cities with more consistent and transparent police disciplinary processes. For example, an 80-member Disciplinary Advisory Group worked for three years with the Denver Police Department to develop and implement a more fair and transparent disciplinary process that includes detailed and definitive sanctions in the form of a disciplinary matrix.<sup>7</sup> The Denver Police Department’s Discipline Handbooks (“DPD Disciplinary Matrix”) provides more comprehensive and consistent guidance on disciplinary decisions than the NYPD’s. In addition, we reference the Tucson Police Department’s Discipline Guide, which serves as another example of a more robust approach to police discipline.<sup>9</sup>

By contrast, the vagueness in the NYPD’s proposed disciplinary matrix fails to ensure true consistency and transparency and makes no meaningful effort to rein in the Police Commissioner’s discretion over discipline. As a result, this matrix replicates the status quo problem of leaving no way for the public, individual officers and affected communities to understand how misconduct will be addressed, if at all. The vast discretion permitted by the NYPD’s proposed matrix is unlikely to provide the level of consistency needed to promote the

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<sup>7</sup> Darrel W. Stephens, *Police Discipline: A Case for Change*, National Institute of Justice (June 2011) <https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>

<sup>8</sup> Denver Police Department and Manager of Safety, *Denver Police Department Discipline Handbook: Conduct Principles and Disciplinary Guidelines* (2018), <https://www.denvergov.org/content/dam/denvergov/Portals/744/documents/handbooks/dpd-discipline-handbook.pdf> (last visited Sep 11, 2020).

<sup>9</sup> Tucson Police Department, *Operations Pamphlet: Discipline Guide* (2019). (on file with author)

accountability that New Yorkers call for and deserve. In sum, the NYPD’s draft disciplinary matrix does not achieve what disciplinary matrices are intended to do.

***Failure to Include Penalty Ranges and Memorialize Escalating Penalties***

Unlike nearly every other police disciplinary matrix, the NYPD’s proposed matrix fails to establish a clear **range** of penalties for misconduct and a schedule for progressive discipline. To achieve its stated goal of transparency and consistency, the NYPD’s disciplinary matrix must include, in addition to presumptive penalties, a minimum penalty for misconduct with mitigating factors and a maximum penalty for misconduct with aggravating factors. As currently proposed, the department’s broad list of aggravating and mitigating factors can far too easily justify frequent departures from the presumptive penalty range. Because the draft matrix’s mitigating and aggravating factors can be widely interpreted and applied, the inclusion of a range of presumptive penalties is rendered essentially meaningless and will do very little to reign in the Police Commissioner’s unfettered discretion in determining penalties.

Definitive penalty ranges that account for mitigating and aggravating factors and ensure both flexibility and consistency are included in other police disciplinary matrices. For example, the Vancouver Police Department’s disciplinary matrix includes minimum and maximum penalties for all offenses inclusive of aggravating and mitigating factors.<sup>10</sup> Similarly, the DPD Disciplinary Matrix includes clearly defined mitigated, presumptive, and aggravated penalties for all violations.<sup>11</sup> An excerpt from the DPD Disciplinary Matrix demonstrating the use of clearly defined penalty ranges is included as Appendix A.

In addition, while the NYPD’s draft matrix purports to achieve progressive discipline in that “penalties are increased for subsequent violations of the same/similar misconduct or when a pattern of misconduct is demonstrated”<sup>12</sup>, the department’s draft states that “prior misconduct may increase the disciplinary penalty for the current violation”<sup>13</sup> — not that it *will* increase — and fails to include any formalized guidance on how penalties are to escalate with each subsequent repeat violation.

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<sup>10</sup> Stephens, *supra* note 4 at 11.

<sup>11</sup> Denver Police Department and Manager of Safety, *supra* note 8 at 26–27.

<sup>12</sup> New York City Police Department, *Disciplinary System Penalty Guidelines: Draft for Public Comment* 8 (2020), [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf).

<sup>13</sup> *Id.* at 8.

Furthermore, the NYPD’s draft matrix fails to clearly establish escalated penalties for repeat misconduct committed within definite timeframes. Repeat misconduct, particularly for similar offenses, warrants more stringent penalties and additional corrective action for officers demonstrating particularly problematic patterns of behavior. The inclusion of escalating penalties for repeat misconduct committed within a clearly defined timeframe would establish clear standards of conduct and serve as a meaningful deterrent for future misconduct.

By contrast, other cities’ disciplinary matrices include escalating penalties within particular time frames. Both the Tucson Police Department’s Discipline Guide and the DPD Disciplinary Matrix include one-year and three-year periods, respectively, for escalated penalties when violations are repeated.<sup>14</sup> In the case of Denver, increased penalties for a repeat violation is automatic.<sup>15</sup>

### *Ambiguous Aggravating and Mitigating Factors*

NYPD’s draft matrix includes a far-reaching list of mitigating and aggravating that fail to create any meaningful constraint on discretion. While mitigating and aggravating factors allow for flexibility and fairness, the sheer ambiguity of many of these factors replicates the status quo of arbitrary and irrational discipline.

