

September 30, 2020

Mayor Bill de Blasio
City Hall
New York, NY 10007

Speaker Corey Johnson
City Hall
New York, NY 10007

NYPD Commissioner Dermot Shea
1 Police Plaza
New York, NY 10038

Dear Mayor de Blasio, Speaker Johnson and Commissioner Shea:

Across New York City and the country, we've witnessed the rise of a mass human rights movement in defense of Black lives and in opposition to police violence. National and local protests were the backdrop and catalyst for a number of police-related laws the New York City Council passed in June, including a requirement for the NYPD to publish a "discipline matrix" – a publicly available framework for disciplinary penalties and factors the NYPD considers for different types of police misconduct and rule-breaking. As a result of the Council's legislation and related advocacy from many organizations signing this letter, the NYPD published their [draft "Disciplinary System Penalty Guidelines"](#)¹ at the end of August, with a one-month period for public comment.

While it's positive that law is now mandating this transparency, **the substance of the NYPD's draft guidelines is an insult to New Yorkers.** For months, there have been constant viral videos and other accounts of new incidents of NYPD violence – including discriminatory and violent social distancing and mask enforcement, brutal police violence at protests, abuse of authority towards New Yorkers, and more. For years, there have been countless incidents of New Yorkers unjustly killed, brutalized, stopped and subjected to gender-based violence by NYPD officers. In the overwhelming majority of these incidents, it seems that the officers responsible and others who refuse to intervene or report such conduct, maintain their employment without discipline for years (if discipline is rendered at all), often accruing tens of thousands of dollars annually in overtime.

Families of New Yorkers killed by the NYPD and organizations signing this letter with Communities United for Police Reform (CPR) reject the NYPD's draft disciplinary guidelines as illegitimate and dangerous. Some of the signers of this letter are also submitting additional comment on the matrix.

There are four main points we make with this letter:

1) When NYPD officers engage in police violence, refuse to intervene or report when they witness other officers engage in misconduct, don't follow the law, or engage in other abusive misconduct -- they should be fired. It's that simple.

The fact that the proposed guidelines don't do this is scandalous, especially given the current crisis of police violence and long history of the NYPD refusing to discipline and fire officers who harm New Yorkers and abuse their authority.

A more detailed summary of examples of actions by NYPD officers that should require termination is attached to this letter.

¹The "NYPD's Disciplinary System Penalty Guidelines" document is also referred to as a discipline matrix and discipline framework by the NYPD and throughout this letter. The framework is a non-binding document. Regardless of what the guidelines say, in New York City, the NYPD commissioner has ultimate disciplinary authority and discretion, and isn't required to follow the published disciplinary guidelines. The Commissioner can modify the discipline guidelines at any time.

2) **The NYPD's draft discipline guidelines obscure and incentivize police violence and cover-ups – and must be changed to address this.** Instead of making termination for such actions the policy, the draft disciplinary matrix creates a roadmap of complex justifications so that officers can keep their jobs, even when they've engaged in abusive misconduct. The "mitigating factors" in the guidelines codify loopholes for officers who harm New Yorkers, lie in official capacity, or break the law to continue to avoid meaningful discipline altogether.

This is insult added to injury since the **NYPD rarely substantiates misconduct complaints** against officers when they harm, disrespect, humiliate or violate the rights of New Yorkers.

- For example, the NYPD substantiated ZERO² of the thousands of complaints on racial and discriminatory profiling from the period of November 2014 - October 2019.

The NYPD's guidelines create complex levels and ranges of disciplinary penalties based on the final *provable physical impact* of misconduct, instead of the substantiated act of misconduct itself. This obscures wrongdoing by police and provides justification for bad conduct. **This is dangerous and incentivizes police violence, cover-ups and police retaliation against those who make complaints after being abused.** This is especially harmful given the reality that the NYPD historically refuses to substantiate misconduct in instances where civilians are harmed. The following are some examples:

- Excessive force - No officer should engage in excessive force against a member of the public and keep their job. However, instead of mandating termination for any use of excessive force, the proposed penalty for excessive force can be as low as five "penalty days" (e.g. taking away five vacation days).
 - Off-duty animal cruelty, or harming an animal or family pet in an officer domestic violence incident have greater presumptive penalties than some on-duty excessive force incidents³.
- Gender-based violence – There is a range of gender-based and sexual violence by officers. Police sexual and gender-based misconduct is far more prevalent than many in the public realize. This includes officers who proposition and sexually harass young people on their way to school, conduct unnecessary strip searches and "gender checks", grope people during stops and more. One study found that police sexual misconduct was the second most reported civilian complaint, after excessive force. A national database with ten years of records found that "a law enforcement official was caught in a case of sexual abuse or misconduct at least every 5 days"⁴. **There should be a zero-tolerance policy for sexual and gender-based abuse by police, who have enormous power in any interaction with civilians.**

² The NYPD substantiated none of the 2,946 discriminatory profiling complaints from November 2014 through October 2019, as noted by the court-appointed monitor in the Floyd federal stop-and-frisk litigation. Peter Zimroth, Tenth Report of the Independent Monitor in Floyd v. City of New York, at p. 73 (Jan. 7, 2020): <https://bit.ly/33Sadax>

³ Off-duty animal cruelty is listed as 30 penalty days + dismissal probation. Harming an animal or family pet, as part of a police officer's domestic violence incident is listed as a presumptive additional penalty of 15 days.

