



## **TESTIMONY**

The Council of the City of New York  
Committee on Public Safety

Hearing on the NYPD Disciplinary System

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Good afternoon. I am Cynthia Conti-Cook, a staff attorney at The Legal Aid Society testifying on behalf of the Special Litigation Unit in the Criminal Practice, a specialized unit dedicated to addressing systemic problems created by the criminal justice system. We thank this Committee for the opportunity to provide testimony on the New York Police Department's disciplinary system. I also echo the testimony prepared by my colleagues at Bronx Defenders and the Center for Constitutional Rights.

To start, before moving into relatively specific feedback on these bills, I want to acknowledge how important these bills are for finally beginning to demystify the NYPD's police disciplinary system. As Justice Jenny Rivera said in her dissent in the NYCLU case decided this past December, **“government is the public's business”** and it is important for the public not only to have an opportunity to be heard on matters involving the public servants they interact with more often than any other, often on a daily basis, but to do so in an informed way.<sup>1</sup> By hiding this information about the police disciplinary system, the public has been kept in the dark about what the problems are, what reforms are necessary, and had no access to the data to support those reforms. These bills are crucial first steps to allowing the public into the process but will definitely not be the last police accountability measures we ask the Council to take on.

### **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 several civil rights cases as well, the Society is in a unique position to testify about the

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<sup>1</sup> NYCLU v. NYPD, No. 133, 2018 WL 6492733, at \*9 (N.Y. Dec. 11, 2018). (Rivera, J. dissent)

importance of a robust, transparent and function police disciplinary system in New York City. Since 2015, the Cop Accountability Project of The Legal Aid Society has systematically collected data from multiple sources on police misconduct in New York City in order to support our defenders' ability to subpoena personnel records, otherwise inaccessible under Civil Rights Law 50-a. This database is a model other defenders nationwide have begun replicating. It supports not just our defenders in criminal court rooms, it supports our law reform and policy work, our impact litigation, investigative reporting as well as local grassroots groups. We have closely analyzed this data, as well as the data released from the BuzzFeed report last year, for patterns of misconduct, outcomes, types of penalties and sentences.

In addition, we have brought Freedom of Information litigation against the CCRB and the NYPD since 2014 requesting information on the civilian complaint histories and disciplinary summaries of police officers, including Daniel Pantaleo. We currently have one case pending leave to appeal in the Court of Appeals, which is against the NYPD for 5 years of summaries of the Personnel Orders like those released by BuzzFeed. We have another pending decision in the Second Department based on a request to the CCRB for the civilian complaint history for Louis Scarcella, who has been retired for 20 years. We lost the case in the First Department for Daniel Pantaleo's CCRB records and we lost a similar case in the Second Department. We have also intervened in the case brought by the PBA against the NYPD preventing NYPD from releasing anonymous summaries along the lines of what BuzzFeed released. That case is still pending decision.

In New York City specifically, the Special Litigation Unit is extremely experienced in police disciplinary matters through the discovery in civil rights cases of police misconduct information, recordings of IAB interviews, CCRB interviews, investigations from both agencies,

the disciplinary process and fundamental lack of follow up on accountability matters. For example, some officers deposed in a civil rights case last year were found guilty of misconduct, sent written reprimands only to never learn from their commanding officers about it. Through these cases we are also aware that much misconduct is not the fault of individual officers as often as it is the fault of supervisors failing to correct misconduct, especially false statements and omissions and of the department failing to hold officers accountable for serious misconduct.