For example, the NYPD characterizes encounters deemed “unpredictable, volatile, or unfold[ing] rapidly not allowing time for deliberate reflection”<sup>16</sup> as a potential mitigating factor. Because every police encounter is unique, nearly every situation could justifiably be considered “unpredictable.” As such, this mitigating factor is applicable to virtually any and all police encounters. Officer training should provide sufficient guidance for officers to assess situations and formulate appropriate responses, eliminating the need for such a far-reaching mitigating factor.

Similarly, the draft confusingly identifies “knowledge, training, and experience” as both an aggravating and mitigating factor.<sup>17</sup> The inclusion of this factor on both lists is inherently contradictory and does not detail how and when knowledge, training, and experience may be applied in one way or the other. This is likely to result in inconsistent penalty determinations. For

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<sup>14</sup> Tucson Police Department, *supra* note 9 at 6; Denver Police Department and Manager of Safety, *supra* note 8 at 21–22.

<sup>15</sup> Refer to Appendix A.

<sup>16</sup> New York City Police Department, *supra* note 12 at 7.

<sup>17</sup> *Id.* at 7.

example, it is unclear if officers who have served for many years would receive mitigated penalties as a result of their tenure and experience or aggravated penalties because they should “know better.” Similarly, the way in which this factor may be interpreted could result in newer officers receiving either a mitigated penalty because of their relative inexperience or an aggravated penalty because they were more recently trained. Such ambiguity, which abounds throughout the draft document, detracts from the efficacy of a disciplinary matrix.

***Fundamental Deficiencies within NYPD Practices and Policies Cannot Be Adequately Addressed by a Disciplinary Matrix Alone***

In addition to these confusing aspects of the draft matrix, the proposal also misses crucial opportunities for NYPD to incorporate policing best practices in its policies and procedures. For example, while the draft matrix affirms an officer’s duty to intervene in excessive force,<sup>18</sup> it fails to effectively promote “active bystandership” by establishing penalties for failing to intervene in non-force related misconduct.

Nationwide surveys of police officers indicate that the majority of police officers agree that “it is not unusual for a police officer to turn a blind eye to improper conduct by other officers.”<sup>19</sup> Such failures to intervene can present significant legal liabilities for officers and the City as well as reduce public confidence in policing.<sup>20</sup> NYPD should incorporate penalties for failing to intervene in apparent misconduct committed by fellow officers as well as develop robust peer intervention programs such as the New Orleans Police Department’s EPIC (Ethical Policing Is Courageous) program.<sup>21</sup> A policy that encourages peer accountability could ultimately reduce more egregious forms of misconduct, promote public trust in policing, and increase public safety.

Yet another example of missed opportunity relates to perjury. Perjury is absent from the list of offenses that would result in termination for officers on entry-level or dismissal probation.<sup>22</sup>

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<sup>18</sup> *Id.* at 17.

<sup>19</sup> Rich Morin, Kim Parker, Renee Stepler, and Andrew Mercer, *Behind The Badge: Inside American’s police departments*, Pew Research Center (January 11, 2017) available at <https://www.pewsocialtrends.org/2017/01/11/inside-americas-police-departments/>; see also David Weisburd and Rosann Greenspan with Edwin E. Hamilton, Hubert Williams, and Kellie A. Bryant, *Police Attitudes Toward Abuse of Authority: Findings From a National Study*, May 2000 National Institute of Justice Research in Brief available at <https://www.ncjrs.gov/pdffiles1/nij/181312.pdf>

<sup>20</sup> Jonathan Aronie & Christy E. Lopez, *Keeping Each Other Safe: An Assessment of The Use of Peer Intervention Programs to Prevent Police Officer Mistakes and Misconduct, Using New Orleans’ EPIC Program As A Potential National Model*, 20 POLICE Q. 295–321 (2017).

<sup>21</sup> New Orleans Police Department, *Home - EPIC - Ethical Policing Is Courageous - New Orleans Police Department*, <https://epic.nola.gov/home/> (last visited Sep 14, 2020).

<sup>22</sup> New York City Police Department, *supra* note 12 at 10.

As public servants charged with upholding the law, honesty, integrity, and trust are integral to the work of policing.

By contrast to the NYPD's draft disciplinary document, DPD provides that, with regard to the commission of a deceptive act in connection with any investigation or any judicial or administrative proceeding, that "A first-time offender ... should expect to be terminated. Only with the existence of appropriate mitigating circumstances would the mitigated penalty of 90 days be imposed. Only with extraordinary mitigation would an offender of this section receive anything less than a 90-day suspension."<sup>23</sup> Furthermore, in Denver, a criminal conviction is not needed, as the burden of proof for disciplinary proceedings is a preponderance of the evidence. And conduct that violates the law, like perjury, is antithetical to a police officer's role as law enforcement.