⁴ The Crime Report, March 12, 2020: "Predators Behind the Badge: Confronting Police Sexual Misconduct": <https://thecrimereport.org/2020/03/12/predators-behind-the-badge-confronting-hidden-police-sexual-misconduct/>

Instead of termination, the guidance for some acts of gender-based violence like improper strip searches and sexually propositioning members of the public carry only some “penalty days” – with a list of potential “mitigating factors” to escape discipline altogether. This is unacceptable.

- Chokeholds have been banned by the NYPD for over 20 years with a publicized penalty of termination. As we saw in the case of Daniel Pantaleo, who killed Eric Garner – and in many other instances - it is incredibly hard to get the NYPD to substantiate chokehold complaints – even with video evidence⁵. Instead of mandating termination for any use of this banned maneuver, the NYPD’s discipline matrix delineates “types” of chokeholds, depending on whether significant physical injury can be proven.
- Failure to intervene when an officer is using unauthorized force. The presumptive penalty is listed as low as 5 penalty days. In other words, an officer can watch their partner slam an elder against the wall or tase them in an unjustified stop. In the unlikely scenario that they face discipline for not intervening, they might face a maximum of 5 penalty days, if the person isn’t able to prove significant injury. If they do intervene, they may be vilified in the department and face unsafe conditions amongst other officers. The NYPD’s guidelines create no incentives for officers to intervene (or to report) unauthorized or excessive force.

The above are just a few examples of how the **NYPD’s discipline framework systemically obscures misconduct and incentivizes police violence and cover-ups.**

3) There are major categories of misconduct that are not included in the draft guidelines – this needs to be corrected. One area relates to the consent search law of the Right To Know Act. This is especially concerning since the NYPD admitted at a 2019 hearing that they had not been documenting DNA consent searches, many of which may have been illegally obtained – without individuals being informed of their right to decline such searches. Such abuse of authority and violation of rights should result in termination. Another area includes use of tasers, batons and other instruments of force – both their use by officers and motions and words that threaten their use. A third area includes officers who refuse to wear masks when in public space and engaging with the public during the pandemic. Given the widespread publicity of NYPD officers not wearing masks in spite of being authorized to enforce mask-wearing amongst the public, this should be clearly spelled out in the discipline framework with a penalty of termination for jeopardizing the public health of New Yorkers.

4) Based on past experience⁶, there is little faith that this “public comment” period will result in meaningful changes to the NYPD’s discipline framework or discipline process. In spite of this, we are submitting this detailed feedback and invite you to prove us wrong.

While this feedback is not comprehensive, we believe that these changes are critical for a discipline system that is meant to protect New Yorkers instead of abusive officers and abusive NYPD practices. **If codified as drafted, the NYPD’s matrix will take us backwards – further cementing bad practices into policy.**

⁵ In the case of Eric Garner, the NYPD didn’t substantiate that Pantaleo used a chokehold – the Civilian Complaint Review Board did. In fact, the NYPD refused to serve the CCRB substantiated charges on Pantaleo for close to a year.

⁶ There have been multiple instances where the NYPD has engaged in “community input” processes, usually mandated by courts or legislation. In fact, members of signing organizations have participated in two examples in recent years, related to the Floyd federal stop-and-frisk litigation’s remedies process and implementation of the Right To Know Act. As far as we know, none of the priority input given in the past several years has been incorporated into changes in policy by the NYPD unless it has been mandated by a court or legislation.

We are calling on you to demonstrate real leadership and a commitment to the long-term safety of all New York’s communities by implementing the above requested changes (including those in the attachment to this letter).

We hope to hear your response to this. If you have any questions or are interested in further discussion, please contact Carolyn Martinez-Class at Communities United for Police Reform (CPR).

