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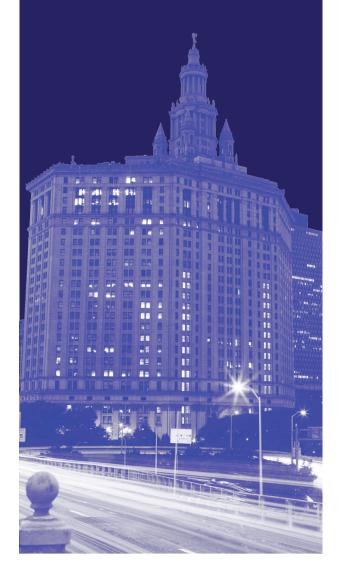
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THE PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Letitia James



POLICY REPORT:

The Cost of Improper Procedures: Using Police Body Cameras to Reduce Economic and Social IIIs

New York City Public Advocate Letitia James

August 2014



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EXECUTIVE SUMMARY

The recent death of Staten Island resident Eric Garner has caused significant outrage and public debate regarding NYPD tactics and misconduct. In response to the increased public scrutiny and concern, Public Advocate Letitia James is proposing a significant reform for how the City documents police interactions with civilians. Under her proposal, the NYPD would establish a robust program of equipping police officers on patrol with body-worn cameras. To begin, NYPD should initiate a pilot program to outfit police officers with body-worn cameras at precincts with the highest rates of crime and complaints of police misconduct.

The value of body-worn cameras can be felt in both ethical and financial terms. Without a doubt, the most important result of NYPD use of body-worn cameras is to ensure transparency and accountability. Upon instituting this policy, New York City would be joining numerous other cities around the country that are aiming to ensure greater transparency and proper police conduct. Additionally, the proposal to use body cameras is likely to save the City significant money: officers will be more inclined to comport themselves in a manner that is less likely to result in lawsuits and false claims will be far easier to debunk. The Office of the Public Advocate estimates that each camera would cost \$450-\$900. The estimated cost of equipping just 15% of the City's police force would be under \$5 million; this figure is far less than the \$152 million in court judgments and settlements paid by the City as a result of allegedly improper NYPD conduct.¹ The City can enhance the cost effectiveness of the program by targeting implementation in the precincts responsible for the majority of police misconduct claims.

Ultimately, a program to use body-worn cameras on NYPD patrol officers would expand transparency, accountability and fairness, while continuing to maintain law and order.

¹Office of the Comptroller of the City of New York, "Claims Report Fiscal Year 2012," page 5 (available at http:// comptroller.nyc.gov/wp-content/uploads/documents/2013_Claims-Report.pdf).



INTRODUCTION

In the immediate aftermath of the death of Eric Garner, New York City elected officials, civil rights advocates, and many residents called, once again, for a thorough re-evaluation of NYPD policies and protocols to ensure that New York City residents are protected from misconduct and abuse of power. While it is clear that reform is in order, a change to policies and protocols is not enough.

A significant number of complaints arise based on police use of chokeholds, a practice banned since 1993, but few, if any, have video evidence to prove their claims. Despite NYPD's chokehold ban, chokehold complaints ranked fourth among use of force allegations in 2013, up almost 40% from 2012 to 2013, according to data from the Civilian Complaint Review Board (CCRB). Notably, although there were 233 complaints to CCRB about NYPD use of chokeholds in 2013, fewer than five percent of those claims were substantiated.²

The cost of police misconduct is a strain on the City's economy and our social fabric. The City paid some \$152 million last year as a result of claims of police misconduct. By instituting a pilot, we can increase transparency and ensure that correct procedures are followed. In so doing, the use of cameras is likely to save the City significant money and time while restoring confidence in NYPD.

Public Advocate James' proposed initiative would begin with a pilot program to equip officers with body-worn cameras in precincts with high rates of crime and complaints of police misconduct with the strict stipulation to record every stop in which an officer is involved. Long-term, the initiative would expand to include all of the City's police precincts. Ultimately, this initiative aims to balance justice and civil rights with the need to maintain law and order. The information below details complaints of police misconduct, how those complaints do not often bring about justice and the economic impact of police misconduct.

²New York City Civilian Complaint Review Board "2013 Report: Statistical Appendices" page 5 (available at http://www.nyc. gov/html/ccrb/downloads/pdf/CCRBAnnual_Appendix_2013.pdf).