I have also written several articles on the harms of police misconduct secrecy, the history of Police Officer Bill of Rights (like Civil Rights Law 50-a),<sup>2</sup> on similar technology-supported police accountability projects across the country<sup>3</sup> and on why police misconduct information is important to public defenders.<sup>4</sup>

**WE FULLY SUPPORT A RESOLUTION TO REPEAL OF 50-A**  
(Williams) (Preconsidered Res. No.)

Civil Rights Law § 50-a prevents the public from receiving critical information about the police officers who serve in their communities, officers entrusted with an immense amount of power. As the Panel Report noted after a seven month investigation: “Denying those directly affected by police misconduct access to information on police discipline serves no one’s interest. More broadly, lack of transparency impedes the Department’s efforts to show the public that it holds officers accountable for their conduct.”<sup>5</sup>

As an illustration of how important it is to have this information about officers, consider news from Chicago this past week. It was discovered that officers leading the Chicago Police

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<sup>2</sup> Cynthia Conti-Cook, A NEW BALANCE: WEIGHING HARMS OF HIDING POLICE MISCONDUCT INFORMATION FROM THE PUBLIC, Vol. 22 CUNY Law Review Issue 1 (Feb. 2019) *pending publication*.

<sup>3</sup> Cynthia H. Conti-Cook, *Open Data Policing*, 106 GEO. L.J. ONLINE 1, 16-21 (2017) (detailing how “open data” about police conduct is being utilized by police reform advocates to “improve oversight and understanding of the police”).

<sup>4</sup> Cynthia H. Conti-Cook, *Defending the Public: Police Accountability in the Courtroom*, 46 SETON HALL L. REV. 1063 (2016).

<sup>5</sup> Mary Jo White et al., *The Report of the Independent Panel on the Disciplinary System of the New York City Police Department*, (Jan. 25, 2019), at 20 [*hereinafter* “Panel Report”].

Department's Implicit Bias training themselves were involved in brutal incidents against young black men.<sup>6</sup> James Baldwin famously said that "Not everything that is faced can be changed, but nothing can be changed without being faced."<sup>7</sup> We can't keep relying on reforms like new policies and trainings when we don't know if there are much deeper ongoing problems that will sabotage those new initiatives.

Existing FOIL exemptions already prevent officers' residential, social security, and medical information from being released.<sup>8</sup> Repealing 50a would only place the police on equal footing with other working professionals, such as doctors and lawyers, who are subject to discipline that is reported online.<sup>9</sup> Repeal would facilitate accountability systems similar to these other professions and allow for public trust in the ability of state police agencies to oversee their officers.

For the proposed resolution, we only have small edits to language.<sup>10</sup> We also recommend removing all references to 50-a from the reporting bills, as its completely unnecessary in the context of aggregated reporting.<sup>11</sup>

### **POLICE MISCONDUCT REPORT**

#### **Int. No 1105 (Richards et al) and (Johnson)(Pre-considered) DEFINING TERMS AND DISCIPLINARY ACTION WITHIN A COMPLEX SYSTEM**

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<sup>6</sup> Debbie Southorn & Sarah Lazare, *Officers Accused of Abuses are Leading Chicago Police's "Implicit Bias" Training Program*, INTERCEPT, (Feb. 3, 2019), <https://theintercept.com/2019/02/03/chicago-police-procedural-justice-training-complaints-lawsuits-racism/>.

<sup>7</sup> "As much truth as one can bear" in *The New York Times Book Review* (14 Jan 1962) republished in *The Cross of Redemption: Uncollected Writings* (2011), edited by Randall Kenan.

<sup>8</sup> *See, e.g.*, *Matter of Obiajulu v. City of Rochester*, 213 A.D.2d 1055, 1056 (4th Dep't 1995) ("personal and intimate details of an employee's personal life are exempt") (internal quotation omitted); *Lyon v. Dunne*, 180 A.D.2d 922, 924-25 (3d Dep't 1992) (ordering redaction of addresses, phone numbers, and dates of birth from otherwise disclosable investigation records).

<sup>9</sup> *E.g.* James Kelly, *New York Courts Put Attorney Discipline Records Online*, N.Y. L. INSTITUTE, (Feb. 24, 2015), <http://www.nyli.org/new-york-courts-put-attorney-discipline-records-online>.

<sup>10</sup> *NYCLU v. NYPD*, No. 133, 2018 WL 6492733 (N.Y. Dec. 11, 2018).

<sup>11</sup> For example, Int. No. 1105 references 50-a.

