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CIVILIAN COMPLAINT REVIEW BOARD

PUBLIC MEETING

July 13, 2022

4:10 p.m.

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HELD VIA VIDEOCONFERENCE

B E F O R E:

ARVA RICE, INTERIM CHAIR

JONATHAN DARCHE, ESQ., Executive Director

Transcribed by:

Shechinah Jackson

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PUBLIC MEETING AGENDA

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- 1. Call to Order
- 2. Adoption of Minutes
- 3. Report from the Chair
- 4. Report from the Executive Director
- 5. New Business
  - Resolution on Remote Board Member Participation
- 6. Presentation from Director of Racial Profiling and Biased-Based Policing Unit
- 7. Public Comment
  - Public Comment on Rules
  - General Public Comment
- 8. Old Business
- 9. Adjourn to Executive Session

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BOARD MEMBERS

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- Arva Rice, Interim Board Chair
- AU Hogan, Board Member
- Rev. Dr. Demetrius S. Carolina Sr., Board Member
- Joseph A. Puma, Board Member
- Michael Rivadeneyra, Esq., Board Member
- Herman Merritt, Board Member
- Willie Freeman, Board Member
- John Siegal, Esq., Board Member
- Erica Bond, Board Member
- Corrine Irish, Esq., Board Member
- Frank Dwyer, Board Member

Presenters:

- Darius Charney - Director of Racial Profiling  
and Bias-Based Policing
- New York City Civilian Complaint Review Board

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SPEAKERS

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Vanessa Gibson - Bronx Borough President

Nick Smith - Deputy Public Advocate

Corey Stoughton - Legal Aide

Kshithji Shrinath - Legal Fellow, Impact  
Litigation Practice- The Bronx Defenders

Guadalupe Aguirre - Staff Attorney - New York  
Civil Liberties Union

Samah Sisay - Center for Constitutional Rights

Andrew Case - Latino Justice PRLDEF

Author Mims - Community Member

1  
2 CHAIR RICE: Welcome again, my name  
3 is Arva Rice. I use she/her, pronouns  
4 and I am serving as Interim Chair of the  
5 Civilian Complaint Review Board. I  
6 would like to call the July 20, 2022  
7 CCRB meeting to order. Would the rest  
8 of the board members please introduce  
9 themselves and I will start once again  
10 with John.

11 MR. SIEGAL: Good afternoon, John  
12 Siegal, I'm the mayoral appointee and  
13 I'm glad to see everyone here.

14 MR. DWYER: Good afternoon, Frank  
15 Dwyer, police commissioner designee.

16 MR. HOGAN: Au Hogan, City Council  
17 designee in Queens.

18 MS. IRISH: Hi everyone, Corrine  
19 Irish, I live in Harlem and I'm a  
20 mayoral appointee.

21 MR. DARCHE: Good afternoon, my name  
22 is Jon Darche. I use he/him pronouns  
23 and I'm the executive director of the  
24 agency.

25 MR. MERRITT: Hi, my name is Herman

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Merritt, City counsel representative from Brooklyn.

MR. RIVADENEYRA: Hi, good afternoon. My name is Michael Rivadeneyra. My pronouns are he/him and I am the City Council designee for the Bronx.

MS. BOND: Good afternoon, my name is Erica Bond. I use she/her pronouns and I am a mayoral designee, thank you.

MR. PUMA: Good afternoon, everyone. My name is Joseph Puma. I use he, him pronouns and I'm the Manhattan City Council representative on the board.

CHAIR RICE: We can have the board members who are joining us online to present themselves, starting with Mr. Freeman.

MR. FREEMAN: Willie Freeman, mayoral from Brooklyn.

MR. CAROLINA: Demetrius Carolina, mayoral appointee, he/him, Staten Island.

CHAIR RICE: Seeing as we have a

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quorum, I would like to ask for a motion to approve the minutes as presented.

FEMALE SPEAKER: So moved.

CHAIR RICE: I'm sorry, I should've asked, are there any corrections or changes to the minutes before I ask for the approval, sorry. Are there any corrections or changes to the minutes?

Okay, may I have a motion to approve the minutes as presented?

MALE SPEAKER: So motioned.

CHAIR RICE: May I have a second?

FEMALE SPEAKER: Second.

CHAIR RICE: Okay, all those in favor of accepting the minutes as presented say aye.

CHORUS: Aye.

CHAIR RICE: Any opposition?

(No response).

CHAIR RICE: All right, the minutes are approved, thank you so much. Last month, the Supreme Court of the United States failed this country by stripping of us of rights and laws that

1  
2 work to protect us. New Yorkers have a  
3 legacy of vocalizing their pain and  
4 their frustration through protest and  
5 this has been no exception. Thousands  
6 of people across the City have gathered  
7 to protest these decisions and we want  
8 all New Yorkers to know the CCRB is  
9 committed to ensuring anyone who  
10 peacefully takes to the street can do so  
11 safely and seek redress if they believe  
12 they have experienced misconduct.  
13 Today's meeting will be focused on  
14 allowing the public to comment on the  
15 CCRB's proposed rule changes. Last year  
16 the City Council voted to change the  
17 City Charter to grant the CCRB the power  
18 to self-initiate complaints and begin  
19 investigating bias-based policing and  
20 racial profiling. In order for the CCRB  
21 to begin these types of investigations,  
22 the board must vote to change the  
23 agency's rules. Darius Charney, the  
24 director of the unit dedicated to  
25 investigating bias-based policing will



1  
2 provide more detail later on, about the  
3 unit and the proposed changes. While  
4 people have had the opportunity to  
5 comment on our proposed rules changes  
6 online, they may also do so in this  
7 meeting. At the conclusion of public  
8 comment, if board members have any  
9 questions about the rule changes, please  
10 direct them to executive director Jon  
11 Darche, who we will now hear from. Jon?

12 MR. DARCHE: Thank you, Chair Rice.  
13 As Avar mentioned, the public has been  
14 given the opportunity to comment on our  
15 proposed rule changes, which can be  
16 viewed online and they may also comment  
17 here today. This meeting is an  
18 opportunity for the board to hear the  
19 public reaction to our proposed rule  
20 changes before voting on them at a  
21 future meeting. Recently, the CCRB  
22 administrative prosecution unit brought  
23 the first protest case to trial. We are  
24 still waiting for the decision on that  
25 case from the trial commissioner. I

1  
2 want to thank our investigators and  
3 prosecutors on the hard work that it  
4 took to get us to this point. This is  
5 the first of many trials for the protest  
6 cases and the final report on the  
7 protest case investigation will be  
8 published in the coming months. I want  
9 to just remind the public that our  
10 office is open for walk-in complaints,  
11 but it is also possible to file  
12 complaints online at NYC.GOV/  
13 CCRBcomplaint, that is NYC.GOV/  
14 CCRBcompaint, by telephone by calling us  
15 directly at 1(800) 341-2272 or by  
16 dialing 311. If anyone wishes to file a  
17 complaint right now, we have two  
18 investigators on hand, ready to take any  
19 new complaints and if they can stand up,  
20 Eliza Clingstin and Emma Stidahard  
21 (phonetic). So, if you are online  
22 please use the raise the hand feature  
23 during the public comments, so that we  
24 can call on you and I want to thank the  
25 staff for their hard work in putting us

1  
2 in this new space in the Law Department  
3 and also thank the law department for  
4 allowing us to use this space for  
5 today's meeting because we were  
6 expecting a larger turnout for the  
7 discussion of the rules.

8 CHAIR RICE: Does our board have any  
9 questions for our executive director at  
10 this time?

11 (No response).

12 CHAIR RICE: Any questions?

13 (No response).

14 CHAIR RICE: Do we have any new  
15 business to come before the board?

16 (No response).

17 I have one item of new business  
18 before the board for consideration  
19 today. It is a resolution that, if  
20 adopted, would authorize remote  
21 attendance at meetings by CCRB board  
22 members under certain circumstances.  
23 Earlier this year the open meetings law  
24 was amended to permit members of a  
25 public body to participate in the

1  
2 meeting via videoconference. From a  
3 remote location that is not open to the  
4 public, if there are extraordinary  
5 circumstances. Some examples of  
6 extraordinary circumstances are  
7 disability, illness, caregiving  
8 responsibilities or other significant or  
9 unexpected factors or events that  
10 preclude a board member from physically  
11 attending a meeting. I want to  
12 emphasize to the public that if this  
13 resolution is adopted, that does not  
14 mean that the entire board can  
15 participate in the board meeting  
16 remotely. Under the law, a quorum of  
17 board members still must be physically  
18 present at the board meeting location in  
19 order for a board member to be able to  
20 participate remotely. The CCRB  
21 recognizes the significant value that  
22 having in-person board meetings provides  
23 to members of the public, in terms of  
24 transparency and accountability. I  
25 should note that notwithstanding this

1  
2 resolution, executive orders for  
3 emergencies such as the COVID 19  
4 pandemic might allow for fully remote  
5 meetings or remote participation by  
6 board members and/or the public when  
7 they will in effect. I will now read  
8 the resolution into the record.