ISSUES AND FINDINGS



photo Credit: Barbaro Flickr

A. Claims And Investigations of Misconduct

A review of complaints of police misconduct made to the CCRB illustrates the significant volume of complaints that are either not investigated or unsubstantiated.

1. CCRB Total Allegations and Total Complaints Received in 2013

In 2013, the CCRB received 22,085 total allegations (16,675) and complaints (5,410); nearly 50% related to abuse of authority; 31% for use of force; 16% for discourtesy and 3% for offensive language by an officer. There were approximately, 3,695 allegations of physical force.³

2. 120th Precinct History of Complaints

According to recent reports, the 120th precinct in Staten Island, where the Eric Garner incident occurred, has one of the highest rates of police misconduct in the city and ranks 10th among the city's 78 precincts in substantiated complaints.⁴

³Civilian Complaint Review Board, supra note 2 at pages 4-6.

⁴Nicholas Rizzi, "Precinct Where Eric Garner Died Ranks High in Police Misconduct" DNAinfo New York, July 23, 2014 (available at http://www.dnainfo.com/new-york/20140723/st-george/precinct-where-eric-garner-died-ranks-high-police-misconduct).



3. CCRB Chokehold Complaints from 2009-14 In the five years between 2009 and 2013, the CCRB received 1,022 complaints concerning alleged NYPD use of illegal chokeholds and the number of chokehold complaints increased by almost 40% from 2012 to 2013.5

The CCRB process can clearly benefit from the use of cameras. A review of the CCRB investigations demonstrates that a minority of cases are actually decided based on their merits and many suffer from a lack of information. The length of CCRB investigations often last longer than the statute of limitations, further impeding justice. And even where CCRB substantiates a claim, NYPD has the authority to disregard CCRB's determination.

1. Failure to Proceed

Only 39% of CCRB cases made findings on the merits of a case.⁶

2. Unsubstantiated Cases

In 2013, 48% of allegations against NYPD were unsubstantiated, which is a significant rise from 2007, when just 26% of all fully investigated allegations were deemed unsubstantiated.⁷ This also applied to cases of chokeholds. Of the 462 alleged chokehold cases that CCRB fully investigated between 2009 and 2013, just nine allegations were substantiated, while 206 instances, or 45% of the alleged chokehold cases, were deemed to be unsubstantiated.⁸

3. Inability to Identify Police

Between 2009 and 2013, there 1,040 total allegations of police misconduct in which the officer was unidentified.⁹ In 2013 alone, there were 17 chokehold allegations and 129 physical force allegations in which the officer was unidentified.

⁵Civilian Complaint Review Board, supra note 2.

⁶Civilian Complaint Review Board, supra note 2.

 ⁷Civilian Complaint Review Board, supra note 2 at page 52.
 ⁸New York City Civilian Complaint Review Board "2013 Report" page 13 (available at http://www.nyc.gov/html/ccrb/ downloads/pdf/CCRB%20Annual_2013.pdf).

⁹New York City Civilian Complaint Review Board, Press Release "Civilian Complaint Review Board Announces It Will Do Comprehensive Study of Chokehold Complaints Received by the Agency During Past Five Years" July 19, 2014 (available at http://www.nyc.gov/html/ccrb/downloads/pdf/News_Chokehold%20Study_20140719.pdf).



4. Statute of Limitations Expiration

One clear impediment to justice in the CCRB process is the duration of investigations. In 2013 the department could not seek discipline because the statute of limitations (SOL) has expired in 29 cases, or 11% of all cases. This is the highest number of SOL cases since 1998.¹⁰

5. Department Discretion Trumps CCRB

Even where CCRB substantiates a claim, NYPD ultimately has discretion on whether to prosecute the accused officer. A recent CCRB report notes that the NYPD declined to prosecute 28% of all substantiated misconduct cases from January to August of 2013, a 13 point increase over the same period in 2012. The upward spike continued into September, the CCRB says, with 40% of cases deemed substantiated by the review board dropped by the NYPD Advocate's Office, which serves as an internal prosecutor.¹¹

¹⁰Civilian Complaint Review Board, supra note 2 at page 60.

¹¹Id. at page 19.

¹²Jeff Morganteen "NYPD Dismisses Growing Share of Substantiated Misconduct Complaints" The New York World, November 1, 2013 (available at http://www.thenewyorkworld.com/2013/11/01/unable-to-prosecute/).