The NYPD's disciplinary system is complex and multi-tiered.<sup>12</sup> Complaints of police misconduct come from many different directions before they ultimately end up resulting in discipline<sup>13</sup> and a case can be disposed of through many different avenues.<sup>14</sup> Therefore, what each agency is responsible for reporting must be clear, as well as the origins of the complaint and the method in which a disposition was reached.

We ask the Council to consider making the categories of misconduct more accessible than the complex set of rules, regulations, city, state and federal laws the bill currently asks the NYPD to report according to. Instead, the Council could require reporting across several categories of misconduct such as those the Panel Report created to describe types of misconduct, for example, Stopping/Frisking/Searching Without Sufficient Legal Authority; Failing to Perform Duties; Making False Entries in Department Records; Excessive Force or Force Without Necessity, etc.<sup>15</sup>

#### COMPLAINTS AND INVESTIGATIONS FROM CCRB, IAB and OIG

The bills need more clarity around what complaints, investigations and disciplinary proceedings the Council will require reporting on. For example, in the Police Misconduct Report bill, the Council asks the NYPD to report on the number of complaints of misconduct it receives. This creates confusion about whether the NYPD needs to also report how many complaints of

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<sup>12</sup> Panel Report, at 7-14 (overviewing NYPD's disciplinary process).

<sup>13</sup> Investigations may be initiated by civilians or service member complaints, or by the Department itself. *Id.* at 7-8. Minor infractions are routinely addressed at the precinct level through Command Discipline, and serious offenses generally involve a more formal disciplinary process. *Id.* at 8. Allegations of misconduct may then be investigated by one or more of the IAB, CCRB, or Force Investigation Division, *id.* at 9-10,

<sup>14</sup> Complaints substantiated internally are prosecuted by the DAO, and those substantiated by CCRB are prosecuted by their Administrative Prosecution Unit (APU), *id.* at 11-12.

<sup>15</sup> Panel Report, at 29-30 (listing the 12 categories of misconduct identified by the Panel). For example, criminal conduct, administrative misconduct, force against civilians, force against MOS, unlawful stop, frisk or searches, false statements, reporting or testimony, failure to investigate, failure to report misconduct, false reporting of overtime, false reporting of sick leave, failure to identify name and badge, etc.

misconduct it receives through the CCRB, which would be a subset of the complaints CCRB receives in general.

We recommend disaggregating the reporting by which complaints the NYPD receives from CCRB, versus the IAB and the OIG, as well as by which of those agencies investigated complaints. We have concerns that IAB officers, who often go directly to people's homes, interrogate them aggressively and leverage power to arrest them, often discourage people from moving forward with complaints. It would be useful to have data on whether complaints traveling through IAB vs CCRB vs OIG have different paths depending on how each agency does intake. We also have concerns that parallel IAB investigations are conducted to undermine CCRB outcomes. In my capacity as a civil rights attorney, I have listened to IAB investigations with officers that last a shorter period of time than the 3-minute preamble the investigator gives before the interview starts. In other words, it's barely an investigation at all.

We recommend removing the language from this bill that overlaps with the jurisdictional areas covered by the CCRB. We believe this will cause confusion, especially without specific aggregation based on to whom a complaint was made and by which agency it was investigated.

#### UNDERSTANDING THE UNIVERSE OF DISCIPLINARY OUTCOMES

We learned from the Panel Report that even if the NYPD did create a centralized case management system, it still would not capture the universe of misconduct penalized by NYPD commanding officers.<sup>16</sup> A world of misconduct is not reported centrally but at the command level only. While much of this misconduct is fairly considered "minor" it also may include misconduct really important to the public, for example unlawful stops, frisks, failure to fill out

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<sup>16</sup> Panel Report, at 8.

stop paperwork, failure to turn on body cameras, and many other aspects of public encounters the public would want more information about.<sup>17</sup>

The definitions used in these bills need to be broad enough to get what the Council wants: a full picture of what misconduct officers are committing and how the NYPD is responding to hold them accountable. If we learn that there are categories of misconduct the public categorically does not have an interest in, we can modify future reporting requirements accordingly. It's important for the public to be involved in defining what misconduct is in the public's interest and that they may do so fully informed about the scope of misconduct occurring in the NYPD.