9 "Proposed Civilian Complaint Review  
10 Board Resolution authorizing board  
11 members to attend meetings via  
12 videoconferencing under extraordinary  
13 circumstances. Whereas, by passing  
14 chapter 56 of the laws of 2020, chapter  
15 56 the New York State legislature  
16 amended section 103 of the open meetings  
17 law and whereas chapter 56 adds section  
18 103-A of the open meetings law  
19 permitting the Civilian Complaint Review  
20 Board ("CCRB") to authorize its members  
21 to attend meetings by videoconferencing  
22 under extraordinary circumstances and  
23 whereas section 103-A2A requires the  
24 CCRB to adopt a resolution following a  
25 public hearing authorizing the limited

1  
2 use of videoconferencing under such  
3 circumstances and where as section  
4 103-A2 allows for hybrid meetings by  
5 requiring that a minimum number of  
6 members are present to fulfill the  
7 public bodies quorum required in the  
8 same physical location or locations  
9 where the public can attend and where as  
10 section 103-A2C requires that members be  
11 physically present at any meeting unless  
12 such member is unable to be physically  
13 present at any such meeting location due  
14 to extraordinary circumstances,  
15 including disability, illness,  
16 caregiving responsibilities or any other  
17 significant or unexpected factor event  
18 which precludes the member's physical  
19 attendance at such meeting and where as  
20 in accordance with section 103-A2D, any  
21 members attending by video conferencing  
22 except during executive session, be  
23 heard, seen and identified while the  
24 meeting is being conducted, including  
25 but not limited to, any motion,

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2 proposal, resolution and any other  
3 matter formally discussed or voted upon  
4 and where as section 103-A2G requires  
5 that any meeting where a member attends  
6 by videoconference be reported to the  
7 CCRB web page within five business days  
8 and transcribed upon request and where  
9 as section 103-A2H requires that members  
10 of the public be permitted to attend and  
11 participate if authorized in any meeting  
12 by videoconference when a member attends  
13 by videoconference. Be it resolved that  
14 the CCRB authorizes its members who  
15 experienced an extraordinary  
16 circumstance as described above and  
17 further defined by any rules or written  
18 procedure later adopted, to attend  
19 meetings by videoconference as long as  
20 the quorum of the meeting of the members  
21 attend in person at one or more  
22 locations open to the public. Two, as  
23 long as the members can be seen, heard  
24 and identified while the open portion of  
25 the meeting is being conducted and

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three, as authorized permitted under chapter 56 of the laws of 2020 and be it further resolved that the CCRB shall create written procedures further governing its use of videoconferencing by its members and compliance with chapter 56 of the laws of 2020 -- 2022."

MR. DARCHE: Madam Chair, I just wanted to clarify the chapter 56 of the laws of 2022, not of 2020 correct?

CHAIR RICE: Yes, of 2022, thank you. Shall I read it again?

MR. DARCHE: No.

CHAIR RICE: Okay, the written procedure governing how and when a board member can participate remotely via video conferencing have been prepared by our general counsel's office. These procedures will be posted on the CCRB website. Do the board members have any questions?

MR. RIVADENEYRA: I have a question about the public access to the videoconference, do we need to have at



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least one board member request for video conferencing so that we are still doing videoconference for the public or will we continue doing videoconference for the public to access what we've been doing?

MR. DARCHE: The agency intention is to continue to do hybrid meetings for as long as possible. One of the reasons why we are continuing to do meetings at 100 Church and haven't gone into the community yet, is we need to figure out how to accomplish that when we are on the road, so to speak.

MR. RIVADENEYRA: Thank you.

CHAIR RICE: Questions, any other questions from our board members?

(No response).

CHAIR RICE: Any questions from those who are joining us online?

(No response).

CHAIR RICE: Okay, all right, may I have a motion to approve the resolution as presented?

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MALE SPEAKER: So ruled.

CHAIR RICE: May I have a second.

FEMALE SPEAKER: Second.

CHAIR RICE: All those in favor say  
aye.

CHORUS: Aye.

CHAIR RICE: Any opposed?

(No response).

CHAIR RICE: The resolution is  
approved. Thank you very much. Now  
we're going to have a presentation from  
our director of racial profiling and  
bias-based policing, Darius Charney,  
that is relevant to the proposed rules  
that we're going to take public comment  
on today. Darius?

MR. CHARNEY: Okay, I'm going to try  
this with the mask, but if you can't  
hear me, I'll take it down. Good  
afternoon, I want to thank the board and  
Chair Rice for giving me the opportunity  
to speak to you today about some of the  
proposed rule changes related to the  
CCRB's new jurisdiction to investigate

1  
2 complaints of racial profiling and  
3 bias-based policing as well as the new  
4 jurisdiction to conduct what I call past  
5 professional conduct investigations of  
6 members of service who have been found  
7 to have previously engaged in acts of  
8 bias. I'm going to start with just a  
9 little bit of history, I think, as most  
10 folks are aware historically the CCRB  
11 has not investigated racial profiling or  
12 bias policing. We do receive a lot of  
13 those complaints from the public and up  
14 until now when we have received them, we  
15 have referred them to the NYPD's  
16 Internal Affairs Bureau. From 2014  
17 through 2021 NYPD received an  
18 investigated over 3,400 profiling bias  
19 policing allegations and substantiated a  
20 total of four. This system of referring  
21 to IAB has now changed because last year  
22 the City Council passed Local Law 47.  
23 Which amended chapter 18A of the New  
24 York City Charter, which is the chapter  
25 that covers the CCRB and those

1  
2 amendments did two things that are  
3 relevant to my presentation. One is  
4 that it clarified that the CCRB's  
5 abusive authority jurisdiction covers  
6 civilian complaints of racial profiling  
7 and bias-based policing against NYPD  
8 members of service, so that change has  
9 now been codified in section 440-C1 of  
10 the charter. The other important change  
11 is that the local law created a new area  
12 of CCRB jurisdiction to investigate what  
13 is called past professional conduct, the  
14 NYPD members who have previously been  
15 found by the CCRB or certain other  
16 public entities, which I will get to in  
17 a second, to have committed an act of  
18 bias or severe act of bias within the  
19 last five years, these new changes  
20 codified in charter section 441 so what  
21 the -- I'm sorry, I skipped a couple of  
22 these, um -- oh, you know what, it looks  
23 like after, it looks like a couple of  
24 slides have mysteriously disappeared,  
25 that's all right. I'll kind of

1  
2 improvise here, two of the changes that  
3 are in the proposed rules that I did  
4 want to highlight are the definitions  
5 for an act of bias and also for what is  
6 a covered entity. Again, for some  
7 reason it's not here, but the act of  
8 bias definition, it talks about acts  
9 that are motivated by an animus on the  
10 part of the police officer on the basis  
11 of race, gender, sexual orientation,  
12 disability and I believe a nation of  
13 origin. Again this definition appears  
14 in section 441-C of the charter, which  
15 is the section that refers to past  
16 professional conduct investigations and  
17 that definition now appears in the  
18 proposed rules. In addition, Local Law  
19 47 and section 441 defines the term  
20 "covered entity" and that definition  
21 includes the CCRB, it also includes  
22 NYPD, it include the City Commission on  
23 Human Rights, as well as state and  
24 federal courts within New York State and  
25 the Department of Investigation for the

1  
2 City. In addition, section 441 gives  
3 the CCRB the authority to identify other  
4 covered entities that could potentially  
5 make finding that an officer had engaged  
6 in an act of bias. So the proposed  
7 rules also include other agencies, state  
8 and federal agencies that do have  
9 jurisdiction to investigate bias  
10 activity. Those include the New York  
11 State Division of Human Rights, the New  
12 York State Attorney General's office, as  
13 well as the United States Department of  
14 Justice and the Equal Employment  
15 Opportunity Commission. Those  
16 definitions that you see in the rules,  
17 as I said, come directly from section  
18 441 of the charter. The terms that the  
19 charter does not define are the terms  
20 racial profiling and bias-based  
21 policing, which of course appear in  
22 section 440-C1 of the charter, so the  
23 proposed rules have incorporated the  
24 definitions of racial profiling and  
25 bias-based policing that come directly

1  
2 from the NYPD's own policy, which is  
3 found in NYPD administrative guide  
4 304-17 and the definition of bias-based  
5 policing is also found in New York City  
6 administrative code 14-151, which was  
7 enacted in 2013 by local law 71, so  
8 those definitions again are coming  
9 directly both from NYPD policy, as well  
10 as New York City statute and those are  
11 the definitions that the NYPD Internal  
12 Affairs Bureau has been using in it's  
13 investigation of bias-based policing and  
14 racial profiling. So now I will go  
15 forward here and I apologize from the  
16 missing slides in the presentation, I  
17 will provide a full -- a full PowerPoint  
18 that I guess we can also put on the  
19 website, but I will make sure that you  
20 all get it. The two slides kind of lay  
21 out what acts of bias and cover entity  
22 and racial profiling and bias-based  
23 policing, those definitions, but I did  
24 just want to explain really briefly, we  
25 have had some questions about, you know,