B. Economic Cost of Misconduct

According to the 2013 report by former Comptroller John Liu, in 2012 there were 9,570 tort claims against the NYPD and the City paid roughly \$152 million as a result of tort claims against the NYPD.

- Police action giving rise to personal injury claims includes alleged improper police conduct, such as false arrest or imprisonment, shooting of a suspect, excessive force, assault, or failure to provide police protection.¹³
- In the past five years, City payments for tort claims against the NYPD have increased by 52%.
- In each of the last five years, NYPD has accounted for the highest or second highest number of tort claims filed against the City and has been among the top three City agencies in terms of cost of claims in each of the last five fiscal years.¹⁴
- Tort claims against NYPD are increasing. There were 5,601 new police action claims filed in FY 2012, which represents 22% increase from the previous year and is the largest number of new police action filings during the last five fiscal years. In fact, police action claims were the most frequent type of personal injury claim filed in FY 2012 and accounted for the fourth highest claim payout in FY 2012.¹⁵

¹³Office of the Comptroller, supra note 1 at page 5.
¹⁴ Id. at page 31.
¹⁵Id. at page 37.



C. Analysis of Citywide Precinct Misconduct

The CCRB reports data on complaints made against the NYPD, including the number of incidents that led to complaints broken down by precinct in each borough; this CCRB data accounted for 77 precincts in New York City. Based on this information, the Office of the Public Advocate assessed which precincts are the most problematic by analyzing the highest rates of incidents that led to a complaint in 2013.

The Office of the Public Advocate isolated the top five precincts per Patrol Services Bureau in each borough with the most incidents leading to a complaint (Brooklyn North, Brooklyn South, Queens North, Queens South, etc.), with Staten Island being the only exception as it only has four precincts in total. This list totaled to 39 precincts. [See Table 1] Among these 39 precincts, there was an average of 93 incidents that led to a complaint in 2013. This sharply contrasts with the remaining 38 precincts, which averaged approximately 45 incidents leading to a complaint, amounting to less than half the number of incidents in the problematic precincts. Further, the average number of incidents leading to a complaint within the top ten precincts was approximately 147 in 2013 – more than three times the average in the lowest 38 precincts. In 2013, the average number of incidents leading to a complaint in all New York City precincts was approximately 69.

Within the top ten precincts with the most incidents that led to a complaint, Brooklyn takes up four positions, including the first, second and third ranks, which are the 75th, 79th, and 73rd precincts, respectively. Four Bronx precincts also classified in the top 10%, with most incidents leading to a complaint, including 40th, 44th, 47th and 52nd precincts. Staten Island's 120th precinct and Queens' 103rd precinct are also on the list. This data corroborates with historical figures, which denote Brooklyn as the borough with the highest number of incidents that led to complaints, followed by the Bronx.

The CCRB categorizes allegations in four clusters: Use of Force, Abuse of Authority, Discourtesy, Offensive Language, also known as FADO. Of these four categories, use of force allegations ranked second, receiving 31% of total allegations in 2013. Abuse of authority ranked first (46%), which is largely due to allegations of stop, frisk, and/or search of a person or property (44% of all abuse of authority complaints). Among use of force complaints, chokehold allegations rank fourth (4.4%), after 'physical force' (69.7%), 'gun pointed' ((5.9%) and 'hit against inanimate object' (4.9%) [Table 2].



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Table 1. Precincts with Highest Complaints

Precinct	Borough	Patrol Sycs Bureau	Complaints
75th	Brooklyn	North	266
79th	Brooklyn	North	184
73rd	Brooklyn	North	161
40th	Bronx		154
44th	Bronx		137
120th	Staten Island		124
103rd	Queens	South	123
77th	Brooklyn	North	120
47th	Bronx		117
52nd	Bronx		116
113th	Queens	South	110
67th	Brooklyn	South	108
81st	Brooklyn	North	106
70th	Brooklyn	South	104
46th	Bronx		102
Midtown south	Manhattan	South	99
25th	Manhattan	North	92
71st	Brooklyn	South	89
114th	Queens	North	84
Midtown north	Manhattan	South	82
60th	Brooklyn	South	81
23rd	Manhattan	North	80
28th	Manhattan	North	75
101st	Queens	South	75
105th	Queens	South	75
34th	Manhattan	North	71
9th	Manhattan	South	70
115th	Queens	North	64
122nd	Staten Island		63
32nd	Manhattan	North	61
13th	Manhattan	South	60
102nd	Queens	South	56
69th	Brooklyn	South	55
6th	Manhattan	South	55
110th	Queens	North	52
104th	Queens	North	50
109th	Queens	North	48
121st	Staten Island		38
123rd	Staten Island		12



