

THE LEGAL AID SOCIETY

Justice in Every Borough.

COMMENTS ON MAYOR DE BLASIO'S POLICING PLAN

New York City Council

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Mayor de Blasio's Policing Plan is the Bad Product of a Bad Process

On June 12, 2020, as New Yorkers joined people across the country in mass protests against longstanding patterns of police violence and harassment of Black and Latinx people, Governor Andrew Cuomo issued [Executive Order 203](#) (“E.O. 203”), directing the executives of local governments to convene the head of the local police agency and various stakeholders to develop a plan to improve policing “for the purposes of addressing the particular needs of the communities served by such police agency and [to] promote community engagement to foster trust, fairness, and legitimacy, and to address any racial bias and disproportionate policing of communities of color.”¹ The order specifically requires that those stakeholders include members of the community with an emphasis on areas with high numbers of police interactions, non-profit and faith-based groups, public defenders, and elected officials and to ensure their involvement in the development of a policing plan. An operations plan was meant to have been issued by September 2020, stakeholders were to have been convened in the early autumn, collaborative drafting was to have taken place in November and December, and a public comment period was supposed to have launched in January of this year.²

In New York City, none of this happened. For months following the issuance of the executive order, Mayor de Blasio’s office did nothing. In October 2020, the Mayor’s Office of Criminal Justice (“MOCJ”) reached out to Legal Aid and several other community-based organizations and prominent community leaders asking to form a leadership committee. In the absence of the operations plan contemplated by the executive order, some of the invitees requested information in advance of joining about how the process would unfold, hoping for some assurance that their input would be valued and that the process would not be dominated by the NYPD leaders and City Hall officials on the committee. It is important to acknowledge that many of those community invitees carried personal histories of violence and harassment by the police. Others were advocates from impacted communities wearied by long years of not being heard or respected by police and City leaders. Building trust should have been understood and foreseen as a critical prerequisite to the success of this process.

Unfortunately, it was not. Officials from Deputy Mayor Dean Fuleihan’s office, who were leading this process, did not respond to any of the inquires from invited stakeholders and, in advance of the meeting, issued public statements that suggested the meeting was a mere fig leaf for a process that would be entirely led by City Hall and the NYPD, leading some to decline to attend. Those of us who did attend the meeting made a good faith effort to help the Mayor’s staff understand the need for clarity around the process, particularly as a confidence-building measure

¹ Executive Order 203 (June 12, 2020), available at <https://www.governor.ny.gov/news/no-203-new-york-state-police-reform-and-reinvention-collaborative>.

² *New York State Police Reform and Reinvention Collaborative: Resources & Guide for Public Officials and Citizens* (August 2020), https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/Police_Reform_Workbook81720.pdf.

that could address community concerns that their inclusion was a “check-box” endeavor and that their voices would be drowned out or simply sidelined when police officials took the pen to draft the plan. Those efforts failed. After first promising to provide some response to attendees’ concerns, the Deputy Mayor’s office suddenly disbanded the committee by email on November 20, 2020. Since that point, there has been no communication between the Mayor or Deputy Mayor’s office and the stakeholders who are specifically required by the executive order to be included in the process.

As a result, the Mayor and NYPD took the police reform process entirely into their own hands, behind closed doors. In October, the NYPD launched a series of “listening sessions” that had the net effect of angering and further alienating communities. The sessions were rolled out chaotically, often with little notice. In-person invitations were limited to carefully selected individuals that created the appearance of bias (for example, in Staten Island, the district attorney was one of only a small group of in-person attendees, and there was no public defense representation); most of the public was relegated to online participation, and questions were carefully curated by an NYPD-selected moderator through online chat and Q&A functions. Community members played no role in setting the agenda for any of these meetings. Some meetings were dominated by presentations by NYPD officials rather than focusing on community input, creating the impression that the Department was more interested in public relations than in listening. Many people felt ignored. Several sessions involved tense exchanges, including one in the Bronx in which Commissioner Dermot Shea at first ignored a question about the NYPD’s brutal beating of protesters on June 4, 2020 in the Mott Haven section of the Bronx—where hundreds were trapped by the police and then beaten and arrested for a manufactured curfew violation—and then defended the Department’s actions and dismissed community concerns out of hand. In other sessions, community members directly challenged the legitimacy of the sessions as they unfolded, leading to awkward dynamics. The listening sessions were [publicly criticized](#) and it seems clear that they further undermined community confidence rather than engaged community input.³ At a City Council hearing on January 11, 2021, the Chair of the Public Safety Committee, Adrienne Adams, along with several other Councilmembers, rightfully excoriated the Mayor’s office and the NYPD for their failures of process and the additional and unnecessary damage they had done.

