

REVISED TESTIMONY

The Council of the City of New York
Committee on Oversight and Investigations

A Local Law to amend the administrative code of the city of New York
and the New York city charter, in relation to the evaluation of civil
actions, claims, and complaints alleging improper police conduct

Proposed Int. No. 119-C

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Good morning. I am Cynthia Conti-Cook, Staff Attorney of the Legal Aid Society's Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing client problems with the criminal justice system. I am joined by Natasha Merle, Fried Frank Fellow from the NAACP Legal Defense and Educational Fund, which is co-counsel with the Society in Davis et al v. City of New York et al., a federal class action that was filed in 2010 to challenge the systemic practice of illegally stopping and arresting individuals for purported trespass violations on New York City Housing Authority ("NYCHA") property. This case settled last year and, as part of the settlement, is currently part of the court monitoring of the New York City Police Department ("NYPD") that had been ordered by the federal court to institute substantive reforms in police training, supervision, disciplining, and monitoring in the areas of stop-and-frisk and trespass enforcement. For the past several months, we have been working in collaboration with the Court-Ordered Monitor, the NYPD, the City Law Department, and plaintiffs' counsel in the related cases, Floyd v. City of New York and Ligon v. City of New York, on developing these reforms.

We thank this Committee for the opportunity to provide testimony on proposed Bill 119-C, and look forward to providing future testimony on proposed legislation regarding early intervention systems within the NYPD.

ORGANIZATIONAL INFORMATION

Since 1876, The Legal Aid Society has provided free legal services to New York City residents who are unable to afford private counsel. Annually, through our criminal, civil and juvenile offices in all five boroughs, our staff handles about 300,000 cases for low income families and individuals. By contract with the City, the Society serves as the primary defender of indigent people prosecuted in the State court system. In this capacity, and through our role as

counsel in the Davis case, the Society is in a unique position to testify about policing in New York City. We represent many of those who are arrested and have spoken with them about the circumstances of their arrests.

The NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is a non-profit, non-partisan civil rights law organization founded in 1940 by the late U.S. Supreme Court Justice Thurgood Marshall. As the nation’s first civil rights and public interest law organization, LDF is recognized for its pioneering and long-standing advocacy for racial justice in the criminal justice system. As counsel in the Davis case, LDF seeks to reform police policies and practices that target NYCHA residents, who are overwhelmingly Black and Latino. LDF believes that the collection and evaluation of civil actions and other complaints alleging police misconduct is vital to improve police practices and provide the transparency and accountability that is necessary to build trust and legitimacy within the diverse and vibrant communities in New York City served by the NYPD.

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Both LDF and the Legal Aid Society support the amendments to the Administrative Code of the City of New York and the New York City Charter concerning the collection and analysis of civil actions and other complaints alleging police misconduct in order to improve the disciplining, training, and monitoring of police officers and other relevant operations, policies, programs, and practices of the NYPD. We believe that the collection and evaluation of this information is essential to the fairness and integrity of policing reform in New York City. This bill is an important first step in identifying patterns and trends of police misconduct, and has the potential to improve both officer performance and police-community relations. By coupling this data with an “Early Intervention System,” supervisors and senior officials within the NYPD

can identify at-risk officers who may be in need of enhanced training or monitoring. Although this data is not a perfect indicator of police performance, if collected and used properly, it can become a tremendous resource for the benefit of individual officers, the police department, community members, and the City at large. To further enhance the benefits and capabilities of collecting this data, however, LDF and the Legal Aid Society suggest the following amendments to the proposed legislation:

1. Expand the type of data collected beyond those enumerated in Proposed Section 7-112(2);
2. Specify not only how civil action data should be collected, but also how that data should be used; and
3. Ensure transparency of the data collection, analysis, results, and consequences to improve legitimacy and trust of the police within the community.

We discuss each of these proposed amendments in more detail below.

A. Expansion of Data Collection

Although the types of data to be collected, as enumerated in Section 7-112(2), are essential, they are not enough. Thus, we suggest expanding the type of data collected to include information taken from lawsuit allegations, as well as evidence and testimony revealed during litigation, including but not limited to information concerning: (1) the address where the incident occurred; (2) the date and time the incident occurred; (3) criminal accusations (if any) against law enforcement and their outcome; (4) any racist, sexist, xenophobic or homophobic comments made by law enforcement and their content; (5) law enforcement reactions (if any) to being recorded; (6) allegations of or destruction of property by law enforcement; (7) alleged racial or other biased profiling; (8) detail on any officer use of force, including whether any weapons were

brandished and/or used; (9) police overtime to process the arrest; (10) the precinct or Police Service Area where the incident occurred; (11) whether the incident occurred on the street, in NYCHA housing, in a private residence, or some other distinctive location; (12) the arrest charge, if any, imposed on the civilian plaintiff; (13) the response, if any, of fellow law enforcement, including peers and supervisors; (14) any reprimand or disciplinary action issued in connection with the incident; and (15) race, gender and disability status of officer and civilian plaintiff.