1  
2 what are these different terms, acts of  
3 bias versus racial profiling and  
4 bias-based policing mean. Racial  
5 profiling and bias-based policing do  
6 cover more protective identity  
7 categories than does the term acts of  
8 bias. Those additional categories are  
9 immigration status, housing status, as  
10 well as age and again, those come from  
11 the City statute that's in 14-151, also  
12 under local law 47 acts of bias that  
13 could trigger that past conduct  
14 investigation, can in certain  
15 circumstances include off-duty conduct,  
16 so these are the differences between the  
17 acts of bias term and the racial  
18 profiling and bias-based policing, but  
19 what I did want to just clarify is these  
20 terms are used for different purposes  
21 according to the charter amendments, so  
22 act of bias, as I mentioned before, that  
23 term appears in section 441 of the  
24 charter, which specifically applies to  
25 the past professional conduct



1  
2 investigations. Whereas the term racial  
3 profiling and bias-based policing  
4 section 440(C)1 of the charter, which is  
5 the section that talks about CCRB's FADO  
6 jurisdiction and its FADO investigations  
7 and specifically identifies racial  
8 profiling and bias-based policing as a  
9 form of abusive authority. So that's  
10 why these different terms and they have  
11 different uses and again the proposed  
12 rules reflect what those distinctions as  
13 laid out in the charter amendments  
14 themselves so that is kind of the -- I  
15 think those are the rule changes I  
16 wanted to highlight, there is a rules  
17 memo that we have provided to the board  
18 and it's also available online for the  
19 public to view, which goes into a little  
20 bit more detail about these changes and  
21 some of the other changes in the  
22 proposed rules related to racial  
23 profiling, bias policing and past  
24 professional conduct investigations, but  
25 I did want to spend a couple of minutes

1  
2 talking about the CCRB's work to get  
3 ready to investigate these new areas of  
4 jurisdiction.

5 We have created a racial profiling  
6 bias policing investigations unit, which  
7 is the unit that I was hired to direct.  
8 The unit, we like to call ourselves the  
9 RPBP unit, we are housed within the  
10 investigations division of the CCRB and  
11 the unit will conduct all racial  
12 profiling and bias-based policing and  
13 past professional conduct  
14 investigations. We will work closely  
15 with other investigations division staff  
16 to jointly investigate those cases that  
17 involve both traditional FADO and filing  
18 bias policing allegations, we definitely  
19 want to take advantage of the incredible  
20 institutional knowledge and expertise  
21 that already exists in the agency, so we  
22 think by doing these investigations and  
23 coordination with the investigations  
24 division, they will and will really, I  
25 think maximize our ability to do these

1  
2 investigations effectively and  
3 thoroughly. In terms of the unit's  
4 staffing as present the unit includes  
5 the Director that is myself and you  
6 know, I have a lot of experience doing  
7 civil rights police misconduct work in  
8 both here in New York City and  
9 nationally and including working on the  
10 Floyd versus City of New York case,  
11 which I think many of you are familiar  
12 with, we have also hired a deputy  
13 director who is a former policy Council  
14 to the chair of the City Commission on  
15 Human Rights, she has more than five  
16 years experience investigating  
17 complaints of discrimination and  
18 enforcing the New York City Human Rights  
19 Law, which is one of the broadest  
20 anti-discrimination laws in the country,  
21 we have also recently hired a chief data  
22 scientist, who has more than nine years  
23 of quantitative research experience and  
24 has focused on racial and other forms of  
25 inequality, which I think will be very

1  
2 relevant to the work that we do. We  
3 have also hired two investigating  
4 managers, who both of whom are  
5 experienced CCRB investigators; they  
6 were internal hires and each of them  
7 will each supervise a team of  
8 investigators and investigating  
9 attorneys. So far, we've hired three  
10 investigators and three investigator  
11 attorneys and we intend to hire, by the  
12 fall, two more investigators, four  
13 investigating attorneys and an  
14 additional data analyst to work with our  
15 data scientist. Last thing I'd like to  
16 say on this, for the staff we already  
17 hired, the investigators and  
18 investigating attorneys, we put them  
19 through several weeks of our new  
20 investigating training, which is  
21 recognized as one of the best training  
22 programs in the country for civilian  
23 oversight and we've also begun to train  
24 them on bias policing specific issues  
25 and will continue to do so throughout

1  
2 the summer and then we'll do the same  
3 kind of training and on-boarding for the  
4 new staff who started in the fall. So  
5 I'm going to stop there because I  
6 obviously want to give enough time for  
7 others to weigh in here, but I'm happy  
8 to answer any question that the board  
9 may have and I guess, hand it back over  
10 to you, Chair Rice.

11 CHAIR RICE: Thank you so much for  
12 that presentation. I want to ask the  
13 board members, if they have any  
14 questions specifically related to what  
15 Darius has laid out in the racial  
16 profiling and bias-based policing unit,  
17 so any questions for Darius based on the  
18 unit that's been created?

19 MR. DWYER: I'd like to ask him for  
20 clarity on the 18-month statute of  
21 limitations.

22 MR. CHARNEY: Sure.

23 MR. DWYER: Visa vie the past  
24 professional conduct investigations?

25 MR. CHARNEY: So the past

1  
2 professional conduct investigations,  
3 again this is something that was created  
4 by the City Charter, it states that if  
5 one of those covered entities that I  
6 named earlier makes a final  
7 determination that a member of service  
8 has committed an act of bias within the  
9 past five years, that would then trigger  
10 CCRB authority to investigate the last  
11 five years of their professional conduct  
12 to determine if that prior act of bias  
13 was part of a bigger pattern of bias  
14 behavior. At the conclusion of that  
15 investigation the CCRB is supposed to  
16 report its findings to the commissioner,  
17 but there is no mandate in the charter  
18 amendment, as far as I know, that  
19 actually provides for that to be handled  
20 through the same disciplinary system  
21 that a regular CCRB civilian complaint  
22 would, so I don't know if that means  
23 that the 18 months statute of  
24 limitations that you're referring to,  
25 which is obviously applied when we're

1  
2 talking about disciplinary proceeding, I  
3 don't know if that would apply to this  
4 kind of investigation because the  
5 outcome of these investigations is not  
6 clear that is a disciplinary process as  
7 opposed to an investigation, that then  
8 provides information for the police  
9 commissioner, I guess, to determine what  
10 he or she will do, so I don't know if  
11 that answers your question, but I think  
12 the 18-month statute of limitations may  
13 not apply here, yes.

14 MR. DARCHE: So there's nothing in  
15 either of the Charter or the City rules  
16 that would contradict civil service law  
17 77, section 75 that sets out the  
18 18-month statute of limitations and the  
19 exception to the 18-month statute of  
20 limitations, so any discipline that  
21 would result throughout their service.

22 MR. CHARNEY: Would still have to  
23 meet that, yes.

24 FEMALE SPEAKER: Within the 18  
25 months that finding.

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MR. CHARNEY: I think it would have to be the incident, right.

MR. DARCHE: I think it's, the 18-month period is from the date of the incident, unless there is an exception to the statute of limitations under section 75 of civil service law, if the conduct that the member of service is accused of committing could be construed as a crime, then the statute of limitations does not apply at all, so if the conduct that the member -- if an investigation of a member of service were to determine that misconduct occurred and that it occurred more than 18 months prior to the finding of the CCRB and it could not be charged as a crime, then the officer could not be disciplined for it.

CHAIR RICE: Any other questions from our board in regards to the (inaudible) of the unit?

MS. BOND: I just -- I'm struggling a little bit with the intent of the law



1  
2 here because of the five-year lookback  
3 journey, so then it's just not clear to  
4 me what happens, right, does it mean  
5 that there's on the record of the  
6 officer -- is there some record of this  
7 investigation and this determination  
8 around racial bias but there is no  
9 redress because we cannot actually  
10 recommend any misconduct or was the  
11 intent of the legislation simply to  
12 start to document what's happened in the  
13 past, for purposes of policymaking? I  
14 find it a little confusing that we would  
15 interpret the law to limit us to 18  
16 months when, in fact, we've been given a  
17 five-year lookback period.

18 MR. DARCHE: Because the law doesn't  
19 limit us to 18 months, the law limits us  
20 to 18 months if the conduct could not be  
21 charged as a crime and so it all depends  
22 on the individual facts and  
23 circumstances of the case.

24 MS. IRISH: Yeah, but this doesn't  
25 mean like something we would accept as a

1  
2 limitation if we have a five-year  
3 lookback period and let's say the last  
4 act maybe occurred within 18 months or  
5 something, I mean, a finding of a  
6 pattern of racial profiling, to me, is  
7 very distinct from an incident of, you  
8 know, a stop and frisk or something like  
9 that. To me, that is a very different  
10 character and I don't believe should be  
11 subject to the 18-month statute of  
12 limitations if we been granted a  
13 five-year lookback.

