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

TESTIMONY OF IAN HEAD,
SENIOR LEGAL WORKER OF THE
CENTER FOR CONSTITUTIONAL RIGHTS

November 18, 2019

On behalf of the Center for Constitutional Rights, I would like to thank the New York City Council’s Public Safety Committee for holding this hearing and inviting us to take part. The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization committed to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.¹

The Committee has requested testimony regarding Int. 1136 which would require the New York City police department to issue public reports on the department’s use of body-worn cameras.² The issue of a body-worn camera program in New York City first emerged as part of the 2013 remedial order in CCR’s federal class action litigation, *Floyd v. City of New York*.³ Although not part of the relief requested by plaintiffs, the Court ordered a the New York Police Department (“NYPD”) to implement a one-year “pilot program” of body-worn cameras in a limited number of NYPD precincts as a possible way to “address[] the constitutional harms at issue” in *Floyd*, namely the unconstitutional and racially discriminatory “stop-and-frisk practices” of the NYPD. However, at the same time the court-ordered pilot was taking place, the De Blasio administration moved forward on its own to equip the entire NYPD with body-worn cameras, a policy shift from the previous administration.

Through the *Floyd* case, the Center for Constitutional Rights has been involved in varying degrees with New York City’s body-camera program and policy since 2013. We feel strongly that body-worn cameras by themselves will not bring about more accountability in policing, but instead the cameras must be paired with robust systems of oversight, transparency and discipline within

¹ For more information, see <http://ccrjustice.org>.

² See Intl. 1136.

³ See *Floyd v. City of New York*, 959 F. Supp. 2d 688540 (S.D.N.Y. 2013). The *Floyd* case, now in its remedial phase, remains ongoing and is being litigated by CCR and Beldock, Levine and Hoffman LLP. The case is overseen for the past five years by a federal, court-appointed monitor.

the NYPD. Over the past several years, we have made this clear in our court filings as well op-eds in local and national media outlets.⁴

The need for police accountability and civilian oversight continues to be incredibly high in the 6 years since the *Floyd* decision. While the *reported* numbers of stops-and-frisks may have declined, the NYPD struggles with accurately documenting the true number of stops, and more importantly severe racial disparities and discriminatory practices remain. Furthermore, recent and ongoing incidents of police violence and other misconduct show that there has yet to be a real and necessary culture-shift within NYPD rank-and-file in regards to the policing of communities of color and real accountability for officers who endanger and violate the rights of New Yorkers.⁵

The communities of color that were at the center of the NYPD's illegal practice of stop-and-frisk and that continue to be the most impacted by police violence and misconduct should have a central role in determining how police body-worn cameras and footage are used. As part of the same remedial decision ordering the original body-worn camera pilot, the *Floyd* court correctly stated that "No amount of legal or policing expertise can replace a community's understanding of the likely practical consequences of reforms in terms of both liberty and safety."⁶ This continues to hold true in 2019, and the Center for Constitutional Rights believes that the voices and leadership of these communities must be given the same if not more weight than any other decision-making body, including the NYPD, when it comes to body-worn camera policies.

The public narrative supporting the implementation of these cameras has been to shine a light on police interactions and increase accountability. In 2014, body-worn cameras became a national talking point when former President Barack Obama suggested (and then funded) body-worn camera programs across the country following the horrific police killings of Black people, such as Michael Brown and Eric Garner. Talking points from the Department of Justice at the time stressed the use of the cameras for "transparency."⁷

⁴ See *Floyd v. City of New York*, Dkt. No. 546 at 1-5 (*Floyd* Plaintiffs' letter to the court describing reasons for Plaintiffs' objection to the proposed body-worn camera policy for court-ordered pilot). Also see Ian Head and Darius Charney, *Don't Let the NYPD Co-opt Body-Worn Cameras*, New York Times, April 27, 2017; Ian Head, *Help write the rules on NYPD body cameras*, NY Daily News, July 7, 2016.