Total Allegations and Complaints Received		Percentage of
in 2014	Number	total
Abuse of Authority (A)	8,202	49.20%
Force (F)	5,303	31%
Discourtesy (D)	2,675	16.04%
Offensive Language (O)	493	2.96%
Total Allegations	16,675	100%
Total Complaints	5,410	

Type of Force Allegation in 2013	Number	Percent of Total
Physical force	2,695	69.70%
Gun pointed	312	5.90%
Hit against inanimate object	259	4.90%
Chokehold	233	4.40%
Nightstick as club	205	3.90%
Pepper spray	198	3.70%

JURISDICTIONS WITH BODY WORN CAMERA POLICIES

Having access to video will enable courts to make more accurate and fair decisions in a variety of cases involving NYPD. A significant number of police departments in other jurisdictions are already making use of body cameras either on a pilot or permanent basis, while several others are exploring their use.

Nationally, the American Civil Liberties Union (ACLU) stated, "one in every six departments are patrolling with them [cameras] on their chests, lapels or sunglasses."¹⁶ Many leaders in law enforcement support the use of body cameras, including current NYPD Commissioner William J. Bratton who, in 2013, stated that "if he were still a police chief, he would want cameras on his officers... the camera offers an objective perspective."¹⁷

 ¹⁶The Associated Press "Police Body Cameras Raise Privacy Concerns" The New York Daily News, March 15, 2014 (available at http://www.nydailynews.com/news/national/cops-body-cameras-raise-privacy-concerns-article-1.1722969).
 ¹⁷Ian Lovett "In California, A Champion for Police Cameras," The New York Times, August 21, 2013 (available at http:// www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html?pagewanted=all&_r=1&).



JURISDICTIONS USING BODY WORN CAMERAS (CONT'D)





photo Credit: Michael Macor. The San Francisco Chronicle

photo Credit: Renee Jones Schneider, Minneapolis Star Tribune

÷	Location	Year	Process
	Chesapeake, VA ¹⁸	2009	Body cameras have been used for six years.
	Oakland, CA ¹⁹	2010	The Oakland Police Department started its pilot project by purchasing 350 cameras and required officers with cameras to record all stops and arrests. As reported by the SF Gate: "[A]fter a decade in which Oakland city officials - and taxpayers - paid out tens of millions of dollars in police-abuse claims, vest cameras are the best defense the city has against false claims of police abuse." Oakland PD has issued vest cameras to all of its 460 patrol officers and maintains a reserve supply of about 70.
	Rialto, CA ²⁰	2012	The Rialto Police Department initiated a pilot program outfitting 75 police officers. A study done in coordination with this pilot project found that complaints dropped 88% and use of force incidents dropped by 59%. ²¹ Rialto PD has since mandated that all of its police force be equipped with cameras.

 ¹⁸Scott Daugherty "Chesapeake Police's Body Cameras Mean a Lot of Work" The Virginian-Pilot, May 4, 2014 (available at http://hamptonroads.com/2014/05/chesapeake-polices-body-cameras-mean-lot-work).
 ¹⁹Chip Johnson "Oakland Police Must Step Us Use of Vest Cameras" The San Francisco Chronicle, January 23, 2014 (available at http://www.sfgate.com/bayarea/johnson/article/Oakland-police-must-step-up-use-of-vest-cameras-5169946.php).
 ²⁰Nancy Dillon "Police Body-Worn Cameras Stop-And-Frisk Judge Suggested Have Helped Rialto Police Department" August 13, 2013 (available at http://www.nydailynews.com/news/national/cameras-proposed-stop-frisk-judge-ca-police-at-iele 1, 1405025)

article-1.1426025).

²¹Randall Stross "Wearing a Badge, And a Video Camera" The New York Times, April 6, 2013 (available at http://www. nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html?pagewanted=all&_r=0).



