



CCRB Comment

The Center on Race, Inequality and the Law at NYU School of Law presents the following comments regarding new rules proposed by the Civilian Complaint Review Board (CCRB) empowering the CCRB to expand definitions of misconduct to include improper use or deliberate misuse of body-worn cameras, as well as the ability to self-initiate misconduct complaints against members of the NYPD. The Center has regularly called for greater independent oversight of the NYPD and stronger disciplinary measures in response to findings of misconduct. We do so while recognizing that the toll of police misconduct continues to fall disproportionately upon New York City's communities of color. These proposed rules are well within the CCRB's mandate as granted by the New York City Charter, particularly in light of the most recent amendments to the Charter, which became effective in January 2022. Furthermore, these rules will advance racial justice within New York City by providing a stronger mechanism to hold accountable officers who engage in misconduct, including racial profiling and other forms of racially-biased policing.

The Proposed Rules Are Within the CCRB's Mandate

The New York City Charter authorizes the CCRB to investigate allegations of police misconduct in a fair and independent manner.¹ The misuse of body-worn cameras (defined as an instance in which a member of the police department fails to turn it on, turns it off prematurely, or fails to record an incident in violation of the NYPD Patrol Guide) constitutes police misconduct under the newly-proposed rules. Given the current lack of transparency around the use of body-worn cameras, and the essential role that body-worn camera footage plays in facilitating CCRB investigations, the proposed expansion of definitions of misconduct will enable the CCRB to properly and punctually carry out its mission. The CCRB's ability to investigate misconduct in relation to body-worn cameras is of paramount importance, given the lack of objective evidence available to investigators in most cases involving interactions between police officers and members of the public, as well as the dearth of investigative efforts undertaken by the NYPD to police itself.

¹ N.Y.C. CHARTER 18-A § 440(a) (2020).

In addition, the proposed rules authorize the CCRB to self-initiate investigations into past and present misconduct by NYPD officers. The department seldom substantiates claims of officer misconduct, and when it does, strong or appropriate action is rarely forthcoming. In 2021, the CCRB received thousands of complaints of officer misconduct—resulting in a mere 10 officers facing disciplinary action, with no terminations.² In a comprehensive report that examines the last 20 years of CCRB activity, the New York Civil Liberties Union (NYCLU) found that less than one percent of police misconduct complaints prompted serious disciplinary action.³ Under such circumstances, it is imperative that the CCRB be equipped with the tools necessary to take action independent of the NYPD.

The Proposed Rules Will Advance Racial Justice in New York City

Enacting these rules, as the CCRB is clearly empowered to do, is an important step toward building a more racially equitable city. At bottom, they provide the CCRB with the tools necessary to hold NYPD officers accountable, where appropriate, for the type of conduct that has undermined the relationship between the police and the communities they are supposed to protect and serve. That relationship has been significantly strained by the NYPD's long and well-documented history of violating the constitutional rights of communities of color. Nearly a decade after a federal court ordered the NYPD to end its racially discriminatory and unconstitutional stop and frisk practices in the landmark case of *Floyd v. City of New York*, racial disparities in stops and frisks remain severe across the city. Between 2015 and 2020, the CCRB received more than 4,000 complaints of unlawful stop and frisk allegations,⁴ demonstrating an ongoing need for comprehensive investigations into police misconduct. Not surprisingly, an examination of the demographics of those who initiate complaints with the CCRB reveals that people of color are three times more likely than white people to be identified as the injured party.⁵ As such, expanding the CCRB's authority with regard to body-worn camera misuse and self-initiated complaints advances the protection of people of color in New York.

The new rules are especially important given the current lack of transparency around body-worn camera conduct. By including body-worn camera misuse in definitions of abuse, the CCRB will be able to effectively investigate in a new playing field of surveillance technologies, as well as gain more access to body-worn camera footage. Since the inception of the NYPD's BWC program, the CCRB has submitted over 4,000 BWC requests but only received footage in

² N.Y.C. CIVILIAN COMPLAINT REV. BD., SEMI-ANNUAL REPORT 2021 (2021),

https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2021_semi-annual.pdf

³ Jesse Barber & Simon McCormack, Cop Out: Analyzing 20 Years of Records Proving NYPD Impunity (2021),

https://www.nyclu.org/sites/default/files/field_documents/nyclu-2021-ccrbdata-report.pdf

⁴ N.Y.C. CIVILIAN COMPLAINT REV. BD. ANNUAL REVIEW 2020 (2020),

https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_Annual.pdf

⁵ Jesse Barber & Simon McCormack, Cop Out: Analyzing 20 Years of Records Proving NYPD Impunity (2021),

https://www.nyclu.org/sites/default/files/field_documents/nyclu-2021-ccrbdata-report.pdf

approximately half of those instances.⁶ Due to the disproportionate policing of people of color, increasing clarity around body-worn cameras will assist the CCRB in investigating incidents of misuse, many of which target Black and Brown people.

In addition to strengthening the CCRB's investigative powers, these proposed rules will allow the agency to carry out its mandate even in the face of the many barriers that often prevent or discourage civilians from filing complaints against NYPD officers. More specifically, allowing the CCRB to self-initiate complaints will help civilians who are unaware of the complaint system and/or the fact that they are part of a larger pattern of misconduct by a particular officer. In some cases, civilians may be discouraged from using the complaint process simply due to a lack of time; ongoing work or child care responsibilities; lack of understanding of or access to the complaint process; or a lack of confidence in the effectiveness of the disciplinary system, among other barriers. Considering that a striking majority of complaints have not resulted in any disciplinary action, it is understandable that civilians are wary of the complaint process and have little incentive to invest their time. In the past 20 years, only seven percent of complaints were substantiated by the CCRB.⁷ Enabling the CCRB to self-initiate investigations will allow the agency to hold officers accountable even when the impacted person is unable to or discouraged from filing a complaint themselves.

Conclusion

Given the recent rhetoric in New York City around rising crime rates and the need for more aggressive law enforcement measures, it is particularly important for the CCRB to be empowered to act at this critical moment. Increased interactions between police officers and members of the public will inevitably spawn additional complaints of misconduct that must be taken seriously and investigated appropriately. Both the ability to thoroughly investigate BWC-related conduct, and the ability to self-initiate complaints against officers who might otherwise evade investigation, are welcome additions to the CCRB's mandate. As such, the Center supports the enactment of the CCRB's 2022 proposed new rules.

⁶ N.Y.C. CIVILIAN COMPLAINT REV. BD. ANNUAL REVIEW 2020 (2020), https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2020_Annual.pdf

⁷ Jesse Barber & Simon McCormack, Cop Out: Analyzing 20 Years of Records Proving NYPD Impunity (2021), https://www.nyclu.org/sites/default/files/field_documents/nyclu-2021-crbdata-report.pdf