⁵ For example, see Christopher Robbins, *Video Shows NYPD Cops Brazenly Ignoring Stop And Frisk Reforms*, *Gothamist*, November 8, 2019; Michael Sisak, *New York City wrestles with surge of violent police clashes*, ABC News, November 10, 2019; Madeline Holcombe, *Hundreds gather in Brooklyn to protest the NYPD after a violent subway video*, CNN.com, November 2, 2019; Spectrum News Staff, *Protesters Rally in Wake of Confrontations Between NYPD Officers and Civilians*, NY1, November 1, 2019.

⁶ *Floyd v. City of New York*, Dkt. No. 372 at 29.

⁷ See Department of Justice press release regarding body-worn cameras available at: <https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>

In the years since, Mayor De Blasio and outgoing police commissioner O’Neill have often praised the cameras as an important tool for transparency.⁸ Yet, both the mayor and the NYPD have far from lived up to their rhetoric, instead implementing policies and decisions that divert and undermine transparency and accountability. This includes reported massive lags and backlog in getting body-camera video to the Civilian Complaint Review Board, as well as forcing members of the public to navigate the often confusing Freedom of Information Law process just to see video of their own interactions with police. And it includes the latest NYPD Operations Order, released last month, which provides the NYPD with a myriad of excuses not to publicly release BWC footage of “critical incidents.”

The bill proposed by Council Member Williams fits within a framework of public transparency and oversight. As written, it could potentially provide a window for New Yorkers to understand whether or not the BWC program is actually working as a tool for police accountability. For that reason the Center for Constitutional Rights does not oppose this bill, but much can be done to bolster it.

First, public reporting is only a first step. If body-worn cameras are going to continue to be used by the NYPD, there must be additional and immediate accountability measures beyond public reporting, so that the footage they record is used as a tool for police accountability, and not for police surveillance and repression.

Second, we have several suggestions that could be added to this bill to make it stronger. We suggest adding reporting on:

- We suggest that the language regarding “noncustodial questioning” be more specifically tailored to the levels of police encounters enumerated in *People v. DeBour* 40 N.Y. 2d 210.⁹ This would ensure that all possible police enforcement encounters under the law would be included in public reports. In this case, we believe “noncustodial questioning” should specifically include “Level 1” and “Level 2” per *DeBour*.

⁸ For example, see Mark Santora and Nikita Stewart, *Police Body Cameras Could Come to New York Soon*, New York Times December 3, 2014 (“New York City Mayor Bill DeBlasio has touted body-worn cameras as ‘one of the ways to create a real sense of transparency and accountability’ for police departments.”); Press Release, *De Blasio Administration, NYPD Announce All Officers on Patrol to Wear Body Cameras by End of 2018, One Year Earlier Than Expected*, January 2018. (De Blasio says “Body cameras have helped guide a new day in policing, bolstering transparency and increasing accountability”); Associated Press, *NY court: Public allowed to see police body camera footage*, February 19, 2019. (NYPD Commissioner O’Neill embraces the ruling allowing access to video, saying “This ruling is an important step forward for transparency and affirms what the NYPD believes...the public entitled to this information.”).

⁹ Under *DeBour*, there are four separate levels of legal police encounters in New York state. Level 1 allows police to approach a person to request information if they have an “objective credible reason.” Level 2 allows officers to make more pointed inquiries if they have “founded suspicion.” In both Level 1 and Level 2 encounters a person is legal free to leave at any time. Level 3 encounters require reasonable suspicion and are detentions of a person, and allow officers to frisk for weapons. Level 4 is an arrest requiring probable cause.

- We believe the definition of “qualified incident” should be stronger. It should at a minimum include all of the items included under “Mandatory Activation” in the NYPD Patrol Guide.¹⁰
- Detailed data should also be reported regarding supervisory review of BWC video, broken down by command and video category.
- We reiterate that we believe additional ideas and input from directly-impacted community members and organizations representing impacted communities be given priority in shaping this bill.

We thank you for hearing our testimony today.

Sincerely,

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¹⁰ See NYPD Operations Order 212-123 “Use of Body-worn Cameras”