JURISDICTIONS USING BODY WORN CAMERAS (CONT'D)

New Orleans, LA ²²	2014	Superintendent of Police, Ronal <u>Serpas</u> noted, "[T]he body-worn camera can help us have that unvarnished re-creation of what happened."
San Diego, CA ²³	2014	San Diego City Council approved body cameras for police officers. "The department has been beset over the years with citizen complaints of sexual misconduct and racial profiling."
Spokane, WA ²⁴	2014	Spokane Police Department received 220 chest-mounted cameras in May 2014 and plans to have full implementation by Fall. The cameras weigh about 3.5 ounces, can record up to 13 hours of video and run about 12 hours on one battery charge.

Piloting Jurisdictions

Location	Year	Note
Cleveland, (DH ²⁵ 2013	Cleveland implemented a pilot project in 2013. A report of the pilot shows that after one month Cleveland officers preferred body cameras to dash cameras. The city has decided to move forward with implementing the program full-scale, which is estimated to take three years.
Los Angeles CA ²⁶	5, 2014	Los Angeles Police Department is currently field testing cameras in an effort to reduce complaints due to police misconduct. LAPD is looking into deploying them to all police officers. If/when fully implemented, it would make it the nation's largest program. Pilot began in early 2014. Camera policy will be created with input from community and union. The cameras are worn on belts, collars and sunglasses.
Denver, CO	27 2014	Denver Police Department initiated a six month pilot project in the Lower Downtown district of Denver as a first step in implementing the plan department-wide.

²²Martin Kaste "Can Cop-Worn Cameras Restore Faith In New Orleans Police?" May 22, 2014 (available at http://www. npr.org/blogs/alltechconsidered/2014/05/22/314912840/can-cop-worn-cameras-restore-faith-in-new-orleans-police). ²³ San Diego City Council Approves Body Cameras for Police Officers' ABC 10 News, June 10, 2014 (available at http://

www.10news.com/news/sd-city-council-to-approve-body-cameras-for-police-officers). ²⁴Jacob Jones "Spokane Police Receive New Body Cams, Looking to Deploy by Fall" Inlander, May 19, 2014 (available at http://www.inlander.com/Bloglander/archives/2014/05/19/spokane-police-receive-new-body-cams-looking-to-deployby-fall).

²⁵Michael Baldwin "Cleveland Police Chose Body Cameras Over New Dash Cams for Officers" NewsNet5 Cleveland (available at http://www.newsnet5.com/news/local-news/cleveland-metro/cleveland-police-chose-body-cameras-overnew-dash-cams-for-officers).

 ²⁶Erika Aguilar "LAPD Body Cameras Tests Show They Fall Off" 89.3KPCC, May 6, 2014 (available at http://www.scpr. org/news/2014/05/06/44015/lapd-body-cameras-tests-show-they-fall-off/).
 ²⁷Brian Maass "Denver Police To Get Body Cameras" CBS Denver, March 10, 2014 (available at: http://denver.cbslocal.

com/2014/03/10/denver-police-to-get-body-cameras/).



JURISDICTIONS USING BODY WORN CAMERAS (CONT'D)

Detroit, Ml ²⁸	2014	Detroit Police Chief announced in April the initiation of a pilot program for select officers to wear body cameras. Cost is between \$330-\$500 per unit.
San Francisco, CA ²⁹	2014	With the help of a \$250,000 federal grant, the San Francisco Police Department will begin equipping some officers with wearable cameras in a pilot program.
Miami, FL ³⁰	2014	Miami Police department initiated a department wide body camera study, to have the ability to review incidents and more accurately compile police reports.
Orlando, FL	2014	As of January 2014, the Orlando Police Department has partnered with the University of South Florida in a year-long study of the use of police body cameras. ³¹





photo Credit: unknown

photo Credit:AP Photo/Jeff Chi | AP

²⁸Gus Burns "Detroit Police To Test On-Body Cameras That Could Increase Officer Safety, Improve Public Interactions" MLive, April 9, 2014 (http://www.mlive.com/news/detroit/index.ssf/2014/04/detroit_police_to_test_on-body.html).
 ²⁹C.W. Nevius "S.F. Police Seek Cameras To Capture Whole Picture" The San Francisco Chronicle, January 23, 2014 (available at http://www.sfgate.com/bayarea/nevius/article/S-F-police-seek-cameras-to-capture-whole-

picture-4997404.php). ³⁰City of Miami Police College "About the Miami Police College" (available at http://www.miami-police.org/

Police TrainingCenter/miami_police_college.html). ³¹Stephanie Hayes "USF To Study Police Officers Wearing Body Cameras" Tampa Bay Times, January 11, 2014 (available

at http://www.tampabay.com/news/education/college/usf-to-study-police-officers-wearing-body-cameras/2160669).



