

**HEARING ON THE CIVILIAN COMPLAINT REVIEW BOARD
BEFORE THE PUBLIC SAFETY COMMITTEE OF THE NEW YORK CITY COUNCIL**

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The Center for Constitutional Rights (CCR) would like to thank the Public Safety Committee of the New York City Council for holding this important hearing on the Civilian Complaint Review Board (CCRB or Board).

CCR is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR has been on the front lines in advancing advocacy and legal work to challenge unlawful and inhumane government practices.¹

For over fifteen years, we have been challenging abusive and discriminatory practices of the New York Police Department (NYPD or Department), the largest² and most influential municipal police department in the United States, through litigation and advocacy. In 2013, the federal judge in our landmark civil rights lawsuit, *Floyd v. City of New York*, found the NYPD liable for a widespread practice of unconstitutional and racially discriminatory “stop and frisks.”³

In this written submission, we address several aspects of Board’s operations and mandate, as well as challenges and opportunities.

¹ Learn more, www.ccrjustice.org

² The NYPD’s current uniformed strength is approximately 34,500. See http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml#1.

³ Learn more about *Floyd v. the City of New York* at www.ccrjustice.org/floyd. See also *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (“Liability Opinion”). Currently the NYPD is under the oversight of a court-appointed independent monitor to implement a series of concrete reforms to the NYPD’s policies, training, supervision, disciplinary systems, among other things, to ensure that individuals are stopped only based on the constitutionally required standard of “reasonable suspicion” and that the police no longer no longer systemically use race as a criteria for law enforcement actions. The court also ordered the City to engage in a “Joint Remedial Process,” currently underway, bringing together affected communities, elected officials, the NYPD, and other stakeholders to collaboratively develop reforms to the Department’s stop and frisk practices – and to provide a forum for a broader conversation about unfair policing practices.

I. Civilian Oversight of Law Enforcement

It is of the utmost importance that police departments are subject to independent oversight. The CCRB, like many other similar bodies across the United States, plays a critical role with regards to ensuring independent oversight of police departments and in documenting and studying the complaints of civilians with regards to police misconduct.

In particular, the Board's mandate to investigate, substantiate, and in some limited circumstances, prosecute cases of police misconduct is crucial. The analysis of the Board with regards to the nature of complaints received and the larger issues of police misconduct it investigates under its mandate is key. For example, the CCRB's historical concerns around the NYPD's discriminatory and unlawful stop and frisk practice, among other issues it has highlighted in its tenure, were and continue to be incredibly beneficial to the public discourse.

However, despite its critical role, the CCRB, like many city agencies, faces challenges which complicate its reputation, efficacy, and ability to fulfill its mandate.

I. Robust Interpretation of Mandate

The CCRB's mandate to investigate allegations of police misconduct⁴ under the following rubric of "excessive use of force, abuse of authority, discourtesy, or use of offensive language"⁵ understandably covers a large breadth of allegations of misconduct.

However, we would urge the CCRB to take a robust and engaged interpretation of the mandate afforded to it. For example, the Board should share whether and how it investigates and substantiates allegations of racial profiling or racially-motivated pedestrian or traffic stops, searches, arrests, summonses, and other law enforcement actions, which, under any reasonable interpretation of the Board's mandate set forth in Chapter 18-A of the City Charter, clearly falls under "abuse of authority." While the NYPD recently announced court-ordered improvements within its internal investigations of civilian complaints related to racial profiling or bias, this does not obviate the role of the CCRB to also independently investigate similarly themed allegations included in civilian complaints that are filed with the CCRB. We also encourage the CCRB to robustly include new and additional investigatory and substantiation factors with the respect to the expanded prohibition on discriminatory law enforcement actions which was added to NY City Administrative Code § 14-151 in 2013 by Local Law 71.⁶

II. Prosecution of Substantiated Police Misconduct Cases

Notably, the Board also plays a critical role with regards to administratively prosecuting substantiated cases of misconduct following the implementation of a 2012 Memorandum of

⁴ New York City Charter, Chapter 18-A, Section 440, "Civilian Complaint Review Board"

⁵ *NY City Charter § 440*

⁶ Local Law 71, Protecting New Yorkers from Discriminatory Policing by the NYPD was signed into law in January 2014. Learn more at <http://changethenypd.org/community-safety-act>.

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Understanding (MOU) with the NYPD.⁷ This role of the CCRB cannot be understated, given the NYPD's own longstanding and well-documented inadequate disciplinary policies and procedures, which routinely fail to meaningfully discipline and deter officers who have committed incidents of misconduct, either by imposing no discipline at all or imposing penalties that are rarely in proportion with the misconduct in question, and offering no explanations for such disciplinary decisions.⁸ In fact, it is through the authority of the 2012 MOU and the work of the CCRB's Administrative Prosecution Unit (APU), that the public is afforded a limited opportunity to learn more about the NYPD's disciplinary processes, the Department's implementation of disciplinary penalties, and the Commissioner's discretion under his afforded disciplinary authority.