False statements impact an officer's ability to effectively perform their job duties as their trustworthiness and integrity will be called into question. The matrix specifically addresses the issue of false or misleading statements by a member of service during an investigation and presumes termination if found guilty. However, an independent analysis of the NYPD disciplinary process found that there were several failures in accountability for making false statements, including the discretionary manner in which such allegations were charged more leniently as well as a complete to failure to charge at all.<sup>24</sup>

A finding of incredibility by a court or district attorney's office should be considered as a critical aggravating factor. For too long, officers are able to rampantly make false statements – regardless of significance – with no consequences.<sup>25</sup> Rather than receiving reprimand for perjury, officers received promotions. Indeed, the practice is so prevalent that it has earned the moniker, "testilying."<sup>26</sup>

Additionally, specific practices prevalent in policing culture such as "handing off" of arrests, whereby the actual arresting officer "hands off" an arrest to a colleague to prepare the requisite arrest paperwork in order to become the "arresting officer" to earn the overtime is tolerated by

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<sup>23</sup> Denver Police Department and Manager of Safety, *supra* note 8 at Appendix D.

<sup>24</sup> White, *supra* note 2.

<sup>25</sup> Joseph Goldstein, *Promotions, Not Punishments, for Officers Accused of Lying*, NY TIMES (March 19, 2018) <https://www.nytimes.com/2018/03/19/nyregion/new-york-police-perjury-promotions.html>

<sup>26</sup> Joseph Goldstein, *Testilying by Police: A Stubborn Problem*, NY TIMES (March 18, 2018) available at <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html>

supervisors. An independent panel cited that stakeholders reported that this practice can promote a culture in which other, more serious falsehoods can occur.<sup>27</sup> Such routine practices should be reconsidered for its effect on the integrity of policing.

Furthermore, out of the 81 cases referred to IAB from the CCRB from 2010 to 2018, IAB substantiated just two allegations of making a false statement.<sup>28</sup> In the remaining 79 cases, NYPD found no wrongdoing or found the officer guilty of lesser conduct.<sup>29</sup> The prevalence of the problem—including the historic failure to substantiate these allegations—undermines the public’s trust in the police as well as their sense of substantive and procedural fairness in the criminal legal system at large. A disciplinary matrix will fail to adequately address the material issue of falsehoods without significant improvements in accountability and oversight of these issues.

Another example of a missed opportunity comes with the manner in which use of force violations are handled within the draft matrix. The matrix outlines penalties based on the outcome of a use of force (e.g. serious physical injury/death, physical injury, no injury) rather than the propriety of the force applied in the particular situation.<sup>30</sup> This standard in the determination of force-related penalties effectively rewards officers who continue to use excessive and inappropriate force but are nonetheless inadequately penalized due to that use of force’s outcome.

One related underlying concern with the adjudication of excessive force incidents more generally is the insufficient guidance provided by the NYPD’s Patrol Guide sections relating to use of force. The NYPD use of force policy offers vague guidance on the types of force to use when encountering a specific type of resistance and simply instructs officers to “apply no more than the reasonable force necessary to gain control”.<sup>31</sup> These vague guidelines grant overly broad deference to officers that use excessive force and has long impeded accountability efforts.

The propriety of the use of force should instead be a primary consideration, with bodily outcomes such as injury or death serving as aggravating factors. Additionally, failure to de-

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<sup>27</sup> White, *supra* at note 2. .

<sup>28</sup> Goldstein, *supra* note 25

<sup>29</sup> *Id.*

<sup>30</sup> New York City Police Department, *supra* note 12 at 17–18.

<sup>31</sup> New York City Police Department Patrol Guide 221-02

escalate must be considered an aggravating factor when determining the appropriate penalty for excessive force. To truly provide meaningful accountability for excessive force, NYPD must adopt use of force guidelines that strongly emphasize de-escalation as well as proportionality in the use of force and provide unequivocal guidance on escalating the type of force applied through a force continuum.

Additionally, the draft specifically lists a “reasonable mistake of law” as a mitigating factor for improper conduct under the Fourth Amendment, including stop/question/frisk of persons.<sup>32</sup> The inclusion of this factor as mitigation is particularly troubling as it means that officer conduct that violates the law will remain unaddressed by the Police Department simply because courts have erected barriers to the recovery of damages from officers whose mistakes caused those violations of law. This conflation of what is necessary to establish legal liability with what is appropriate to trigger police discipline is deeply disturbing and underscores the sense that this proposed matrix is not intended to seriously address police misconduct.