14 MR. CHARNEY: The charter amendment  
15 itself does say that we can recommend  
16 discipline, but it says where consistent  
17 with section 75 of the laws, so I think  
18 to board member Bond's point, I mean, I  
19 don't know what the City Council was  
20 intending here, but they did very  
21 specifically say if we are going to  
22 recommend discipline it has to be  
23 consistent with section 75, which is  
24 where the 18-month statute of  
25 limitations comes in, yeah.

1  
2 MR. HOGAN: My question is just for  
3 the clarity because there is a whole lot  
4 of stuff that is not clear to me because  
5 it's almost to the point that if he is  
6 not being able to -- if it's not being  
7 addressed as a crime and there is no  
8 further discipline is that correct after  
9 the 18 months, is this what it's saying,  
10 unless it was a crime?

11 MR. DARCHE: So it's not a crime as  
12 if it was charged by a prosecutor and  
13 then there was a finding of guilt, it's  
14 whether the conduct could be charged as  
15 a crime, so if that conduct could be  
16 charged as a crime, then the crime  
17 exception does not apply and that is  
18 something that has to look at every case  
19 individually, to look at the facts and  
20 circumstances as to whether or not the  
21 conduct that was misconduct could be  
22 considered a crime and one of the  
23 purposes of the City Councils five-year  
24 lookback was, if there is evidence that  
25 the member of service has engaged in

1  
2 bias activity that might not be from  
3 their police action, it might be because  
4 the reason that the City Council began  
5 debating this provision, was there was a  
6 case of an inspector in the department's  
7 equal opportunity division who was found  
8 to have engaged in racist, misogynistic  
9 and homophobic statements on a online  
10 forum that was not part of their job  
11 duties, but there was nothing that can  
12 be done about that officer's conduct as  
13 a police officer, so the act of bias or  
14 the severe act of bias triggers the  
15 lookout into their police activity and  
16 so it doesn't -- it is -- it may be that  
17 your investigation -- that Darius's  
18 unit's investigation does not uncover  
19 any police activity that was the result  
20 of bias, even though you would have  
21 evidence of, the officer was biased from  
22 the act of bias that resulted in the  
23 investigation. Those are extremely  
24 difficult and broad investigations that  
25 will involve all of that officer's

1  
2 police actions that they took for the  
3 five-year period from the finding, it's  
4 one of the reasons why the agency  
5 advocated for an entire unit to handle  
6 these types of investigations because  
7 they're extremely time-consuming and  
8 they require --

9 MR. CHARNEY: A lot of resources --

10 MR. DARCHE: Thanks, a lot of  
11 resources, but they're, in a way, very  
12 different from the pattern and practice  
13 profiling investigations that are --  
14 that the unit is also going to be  
15 investigating. Instead, it's almost  
16 like an individual FADO investigation  
17 into every police action that officer  
18 took during the five-year period, so if  
19 there is misconduct that is discovered  
20 and if that misconduct is within the 18  
21 months or will fall within the crime  
22 exception then the officer can be  
23 disciplined for that conduct.

24 MR. HOGAN: If the allegations were  
25 connected to, as an officer or was not

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an officer.

MR. DARCHE: Correct because at that point then we're looking at their police activity.

MS. IRISH: If the pattern leads so the last act, which is within the 18 month period, that officer can be disciplined based on the pattern.

MR. DARCHE: So there are two separate things, there is pattern for profiling, but then there is an act of bias that leads to the looking at their past action, you don't need a pattern.

MR. CHARNEY: I think if I understand board member Irish's question, if when you -- so the investigation has been triggered by some act that happened four years ago, now you're investigating and you see that within the last five years, including maybe 12 months ago, the officer has done bias behavior, could we discipline or could we recommend discipline for any of that bias behavior that happened on

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2 the job within those last 18 months and  
3 as I read the statute we could recommend  
4 it. I mean, the statute says we can  
5 recommend a lot of things to the police  
6 commissioner and then the police  
7 commissioner has within 120 days to  
8 respond and say what action, if any,  
9 they're going to take in response to our  
10 recommendations, so I don't know if that  
11 answers your question.

12 CHAIR RICE: Do the board members  
13 have any other questions relating to the  
14 new reforms unit? Yes, John.

15 MR. SIEGAL: I have kind of an  
16 obscure question here, essentially, I  
17 have been reading, I understand the  
18 definition of bias-based policing comes  
19 from local law 71, so we're kind of  
20 stuck with it and that statute is nine  
21 years old, so it's probably been some  
22 stuff, but do you have any learning you  
23 can share with us as to what "creed" and  
24 "housing status" are under that  
25 definition?

1  
2 MR. CHARNEY: Yes, so, housing  
3 status, the definition actually means,  
4 in local law 71 they specifically define  
5 housing status, which was very good of  
6 them to do, it includes things like, are  
7 you a renter or owner, it includes do  
8 you live in public housing or private  
9 housing, it includes whether you're  
10 domiciled or un-domiciled or whether you  
11 live in a shelter. If you know the  
12 allegation is that the police officer  
13 took action based on any of those kinds  
14 of housing statuses, that would fall  
15 under, as we read it, the definition of  
16 bias-based policing and then the other  
17 was creed, I think is defined in the  
18 rest of the categories in that statute  
19 in local law 71, they refer to the human  
20 rights law definitions and I believe  
21 creed is defined as essentially  
22 synonymous with religion or religious  
23 belief.

24 MR. SIEGAL: I didn't mean to ask  
25 you on whether you comprehend --



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MR. CHARNEY: No, we look very closely with all these things because there are a lot of categories we have to keep track of, thank you.

CHAIR RICE: Any questions from the board members?

MR. PUMA: Yes, I have a question about, I guess, what for work product I guess would be and what level of involvement the board has, in that this is a new paradigm for the agency and it's wonderful, as many staff as we're going to have working on it, but a traditional investigation goes to a panel of three board members, we make recommendations and the case gets referred to the police department how a typical case from your unit might be handled and I know this stuff is still being --

MR. CHARNEY: Yeah, so I think to answer your question, I kind of look at the two different categories, I think you have racial profiling and bias

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2           policing, which you know now falls under  
3           abuse of authority, so that's one  
4           category and then we have these past  
5           professional conduct investigations. So  
6           for the first category, the bias  
7           policing racial profiling, I think we  
8           are going to treat those just as we  
9           would any FADO, if a civilian makes an  
10          allegation we'll go to investigate it,  
11          we're going to do a closing report, we  
12          are going to make recommendations as to  
13          what the disposition should be and then  
14          we bring it to a panel -- and then a  
15          panel and the panel will vote, just as  
16          you do with any FADO case and if you're  
17          going to substantiate, then we go  
18          forward with the same process we have  
19          for other FADO allegations, I believe  
20          that profiling is in the discipline  
21          matrix already, there are presumptive  
22          penalties, so I think we would handle it  
23          as we do other FADO, for past  
24          professional conduct. I mean, obviously  
25          it's going to have to go to the board in

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2           some capacity to approve before it can  
3           be sent to the police commissioner  
4           because it's going to be in a report  
5           with recommendations that might be  
6           discipline, they might be other things,  
7           but in terms of whether that would go to  
8           a panel versus the whole board, I don't  
9           think we -- actually confess we haven't  
10          thought through that yet, but I think we  
11          will and we would, obviously would want  
12          all your input and ultimately we would  
13          obviously have the final say as to what  
14          the process should be, but I think  
15          that's the thinking around how we would  
16          handle those.

17                 MR. PUMA:    Thank you.

18                 CHAIR RICE:   Thank you, Mr. Joseph  
19                 for that question, do you have any other  
20                 questions for our board?   All right, we  
21                 will now enter the public -- one raised  
22                 hand.

23                 MALE SPEAKER:   No --

24                 MR. CHARNEY:   Was there another  
25                 question?

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2 CHAIR RICE: No, I think we're done,  
3 just double-checking, we're now going to  
4 enter the public comment portion of the  
5 meeting that is divided into two  
6 sections. First we will hear from  
7 members of the public that would like to  
8 comment on our proposed rules, then we  
9 will hear general comments from the  
10 public and I'm going to turn it over to  
11 Yojaira who has a number of folks who  
12 are going to --

13 MR. DARCHE: Can I just make one  
14 correction, it's not just that all cases  
15 will go to panels. Sometimes, if the  
16 case is, for a variety of reasons, might  
17 go to the full board as well, but they  
18 will be treated, as Darius said, like  
19 any other case, not just going to a  
20 panel of three, just wanted to make that  
21 clear.

22 CHAIR RICE: Thank you, terrific,  
23 Yojaira, are you ready with our first  
24 person to make a comment, Yojaira?

25 MS. ALVAREZ: Thank you, Chair.

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First, we will be hearing from Bronx Borough President Vanessa Gibson, followed by Deputy Public Advocate Nick Smith.

MS. GIBSON: Good afternoon ladies and gentlemen, I hope you can hear me.

CHAIR RICE: Yes, we can.