Likewise, it's important that the Council be aware of when action isn't taken as much as when it is taken. We suggest that the Council disaggregate by what the disciplinary outcomes are (as opposed to the investigation outcomes) by the various types of outcomes available in the NYPD disciplinary system (guilty, not guilty, guilty in part, dismissed, filed, acquitted, resignation and "no lo contendre").

We suggest that the penalties are separately reported according to what type of penalty was given (forfeiture; return of time; return of benefits; return of pay; restitution; case citation; reprimand; instructions; Command Discipline – A; Command Discipline – B; formal training; informal training; dismissal probation; voluntary separation; suspension; and termination").

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<sup>17</sup> Peter L. Zimroth, *Seventh Report of the Independent Monitor*, at 38-40 (Dec. 13, 2017) (finding that the failure to document stops continues to be a problem, and showing various nonpublic disciplinary outcomes, including Command Discipline, supervisors have imposed). See NYPD, PATROL GUIDE PROCEDURE NO. 206-03: VIOLATIONS SUBJECT TO COMMAND DISCIPLINE (2017) (providing that discipline may be imposed based on charges brought under Schedule A, "[a]ny other minor violation that, in the opinion of the commanding/executive officer is appropriate for Schedule A command discipline procedure;" under Schedule B, "[a]ny other violation, which, in the opinion of the commanding/executive officer and after notification to the patrol borough adjutant and consultation with the Department Advocate, is appropriate for Schedule 'B' command discipline procedure;" under Schedule C, "[a]ny violation reviewed and determined by the Department Advocate to be suitable for Schedule 'C' command discipline.").

We further suggest the following “sentence” is reported in detail: if forfeiture or “return of”: report the number of days sentenced to forfeit or return. (For example: days of annual leave, days of vacation, days of pre-trial suspension, days of time, days of pay, days of benefits, and years of dismissal probation).

We make these recommendations because comparing BuzzFeed data on sentences is confusing. Many sentences read in a convoluted way that is hard to compare.<sup>18</sup> For example, many officers received a combination of “judgement suspended and one year of dismissal probation” and would get some combination of days forfeited, vacation days forfeited, on suspension without pay or pre-trial suspension days. These sentences need clarity and transparency as well as the outcomes and types of penalties before they can be comparable.

#### TRANSFERS AND VOLUNTARY SEPARATION

We also learned from the Panel Report that Commissioner O’Neill has increasingly relied on voluntary separation as a method of removing officers from the department without interrupting their pensions, their ability to get future employment as a police officer and also to possibly avoid required reporting to the New York State Department of Criminal Justice Services for when officers are terminated.<sup>19</sup>

It is very important, therefore that voluntary separation is a type of discipline recognized and counted in any data reporting on the disciplinary system, as are other hidden forms of discipline, such as transfers to other boroughs or demotions from rank.

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<sup>18</sup> Kendall Taggart, Mike Hayes and Scott Pham, *Here are the Records on Thousands of New York Police Misconduct Cases*, BUZZFEED, (Apr. 16, 2018), <https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database>.

<sup>19</sup> Panel Report, at 26 (“The overall effect of voluntary separation is that the officer is entitled to collect a pension, if it has vested, and can inform future employers that he or she voluntarily left the Department.”). See 9 NYCRR 6056.4(c) (requiring each police department to report to NYSDCJS when officers have ceased employment and the reasons why, including “for cause”); 9 NYCRR 6056.2(g) (defining “for cause”). Voluntary separation is arguably meant to skirt this definition, allowing for a report that an officer was not terminated due to misconduct, but simply resigned.