***Lack of Clear Procedural Requirements Undermines Legitimacy of  
the Proposed Disciplinary Matrix***

The NYPD’s draft matrix fails to include any revisions to the disciplinary process that would provide additional transparency. For example, there is no requirement that aggravating and mitigating factors considered in the determination of penalties be documented, along with written justifications of how those factors influence the final penalty. There is also no language explaining how aggravating and mitigating factors are weighed and used to determine the penalty imposed.

Departures from presumptive penalties should be explained clearly for the benefit of clarity and to guard against inconsistencies that could undermine the legitimacy of the disciplinary process. Stakeholders would benefit from a better understanding of the rationale utilized in considering all aggravating and mitigating factors. More importantly, it will allow stakeholders to hold the Police Commissioner accountable for deviations from the presumptive penalties.

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<sup>32</sup> New York City Police Department, *supra* note 12 at 22.

In contrast, the DPD's Disciplinary Matrix includes a requirement that all mitigating and aggravating factors are documented.<sup>33</sup> It also ensures that aggravating and mitigating factors are appropriately weighed so as to determine the proper penalty.<sup>34</sup>

### **CONCLUSION**

The uprisings of this summer are resoundingly clear about the demand for transparency and accountability for police misconduct. While the implementation of a disciplinary matrix has the potential to contribute to such accountability, the proposed draft matrix fails in this goal.

Ultimately, this draft matrix fails to provide meaningful guidance and does not adequately reign in the Police Commissioner's wide discretion over discipline. The efficacy of a disciplinary matrix is easily blunted by its failure to establish a clearly defined range of penalties, define escalated penalties for repeat misconduct within a clearly defined timeframe, and use mitigating and aggravating factors for fairness and flexibility rather than complete arbitrariness. Such failures will continue to perpetuate the pervasive culture of impunity within the NYPD.

Inconsistent penalties are bound to result from this draft matrix and will continue to erode officer morale as well as public trust and confidence in the police department. Finally, there are numerous fundamental problems within NYPD's policies and procedures that will not and cannot be adequately addressed with a disciplinary matrix alone.

We continue to urge the City's elected officials to significantly strengthen the oversight roles of the CCRB and OIG-NYPD by expanding their jurisdiction and authority, increasing their independence, and providing them with adequate resources.

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<sup>33</sup> Denver Police Department and Manager of Safety, *supra* note 8 at 22.

<sup>34</sup> *Id.* at 26.

Appendix F - Penalty Table and Discipline Matrix

**Penalty Table**

<b>Discipline Level</b>	<b>Mitigated Penalty</b>	<b>Presumptive Penalty</b>	<b>Aggravated Penalty</b>
1		Oral Reprimand	Written Reprimand
2	Oral Reprimand	Written Reprimand	1-3 Fined Days
3	Written Reprimand To 1 Fined Day	2 Fined Days	4-6 Fined Days
4	2-4 Fined Days	3 Days Suspension	5-7 Days Suspension
5	4-6 Days Suspension	10 Days Suspension	14-16 Days Suspension
6	18-22 Days Suspension	30 Days Suspension	38-42 Days Suspension
7	43-47 Days Suspension	60 Days Suspension	Termination
8	90 Days Suspension	Termination	



# DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



## Categories, Violations and Level Assignments Table

### CATEGORY A

CONDUCT THAT HAS A MINIMAL NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT

<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>		1st Violation	2nd Violation	3rd** Violation
RR-102.1	Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	in 3 Years	in 3 Years	in 3 Years
RR-102.2	Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*	-Level-	-Level-	-Level-
RR-103	Aid Another to Violate Rule (A-F)*			
RR-105	Conduct Prejudicial (A-F)*			
RR-108.1	Plainclothes Officers - Identification			
RR-115.1	Conduct Prohibited by Law (A-F)*	1	2	3
RR-116	Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-121	Off Duty in Uniform (A-F)*			
RR-129	Giving Name and Badge Number			
RR-136	Use of Tobacco Products in Police Facilities			
RR-205	Giving Testimonials, Seeking Publicity			
RR-314	Providing Assistance Outside the City			
RR-501	Personal Appearance in Court			
RR-612	Answer to Official Communications			
RR-614	Publication of Articles			
RR-616	Police Bulletin			
RR-802	Uniform Restrictions While Off Duty			
RR-805	Equipment Carried on Person			
RR-1001	Testifying in Civil Cases			
RR-1002	Service of Civil Processes			
RR-1003	Initiation of Civil Cases			
RR-1104	Location When Ill			
RR-1105	Reporting During Illness or Injury			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

\*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

\*\*The 4<sup>th</sup> or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



# DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



## Categories, Violations and Level Assignments Table

### CATEGORY B

CONDUCT THAT HAS MORE THAN A MINIMAL NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT; OR THAT NEGATIVELY IMPACTS RELATIONSHIPS WITH OTHER OFFICERS, AGENCIES OR THE PUBLIC.

**EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:**

- RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)\*
- RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)\*
- RR-103 Aid Another to Violate Rule (A-F)\*
- RR-105 Conduct Prejudicial (A-F)\*
- RR-108.2 Protecting Identity of Undercover Officers
- RR-115.1 Conduct Prohibited by Law (A-F)\*
- RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)\*
- RR-121 Off Duty in Uniform (A-F)\*
- RR-122.1 Respect for Fellow Officer
- RR-126 Amusement Places Restrictions
- RR-127 Responsibilities to Serve Public
- RR-128.1 Impartial Attitude
- RR-132 Purchase of Forfeited Property
- RR-140.1 Discourtesy
- RR-206 Soliciting Business
- RR-303 Trivial Offenses
- RR-304 Traffic Enforcement When Not in Uniform
- RR-309.1 Suggesting Bondsmen or Attorneys
- RR-605 Removal of Reports and Records
- RR-607 Failure to Make, File, or Complete Official Reports
- RR-613 Unauthorized Use of Department Letterheads
- RR-703 Soliciting Money for Political Purposes
- RR-704 Soliciting for Promotion, Appointment
- RR-806.1 Alteration of Badge Prohibited
- RR-807 Loss or Damage to Badge
- RR-808 Equipment and Property Restrictions on Use
- RR-809 Rough or Careless Handling of City, Departmental, or Outside Agency Property
- RR-902 Department Vehicle Operation
- RR-1101 Reporting Absence Prior to Roll Call
- RR-1102 Reporting for Duty (B-D)\*

1st Violation	2nd Violation	3rd** Violation
in 4 Years	in 4 Years	in 4 Years
-Level-	-Level-	-Level-
2	3	4

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

\*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

\*\*The 4<sup>th</sup> or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



# DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



## Categories, Violations and Level Assignments Table

### CATEGORY C

CONDUCT THAT HAS A PRONOUNCED NEGATIVE IMPACT ON THE OPERATIONS OR PROFESSIONAL IMAGE OF THE DEPARTMENT, OR ON RELATIONSHIPS WITH OTHER OFFICERS, AGENCIES OR THE PUBLIC.

<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>	1st Violation	2nd Violation	3rd** Violation
	in 5 Years	in 5 Years	in 5 Years
	-Level-	-Level-	-Level-
	3	4	5
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*			
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*			
RR-103 Aid Another to Violate Rule (A-F)*			
RR-105 Conduct Prejudicial (A-F)*			
RR-107 Always on Duty			
RR-109.1 Commission of an Offensive Act While Intoxicated			
RR-115.1 Conduct Prohibited by Law (A-F)*			
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-117 Disobedience of an Order (C-F)*			
RR-119 Sleeping on Duty			
RR-121 Off Duty in Uniform (A-F)*			
RR-122.2 Abuse of Fellow Officers			
RR-138 Discrimination, Harassment and Retaliation (C-F)*			
RR-140.2 Verbal Assault and Abuse of the Public (C-D)*			
RR-141.2 Reporting of Prohibited Associations			
RR-142 Soliciting Preferential Treatment (C-F)*			
RR-204 Soliciting, Accepting Gifts, Gratuities			
RR-307 Posting Bail			
RR-310 Mistreatment of Prisoners/Suspects			
RR-401 Display of Firearms			
RR-402 Careless Handling of Firearms or Less Lethal Weapons (C-F)*			
RR-403 Restrictions on Auxiliary Weapons			
RR-702 Using Police Position to Gain Political Office			
RR-1004 Testifying for Defendant			
RR-1102 Reporting for Duty (B-D)*			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

\*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

\*\*The 4<sup>th</sup> or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



# DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



## Categories, Violations and Level Assignments Table

### CATEGORY D

CONDUCT SUBSTANTIALLY CONTRARY TO THE VALUES OF THE DEPARTMENT OR THAT SUBSTANTIALLY INTERFERES WITH ITS MISSION, OPERATIONS OR PROFESSIONAL IMAGE, OR THAT INVOLVES A DEMONSTRABLE SERIOUS RISK TO OFFICER OR PUBLIC SAFETY.