In the end, Mayor de Blasio’s decision to cede control of this process to the NYPD alienated impacted communities and other stakeholders, missing the opportunity presented by the executive order to bring together people with a diversity of experiences, perspectives, and voices, prioritize the calls of people whose lives have been directly affected by police harassment and violence, and ensure that a powerful police department did not dominate a truly inclusive process.

³Alice Fontier, Stan Germán, Tina Luongo, Justine Olderman & Lisa Schriebersdorf, *This is Sham Reform, But as Usual the Mayor and Commissioner are Dodging*, N.Y. Daily News (Dec. 15, 2020) <https://www.nydailynews.com/opinion/ny-oped-this-time-we-need-fundamental-nypd-reform-20201215-kg4hyd3jdnc57ntyq6smq27o2e-story.html>

Unsurprisingly, this flawed process produced an equally flawed plan. With a few exceptions, Mayor de Blasio's NYC Police Reform and Reinvention Collaborative Draft Plan – released in two Parts on March 5 and March 12, 2021 – consists of recitations of things the NYPD has been doing for years and promises of plans to later create an actual plan. It falls dramatically short of the transformative action required by this moment in history, reflects the same systemic and cultural flaws that have long plagued the NYPD's efforts to cure itself, and lacks legitimacy in the eyes of the New Yorkers it is intended to benefit.

The overwhelming majority of the specific proposals in Mayor de Blasio's plan merely expand upon NYPD initiatives that date back years. For example, six out of the seven proposals offered under the banner of "Recognition and Continual Examination of the Historical and Modern-Day Racialized Policing in New York City" consist solely of a re-commitment to training programs that have long been operational or, in the case of ABLE bystander training, that was announced last year. (Plan Part 1, Section III, pp. 21-22). The proposal to require supervisors to report biased-based policing in violation of NYPD rules has long been a Department rule, (Plan Part 2, Section II, p. 15), and the Early Intervention Program for identifying officers at risk of poor performance was rolled out more than a year ago at the direction of the federal monitor overseeing NYPD stop-and-frisk practices (Plan Part 2, Section III, p. 17). Several of the flagship elements of the plan – including the disciplinary matrix and the proposals to reduce the involvement of police in mental health calls, homeless outreach, schools, and enforcement of street vending rules – have been in development for years and, in the case of the disciplinary matrix, were imposed on the NYPD by mandate of this Council. These aspects of the Plan expose the Mayor's intention to validate rather than reform the way the NYPD works.

Some of the most innovative-sounding aspects of the plan – such as a commission to focus on racial justice and reconciliation and a commitment to develop a new citywide policy on biometric technology – are processes rather than outcomes and do no more than hold a vague promise of putting the City onto a better path. The second part of the Plan, released in a separate document on March 12, 2021, is particularly disappointing in its pronouncement of things like an "Ending Poverty to Prison Pipeline Initiative" (Plan Part 2, Section I, p. 7); a promise to "take affirmative steps to better the relationship between the Department and Muslim communities," (Plan Part 2, Section IV, p. 23); and an intention to "explore structural opportunities to ensure that health and human services are provided in a supportive client-centered manner" and ensure that such services are "trauma-informed" (Plan Part 2, Section I, p. 8-9). These proposals lack any concrete substance and are accompanied by text that reads more like a campaign stump speech than a policy plan. From a Mayor and police leadership that have done so much damage to the trust of advocates and impacted communities, such rhetoric is not enough.