## COMMAND VS. PRECINCT

The distinction between command and precinct isn't semantics. It's technical. And if the bill only requires reporting across precincts, important and powerful commands that interact with the public invasively, for example, narcotics detectives, anti-crime detectives, Strategic Response Group officers, VICE detectives and other officers assigned to similar public encounters will be carved out, as would the housing and transit patrol service areas.

## FORMATTING

We really look forward to having the reporting from these bills available in Excel or similar formats, allowing for processing and modern analysis.

### **DEMAND A STUDY ON STRATEGY FOR IMPLEMENTATION OF A DISCIPLINARY MATRIX, NOT FEASIBILITY**

Int. No. 1309 (Richards)

As my colleagues' testimony emphasizes, there are sufficient studies at this point to say definitively that NYPD's disciplinary system requires publicly available guidelines or matrices created with opportunity for informed public comment. This is no longer an "if" but a "how" report. There are, however, important strategic decisions the department needs to make on how it will construct a matrix and how it will involve informed community input. This is so important because it is the department's and the community's sense of justice that need to be aligned in order for there to be trust in the accountability system again. The public (and officers) need to know the types of misconduct officers can be charged with, the process of investigation, prosecution and the penalties available and they need to have access to see it in action for themselves. These are not revolutionary ideas, these are the fundamental basics of our

governmental system that center the right of access and the principle that “justice must be seen to be done”.<sup>20</sup>

It would be wrong, for example, if a matrix or guidelines were built with data from past decisions which do not deliver the penalties for misconduct that the community agrees officers deserve. For example, we do not want to introduce any type of scoring system that will fundamentally weigh mitigating factors in a way that means the status quo is maintained.

A disciplinary matrix is also not a static thing. We not only want the NYPD to design a system to implement a disciplinary matrix but one to update it regularly as well, again with ongoing opportunity for public input.

**COMBINE OBSTRUCTION OF GOVERNMENTAL ADMINISTRATION,  
RESISTING ARREST, AND/OR ASSAULT AND/OR DISORDERLY CONDUCT**  
(Lancman)(Preconsidered) and (Richards)(Preconsidered)

If the Council is trying to probe the path of cases civil rights and criminal defense lawyers have dubbed “the trifecta” or “contempt of cop” we recommend combining the reporting bills related to reporting on resisting arrest, assault and obstruction of governmental administration. We recommend requiring the reporting not from the police but from the District Attorneys. We also recommend adding disorderly conduct to the group of charges. We recommend not including other offenses, which may obscure the types of incidents you’re searching for evidence of.

**DISTRICT ATTORNEY OFFICES’ ACCESS TO POLICE PERSONNEL RECORDS**  
(Lancman)(Preconsidered)

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<sup>20</sup> See GEOFFREY ROBERTSON, THE TYRANNICIDE BRIEF: THE STORY OF THE MAN WHO SENT CHARLES I TO THE SCAFFOLD 145-147 (2005) (“Cromwell wanted to play to the larger gallery . . . so that the justice of the proceedings could be more widely appreciated . . . [because of terrible acoustics in the Hall] . . . [T]he judges were particularly concerned that justice must be seen to be done, because it would not be heard to be done. It would be read, at least: twelve short-hand reporters were permitted to form the first press gallery.”).

Civil Rights Law § 50-a expressly permits district attorneys to obtain officers' disciplinary records "in connection with official duties," the most obvious example being criminal prosecutions.<sup>21</sup> Recently, a public disagreement between the District Attorney of New York and the NYPD over the ability of the DA to view disciplinary files has made clear the recalcitrance of the NYPD to comply with their obligations, as well as the necessity for further, outside action.<sup>22</sup> For decades, the NYPD has "turned over disciplinary records of officers only when a prosecutor asks for a background check on an officer who is going to testify at a hearing or trial."<sup>23</sup> This bill, requiring NYPD to comply with all district attorney requests within 24-hours, represents a step in the right direction.

It is critical for prosecutors to ask for disciplinary records of arresting officers and to obtain these records quickly. Early decisions to decline prosecutions could prevent harmful, abusive prosecutions from going forward that are sometimes only initiated to deter police complaints from being filed. Disciplinary records are necessary to make full investigations into the merits of allegations and to probe the credibility of potential police witnesses, who will often be central to obtaining a conviction.