We have witnessed first-hand the impact of collecting this additional information. The Legal Aid Society has been extracting the above listed data points from lawsuits filed in federal court for the past 15 months. The attached report is a sample of the types of dynamic analyses that would be possible if more specific data were collected. For example, because many lawsuits name the precinct where an arrestee is taken, Legal Aid has been able to map, by precinct, where most incidents described in lawsuits originate and how much each precinct costs the City in settlements. Moreover, by analyzing data regarding what originating incidents become the subjects of lawsuits, Legal Aid has determined that the majority began as street stops and that lawsuits filed in late 2015-early 2016 include 17 allegations of officers using chokeholds—an issue that many entities, including the City Council, has been interested in tracking. With this type of granular data, the City could identify the specific problems that are leading to costly litigation, and help develop solutions to prevent future misconduct that may lead to additional waste of resources.

B. Use of Data Collected

Whether this bill will accomplish its goals of improving policing in New York City depends not only on what is collected, but also what is done with the data that is collected. For

this purpose, we recommend that, at the very least, the following steps be taken with the data collected pursuant to the proposed legislation:

1) Review of Data by Supervisors: This bill should be used to encourage supervisory involvement in officer development. In addition to collecting data regarding civil actions and other complaints alleging police misconduct, NYPD supervisors should review and analyze the data on a regular basis. Sergeants and lieutenants play a large and important role in the professional development of the officers under their supervision and the establishment of the culture of the entire Department. Thus, the bill should provide clarity on how these critical players should utilize the data for the benefit of the Department, the City, and the communities they serve. At a minimum, supervisors should identify officers who raise performance concerns, based on their analysis of the data, for additional instruction, training, monitoring, or other intervention.

2) Baseline Standards for Intervention: As already stated, the Department should utilize the collected data to counsel, educate, re-train, and/or discipline officers, as needed. In this regard, we further recommend that more clarity be added to the bill beyond simply authorizing the Inspector General of the Department to “develop recommendations relating to the discipline, training, and monitoring of police officers and related operations, policies, programs, and practices of the police department.” For example, there is no specificity as to a threshold number civil actions and other complaints against an officer and what happens once that threshold has been met. To be clear, we do not suggest that police officers should be automatically disciplined every time they are involved in a civil lawsuit. Allegations, evidence, and testimony developed through civil rights litigation should serve to supplement and inform police departments’ personnel and policy evaluations, not to substitute them.

3) Post-Intervention Monitoring: The Department should perform post-intervention monitoring to promote improvements or identify non-compliance. These assessments should be ongoing with an eye towards steady improvement of individual officers, as well as entire precincts and Police Service Areas that may have had disparate incidents of alleged and/or substantiated misconduct.

C. Transparency and Accountability of Data Collection

The effective collection, analysis, and use of the collected data can be instrumental in improving police accountability and engendering greater trust in police-community relations when the public is fully informed of such efforts. We, therefore, recommend that the NYPD be transparent in its data analysis so that New York City residents can better understand the conduct of officers serving their community, how the NYPD is using this data to identify trends and potential problems within the Department as a whole, the steps taken by the NYPD to remedy identified problems.

Of course, the issue of police transparency and accountability cannot be fully addressed without discussion of reforming N.Y. Civ. Rights Law § 50-a, which, like no other statute in the country, affords police disciplinary data unparalleled secrecy regarding an officer's disciplinary history. For this reason, for example, we continue to have no information about Officer Daniel Pantaleo's history of misconduct and, thus, whether some intervention could have prevented Eric Garner's death. The Legal Aid Society's petition for a summary of Officer Pantaleo's CCRB records was granted last year, and yet this administration has appealed that decision, claiming that Section 50-a prohibits absolutely all disclosures, even summaries, of officer misconduct records. Without reform of Section 50-a reform, which we urge the City Council to support, it would difficult—if not impossible—to fully evaluate the NYPD's accountability to the public.

Thank you for your consideration of the Legal Aid Society's and the NAACP Legal Defense Fund's comments to the proposed amendment to 119-C.