MS. GIBSON: Thank you. Thank you so much, good afternoon, Madam Chair Avar Rice and the members of the Civilian Complaint Review Board. It's a great opportunity to join with all of you for your monthly hearing. I am Bronx Borough President Vanessa L. Gibson proud to join with all of you my pronouns are she/her and hers and I want to thank you for the invitation to speak before you today regarding the rule changes that the CCRB is proposing. I truly believe this is an important step towards implementing two very important local laws that will truly make the CCRB a more effective body and better able to accomplish all of your mission.

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2           Ensuring the public safety is one of the  
3           important jobs and functions that we  
4           truly have as a local government and the  
5           work of the NYPD is truly essential to  
6           fulfill this goal. However, if the  
7           public does not have confidence in the  
8           police department to enforce the laws  
9           fairly without any bias and without any  
10          abuse, they will be unable to accomplish  
11          that mission. Therefore, the work of  
12          our agency of the CCRB is crucial to  
13          ensure that the public can report when  
14          an officer steps out of line and an  
15          appropriate investigation is performed.  
16          Local Law 47 of 2021, of which I was  
17          very proud to introduce as a former  
18          member of the New York City Council,  
19          authorizes the CCRB to investigate  
20          biased policing incidents, as well as  
21          racial profiling complaints, allowing  
22          the CCRB to investigate these claims of  
23          racism and other biases against police  
24          officers, will enable the public to know  
25          that these officers are not able to

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2 engage in these sorts of behaviors with  
3 impunity. This is especially important  
4 for vulnerable BIPOC communities, low  
5 income communities that have often and  
6 historically been targeted by unfair  
7 police practices over the years. We  
8 truly must improve education and  
9 training for all of our officers, so we  
10 know that they can do their jobs fairly,  
11 in a unbiased way and to be clear  
12 working with the NYPD our partners,  
13 working with the police commissioners  
14 and all of the men and women of the  
15 NYPD, ensuring that they uphold the  
16 laws, they conduct themselves in a  
17 respectable way and they truly are  
18 treating everyone fairly and  
19 respectfully, as we should do the same  
20 for our officers as well. I want to  
21 recognize this is a two-way street as we  
22 ask our officers to treat us fairly and  
23 New Yorkers need to do the same as well,  
24 but we know the small minority of  
25 officers who fail to meet the standard,

1  
2 we want to make sure that the CCRB has  
3 the tools and resources necessary to  
4 investigate and recommend penalties, if  
5 appropriate. In addition, this law will  
6 allow the CCRB to conduct a lookback at  
7 an officer's past record, if the officer  
8 is found to have engaged in past bias  
9 policing, this means the CCRB will  
10 review past actions and records of the  
11 officer to ensure that they have not  
12 engaged in this particular behavior in  
13 the past. This will really ensure true  
14 accountability and an open process for  
15 the members of the public with whom the  
16 officer has had a particular  
17 interaction. I was very proud as a  
18 member of the City Council to support  
19 the passage of Local Law 24 of 2022,  
20 which now authorizes the CCRB to  
21 initiate investigations rather than  
22 waiting for a member of the public to  
23 file a complaint. This reform will  
24 enable the agency to immediately take  
25 action to launch an investigation



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2 whenever there is evidence, sufficient  
3 evidence that misconduct has occurred,  
4 justice should be done regardless of  
5 whether the complaint is made and this  
6 reform will truly help all of you meet  
7 that goal. The rule changes that are  
8 being proposed today regarding the  
9 improper use of body worn cameras is  
10 also a strong and important step towards  
11 ensuring accountability. I support the  
12 pilot years ago of body worn cameras  
13 working with the police foundation  
14 because it is a critical part of our  
15 reform that protects both the public and  
16 the officers, they're neutral  
17 bystanders, they help provide an  
18 unbiased account of an incident and have  
19 often been used to both substantiate  
20 complaints as well as clearing officers  
21 of any wrongdoing when officers fail to  
22 turn on their cameras in a timely  
23 fashion. This is truly an abuse of  
24 public trust and it should be  
25 investigated as such body worn cameras

1  
2 are an essential part of modern day  
3 policing happening all across the  
4 country and officers must use them when  
5 appropriate. The City must also  
6 continue to reform the CCRB to increase  
7 its effectiveness in combatting police  
8 misconduct. The agency became a truly  
9 independent oversight commission with  
10 the ability to issue binding  
11 disciplinary action substantiated cases  
12 and the complaint that has been logged  
13 against police officers. Now while we  
14 continue to push for these changes, the  
15 reforms that these laws had enacted are  
16 really a great step forward and I want  
17 to commend you, madam chair, the members  
18 of CCRB, I want to thank you for  
19 introducing these rules changes to fully  
20 implement Local Law 47 and Local Law 24  
21 and again as a former member of this  
22 City Council, being part of the  
23 legislative body, I do want to make just  
24 a lot of compliments towards CCRB.  
25 We've been able to roll out a number of

1  
2 reforms that brings CCRB into the outer  
3 of borough most because we know many  
4 complainants do not want to go down to  
5 Church Street in lower Manhattan and  
6 we've been able reform the process and  
7 allow more engagement with those who want  
8 to come forward in a very neutral way  
9 and a very responsible and respectful  
10 way. I thank you for your time this  
11 afternoon. I look forward to working  
12 with, now with my new role as the Bronx  
13 Borough President and I thank you for  
14 holding this very important hearing this  
15 afternoon, thank you Madam Chair.

16 CHAIR RICE: Thank you, Madam  
17 Borough President for your remarks and  
18 for your leadership. Yojaira?

19 MS. ALVAREZ: Thank you Borough  
20 President. Next we will be hearing from  
21 Deputy Public Advocate Nick Smith,  
22 followed by Corey Stoughton.

23 MR. SMITH: Good afternoon  
24 everybody, can you see or hear me?

25 MS. ALVAREZ: We can hear you. I

1  
2 think the video is unable to be  
3 activated, but you can proceed.

4 MR. SMITH: Okay, no problem. Good  
5 afternoon everybody, thank you so much  
6 for giving me the opportunity to briefly  
7 testify on these proposed rule changes  
8 relative to the Council passing the  
9 laws. Before I touch on the actual  
10 rules, I just want to say on behalf of  
11 our public advocate Jumaane Williams  
12 that we continue to insist on two other  
13 elements, which is final disciplinary  
14 authority of the CCRB, we long called  
15 for that, secondarily, encouraging the  
16 administration to ensure that the CCRB  
17 has sufficient resources to staff, not  
18 only this new unit that Darius is in  
19 charge of, but its agency overall, that  
20 includes, by the way, funds needed to  
21 publicize the availability of CCRB as a  
22 resource to New Yorkers and representing  
23 the public advocate who is actually the  
24 sponsor of Local Law 71, we thank you  
25 for the invitation and we do align

1  
2 ourselves and support the proposed rule  
3 changes. An example of that goes back  
4 to summer of 2020, during the BLM  
5 protest after the murder of George Floyd  
6 there are undoubtedly far more alleged  
7 incidents of alleged misconduct of that  
8 were reported. When people experience  
9 abuse or inappropriate behavior from the  
10 police, they are vulnerable and may be  
11 hesitant or scared to share what has  
12 happened to them, many New Yorkers don't  
13 know how to file a complaint with CCRB  
14 or how long they have before the statute  
15 of limitations expires, I know that was  
16 discussed a few minutes ago. In the age  
17 of smartphones and social media, many  
18 acts of alleged misconduct are quickly  
19 publicized. This rule change will allow  
20 the CCRB to investigate what they're  
21 seeing in real time, the CCRB also  
22 propose new rules to make the  
23 investigation process more transparent  
24 and easier for the public to understand  
25 for civilians and especially for people

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2 who primarily speak in languages other  
3 than English, of the legal terms  
4 typically used in reports that are often  
5 confusing or difficult to understand.  
6 Replacing the term "unsubstantiated"  
7 with "unable to determine," for example,  
8 makes it clearer there was not  
9 sufficient evidence to establish whether  
10 or not it was an act of misconduct.  
11 Importantly the updated language also  
12 adds bias-based policing in racial  
13 profiling, as well as improper use of  
14 body worn cameras to the definition of  
15 abuse of authority. The CCRB operates  
16 for civilians and all communications  
17 must be in language that every New  
18 Yorker can understand, it is clear that  
19 we must prioritize, empowering and  
20 increasing resources for the CCRB, so  
21 they're able to fully hold the PBA  
22 accountable. The proposed rule changes,  
23 particularly those giving the CCRB the  
24 power to initiate its own investigations  
25 are steps in the right direction and one

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that we must continue and again, on behalf of the Public Advocate we thank you for the invitation and the work that the CCRB continues to do for all New Yorkers, thank you so much.

CHAIR RICE: Thank you for your comments, Deputy Public Advocate Smith. We appreciate your comments and as well as your leadership as well. Yojaira, our next comment?

MS. ALVAREZ: Thank you, Deputy Public Advocate, we will be hearing from Corey Stoughton followed by Andrew Case.