The sooner that prosecutors obtain officers' disciplinary records, and share them with defense, the easier defense can make an informed decision about the strength of the State's case. Wrongful prosecutions, for example based upon false arrests that are part of a pattern of documented misconduct, will be weeded out, and in strong cases, defense may sooner be persuaded to negotiate a plea.

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<sup>21</sup> N.Y. CIV. RIGHTS. L. § 50-a(4).

<sup>22</sup> James McKinley Jr., *Manhattan District Attorney Demands Access to Police Records*, N.Y. TIMES, (July 8, 2018), <https://www.nytimes.com/2018/07/08/nyregion/manhattan-district-attorney-police-records.html>.

<sup>23</sup> *Id.*

This will not only preserve judicial resources, but also directly effects the liberty interest of our clients. Each year, several of our clients' cases are dismissed by prosecutors based on red-flags found in officer disciplinary files. Requiring NYPD to share this information within 24 hours of request will lead to earlier dismissals in such cases. For individuals who have been ROR'ed or made bail, this means less money expended, and days of work, childcare, etc. lost due to going back and forth to court. For clients incarcerated during the pendency of proceedings, each day it takes to produce disciplinary records means another day confined in jail. And especially for incarcerated clients, who in many cases feel immense pressure to quickly plea in order to regain their freedom, and currently often do so before defense has access to any disciplinary information regarding their arresting officers, early access to this information can be the difference between a conviction and all of its collateral consequences and the decision to fight a case.

While this bill is a step in the right direction, its requirements could be made stronger in the following ways. First, as written, there is no way to ensure that NYPD is complying with the twenty four-hour records production requirement. At a minimum, District Attorneys should be required to report to the Council instances in which they are not receiving requested disciplinary histories from the NYPD in timely fashion.

We strongly believe that failure by district attorneys to request officers' disciplinary records: runs counter to prosecutors' duties to fully investigate the cases they bring; enables officers to continue patterns of unconstitutional, incredible, or otherwise unlawful arrests and/or practices; and, most alarmingly, increases the risks of prolonged incarceration of innocent clients, false convictions and false pleas. The public deserves to know which prosecutors are making these requests, or conversely shielding themselves from awareness of the misconduct

histories of officers they willingly call to the witness stand. Absent the council's ability to mandate that prosecutors' request these records, each District Attorney should be required to report when these requests are made.

### **DISTRICT ATTORNEY REPORTING REQUIREMENTS**

(Johnson) (Preconsidered)

Collectively representing the nation's largest provider of indigent defense, Legal Aid Society attorneys understand that prosecutors are trusted with wide discretion and wield tremendous power in our criminal courts. Through decisions such as what crimes to charge, whether to request bail and for how much, and what pleas to offer, prosecutors are the *de facto* sentencers in a great deal of our cases.

Such power necessitates increased transparency. In order for district attorneys to truly represent the will of the communities that elect them, it is imperative that the public be given the information to assess how they are using their considerable discretion. Members of the public will not be able to hold prosecutors accountable without such information.

For example, some District Attorneys have recently responded to the long-ignored voices of communities marginalized by mass incarceration, by running on campaign promises not to prosecute certain crimes.<sup>24</sup> These policies embody a criminal justice system influenced by democratic choices. Yet without public information on showing whether these promises have been kept, the public will not be able to make an informed choice on who they trust with the considerable power to prosecute, and will thereby continue to be shut out of informing decisions at the root of basic liberty.