Sincerely,

Communities United for Police Reform (CPR)

Hertencia Petersen, aunt of **Akai Gurley**, killed by NYPD in 2014

Nancy Pacheco, sister-in-law of **Jayson Tirado**, killed by NYPD in 2007

Kadiatou Diallo, mother of **Amadou Diallo**, killed by NYPD in 1999

Hawa Bah, mother of **Mohamed Bah**, killed by NYPD in 2012

Constance Malcom, mother of **Ramarley Graham**, killed by NYPD in 2012

Iris Baez, mother of Anthony Baez and Mercy Baez, cousin of **Anthony Baez** killed by NYPD in 1994

Carol Gray, mother of **Kimani Gray**, killed by NYPD in 2013

Gwen Carr, mother of **Eric Garner**, killed by NYPD in 2014

Eric & Lorna Vassell, parents of **Saheed Vassell**, killed by NYPD in 2018 – with Saheed’s brothers Andwele, Javohn, Marcus; sisters Telah Vassell and Keisha Speller; Saheed’s son Tyshon Vassell; and nephews Deandre and Eyon.

Margarita Rosario, mother of **Anthony Rosario** and aunt of **Hilton Vega**, killed by NYPD in 1995

Angie Hicks, aunt of **Shantel Davis**, killed by NYPD in 2012

Samy Feliz, brother of **Allan Feliz**, killed by NYPD in 2019

Victor Dempsey, brother of **Delrawn Small**, killed by NYPD in 2016

Joyce Huang, sister of **Yong Xin Huang**, killed by NYPD in 1995

Tsukasa Oyamada, father and Tomoko Suzuki, sister of **Ryo Oyamada**, killed by NYPD in 2013

Amnesty International USA

Arab American Association of New York

Association of Legal Aid Attorneys (UAW Local 2325)

Best Practices Policy Project

BetaNYC

Brandworkers

Bronx Defenders

Brooklyn Community Pride Center

Brooklyn Defender Services

Brotherhood/SisterSol

Center for Anti-Violence Education

Center for Community Alternatives

Center for Constitutional Rights

Center for Frontline Retail

Center for Law and Social Justice at Medgar Evers College

Churches United for Fair Housing

College Access: Research & Action (CARA)

Common Cause/New York

Community Service Society of New York

Community Voices Heard

Correctional Association of New York

Crown Heights Mutual Aid

Dance Wave

Dignity in Schools Campaign

DRUM- Desis Rising Up & Moving

Empire State Indivisible

Equality for Flatbush
Faith In New York
FIERCE
Gathering for Justice/Justice League NYC
Immigrant Defense Project
Jews for Racial & Economic Justice
Jim Owles Liberal Democratic Club
Justice Committee
Justice for Families
Kairos Center for Rights, Religions, and Human Rights at Union Theological Seminary
Katal Center for Health, Equity & Justice
Korean Queer Transgender Network of NYC (KQTxNYC)
Legal Action Center
Make the Road New York
Malcolm X Grassroots Movement
Metropolitan Community Church of New York
Micah Institution at the Interfaith Center of New York
Mijente
MomsRising
Neighbors Together
New Kings Democrats
New York City Anti-Violence Project
New York Communities for Change
New York Immigration Coalition
North Star Fund
NYC-Democratic Socialists of America
Parent Action Committee
Peoples Climate Movement-NY
The Play Company
Prison Writes
Public Science Project
Rockaway Youth Task Force
Showing Up for Racial Justice - NYC
Sister Diaspora for Liberation
Street Vendor Project at Urban Justice Center
T'ruah: The Rabbinic Call for Human Rights
TakeRoot Justice
Tarab NYC
The Movement Theatre Company
Transgender Law Center
VOCAL-NY
Yalla Brooklyn

cc:

NYC Public Advocate Jumaane Williams
Councilmember Donovan Richards, Chair of the Public Safety Committee
CCRB Chair Fred Davie
CCRB Executive Director Jonathan Darche
Floyd v. City of NY Court-appointed Monitor Peter Zimroth
NYPD Inspector General Phil Eure

Attachment

**Part 2 of Public comment on
NYPD's 8/31/2020 draft Disciplinary System Penalty Guidelines**

Summary of actions that should require termination of NYPD officers

The following summary relates to the NYPD draft "Disciplinary System Penalty Guidelines" issued on August 31, 2020 – and reflects the opinions of families of New Yorkers whose loved ones were killed by NYPD and organizations that signed onto the September 2020 letter organized by Communities United for Police Reform (CPR). The letter is part 1 of the public comment being submitted by signers. Some signers are also submitting additional comment separately.

NYPD officers who engage in police violence, refuse to intervene or report when they witness other officers engage in misconduct, don't follow the law, or engage in other abusive misconduct -- should be fired.

It's that simple. However, the NYPD's draft discipline matrix obscures police violence and incentivizes cover-ups and retaliation against those who report abusive conduct by creating a roadmap of complex justifications so that officers can keep their jobs, even when they've engaged in abusive conduct.