MS. STOUGHTON: Thank you very much and good evening everyone, (inaudible) Sorry, can you hear me? I want to thank you for the opportunity to comment on today's rule changes. My name is Corey Stoughton. I'm from the Legal Aid Society. I'm here speaking on behalf of both the Legal Aid Society and the NAACP Legal Defense and Education Fund, who is our cocounsel in the Davis versus New York case, which is the companion case

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2 of the stop and frisk litigation  
3 pertaining to patterns of unlawful  
4 stops, arrests and searches outside of  
5 NYCHA properties. As lawyers for low  
6 income people who often experience the  
7 worst abuse of police authority, I want  
8 to thank you, the CCRB, for all of the  
9 slate of rule, proposed rule change  
10 proposals that will advance the cause of  
11 accountability through independent  
12 oversight. The range of issues raised  
13 today, which we addressed in detail in  
14 our written testimony, but there are  
15 three issues that I'd really like to  
16 highlight today in my oral testimony.  
17 First, on the issue of body worn cameras  
18 and the rule changes around body worn  
19 cameras, a written testimony lays out  
20 legally direct experience of rampant  
21 violations of the NYPD own body worn  
22 cameras policy and thus the need for  
23 more independent oversight of the  
24 department's failure to follow its own  
25 rules on timely activation and



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2           deactivation of cameras to report police  
3           encounters. Our internal focus group of  
4           public defenders within Legal Aid  
5           Society revealed failures to record --  
6           failures to report in, late activation  
7           are so rampant in criminal defense cases  
8           that can fairly be called the norm  
9           rather the exception, particularly in  
10          cases where there are indications of use  
11          of force or indications of potential  
12          false arrest or other unconstitutional  
13          behavior. These issues had also been  
14          noted in the stop and frisk litigation  
15          that we're part of and while the monitor  
16          reporting shows that there has been some  
17          improvement in this practice by the NYPD  
18          over time, that improvement is very slow  
19          and starting from such a low baseline of  
20          noncompliance that there is really no  
21          question that we're far away from living  
22          out the promise of body worn cameras as  
23          a meaningful tool of police  
24          accountability, so for those reasons the  
25          CCRB's attention to this issue and the

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2 clarification on the fact that this  
3 issue falls within its FADO authority  
4 and always has and that it will focus on  
5 this issue is really welcomed and we  
6 really appreciate that. The second  
7 issue that I want to highlight, is the  
8 issue of expanding authority to  
9 self-initiated complaints, again our  
10 experience at Legal Aid Society gives us  
11 a practical insight to how important  
12 that expansion authority is. We file  
13 CCRB complaints on behalf of clients who  
14 we encounter coming from criminal  
15 arraignments, where there is indication  
16 of police misconduct very regularly and  
17 what we often encounter is that clients  
18 are unwilling or unable to file CCRB  
19 complaints in a timely manner, often  
20 because there are pending criminal  
21 charges and we have to advise our  
22 clients of the risk to their criminal  
23 case of filing a CCRB complaint  
24 immediately while there are pending  
25 criminal charges, we have also

1  
2           unfortunately seen patterns of  
3           trumped-up criminal charges in cases  
4           where officers are clearly filing those  
5           charges and pursuing those charges in  
6           order to cover up instances of police  
7           misconduct. We often see that on  
8           low-level charges that might eventually  
9           not get prosecuted, but resulted in a  
10          delay in a person being able to file or  
11          incompetent to file a CCRB complaint, so  
12          echoing the comments of the deputy  
13          public advocate, the ability to, for  
14          CCRB to self-initiate ensures timely  
15          investigation into incidents of police  
16          misconduct in many cases where  
17          complainants are simply unable to have  
18          access to this form of accountability  
19          and then the final issue I want to  
20          highlight is the issue of the language  
21          and the fact that this might even have  
22          to be a subject of a debate, to be  
23          honest with you, quiet an affront to the  
24          English language because even as a  
25          lawyer, I have found the terminology

1  
2 that the CCRB uses to describe  
3 complaints mystifying and in so many  
4 instances, not only do I have trouble  
5 explaining and getting the client to  
6 understand this, but we have trouble  
7 getting members of legal (inaudible)  
8 understanding and other actors from the  
9 Legal Aid Society and so the common  
10 sense language changes that are being  
11 proposed are really critical to ensuring  
12 the CCRB can continue to engage with the  
13 public and being an effective tool for  
14 the public and our clients. Thank you  
15 so much for these comments, we  
16 appreciate this again and we fully  
17 support the proposed changes.

18 CHAIR RICE: Thank you, Ms.  
19 Stoughton for those comments, we  
20 appreciate them. Yojaira, the next  
21 presenter?

22 MS. ALVAREZ: Thank you so much,  
23 Corey. Next we will be hearing from  
24 Andrew Case followed by Samah Sisay and  
25 Lupe Aguirre.

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MR. CASE: Hi, can you hear me, can you see?

CHAIR RICE: Yes, we can hear and see.

MR. CASE: Great, thank you, my name is Andrew Case, I'm senior Council at Latino Justice and I want to thank you the board and agency staff for inviting us to comment on the proposed changes to the agency's rule. We are in favor of implementing the proposed rules and the proposed procedure and we want to thank the board for taking action to implement its new powers and particularly for taking action to implement the body worn camera abuse of authority allegations. We're glad to hear that the racial profiling and bias policing unit will be robust and staffed and that they're receiving additional training to tackle these complaints. These complaints are among the most important that the agency will handle and there also among the most challenging to investigate and we

1  
2 appreciate that that challenge has been  
3 taken seriously by the agency. We want  
4 to comment on three elements to the rule  
5 changes. First is the definition of  
6 unable to determine, our position here,  
7 we appreciate the change in the rule,  
8 but we also believe that the fundamental  
9 issue is that the agency relies on this  
10 finding far too frequently, it did it  
11 when I was at the CCRB 15 years ago  
12 using substantiated and in 2018 this  
13 agency closed fully 48 percent of its  
14 allegations with "unsubstantiated."  
15 It's now moved back down again to where  
16 it was about 15 years ago, 28 percent,  
17 but the CCRB is suppose to make findings  
18 based on a preponderance of the evidence  
19 standard. And we know that the  
20 preponderance of the evidence standard  
21 is commonly called 50 percent plus a  
22 feather. In the age of body worn  
23 cameras, in the age of very thorough and  
24 very complete investigations, the agency  
25 does, there should be almost no

1  
2           allegations in which there is a pure 50  
3           percent chance either way and the agency  
4           is unable to make a determination. This  
5           ruling, this outcome, whatever you want  
6           to call it, should be used extremely and  
7           frequently. And proper use of body worn  
8           camera evidence, in addition to being an  
9           abuse allegation of authority in and of  
10          itself which we appreciate, should be an  
11          element that the agency considers when  
12          reviewing and investigating the  
13          underlying allegations. If an officer  
14          refuses to turn on his body worn cameras  
15          and one officer didn't report an  
16          incident properly. That itself is the  
17          extra feather evidence demonstrating  
18          that the officer more likely than not  
19          did what the complaint alleged, it would  
20          be proper even for the CCRB to enact a  
21          rule that defines that if an officer did  
22          not turn on their body worn camera, that  
23          in itself is evidence that, had the  
24          camera been turned on, would have shown  
25          what the complainant alleged. I want to

1  
2 mention one point also about the racial  
3 profiling bias policing group and the  
4 complaints of past conduct  
5 investigations, I have -- I think there  
6 are some questions that were raised that  
7 were very interesting how they would  
8 play out in practice, but one thing I  
9 think the unit can do is use the skills  
10 developed in that to investigate conduct  
11 that may not appear additionally,  
12 related to an allegation of racial  
13 profiling bias, but which can be that  
14 also extra feather of evidence, an  
15 officer's social media profile, an  
16 officer's off-duty conduct, while it's  
17 not something the CCRB can investigate  
18 in and of itself, that is evidence that  
19 can be used to make a determination in a  
20 racial bias profiling complaint. The  
21 Biden Executive Order recently said the  
22 agencies should be doing everything they  
23 can to identify people who have white  
24 supremacist ties, taking officers who  
25 have complaints of racial bias, in doing



1  
2 a thorough investigation of their online  
3 presence to determine if there is a  
4 point to that bias, is an effective way  
5 to implement that executive order.

6 Thank you for the opportunity for Latino  
7 Justice to address your rule changes and  
8 thank you for taking the initiative to  
9 further strengthen your agency's powers.

10 CHAIR RICE: Thank you, Mr. Case for  
11 your comments, we appreciate them.  
12 Yojaira, can we hear from the next  
13 speaker.