Jurisdictions Considering Body Cameras

Washington, D.C. ³²	In May 2014, the Washington D.C. Police Complaints Board recommended to establish a task force to set such policies on body cameras — as well as ones related to storage, retention and access of the recordings and how to notify citizens that they are being recorded.
Dallas, TX ³³	In May 2014, the Dallas Police Chief called for police body cameras for its department after incidents involving police officers fatally shooting an unarmed teen and mentally ill man.

³²The Washington Post Editorial Board "Putting Cameras On Police Officers Is An Idea Whose Time Has Come" The Washington Post, May 12, 2014 (http://www.washingtonpost.com/opinions/putting-cameras-on-police-officers-is-an-idea-whose-time-has-come/2014/05/12/4674b3b6-da20-11e3-8009-71de85b9c527_story.html).
 ³³David Ferguson "Dallas Police Chief Calls For Body Cameras AfterCops Shoot Unarmed Teen, Mentally III Man" The Raw Story, May 6, 2014 (http://www.rawstory.com/rs/2014/05/06/dallas-police-chief-calls-for-body-cameras-after-cops-

shoot-unarmed-teen-mentally-ill-man/).

RECOMMENDATIONS

In light of the information noted above, Public Advocate James seeks to restore confidence in the NYPD by ensuring transparency and fairness while we preserve law and order. Following a pilot to ensure functionality, the NYPD must move to have body-worn cameras on all patrolling officers to record stops. To that end, the Office of Public Advocate recommends the following:

Implement a Meaningful NYPD Body Camera Pilot

In order to ensure a meaningful sample, NYPD must implement a body camera pilot that includes at least 15% of police officers on patrol, and all participating officers must record every single stop conducted while on patrol. Over time, the initiative must expand to include all precincts in the City.

Precincts with High Complaints of Misconduct Must Wear Body Cameras

A review of CCRB reports demonstrates that complaints of NYPD conduct originate from certain precincts at a significantly higher rate than the City average. For example, while the average number of complaints for each police precinct City-wide last year was roughly 69, the 75th Precinct in Brooklyn received 266 – almost four times more than the City average. To ensure that the body camera pilot is as effective as possible, the pilot must take place in the precincts responsible for the most civilian complaints and high rates of crime.

Protect Process and Civil Liberties

The City - working with union officials and advocates - must craft a transparent policy of how and when cameras will be activated (manual vs. automatic), who has access to them, how long a release request will take and to whom, length of storage time and how footage will be securely stored. It is imperative to protect civil liberties and the rights of both police officers and the public. Additionally, footage must be protected to ensure that fair trials can take place, without jeopardizing a case.

Ensure Expeditious Investigations

On average, a substantiated CCRB investigation takes over one year to complete, and this rate has slowed even further in recent years. As a result, statutes of limitations are more likely to expire in cases where CCRB substantiates claims, leaving victims with no recourse or justice. Additionally, even where CCRB substantiates a claim in a timely fashion, NYPD has the authority to disregard CCRB's determination. The City must provide CCRB with the resources and authority necessary to ensure that investigations of misconduct are conducted competently and in a timely fashion.



CONCLUSION

As a result of recent events, the City must use this moment to provide clear and decisive action toward improving police/community relations. While changes to police training is an important step, it must not be the only step. Police body-worn cameras will help to ensure greater transparency and accountability in all encounters between police and civilians. Additionally, the use of body worn cameras offers significant promise as a means to improve police conduct and reduce the money the City spends on lawsuits resulting from police misconduct. Other jurisdictions have used similar technology and the reported results appear to be very promising. The Office of Public Advocate recommends implementation of an initiative beginning with a pilot that includes at least 15% of officers on patrol and in precincts with high rates of crime and complaints of police misconduct. The initiative should expand to include all precincts in the City. The protocol for making video footage available must ensure accessibility and transparency. Finally, the City must provide additional resources to the CCRB to ensure that investigations are conducted in a timely and competent manner. Ultimately, body-worn cameras will help to restore confidence in the NYPD and bridge the gap between NYPD and the communities it serves.



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