The frequency with which the Plan takes up space congratulating the NYPD on its recent performance rather than engaging with longstanding problems is another sign of Mayor de Blasio's failure to take seriously New Yorker's calls for change. One of the proposals offered under the goal of "Recognition and Continual Examination of the Historical and Modern-Day Racialized Policing in New York City" consists entirely of self-congratulation about the drop in reported officer firearm discharges between 2013 and 2019, accompanied by no suggestion whatsoever for reform or improvement. (Plan Part 1, Section III, p. 21). Another proposal on this topic touts the NYPD's cooperation with the federal monitor in *Floyd v. City of New York* (Plan Part 2, Section II, p. 15), failing to acknowledge how that process has dragged on for seven years with the NYPD still not close to substantial compliance with most of the monitor's compliance metrics. A third proposal notes the NYPD's compliance with the requirements of the POST Act passed by Council last year, despite the fact that recent public comments highlighted the woeful deficiencies of the impact and use policies that NYPD released under that act (Plan Part 2, Section III, p. 18).

The plan's failure to tackle racially biased policing is particularly glaring. The City has offered no evidentiary basis to validate the effectiveness of any of its proposals in reducing bias in policing. For many of the proposals no such evidence base exists. Six of the seven proposals offered toward this goal in Part I of the Plan are nothing more than training initiatives – most of which rehash of old or existing trainings. (Plan Part 1, Section III at 20-23). The seventh proposal is a commission on "racial justice and reconciliation" with no clear mission, mandate or composition that, even under the most optimistic circumstances, holds no promise of change for Black and Latinx New Yorkers suffering the effects of racial bias in this critical moment. In 2021, it is not acceptable for the NYPD to offer vague future processes and stale training programs as the solution to racist policing. New Yorkers deserve better. The reconciliation process outlined in Part 2 of the Plan presents a more ambitious goal (Plan Part 2, Section II, p. 15), but is destined to fail unless City and police leadership can break the cycle of community alienation and process failure that characterized this reform process.

There are bright spots amidst the gloom. The proposal for the upcoming budget to double the size of the Cure Violence program – an initiative born in this Council that puts communities rather than law enforcement at the center of violence interruption and as a proven track records of success – is an unquestionably positive development that should be embraced by the Council. (Plan Part 1, Section IV, p. 27). Legal Aid also welcomes the Mayor and NYPD's support for passage of the Less is More Act and the START Act in the state legislature. (Plan Part 2, Section I, page 7 and page 10). But, taken as a whole, there is no escaping the conclusion that, at a time in history when bold action is plainly necessary, Mayor de Blasio's Policing Plan fails to meet the moment.

These problems would be less damaging if the Mayor had met the executive order's deadlines and left sufficient time for public input and for the Council's reasoned consideration. But here again, Mayor de Blasio failed New Yorkers and this Council. There will be little more

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than two weeks between the release of the Mayor's Plan and the Council's vote on the resolution, leaving the public and the Council a handful of days to attempt to influence a final outcome in advance of the April 1, 2021 deadline set by the executive order. That is unacceptable.

Any Council Resolution Relating to Mayor de Blasio's Policing Plan Must Expressly Acknowledge the Plan's Flaws and Limitations

Mayor de Blasio's Police Reform Plan is not a foundation for success. To take us forward, Council should acknowledge that and take steps to build a firmer foundation for the significant remaining work required to address the crisis in policing and the need to rebuild trust between the NYPD and the communities they are meant to serve.

Towards this goal, at a minimum, Council's resolution pertaining to Executive Order 203 should do the following:

1. **Acknowledge that Mayor de Blasio and the NYPD's police reform process disrespected New Yorkers directly impacted by police violence and abuse.** The Mayor's Police Reform Plan is the product of a process that did affirmative harm. The Council has an opportunity to begin to repair that damage by acknowledging it and avoiding any impression that a resolution relating to this Plan chooses to ignore – or, worse, endorse – that damage.
2. **Acknowledge that Mayor de Blasio's plan largely extends status quo policing strategies and fails to meet New Yorker's demands for transformative change.** Mayor de Blasio's failure of leadership produced a police reform plan with flaws that cannot be ignored and can only be fixed with more time than the Council has available to meet the Governor's April 1, 2021 deadline. To take us beyond this moment, the Council's resolution must acknowledge that Mayor de Blasio's plan offers little in the way of concrete solutions to the problems of the NYPD and is, at best, a starting point with much more work to be done.
3. **Make meaningful community engagement a prerequisite for any further reform processes.** At the heart of the present disaster is Mayor de Blasio and the NYPD's failure to meaningfully engage advocates and impacted communities. With the multitude of new processes, commissions, committees and inquiries delineated in the Mayor's Plan, Council has an opportunity to ensure that these mistakes are not repeated. Council should require that:
 - Any Patrol Guide Review Committee must expressly include and incorporate community input prior to the implementation of any proposed changes. (Plan Part 1, Section I, p. 15);
 - The comprehensive, independent review of structural racism (Plan Part 2, Section II, p. 15) must include a community engagement effort at least as robust than the one