14 MS. ALVAREZ: Next we'll be hearing  
15 from Samah Sisay, followed by Lupe  
16 Aguirre.

17 MS. SISAY: Thank you, good  
18 afternoon, my name is Samah Sisay and I  
19 am with the Center for Constitutional  
20 Rights. I'm providing testimony today  
21 on behalf of the Center for  
22 Constitutional Rights and Beldock Levine  
23 and Hoffman LLP, organizations that have  
24 served for the past 14 years as  
25 Plaintiff's Council, in the Floyd versus

1  
2 City of New York litigation, as you all  
3 may know, this landmark civil rights  
4 class action successfully challenged the  
5 New York City Police Department's  
6 racially discriminatory and  
7 unconstitutional stop, question and  
8 frisk practices. This suit resulted in  
9 a monitorship and in a federal court  
10 injunction that mandated reforms to the  
11 NYPD procedures for disciplining  
12 officers found by the CCRB to have  
13 committed misconduct during police  
14 stops. We welcome the CCRB's effort to  
15 incorporate the reality of racial bias  
16 and policing into their mandate through  
17 the newly-formed racial profiling and  
18 bias policing investigation unit. We're  
19 very happy that this action has been  
20 taken and we believe that this work  
21 falls squarely within the CCRB's  
22 statutory mandate. The CCRB's proposed  
23 changes are especially pertinent to our  
24 work given, the fact that within the  
25 past eight years that the Floyd

1  
2 post-trial monitorship the NYPD has  
3 failed to reach full compliance with the  
4 federal Court remedial order.

5 Today, I'm just going to briefly  
6 touch on two aspects of our written  
7 comment that we submitted. First, just  
8 talking about definition of abuse of  
9 authority to include body worn cameras  
10 and then lastly, talking about the CCRB  
11 authority to investigate bias-based  
12 policing and racial profiling and how  
13 that can be extended to help with the  
14 issues that we're seeing with a lack of  
15 reporting in stops through the Floyd  
16 monitorship. So the definition of abuse  
17 of authority we think could be more  
18 expansive or we would just like to just,  
19 you know, talk about ways in which we  
20 think it should be more expansive with  
21 regard to body worn cameras, so we  
22 definitely welcome the CCRB's  
23 incorporation of improper use of body  
24 worn cameras into the definition of  
25 abuse of authority, expanding its

1  
2 ability to investigate another  
3 significant aspect of police misconduct  
4 during the Floyd litigation. The court  
5 specifically mentioned the CCRB as a  
6 stakeholder in the reform process and  
7 recognized that body worn cameras were  
8 uniquely suited to address the  
9 constitutional harm at issue and so we  
10 believe that this is an issue that falls  
11 squarely within the mandate for CCRB.  
12 So the proposed rule talks about  
13 improper use of body worn cameras as  
14 when a member of service member fails to  
15 turns it on, turns it off prematurely or  
16 fails to record an incident in violation  
17 of the NYPD patrol guide and so for that  
18 last section the fails to record an  
19 incident in violation of the NYPD patrol  
20 guide, we just want to state for the  
21 record that we hope that covers when a  
22 member of the service fails to turn on  
23 the body worn cameras at the start of an  
24 encounter, as required by the patrol  
25 guide because from our experience and

1  
2 from the report that CCRB released in  
3 2020, we saw that a huge issue is not  
4 that officers are not actually recording  
5 encounters it's that when they are  
6 recording them, they turn the cameras on  
7 late and so we don't get, like really  
8 important information of the beginning  
9 of the encounter and just making sure  
10 that is something that that's being  
11 looked at. And secondly, as I was  
12 saying, we believe that the CCRB  
13 authority to investigate allegations of  
14 bias-based policing and racial profiling  
15 is important to reducing the continuing  
16 racial disparity between subjects and  
17 police stops through the decades of the  
18 work plaintiffs for Floyd are --  
19 Plaintiff's Counsel for Floyd have  
20 noticed that despite dramatic reduction  
21 in the number of reported stops, the  
22 racial disparity continues between folks  
23 who are being stopped and so we think  
24 this is really important and we think  
25 that -- we don't think it has been shown

1  
2 through the monitorships own report that  
3 there is an under-reporting of stops and  
4 therefore we think an accurate reporting  
5 of stops is really, really important for  
6 us to get at this racial disparity and  
7 so again, this is not a part of the rule  
8 at this time, but we do believe that the  
9 definition of abuse of authority should  
10 be expanded to include investigations  
11 into improper reporting of stops because  
12 we think this is what is adding to the  
13 severity, because much like improper use  
14 of body worn cameras, the  
15 under-reporting of stops serves as a  
16 significant roadblock to evaluating  
17 constitutional compliance or  
18 investigations into unlawfulness of  
19 individual stops and so we hope that the  
20 CCRB's involvement in this issue will  
21 result in more robust and credible  
22 investigations of allegations in police  
23 misconduct and a reduction in bias  
24 policing practice and we believe that  
25 the CCRB's newly established ability to

1  
2 self-initiate investigations into  
3 misconduct will also really help in this  
4 regard. So overall, we are very happy  
5 with that and we thank you all for your  
6 work on this issue.

7 CHAIR RICE: Thank you so much, Ms.  
8 Sisay for your comments. Yojaira, who  
9 is next?

10 MS. ALVAREZ: Next we'll be hearing  
11 from Lupe Aguirre.

12 MS. AGUIREE: Hi, good afternoon.  
13 My name is Lupe Aguirre, I'm a staff  
14 attorney at the New York Civil Liberties  
15 Union and today I will just be  
16 highlighting several key points that are  
17 outlined in more detail in our written  
18 comments.

19 So first, I want to acknowledge that  
20 we have reached this important point  
21 because of ongoing issues with racial  
22 profiling and bias policing in the NYPD  
23 and the NYPD's mishandling of  
24 investigations into these abuses, so  
25 because of the significance and

1  
2 prevalence of this issue, we also offer  
3 our broad support for the roles  
4 regarding this investigation, however we  
5 do know that we urge the CCRB to  
6 continue having meaningful, robust  
7 engagement with stakeholders,  
8 particularly directly impacted  
9 communities and this includes fully  
10 implementing the CCRB's language access  
11 plan, which we hope to follow up with  
12 y'all on that soon. The bulk of our  
13 comments will relate to the CCRB's  
14 proposal to investigate the misuse of  
15 body worn cameras, which we think is  
16 very important for both police  
17 accountability and transparency issues  
18 for three reasons.

19 First, we understand that body worn  
20 cameras are a useful tool for police  
21 accountability and transparency  
22 generally and misconduct investigations,  
23 but the reliability and utility of that  
24 tool is undermined when officers are not  
25 properly documenting their encounters



1  
2 with the public. As some of my fellow  
3 commenters have pointed out, there are  
4 serious concerns that officers are  
5 failing to properly document the  
6 encounters including violence,  
7 manipulating or interfering with body  
8 worn cameras and failing to activate  
9 them in a timely manner to fully capture  
10 the encounter, so because body worn  
11 cameras are susceptible to these sorts  
12 of abuses, we believe it's really  
13 important to have independent monitoring  
14 by agencies like the CCRB body worn  
15 camera use. Second we, we, we  
16 understand well that the NYPD and IAB  
17 also have a documented history of  
18 mishandling misconduct investigation and  
19 there no reason to believe that the  
20 investigations of body worn cameras  
21 misuse will be any different  
22 contrastingly the CCRB has demonstrated  
23 that it understands the value and  
24 utility of body worn cameras footage for  
25 its investigation and does take them

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seriously, so that is another reason why we support the rule.

Finally, the rules important for transparency purposes. The CCRB does a good job of publicizing information about its findings, operations, investigations and we firmly believe as the CCRB learns more about this particular issue, it would also report it to the public and increase the public understanding of the issue as well. We do, however, strongly encourage the CCRB to commit to publicizing on a regular basis the information that it receives by other government entities or agencies around its -- their final determination of bias by NYPD officers, given the importance of this issue and the stakes involved, it is critical information for the public to know. That concludes our comments and thank you for your time.

CHAIR RICE: Thank you, Ms. Aguirre for your comments, we appreciate them. Yojaira?

1  
2 MS. ALVAREZ: Thank you, Chair,  
3 thank you, Lupe. Next we'll be hearing  
4 from Kshithji, sorry and he will be  
5 testifying in person, so if you can  
6 please come up to the podium.