<u>EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:</u>		1st Violation	2nd Violation	3rd** Violation
RR-102.1	Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	in 7 Years	in 7 Years	in 7 Years
RR-102.2	Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*	-Level-	-Level-	-Level-
RR-103	Aid Another to Violate Rule (A-F)*			
RR-105	Conduct Prejudicial (A-F)*			
RR-106.1	Immoral Conduct			
RR-109.2	Unfit for Duty			
RR-112.1	Misleading or Inaccurate Statement (D-E)*	5	6	7
RR-115.1	Conduct Prohibited by Law (A-F)*			
RR-116	Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-117	Disobedience of an Order (C-F)*			
RR-121	Off Duty in Uniform (A-F)*			
RR 122.3	Insubordination			
RR-128.2	Impartial Attitude - Bias			
RR-130.1	Failure to Aid or Protect Fellow Officers – Unreasonable			
RR-138	Discrimination, Harassment and Retaliation (C-F)*			
RR-140.2	Verbal Assault and Abuse of the Public (C-D)*			
RR-141.1	Prohibited Associations (D-F)*			
RR-142	Soliciting Preferential Treatment (C-F)*			
RR-306	Inappropriate Force (D-F)*			
RR-311.1	Compromising Criminal Cases			
RR-312.1	Interfering with Case Assigned to Other Officers			
RR-402	Careless Handling of Firearms or Less Lethal Weapons (C-F)*			
RR-601.1	Communication of Confidential Information, Generally			
RR-603	Destruction of Evidence			
RR-806.2	Use of Badge by Person other than Officer			
RR-1102	Reporting for Duty (B-D)*			
RR-1106	Feigning Illness or Injury			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

\*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

\*\*The 4<sup>th</sup> or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



# DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



## Categories, Violations and Level Assignments Table

### CATEGORY E

CONDUCT THAT INVOLVES THE SERIOUS ABUSE OR MISUSE OF AUTHORITY, UNETHICAL BEHAVIOR, OR AN ACT THAT RESULTS IN AN ACTUAL SERIOUS AND ADVERSE IMPACT ON OFFICER OR PUBLIC SAFETY OR TO THE PROFESSIONALISM OF THE DEPARTMENT.

**EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:**

	<b>1st Violation</b>	<b>2nd Violation</b>	<b>3rd** Violation</b>
RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)*	No Time Limit	No Time Limit	No Time Limit
RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)*			
RR-103 Aid Another to Violate Rule (A-F)*	-Level-	-Level-	-Level-
RR-105 Conduct Prejudicial (A-F)*			
RR-109.3 Drinking on Duty or While in Uniform (E-F)*	6	7	8
RR-112.1 Misleading or Inaccurate Statement (D-E)*			
RR-114 Intimidation of Persons			
RR-115.1 Conduct Prohibited by Law (A-F)*			
RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)*			
RR-117 Disobedience of an Order (C-F)*			
RR-120 Appropriating Property (E-F)*			
RR-121 Off Duty in Uniform (A-F)*			
RR-123 Assault of Fellow Officer			
RR-138 Discrimination, Harassment and Retaliation (C-F)*			
RR-141.1 Prohibited Associations (D-F)*			
RR-142 Soliciting Preferential Treatment (C-F)*			
RR-203 Accepting Gifts from Persons of Bad Character			
RR-302 Personal Family Disputes			
RR-305 Duty to Protect Prisoner			
RR-306 Inappropriate Force (D-F)*			
RR-309.2 Suggesting Bondsmen or Attorneys for Profit			
RR-402 Careless Handling of Firearms or Less Lethal Weapons (C-F)*			
RR-601.2 Communication of Confidential Information that Jeopardizes a Police Action (E-F)*			
RR-606 Destruction of Reports or Records			
RR-609 Altering Information on Official Documents			
RR-1107 Physical or Mental Examination (E-F)*			
RR-1108 Release of Medical Information			

- Any prior sustained violation in a category greater than or equal to the current violation shall increase the penalty level by 1. The prior violation must be within the specified time frame of the current violation.
- Any prior sustained violation within the specified time frame, in a category lower than the current violation, may be considered as an aggravating factor.

\*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

\*\*The 4<sup>th</sup> or subsequent sustained violation of the same R&R, within the specified time frame, may result in more severe disciplinary recommendations.



# DENVER POLICE DEPARTMENT - DISCIPLINE MATRIX



## Categories, Violations and Level Assignments Table

### CATEGORY F

ANY VIOLATION OF LAW, RULE OR POLICY WHICH: FORESEEABLY RESULTS IN DEATH OR SERIOUS BODILY INJURY TO ANOTHER PERSON; OR CONSTITUTES A WILLFUL AND WANTON DISREGARD OF DEPARTMENT VALUES; OR INVOLVES ANY ACT WHICH DEMONSTRATES A SERIOUS LACK OF THE INTEGRITY, ETHICS OR CHARACTER RELATED TO AN OFFICER'S FITNESS TO HOLD THE POSITION OF POLICE OFFICER; OR INVOLVES EGREGIOUS MISCONDUCT SUBSTANTIALLY CONTRARY TO THE STANDARDS OF CONDUCT REASONABLY EXPECTED OF ONE WHOSE SWORN DUTY IS TO UPHOLD THE LAW; OR INVOLVES ANY CONDUCT WHICH CONSTITUTES THE FAILURE TO ADHERE TO ANY CONTRACTUAL CONDITION OF EMPLOYMENT OR REQUIREMENT OF CERTIFICATION MANDATED BY LAW.

