



September 28, 2020

Commissioner Dermot Shea
Deputy Commissioner Strategic Initiatives Danielle Pemberton
New York City Police Department
1 Police Plaza
New York, NY 10038

RE: NYPD's Proposed Discipline Matrix

Dear Commissioner Shea and Deputy Commissioner Pemberton,

Brooklyn Defender Services submits these comments to the NYPD's Proposed Discipline Matrix, published August 31, 2020. For the reasons set forth below, we strongly oppose adoption of the Matrix.

Every year, Brooklyn Defender Services ("BDS") represents nearly 30,000 people in the criminal, family, and civil court systems of Kings County. Many of the people we serve, primarily Black and brown New Yorkers, have experienced abuse and misconduct by the NYPD. We at BDS have joined our communities in the call for meaningful, top-down change to the NYPD for years. We are now living in a seminal moment in history as police departments face demands from across the country to analyze long-standing abusive practices and the continued employment of perpetrators within their ranks.

Amid calls for real reform, the NYPD has released a draft non-binding "Discipline Matrix" which defines prohibited police conduct and specifies potential penalties for personnel who engage in misconduct. However, this purportedly new document merely reiterates preexisting guidance that has consistently failed to rein in abusive police behavior. Crucially, under the proposal, the NYPD remains responsible for enforcing its own rules—which it has repeatedly demonstrated an unwillingness to do—and the Police Commissioner retains veto power over any and all disciplinary actions per City law. We do not believe that essentially condensing the existing Patrol Guide into a 53-page Matrix will have any meaningful impact on abuse suffered by New Yorkers at the hands of the NYPD. Despite a demonstrated need for change, the Department instead makes it clear, once again, that it plans to continue to condone and defend a pervasive culture of abuse and violence while codifying ways for police to evade accountability.

The Patrol Guide is a publicly available document that purportedly governs police conduct by defining prohibited conduct and disciplinary actions that may be taken against offending personnel. However, anyone who has experienced police behavior in New York City understands that these "rules" do not prevent or meaningfully discourage police brutality and misconduct. Alarming, efforts to enhance transparency and accountability, including increased video surveillance of police conduct, have done little to counteract violence and abuse that far too often goes unchecked and unpunished. In the past several months alone, countless instances of police violence captured on video, when the officers know they are being recorded, clearly demonstrate that the existing rules and protections are inadequate. Officers with

highly publicized histories of misconduct not only remain on the job making arrests but are promoted through the ranks. This is unlikely to change if the arbiter of police discipline remains the NYPD itself.

The Matrix reflects Patrol Guide language, sometimes verbatim. For example, the Patrol Guide governs use of force (221-01 and 221-02), requires NYPD personnel to intervene during instances of excessive force by other officers (221-02), and has strict reporting requirements (221-03). These rules are on the books but do little to curb obvious, persistent, and often recorded violations of these rules by NYPD personnel, and reforms have historically been disregarded by the Department. The chokehold ban went into effect in 1993 after the police killed 21-year-old Federico Pereira in Queens, but police have repeatedly been seen on video using prohibited chokeholds on New Yorkers. Even though the body-worn camera (“BWC”) program, launched after the 2014 Black Lives Matter protests, requires officers to have their cameras turned on during almost all encounters with civilians, BWCs are routinely obstructed or turned off. The Right to Know Act was enacted in 2018, yet police often conceal their badge numbers and refuse to give required information to the public.

While the stated goal of the Matrix is to provide transparency and efficiency in the accountability process, it ultimately is little more than a theoretical possibility—it states what penalties *could* be imposed, is non-binding, and does not present a solution to ongoing disregard for existing Department policies. This stated commitment to transparency is clearly apocryphal; since the repeal of 50-A, which shielded police personnel files from public view, the NYPD has engaged in an ongoing court battle to fight the release of any and all NYPD disciplinary records.

The Matrix, like the Patrol Guide and previous attempts at police reform, also includes major loopholes allowing the NYPD to excuse abusive conduct using myriad mitigating factors. The mitigation language incorporates racist presumptions that underpin brutal policing, raising their profile from mostly unspoken understandings to Department-sanctioned excuses. For example, excessive force may be excused if an officer claims that a person was “apparently under the influence of a stimulant or narcotic which would affect pain tolerance,” with no requirement for the officer to be factually correct. The subject’s “size, age and condition” compared to the officer may also be considered. In these two factors alone, the Matrix manages to codify historically race-based presumptions about drug use, pain tolerance, age, and strength into official NYPD code. This loaded language has been used throughout American history to justify racist, deadly, and abusive policing, and the NYPD has made it part of its 2020 platform. Additional mitigating factors are also familiar to defenders and anyone who has been charged with criminal conduct in attempts by police to excuse their own abuse or misconduct. Police allegations that a person made furtive movements, that a crowd gathered, that a situation was tense, or that they resisted arrest by moving any part of their body, among other claims, would continue to help officers evade accountability.

Any attempt to rein in the police without significant cuts to budget and personnel—beginning with those who have already committed “prohibited” conduct—as well as independent oversight with disciplinary powers, and binding conduct requirements will not change a Department with a long history of abuse, misconduct and unaccountability, particularly against Black and brown communities. The Matrix also notes that police may face both civil and criminal actions for egregious misconduct, but every dollar of civil lawsuit settlements are paid by NYC residents and criminal actions filed by prosecutors against police can only be described as exceedingly rare. We have every reason to believe, based on past experience and the ongoing public words and actions of the NYPD and its unions, that this program will merely pacify some critics while maintaining the status quo.

Lastly, the Department's effort to ram through this Matrix in 30 days—without adequate time for public analysis and comment—just reiterates that this flawed process is little more than a facade designed to

mask recycled policies that have already proven to be ineffective. This is an unacceptable tactic, particularly at a time when gathering stakeholder input is more difficult than ever and the public is demanding an open, effective, comprehensive process that results in meaningful change. The Department's fundamentally flawed process will inevitably yield ineffective results and only exacerbate the significant harms done to New Yorkers.

Simply put, this Discipline Matrix has failed to incorporate the transformative changes community members have been demanding. The NYPD will never police itself.

Sincerely,

Maryanne Kaishian
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Brooklyn Defender Services