7 MR. KSHITHJI: Thank you. Just a  
8 second, can you hear me, okay. Good  
9 afternoon, my name is Kshithji and I'm a  
10 legal fellow with the impact litigation  
11 practice of the Bronx Defenders. During  
12 the course of our representation, we  
13 have seen that low income people in the  
14 Bronx experience bias policing, yet many  
15 do not seek accountability because to do  
16 so presents risks to them or seems like  
17 a futile effort. Hurdles include the  
18 fear of retaliation, the difficulty  
19 individuals face in obtaining  
20 corroborative documents for accounts of  
21 similar misconduct, which is also often  
22 critical to proving a bias claim and  
23 complications from parallel proceedings,  
24 such as prosecutions or deportation  
25 proceedings that are, in fact, caused by

1  
2 the bias policing itself. In addition,  
3 insufficient responses can build  
4 mistrust that oversight agencies can do  
5 anything. We represented a group of  
6 clients brutalized at a protest in Mott  
7 Haven in June 2020. Mott Haven is a  
8 predominately black and brown community  
9 in the south Bronx that already faced  
10 longstanding racially disparate police  
11 violence. Despite the prevalence of  
12 protests throughout that spring, it was  
13 in Mott Haven that the NYPD employed a  
14 drastic militarized response, beating  
15 protesters with batons and arresting and  
16 charging more protesters there than in  
17 any other protest. Our clients  
18 witnessed hard harassment of black and  
19 brown people during the protest,  
20 searching their hair, physically  
21 attacking them and holding them longer  
22 after arrest. Our clients collectively,  
23 actively demanded redress from the city,  
24 seeking compensation and broader  
25 accountability for the past and present

1  
2 patterns of racial and bias policing.  
3 All our clients received pre-litigation  
4 settlement offers. The city resisted  
5 demands for the boarder accountability  
6 and the CCRB, despite its mission to  
7 respond to misconduct by NYPD officers,  
8 did not have the authority to even  
9 investigate racial bias by officers on  
10 the scene. Without institutional  
11 mechanism to scrutinize individual cases  
12 of bias, racialized police violence goes  
13 unchecked and can build to tragedy like  
14 policing of the Mott Haven protest. We  
15 agree with prior commenters and believe  
16 the proposed rule to help to address the  
17 very hurdles, the accountability for  
18 bias policing and help to interrupt such  
19 conduct earlier in the process. The  
20 rules authorize the CCRB to investigate  
21 bias, further, the rules permit the CCRB  
22 to self-initiate complaints. The board  
23 no longer has to close its eyes to  
24 obvious bias and can instead proactively  
25 investigate and build trust with

1  
2 community members. The rules also  
3 permit the board to look back at an  
4 officer's professional history, which  
5 provides important context for  
6 disrupting future acts of bias. We also  
7 support the CCRB decision to designate  
8 improper use of body worn cameras as an  
9 abuse of authority. Given how difficult  
10 it is for an individual to come forward  
11 it is crucial when they do, the  
12 individual's right to be heard is  
13 protected. Misuse of body worn cameras  
14 interferes with that right as our  
15 written testimony further details. For  
16 these reasons we support the CCRB  
17 proposed rules and we thank you and the  
18 new division for this important effort,  
19 thank you very much.

20 CHAIR RICE: For those joining us in  
21 person and would like to make a comment  
22 on the proposed rule changes, if anyone  
23 would like to make a comment, they can  
24 come to the podium. Anyone in person?  
25 Okay.

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MR. MIMS: Hello board, thank you for hearing me out. First thing I wanted to say, if I could.

CHAIR RICE: Could you state your name for the record.

MR. MIMS: I'm sorry, Arthur Mims.

CHAIR RICE: Thank you, Mr. Mills.

MR. MIMS: Mims.

CHAIR RICE: Mims.

MR. MIMS: It's okay. The police has a tendency to screw it up, too sometimes, what I was going to say was I wanted to know for sure will the board now see about actually tagging these cops' records? What I mean by that is letting it be known that so and so got these many complaints against him and also making hard recommendations for discipline, because I can remember a time when the board wanted to do that, but the police department let it be known they did not care for your input. I also want to know whether they will be going after their sick days and their

1  
2 vacation days because I do believe in  
3 hitting these people who do this kind of  
4 crap in their pocket because that's what  
5 they respect, that's when they really  
6 and truly look up when you hit them in  
7 their pocket and you hit their vacation  
8 days and their sick days and you take  
9 about 10 or 20 of them away from them,  
10 maybe they start to get the message  
11 because when you turn around and you  
12 sue, which is what we have done in the  
13 past, you turn around and sue them, that  
14 money is not coming from the police  
15 department, that money is our money, so  
16 basically that I wanted to say, also I  
17 heard at one of the meetings you said  
18 you would talk about calling up the  
19 police chief to come by. Will somebody  
20 from the police department bring their,  
21 I think I say this on camera, bring  
22 their asses down here and hear what the  
23 hell some of the public have to say? I  
24 say that because I also think, too, it's  
25 about time. I know we're still dealing



1  
2 with the COVID thing, but I would like  
3 for us to very much to turn around and  
4 come back into, I mean go back into -- I  
5 mean go back out into the outer  
6 boroughs, come back out and really and  
7 truly and I mean, let the police  
8 department bring their asses down there  
9 and hear, this is nothing calm -- I'm  
10 not saying this to sound like someone  
11 who hate the police, but I am a person  
12 when I was younger had my problems with  
13 the police, as quite a few black males I  
14 know had their problems with the police,  
15 including Obama and others. And the  
16 truth of the matter is that you could  
17 only take this crap but so damn long,  
18 that's why when I heard the Council, the  
19 lady speak earlier and she said few  
20 apples, I'm sick and tired of a few bad  
21 apples because the truth of the matter  
22 is, if there is a few bad apples, I  
23 really think it's time you got -- did  
24 something about that orchard, you really  
25 need to go in that orchard and do

1  
2 something because it's more than a few  
3 bad apples. People forget, one man  
4 killed George Floyd, one man put his  
5 knee on his neck, but three other  
6 shmucks stood around and told everybody  
7 else to back off and what you need to  
8 actually do, I mean I wish everyone in  
9 this room would actually get the paper  
10 out that, the actual report that the  
11 police put out when George Floyd died  
12 before they knew that there was a  
13 16-year-old girl with a camera that was  
14 videotaping them because they made it  
15 sound almost as if the poor guy went  
16 into some kind of shock and we took him  
17 to the hospital and we did what we  
18 could. No mention -- so anyway I  
19 thought I'd say my little two cents and  
20 thank you very much for hearing me out.

21 CHAIR RICE: Thank you, Mr. Mims, we  
22 appreciate that.

23 MR. DARCHE: Madam chair, I just  
24 wanted to point out two things in  
25 response to Mr. Mims' questions. The

1  
2 first is that since 2020 when the  
3 legislature appealed civil rights law  
4 section 50A, the agency has been putting  
5 member of service CCRB records online  
6 and so you can search and find out the  
7 CCRB histories of members of service, so  
8 that's no longer secret information and  
9 the board has also, as of last year  
10 committed to following the department's  
11 disciplinary matrix for discipline  
12 recommendations and so that is all  
13 public information that can be used to  
14 gauge how the CCRB is determining what  
15 level of discipline to recommend that  
16 the department impose on members of  
17 service.

18 CHAIR RICE: Thank you, Jon, for  
19 that clarification. Is there anyone  
20 else in the room that would like to make  
21 a comment during this general public  
22 portion of the meeting?

23 (No response).

24 CHAIR RICE: Anyone else?

25 (No response).

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CHAIR RICE: Thank you. Do any board members have any questions for Jon on the proposed July changes? Any questions for executive director?

(No response).

MR. PUMA: I just wanted to -- on the rules pertaining to changing the language of certain dispositions, I just wanted to clarify for the record that "unable to investigate" will sort of cover investigations that, where there could be various numbers of situations where we couldn't complete the investigation, such as a complainant that wasn't responsive or a victim that wasn't available. I just wanted to clarify that the agency wouldn't be losing that level of nuance in its reporting of like, public data, you know, and just want to make sure that we preserve that and I just wanted to clarify if this affects that.

MR. DARCHE: Thank you for that question, Mr. Puma. The agency will

1  
2 continue to gather that information as  
3 we always did, and report it, but we  
4 feel that general title to describe  
5 those types of cases is better described  
6 as unable to investigate rather than  
7 truncated or any of the other terms we  
8 used in the past.

9 MR. PUMA: Thank you.

10 CHAIR RICE: Any other questions for  
11 Jon on the proposed rule changes?

12 (No response).

13 CHAIR RICE: Okay, seeing none, do  
14 we have any old business to come before  
15 the board, any old business?

16 (No response).

17 CHAIR RICE: Okay, all righty, so  
18 hearing none, I'm going to move now that  
19 we break into our executive session, the  
20 executive session -- the agenda session  
21 for the board will deliberate on one  
22 full board case, will receive an update  
23 from the executive director on the  
24 pending personnel action and an update  
25 from the general Council on litigation,

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can I have a moment -- can I have a motion to bring this meeting to a close?

MR. DARCHE: Into executive session.

CHAIR RICE: I'm sorry, do I have a motion to bring the executive session -- I mean, bring the meeting into executive session?

MALE SPEAKER: So motioned.

CHAIR RICE: Do I have a second?

FEMALE SPEAKER: Second.

CHAIR RICE: All in favor?

CHORUS: Aye.

CHAIR RICE: All right, so moved, thank you very much.

(Whereupon, the examination was concluded at 5:33 p.m.)

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss

COUNTY OF BRONX )

I, SHECHINAH JACKSON, a Notary Public within and for the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such an examination is a true record of the testimony given by such a witness.

I further certify that I am not related to any of these parties to this action by blood or marriage, and that I am not in any way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of July, 2022.

*Shechiah Jackson*  
Shechiah Jackson