#### EXAMPLES INCLUDE BUT ARE NOT LIMITED TO:

- RR-102.1 Duty to Obey Departmental Rules and Mayoral Executive Orders (A-F)\*
- RR-102.2 Requirement for Former Officers to Obey Laws, Denver Police Department Rules and Regulations, and Certain Orders during the Pendency of Appeals (A-F)\*
- RR-103 Aid Another to Violate Rule (A-F)\*
- RR-105 Conduct Prejudicial (A-F)\*
- RR-106.2 Sexual Misconduct
- RR-109.3 Drinking on Duty or While in Uniform (E-F)\*
- RR-109.4 Under the Influence
- RR-111 Controlled Substances
- RR-112.2 Commission of a Deceptive Act
- RR-115.1 Conduct Prohibited by Law (A-F)\*
- RR-115.2 Aggravated Conduct Prohibited by Law
- RR-116 Conspiracy to Commit Conduct Prohibited by Law or Aggravated Conduct Prohibited by Law (A-F)\*
- RR-117 Disobedience of an Order (C-F)\*
- RR-120 Appropriating Property (E-F)\*
- RR-121 Off Duty in Uniform (A-F)\*
- RR-130.2 Failure to Aid or Protect Fellow Officers – Intentional or Reckless
- RR-137 Collective Bargaining Fair Share Fee
- RR-138 Discrimination, Harassment and Retaliation (C-F)\*
- RR-141.1 Prohibited Associations (D-F)\*
- RR-142 Soliciting Preferential Treatment (C-F)\*
- RR-202 Soliciting or Accepting a Bribe
- RR-306 Inappropriate Force (D-F)\*
- RR-308 Aiding an Escapee
- RR-311.2 Interference with Prosecution
- RR-312.2 Interfering with Internal Investigation/Questioning
- RR-312.3 Failure to Provide a Statement
- RR-402 Careless Handling of Firearms or Less Lethal Weapons (C-F)\*
- RR-601.2 Communication of Confidential Information that Jeopardizes a Police Action (E-F)\*
- RR-803 Uniform Restrictions for Officers Under Suspension
- RR-1107 Physical or Mental Examination (E-F)\*
- RR-804 Exercise of Authority While Under Suspension
- RR-1103 Constructive Resignation
- RR-1201 POST Certification Required

1st  
Violation

-Level-

8

\*Violations that appear in multiple categories will require the Department to compare the underlying conduct to the definitions contained in each category in order to identify the appropriate category for the violation.

## **Scheduled Discipline**

The following violations are subject to Scheduled Discipline as set forth in the Denver Police Department Operations Manual, rather than the Disciplinary Matrix set forth above.

- 1) OMS 120.01(2)(d)(3) - Required Minimum Annual Continuing Education
  - 1<sup>st</sup> Offense – 8 Fined Hours
  - 2<sup>nd</sup> Offense (in subsequent calendar years) – 24 Fined Hours
  - 3<sup>rd</sup> Offense – “Subsequent violations may be dealt with more severely”
  
- 2) OMS 120.01(2)(d)(2) - CEP Cancellation / CEP Failure to Attend
  - 1<sup>st</sup> Offense – Written Reprimand
  - 2<sup>nd</sup> Offense (within 1 year) – 8 Fined Hours
  - 3<sup>rd</sup> Offense – “May be dealt with more severely”
  
- 3) OMS 105.08(5)(d) - Failure to Shoot for Efficiency
  - 1<sup>st</sup> Offense – 1 Fined Day
  - 2<sup>nd</sup> Offense – (within 12 months) - 3 Fined Days
  - 3<sup>rd</sup> Offense – (within 5 consecutive years) – Chronic Offender
  
- 4) OMS 103.02(5)(b) - Failure to Appear in Court (*filed under RR-502*)
  - 1<sup>st</sup> Offense – Oral Reprimand
  - 2<sup>nd</sup> Offense – (within 12 months) - Written Reprimand
  - 3<sup>rd</sup> Offense – (within 12 months) - 8 Fined Hours
  - 4<sup>th</sup> Offense – (within 12 months) - 40 Fined Hours
  
- 5) OMS 203.08(2)(d)(6) - Preventable Accidents (*filed under RR-809*)
  - 1-4 Points - Oral Reprimand
  - 5-9 Points - Written Reprimand
  - 10-15 Points - A fine of one to five days
  - 16-20 Points - Suspension from three to ten days without pay
  - 21+ points - Minimum 5-day suspension without pay or more stringent action as appropriate.
  