Notably, the APU's relationship with the NYPD and in particular, with the Department Advocate's Office has greatly improved in recent years, allowing for a more necessary cohesion. However, despite this increased cohesion a number of concerns remain.

a. Modification of Pleas

The matter of the resolution of cases by the APU is also at stake given the retention of exclusive disciplinary authority by the NYPD Police Commissioner.⁹ With regards to any modification of any pleas by the Commissioner,¹⁰ we encourage the CCRB to make public the following information related to these and all future cases where pleas are modified: any written explanations for modification of pleas by the Commissioner, as well as relevant information about the case, including the type of misconduct, demographic information about the individual(s) and the subject officer(s), the precinct and location of the incident, the original plea and penalty agreed to and the new modified plea and penalty, and any other relevant information. While some of this information is contained in quarterly APU reports, we urge the Board to release as much information as possible so that the public may assess any trends or areas of concern.

⁷ See 2012 Memorandum of Understanding Between the Civilian Complaint Review Board (CCRB) and the Police Department (NYPD) of the City of New York Concerning the Processing of Substantiated Complaints, at paragraph 8 [noting, "The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations"] (hereinafter "2012 CCRB MOU"). This MOU authorized the CCRB to prosecute administrative cases against officers who they recommended "charges and specifications," becoming the first civilian oversight agency in the U.S. with prosecutorial power.

⁸ Communities United for Police Reform, *Priorities for the New NYPD Inspector General: Promoting Safety, Dignity and Rights for all New Yorkers*, June 2014, pages 9-11, available: <http://changethenypd.org/resources/priorities-new-nypd-inspector-general-promoting-safety-dignity-and-rights-all-new-yorkers>

⁹ The NYPD Police Commissioner is granted exclusive control over disciplining officers who have been found to engage in misconduct against civilians. This authority is granted to the NYPD Police Commissioner under the following codes of the New York City Charter and the Administrative Code: Sections 434(a) of the New York City Charter and 14-115(a) of the New York City Administrative Code.

¹⁰ CCRB, 2015 Annual Report, published May 2016, available:

https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2015_annual.pdf, noting, "In 2015, APU resolved 41 cases through a guilty plea by the subject officer. The APU negotiated pleas in which officers agreed to penalties ranging from instructions to a forfeiture of 30 vacation days. In four cases where there was originally a plea, the plea was set aside by the Police Commissioner and the charges dismissed. Of these cases, the officer received a penalty in all four cases."

III. Reconsideration Process

The Board recently opened up a period for public comment related to its proposed rules regarding the reconsideration process for substantiated CCRB cases.¹¹ Concerns related to this process, through which the NYPD can seek reconsideration of the CCRB's substantiated findings of officer misconduct and recommended penalties for substantiated misconduct were expressed in a letter that CCR, the NAACP Legal Defense and Educational Fund and the Legal Aid Society sent to the Board in June 2016.¹² In that communication, we underlined concerns that the process would be used to essentially perpetuate problematic Departmental disciplinary mechanisms that were identified by the federal court in *Floyd*, and to potentially undermine important and court-mandated disciplinary reforms in the *Floyd* case.

As we shared in our letter, it is of the utmost importance that the NYPD officers are held accountable for substantiated unconstitutional conduct. The recommendation of disciplinary penalties by the Board, as well as its credibility determinations and weighing of testimonial evidence cannot be contested by the Department through the reconsideration process. Moreover, the reconsideration process cannot be employed in order to contravene the rulings of the federal court in the *Floyd* litigation or otherwise prevent NYPD officers from being held truly accountable for unconstitutional stops-and-frisks, trespass arrests, or other misconduct.

Furthermore, the reconsideration process, as currently contemplated, could potentially undermine the independence of the Board in substantiating and prosecuting allegations of misconduct overall. It is not unreasonable to think that the Board will begin or has already begun to recommend lower disciplinary penalties for misconduct it previously recommended to be punished at higher levels, or even to not substantiate allegations it may have in the past substantiated in order to avoid future NYPD requests for reconsideration.

As this matter may still be under consideration by the Board, we urge the CCRB to consider our June 2016 letter and the recommendations contained therein as it finalizes the rules.

IV. Opportunities for Collaboration

Further, we underline CCR's continued interest in working collaboratively with the CCRB moving forward, particularly in the joint reform process ordered by the federal district court in August 2013 in *Floyd*.

In conclusion, we sincerely hope that this hearing will help usher in the continued engagement by the CCRB to meet its mandate and to make concrete steps towards addressing the challenges it faces.

¹¹ CCRB Proposed Rule Amendments, Comment period ended June 10, 2016, available: <http://rules.cityofnewyork.us/content/ccrb-proposed-rule-amendments>

¹² CCR et al., Letter to Civilian Complaint Review Board, Comments on Proposed Rules of the Civilian Complaint Review Board, June 10, 2016.