



January 5, 2021

Civilian Complaint Review Board

Attn: Heather Cook, Esq.

100 Church Street, 10th Floor

New York, NY 10007

Via Email to [ccrbrules@ccrb.nyc.gov](mailto:ccrbrules@ccrb.nyc.gov)

**Re: Miscellaneous Rule Amendments, Including Sexual Harassment**

Dear Chair Davie, Executive Director Darche, and Members and Staff of the Civilian Complaint Review Board:

Girls for Gender Equity (GGE) writes to the CCRB in strong support for interpreting jurisdiction to include sexual misconduct by members of the NYPD. Now with the opportunity to submit written comments on this proposed rule, GGE is offering recommendations to strengthen and clarify the language used.

According to the December 2020 Report of the CCRB, in the past year the people of New York formally reported allegations of verbal sexual harassment, sexual humiliation, sexual/romantic propositions, including substantiated allegations with instructions and charges.<sup>1</sup> GGE works daily with young women and girls of color who are policed at every juncture of their lives: in their communities, on the way to school, within and in proximity of their school buildings, and while accessing City services. In December, for the first time, the NYPD concluded that one of the department's employees engaged in racial profiling – a school safety agent.<sup>2</sup> In 2018, when BuzzFeed released thousands of records of misconduct cases, we found anecdotes involving school safety agents behaving inappropriately with students, such as wrongful searches, simulating sexual gestures, engaging in sexual activity

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<sup>1</sup> *Executive Director's Monthly Report December 2020 (Statistics for November 2020)*. Retrieved from [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/monthly\\_stats/2020/20201209\\_monthlystats.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/monthly_stats/2020/20201209_monthlystats.pdf).

<sup>2</sup> See

<https://gothamist.com/news/the-nypd-substantiated-its-first-complaint-of-biased-policingbut-not-against-an-actual-officer>.

on school premises, digital harassment, harassing remarks, and utilizing Department of Education computers inappropriately.<sup>3</sup> It is with this context and organizational experience that we offer the recommendations in the following pages.

Researchers agree that while the issue of police sexual misconduct is often invisible in public discourse around racial profiling and police violence, it is both prevalent and systemic. National research and research conducted by community organizations across the country, including here in NYC, reveals that targets of police sexual misconduct include those who are not likely to be believed if they come forward, such as young women and LGBTQ youth. Studies by researchers at the CUNY Graduate Center found that two in five young women reported sexual harassment by the NYPD.<sup>4</sup>

GGE again applauds the expansion of CCRB's investigatory purview to include claims of NYPD sexual harassment and assault and looks forward to continuing conversation with the CCRB on this issue.

**GGE writes with the following recommendations for further amendments:**

PROPOSED RULE PAGE 5

CCRB's Proposed Language:

**Abuse of Authority.** The term "Abuse of Authority" refers to misusing police powers. This conduct includes, but is not limited to, improper searches, entries, seizures, property damage, refusals to provide identifying information, intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions, and sexual misconduct.

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<sup>3</sup> Retrieved from

<https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database#.uf5OLLlaN>.

<sup>4</sup> Brett G. Stoudt, Michelle Fine, and Madeline Fox, Growing Up Policed in the Age of Aggressive Policing Policies, 56 N.Y.L. Sch. L. Rev. 1331 (2011); Fine, M., N. Freudenberg, Y. Payne, T. Perkins, K. Smith, and K. Wanzer, "Anything can happen with police around": Urban youth evaluate strategies of surveillance in public places. Journal of Social Issues 59:141-58 (2003).

GGE Recommends:

We recommend front-loading an expanded definition of sexual misconduct to include sexual harassment sexual assault.

The language would then read:

Abuse of Authority. The term "Abuse of Authority" refers to misusing police powers. This conduct includes, but is not limited to, improper searches, entries, seizures, property damage, refusals to provide identifying information, intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions, **sexual harassment, sexual assault and other sexual misconduct.**

#### PROPOSED RULE PAGE 7

CCRB's Proposed Language:

**Sexual Misconduct.** The term "Sexual Misconduct" encompasses misconduct of a sexual nature alleged by a civilian against a member of the Police Department. It includes, but is not limited to, the following examples of misconduct: verbal sexual harassment; sexual harassment using physical gestures; sexual humiliation; sexually motivated police actions such as stops, summonses, searches, or arrests; sexual or romantic propositions; and any intentional bodily contact of a sexual nature, including but not limited to, inappropriate touching, sexual assault, rape, and on-duty sexual activity.

GGE Recommends:

Add sexual intimidation, coercion and extortion. We ask that "using physical gestures" be expanded to include *expressions*, and we ask if the limitations of "gestures" led to a low number of reported allegations in 2020 as reported in December's year-to-date report.

Include *digital and written* with verbal sexual harassment to be inclusive of text-based communication or otherwise. To again reference the BuzzFeed database – which includes anecdotes of Facebook and phone harassment of students by NYPD employees.<sup>5</sup>

Include *taking unwarranted photographs or videos or voyeuristic actions* and also *use of personal information, including telephone numbers, obtained from individuals in the course of duty for other than legitimate purposes.*

Revise “inappropriate touching” to *groping*, as inappropriate is far too subjective a word choice.