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<sup>24</sup> See, e.g., Noah Maskar, *Court Watch NYC Aims to Make DAs Keep Their Promises*, PATCH, (Feb. 27, 2018), <https://patch.com/new-york/new-york-city/court-watch-nyc-aims-make-das-keep-their-promises> (Vance and Gonzalez . . . have each pledged leniency on certain charges such as turnstile-jumping and marijuana possession, which are disproportionately enforced against people of color."); Azi Paybarah, *Brooklyn D.A. Candidates Take Aim at Broken Windows*, POLITICO, (Apr. 19, 2017), <https://www.politico.com/states/new-york/city-hall/story/2017/04/brooklyn-da-candidates-tae-aim-at-broken-windows-policing-111317>;

The Legal Aid Society therefore supports this bill as a much-needed measure to shine a light on those representing “the People” in our criminal courts. We are especially encouraged by inclusion of reporting requirements for demographic data on those charged with crimes, which will allow for accountability surrounding racially disproportionate charging decisions, and decline to prosecute, which will allow the public to scrutinize the extent to which different District Attorneys ensure the fairness and integrity of criminal proceedings.

As written, the bill can most benefit from more complete reporting on bail applications made by prosecutors. Most obviously and immediately, the decision to request bail effects the liberty of individuals charged with crimes. Those who cannot make bail are subjected to heinous conditions in New York City’s jails, many of which have been well-documented.<sup>25</sup> But Legal Aid attorneys know all too well the further consequences of being warehoused in jail during the pendency of a case—loss of education and/or employment opportunities; loss of familial relations and even custody of children<sup>26</sup>; and a greater chance of receiving a carceral sentence at the culmination of one’s case.<sup>27</sup> Faced with the specter of years in jail awaiting trial, even clients privately pleading their innocence make understandable decisions to plead guilty.

As written, the data captured in District Attorney’s bail reports will fail to capture the full range of damage our bail system has wrought, and the extent to which prosecutorial discretion is to blame for it. First, the bill should be amended to include demographic information of all individuals for whom bail is requested. Publicly available data demonstrate distressing racial

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<sup>25</sup> See Michael Jacobson et al., *Beyond the Island: Changing the Culture of New York City Jails*, 45 FORDHAM URB. L.J. 373, 379-391 (overviewing a history of brutal conditions including “pervasive violence and...decaying and outmoded conditions” at New York City jails, as well as reform efforts, and citing contemporaneous media coverage of these abuses).

<sup>26</sup> Nick Pinto, *The Bail Trap*, N.Y. TIMES, (AUG. 13, 2015), <https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html>.

<sup>27</sup> Meghan Sacks & Alissa R. Ackerman, *Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?*, 20 CRIM. JUST. POL’Y REV. 1 (finding that pretrial detention “significantly and negatively” affects sentence length).

disparities in judicial grants of release versus bail during arraignments.<sup>28</sup> The first step to fixing this problem is understanding it. Without information on prosecutors' bail requests sorted out by demographic data, it will be impossible to determine the extent to which prosecutorial bias has contributed to these disparities.

Next, the District Attorneys should report on whether they have attempted to assess an individual's ability to pay before making a bail request. This reporting is critical to understanding whether, and which, District Attorney's offices view bail as a means to keep individuals in jail throughout the pendency of a case, instead of simply ensuring their returns to court—the only statutory determination on which bail decisions are to be based under New York State law.<sup>29</sup>

Lastly, while we it will certainly be useful to understand when in the course of proceedings cases are resolved and after how much time in order to study the criminal justice system and make real speedy trial guarantees, further information could illuminate the challenges that our clients who cannot make bail face. Additional reporting should include the stage of the proceeding at which a case is disposed of disaggregated by incarceration, as well as convictions resolved by plea agreement disaggregated by incarceration.

## **CONCLUSION**

We thank you for hearing our testimony today. We look forward to continuing to partner with the City Council in order to create meaningful accountability structures, informed by the needs and values of community members, that are a minimum to community trust in the NYPD.

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<sup>28</sup> Cynthia E. Jones, *"Give us Free": Addressing Racial Disparities in Bail Determinations*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 919, 938-945 (2013) (outlining fifty years of studies consistently finding that "African American defendants receive significantly harsher bail outcomes than those imposed on white defendants.").

<sup>29</sup> N.Y. CPL § 510.30(2)(a).