- employed as part of the Joint Remedial Process undertaken as part of the federal monitorship in the *Floyd v. City of New York* litigation;
- The City must include a notice and public comment period for any policy changes that result from implementation of the policing plan -- including but not limited to any further changes to the disciplinary matrix (Plan Part 1, Section I, p. 14); the proposed plan to consolidate NYPD oversight agencies (Plan Part 1, Section, p. 15); any changes resulting from the examination of summons, arrest, and appearance ticket policies (Plan Part 2, Section I, p. 7); any new policies relating to school safety (Plan Part 2, Section I, p. 9-10); new policies relating to combatting sex trafficking (Plan Part 2, Section I, p. 10); the proposed “restorative justice policy” (Plan Part 2, Section II, p. 14); and the proposed Citywide policy on biometric technology (Plan Part 2, Section III, p. 19). Such notice and comment periods should include a clear timeline for the publication of draft plans and policies with sufficient notice to the public, as well as a timeline and transparent process for the implementing body (e.g., NYPD or CCRB) to consider all public comments and either incorporate public feedback or explain in writing why the body declined to incorporate that feedback into its final plan or policy. This requirement would strengthen the current plan’s vague commitment to “develop a policy regarding notice and public comment” (Plan Part 2, Section III, page 18) and take a small step toward correcting the lack of community and public input that went into the Mayor’s wide-ranging plan.
4. **Mandate transparency in all police reform proposals.** Mayor de Blasio and the NYPD have a well-established pattern of failing to commit to full transparency around NYPD policies and practices. This is particularly troubling given how much of the Plan centers on new assessments and reviews to further examine problematic NYPD practices. The Council should pay close attention to this issue and make explicit demands to ensure that transparency is a component of all reform initiatives. In particular, any Council resolution should specify that:
- The NYPD must provide the CCRB with direct, unfettered access to NYPD databases containing information routinely used for investigations, including body-worn camera (BWC) video, and not merely issue further meaningless pledges to shorten the time frame for sharing such material. (Plan Part 1, Section I, p. 14-15). Timely access to records is a prerequisite to thorough and impartial misconduct investigations. Direct access to police department databases is becoming increasingly common for civilian oversight agencies across the country. The Mayor’s Plan repeats the NYPD’s longstanding pattern of pledging, but failing, to fix problems with the delayed or denied production of critical evidence to the CCRB. The CCRB should have full access to the

- NYPD’s Evidence.com platform, online case management system, and the Council should make clear such direct access is the only viable solution.⁴
- The NYPD must make public “deviation letters” that set out the Police Commissioner’s specific rationale for exercising his discretion to deviate from guidelines set by the new disciplinary matrix. Although Commissioner Shea has suggested in press reports that these letters will be made public, the Mayor’s Plan worryingly does not make that commitment formal, despite placing the disciplinary matrix at the center of the plan. (Plan Part 1, Section I, p. 14). Making these documents public is critical to understanding whether the broad discretion the Commissioner retains over disciplinary decisions renders the disciplinary matrix ineffective in addressing the NYPD’s longstanding culture of impunity and tolerance of misconduct.
 - The NYPD must publish complete officer disciplinary histories. While the CCRB published an easily searchable database containing entire allegation histories and outcomes for all active members of service updated in real time, the NYPD Member of Service portal is extremely limited in scope, disclosing only the rare instances of formal charges and an administrative trial. The vast majority of police officer discipline occurs at the command level, and the NYPD continues to obstruct the spirit of the law by hiding that data. The Mayor’s Plan does nothing to change this. The Council should make clear that the dashboard should include all complaints that resulted in command level discipline; all complaints that were received and found unsubstantiated, exonerated, or unfounded following an IAB or other internal investigation; all charges and specifications; all settlements reached in lieu of administrative trials; and all penalties. (Plan Part 1, Section I, page 16).
 - All data and data analysis relating to the comprehensive data dashboard for use of force metrics and racial disparities should be regularly updated and made fully accessible to the public, following the example of other departments around the country, such as the [Seattle Police Department](#). (See Plan Part 1, Section I, page 16).
 - All data and data analysis relating to the assessment of current summons, arrest and desk appearance ticket practices, including the practices of District Attorneys’ Offices, should be regularly updated and made fully accessible to the public. (See Plan Part 2, Section I, p. 7).