- 6) OMS 112.03(4) - Photo Radar and Photo Red Light
  - 3<sup>rd</sup> Offense - Oral Reprimand
  - 4<sup>th</sup> Offense - (within 12 months) - Written Reprimand
  - 5<sup>th</sup> Offense - (within 12 months) - 8 Fined Hours
  - Subsequent, or flagrant violations may result in more severe disciplinary recommendations

- 7) OMS 501.03(2)(b) - Punctuality ( *filed under RR-125* )
- 1<sup>st</sup> Offense - Oral Admonition
  - 2<sup>nd</sup> Offense - Oral Reprimand
  - 3<sup>rd</sup> Offense - Written Reprimand
  - 4<sup>th</sup> Offense - 8 Fined Hours
    - “Subsequent violations may be dealt with more severely.”
    - 6 offenses within 12 months or 9 offenses within 3 years = Chronic Offender.
- 8) OMS 112.01(3)(c)(2) - Safety Restraining Devices
- 1<sup>st</sup> Offense - Oral Reprimand and Journal Entry
  - 2<sup>nd</sup> Offense (within 12 months) - Written Reprimand
  - 3<sup>rd</sup> Offense (within 12 months) – 1-day suspension
    - “Subsequent violations will be dealt with more severely.”
- 9) OMS 119.04(12) – Body Worn Camera
- 1<sup>st</sup> Offense (within 12 months) - Oral Reprimand, Policy Review, and Journal Entry
  - 2<sup>nd</sup> Offense (within 12 months) - Written Reprimand, Audit, and PAS Review
  - 3<sup>rd</sup> Offense (within 12 months) - 1 Fined Day
    - “Purposeful, flagrant, or repeated violations will result in more severe disciplinary action. At any time during review, if deemed necessary, violations can be removed from the scheduled discipline above and transitioned to a formal investigation governed by the discipline matrix”.
- 10) OMS 505.01(9)(c) – On-Call Requirements / Fail to Respond to a Call for Duty
- 1<sup>st</sup> Offense (within 12 months) - Written Reprimand
  - 2<sup>nd</sup> Offense (within 12 months) - Fine of 8-hours (1 day)
  - 3<sup>rd</sup> Offense (within 12 months) – Chronic Offender (violations will be dealt with more severely within the Discipline Matrix)
- 11) OMS 111.02(1)(d) – Uniform Cap / Failure to Wear as Directed
- 1<sup>st</sup> Offense – Oral Reprimand and Journal Entry
  - 2<sup>nd</sup> Offense (within 12 months) – Written Reprimand
  - 3<sup>rd</sup> Offense (within 12 months) – 1-day suspension without pay
    - “Subsequent violations will be dealt with more severely”



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

**Jumaane D. Williams**

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**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.



## Jumaane D. Williams

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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,<sup>1</sup> we have seen several instances<sup>2</sup> 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."**<sup>3</sup> 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.

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<sup>1</sup> [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf)

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

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



## Jumaane D. Williams

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Additionally, as the recent NYCLU<sup>4</sup> 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,<sup>5</sup> 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 Monitor<sup>6</sup> 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

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

<sup>5</sup> 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](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/nypd-discipline-matrix-draft-for-public-comment-2020-08-31-w-message.pdf)

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



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

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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.

**Testimony from Assemblymember Rodneyse Bichotte**  
CCRB Special Public Meeting to Discuss NYPD Disciplinary Matrix

September 17, 2020

Chair Davie,

Thank you for the opportunity to present testimony on the NYPD disciplinary matrix at today's public meeting.

The deep-seeded need for police reform has been brought to the forefront of our agenda by recent events. The mission of the CCRB, to oversee the NYPD and review civilian complaints of misconduct, is one we need to fulfill today more than ever, so that police-community relations can be healed. I thank you for your efforts to see that through and ensure justice is meted out.

I believe the matrix needs to a) include a mechanism for collecting data on racial profiling, and b) require police officers to identify themselves to the public and impose a penalty, deemed appropriate by the CCRB, for those that do not comply.

One goal of the matrix is to increase public transparency, but when there is no data, there is no transparency.

Racial profiling is punishable by termination under the matrix, but there is currently no requirement that officers collect data on the race of each and every person that is stopped by the police. The fact that the data is limited hinders the Board's ability to effectively review complaints and make a determination in cases of racial profiling, because the Board cannot truly see which officers are using race as a determination of who gets stopped.

We also saw, during the protests this summer, that many officers were hiding their badge numbers. I ask the CCRB and NYPD to consider imposing stricter penalties for police officers who intentionally fail to identify themselves by obscuring their shield numbers. It is obvious this is a widespread problem, and that the current penalty is not serving as a significant enough deterrent. Officers who obscure their badge numbers hinder the heart of CCRB's mission, and I fear that may be the intent. If formal measures are not taken to prevent this from happening, it will reflect badly on the entire department.

In the Assembly, I have sponsored legislation that would help to correct for these inequities in policing. I truly believe that if we work together, we can build better community-police relations.

Sincerely,  
Assemblymember Rodneyse Bichotte