The types of police actions that should be cause for automatic termination include, but are not limited to the following:

- Excessive and unnecessary force. Use of excessive force, use of unnecessary force, failure to intervene when an officer is using excessive force, and failure to report on the use of excessive force. Officers who engage in any of these actions should be fired, regardless of the extent of physical harm on individuals. This includes mass-pepper spraying and tasing people in communities and at protests. The NYPD matrix has a range of penalties from 5 days to termination, with penalties ranging based on their assessment of seriousness of injury. Instead of making clear that all excessive and unnecessary force is unacceptable, this encourages cover-ups and continued police violence.
- Failure or refusal to request or seek medical assistance – People have died because NYPD officers refused to request or seek medical assistance. It's a slap in the face to New Yorkers that the NYPD matrix proposes some vacation days be the penalty instead of termination.
- Sexual propositions, sexual advances, other sexual harassment, sexual assault and other sexual and gender-based violence by officers. Police sexual and gender-based misconduct is far more prevalent than many in the public realize. This includes officers who proposition and sexually harass young people on their way to school, conduct unnecessary strip searches and "gender checks", grope people during stops and more. One study found that police sexual misconduct was the second most reported civilian complaint, after excessive force. A national database with ten years of records found that "a law enforcement official was caught in a case of sexual abuse or misconduct at least every 5 days"⁷. **There should be a zero-tolerance policy for sexual and gender-based abuse by police, who have enormous power in any interaction with civilians.** Instead of termination, the guidance for some acts of gender-based violence like improper strip

⁷ The Crime Report, March 12, 2020: "Predators Behind the Badge: Confronting Police Sexual Misconduct": <https://thecrimereport.org/2020/03/12/predators-behind-the-badge-confronting-hidden-police-sexual-misconduct/>

searches and sexually propositioning members of the public carry only some “penalty days” – with a list of potential “mitigating factors” to escape discipline altogether. This is unacceptable.

- Improper or unlawful stop or frisk. In 2013, the NYPD’s stop-and-frisk program was found to be unconstitutional. There have been numerous trainings the NYPD has instituted to ensure that officers understand when a stop or frisk is legal. There has been over 20 years of litigation and court-ordered reform processes in NYC on this issue, starting with Daniels v NYC after the NYPD killed Amadou Diallo in a hail of 41 bullets. There should be no room or excuse for allowing officers to continue to engage in unlawful and improper stops or frisk. The fact that the NYPD is not proposing termination for unlawful stops is dangerous and encourages the continued and daily violation of the rights of Black, Latinx and other New Yorkers of color.
- Improper or unlawful search of a person, their belongings, home or vehicle – including wrongful entry of premises. This should also include not following guidance in the Right To Know Act law, requiring that officers notify individuals that they have the right to decline a search if there is no other legal justification for the search other than their consent.
- Force, threats, surveillance, harassment and other abusive actions in retaliation for complaints. One of the main obstacles to reporting police abuse has been the reality that police violence survivors and witnesses often experience harassment to pressure them to withdraw complaints and/or in retaliation for complaints against officers. It’s unacceptable that this is not even mentioned in the discipline matrix.
- Improper or wrongful threats of arrest, hospitalization or reporting to other agencies. These actions are part of the ways in which officers too often abuse their power and terrorize immigrants and other New Yorkers.
- Racial and other discriminatory profiling and bias-based policing, including profiling and enforcement action based on perception of gender/gender identity, immigrant status, housing status, disability and other categories covered by the anti-profiling Community Safety Act law. While the proposed matrix indicates that termination is the presumptive penalty for discriminatory profiling, the long list of “mitigating factors” and the fact that the *NYPD has substantiated ZERO of close to 3,000 complaints of racial or discriminatory profiling*⁸ exposes the reality that the NYPD does not take these complaints seriously. The refusal to discipline and fire officers for discriminatory profiling contributes to the culture of impunity and abusive policing.
- Making false or misleading statements in official reports, to prosecutors and/or in arrest or court-related instances. While the NYPD Patrol Guide has long stated that false statements in official capacities would result in dismissal, except in “extraordinary circumstances”, this has not been the reality. The
- Breaking or not following the law, including but not limited to interfering with individuals lawfully observing and documenting police activity, not wearing masks in public spaces and engaging with the public, covering and hiding badge numbers, violations of the Right To Know Act laws (including refusing to provide their name, shield number or business card and failure to inform individuals that they don’t have to consent to searches where there is no legal justification other than their consent), and other laws that too many officers routinely violate without consequence – contributing to a culture of impunity and violating the rights and public health of New Yorkers.

⁸ The NYPD substantiated none of the 2,946 discriminatory profiling complaints from November 2014 through October 2019, as noted by the court-appointed monitor in the Floyd federal stop-and-frisk litigation. Peter Zimroth, Tenth Report of the Independent Monitor In Floyd v. City of New York, at p. 73 (Jan. 7, 2020): <https://bit.ly/33Sadax>