⁴ Erin Durkin, *Body cameras aid police misconduct investigations, but CCRB faces hurdles getting footage*, POLITICO PRO (2020), <https://politi.co/2I1aFXy>; Eric Umansky, *The NYPD Isn’t Giving Critical Bodycam Footage to Officials Investigating Alleged Abuse — ProPublica* (2020), <https://www.propublica.org/article/the-nypd-isnt-giving-critical-bodycam-footage-to-officials-investigating-alleged-abuse>.

- All data and data analysis relating to the independent review of structural racism within the NYPD should be made fully accessible to the public. (See Plan Part 2, Section II, p. 15).

5. Withhold endorsement of Plan Part 1, Section II “Community Representation and Partnership.” The proposals in the “Community Representation and Partnership” section of Part 1 of Mayor de Blasio’s Plan represent perhaps the worst flaws of the plan as a whole. These provisions merely expand the NYPD’s existing approach to community policing, referred to as “Neighborhood Policing” or “Enhanced Neighborhood Policing.” As the Plan itself acknowledges, this policing strategy dates back to 2015.⁵ Far from “reinventing” or “reimagining” policing, this portion of the plan doubles down on an approach that failed to prevent, and in some cases contributed to, the injustices underlying the current crisis in policing.

There is no evidence that this model of policing is working and ample evidence that it is failing. The NYPD’s approach relies on police officers known as Neighborhood Coordination Officers (NCOs). The NCO program was first piloted in Far Rockaway, Queens in 2015 in response to activist demands for police reform in the wake of the NYPD killing of Eric Garner. Following a 15-month pilot, Mayor de Blasio and then-Commissioner O’Neill expanded the program to the rest of the city despite “little evidence that the program has helped bridge the divide between officers and the public.”⁶ At the time of the citywide rollout, Commissioner O’Neill said that the NYPD would gauge the effectiveness of the program “based on crime statistics and anecdotal evidence.”⁷ To date, however, there has been no publicly released evidence to suggest that the NCO program has affected crime statistics or increased community trust.⁸ This is despite the NYPD contracting with two separate entities to conduct reviews of the NCO program. The first, a Guidehouse LLP evaluation of the NYPD’s neighborhood policing strategic plan, has not been released to the public or to the Council despite being

⁵ See Plan Part 1 at 16 (“With the implementation of Neighborhood Policing in 2015, the City and the NYPD have made engagement with residents a priority.”)

⁶ Ashley Southall, *Community Policing Expands in New York, but Some Question if It Works*, N.Y. Times (Aug. 17, 2016), <https://www.nytimes.com/2016/08/18/nyregion/community-policing-expands-in-new-york-but-some-question-if-it-works.html>.

⁷ *Id.*

⁸ Samar Khurshi, *Long-Promised Study of De Blasio’s Neighborhood Policing Program Delayed Into His Final Months In Office*, Gotham Gazette (Sept. 29, 2020), (“The program helped the administration and the City Council justify adding more than 1,000 officers to the police department and was meant to bridge a yawning trust gap between officers and communities and help reduce crime at a local level.” “[T]hey have yet to produce any evidence that can directly support that conclusion despite promising for years that they will do so.”), <https://www.gothamgazette.com/city/9791-de-blasio-nypd-neighborhood-policing-study-late>; Indeed, a key component of the NCO program—“Build the Block” meetings—which were intended to build community trust have resulted in low turnout and a failure to reach targeted audiences with whom police – community relationships are strained. See Roshan Abraham & Angely Mercado, *NYPD’s Neighborhood Policing Meetings Aren’t Reaching Intended Audiences*, City Limits (Apr. 24, 2018), <https://citylimits.org/2018/04/24/nypds-neighborhood-policing-meetings-arent-reaching-intended-audience/>.

requested by Council Members.⁹ The second, a RAND Corporation study commissioned in 2018 to evaluate the impacts of the Neighborhood Policing model on crime, public safety, and the public’s trust in the police, has yet to publish any results.¹⁰ The Mayor should not ask the Council to endorse a strategy that is in the middle of a critical initial evaluation without providing Council with any even preliminary sense of the results of that evaluation.

In the meantime, there are worrying indications that NCOs behave in ways that undermine community trust. Two prominent examples include NCO Detective Fabio Nunez’s brutal assault of a young man over a noise complaint in Washington Heights, which is the subject of litigation brought by the Legal Aid Society,¹¹ and the NCO who gouged a Bronx woman’s eye out and denied her prompt medical care during a low-level non-violent encounter.¹² Based on recently released disciplinary records, the Legal Aid Society is analyzing NCO disciplinary data and, while our analysis remains a work in progress, it is clear that a significant number of NCOs have been the subject of CCRB complaints, lawsuits, and other misconduct allegations, casting some doubt on the notion that the NCO model is a basis for avoiding past patterns of police-community interactions that have strained relationships.

In addition to these questions about the fundamental merits of the NYPD’s strategy, many of the proposals in the “Community Representation and Partnership” section of the Plan are obvious public relations exercises disguised as community engagement. For example, the Plan’s proposals to fund the NYPD to rehabilitate NYCHA basketball courts and Parks Department properties and to involve the NYPD in free youth sports programs (*see* Plan Part I at p. 20), is a shameful effort to take popular initiatives that properly belong in the purview of City social service agencies and use that popularity to bolster the image of the NYPD. Worse, these proposals threaten to divert resources away from social service agencies like NYCHA and the NYC Parks Department – whose budgets have been slashed by Mayor de Blasio – and put toward the NYPD’s already bloated budget. Likewise, programs like “Pop Up with a Cop” enmesh NYPD officers in community-led initiatives like food pantries, unnecessarily blending social service delivery with law enforcement and expanding the presence of the NYPD in communities at a time when many in those communities are asking for the exact opposite.

⁹ Greg B. Smith, *De Blasio’s ‘Stalled’ Pet NYPD Neighborhood Policing Plan Draws Outside Look*, The City (Jul. 23, 2020), <https://www.thecity.nyc/2020/7/23/21336402/de-blasios-nypd-neighborhood-policing-plan-draws-outside-look>.

¹⁰ RAND Corporation, *What is the Impact of NYPD’s Neighborhood Policing?*, https://www.rand.org/content/dam/rand/pubs/corporate_pubs/CP900/CP919-2019-01/RAND_CP919-2019-01.pdf.

¹¹ Alice Speri, *More than Two Years After Viral Chokehold Video, NYPD Officer has Faced No Discipline*, The Intercept (Feb. 25, 2021), <https://theintercept.com/2021/02/25/nypd-chokehold-discipline-fabio-nunez/>.

¹² John Annese & Rocco Parascandola, *Bronx woman who accused cop of ripping her eye out gets \$1.25 million settlement from city*, N.Y.D.N. (Sep. 10, 2020), <https://www.nydailynews.com/new-york/nyc-crime/ny-bronx-woman-eye-gouged-out-settlement-20200910-vszhxqjqobgl5k3z63ovnabvmi-story.html>.

Council should not further alienate New Yorkers by endorsing a police reform plan that seeks to gloss over and distract from, rather than address, the deeply rooted problems within the NYPD, and which facilitates the NYPD's strategy of dominating public services in a manner that starves necessary city agencies of resources and fuels the unnecessary growth of the NYPD's budget.