Explain “on-duty sexual activity” to indicate more of a spectrum of coercive sexual contact. In the 2018 CCRB memo, the example scenario described a coercive situation involving a parent whose child was detained in the precinct.<sup>6</sup> We offer a potential revision of *engaging in sexual activity while on-duty*, as that clarifies that there is a difference between “on-duty” activity, which implies part of job or during a break, and then activity while on duty, including all time spent. We also encourage the inclusion of the use of an official position, official identification cards or badges, or any use of department property or vehicles, to coerce, persuade, force or initiate or engage in sexual contact with anyone or to solicit sexual conduct while off duty. We would appreciate more clarification from the CCRB on how the Board intends to navigate on- and off-duty activity and what is included in all contexts. As an example, according to the International Association of Chiefs of Police 2011 report, as cited by Andrea Ritchie’s presentation before the CCRB, police sexual misconduct spans a range of behaviors: sexual harassment of members of the public; taking unwarranted photos/videos; sexual humiliation/degradation during frisks and searches – “stop and grope”; unwarranted traffic and street stops, callbacks, searches, strip searches; sexual assault; forcible rape; extortion of sex in exchange for leniency; off duty sexual violence facilitated by the badge; and consensual on-duty sexual activity.

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<sup>5</sup> Retrieved from

<https://www.buzzfeednews.com/article/kendalltaggart/nypd-police-misconduct-database#.uf50LLlaN>.

<sup>6</sup> Memorandum Accompanying Public Vote. Retrieved from

[https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/20181402\\_boardmtg\\_sexualmisconduct\\_memo.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/20181402_boardmtg_sexualmisconduct_memo.pdf).

We ask the CCRB for clarity on the decision not to define “sexual harassment.” We encourage the CCRB to rely on the definition of sexual misconduct that mirrors the City Human Rights Law or Human Rights Commission’s broad understanding of sexual harassment.

We ask the CCRB for clarity on the decision to utilize “of a sexual nature” in comparison to discrimination or harassment that is gender-based. Our concern is that the scope then becomes too narrow or limited to deferring to sexual desire, neglecting instances of sexual violence arising from gender discrimination. A potential reframing may be *misconduct of a sexual nature or motivated in whole or in part by the civilian’s actual or perceived gender or gender presentation*.

Finally, we applaud the CCRB for utilizing “a member of the Police Department” in this definition. Currently, pathways for reporting harmful experiences with school safety agents and other peace officers must also go to the NYPD Internal Affairs Bureau. Young people who have experienced reportable harm by school safety agents must have their reports handled by the NYPD. CCRB can and should be the primary agency for these reports.

The language would then read:

**Sexual Misconduct.** The term “Sexual Misconduct” encompasses misconduct of a sexual nature **or motivated in whole or in part by the civilian’s actual or perceived gender or gender presentation** alleged by a civilian against a member of the Police Department. It includes, but is not limited to, the following examples of misconduct: verbal, **digital, and written** sexual harassment; sexual harassment using physical gestures **and expressions**; sexual humiliation; **sexual intimidation and coercion; taking unwarranted photographs or videos or voyeuristic actions; use of personal information, including telephone numbers, obtained from individuals in the course of duty for other than legitimate purposes;** sexually motivated police actions such as stops, summonses, searches, or arrests; sexual or romantic propositions; and any intentional bodily contact of a sexual nature, including but not

limited to, **groping**, sexual assault, rape, and **engaging in sexual activity while on duty**.

CCRB's Proposed Language:

**Sexual Humiliation:** The term "Sexual Humiliation" refers to incidents in which an officer gratuitously shames or degrades a civilian in relation to their sexual organs or sexual behavior.

GGE Recommends:

Delete the word "gratuitously" as "shames or degrades" does not need a qualifier.

Replace "sexual organs" with *body in part or in whole, physical attributes, attire, appearance, or gender expression*. The language "sexual organs" is far too limited to physiology, at the expense of ignoring a person's presentation or appearance.

Include *in relation to the officer's body or self*. In the February 2018 memo of the CCRB a situation is describe where an officer makes reference to themself, i.e. "You see me? I'm a big guy..."<sup>7</sup>

The language would then read:

Sexual Humiliation: The term "Sexual Humiliation" refers to Incidents in which an officer **shames, degrades, or harasses a civilian in relation to their body, in part or in whole, physical attributes or appearance or gender expression or sexual behavior, or an officer uses or refers to their own body or attributes to harass, shame, or degrade a civilian.**

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<sup>7</sup> Retrieved from

[https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/20181402\\_boardmtg\\_sexualmisconduct\\_memo.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/20181402_boardmtg_sexualmisconduct_memo.pdf).

CCRB's Proposed Language:

(15[4]) **Other Misconduct Noted:** the Board found evidence during its investigation that an officer committed misconduct not traditionally investigated by the Board, but about which the Police Department should be aware.

GGE Recommends:

It would be beneficial to the mission of misconduct transparency that the categories of other misconduct be disaggregated in a way that the public can understand. We would be especially concerned with misconduct that is adjacent to sexual misconduct but does not cleanly fit into the definitions of that category.

## **Conclusion**

GGE strongly supports and encourages increased public transparency and reporting on this issue, including through a commitment to a detailed and designated report on police sexual misconduct. Finally, we would also urge the CCRB to increase public awareness of CCRB's full purview over NYPD sexual misconduct. Given limited governmental resources, we urge the CCRB to leverage existing resources to track and report data on complaints and use its policy power to recommend measures to prevent and address NYPD sexual misconduct in a systematic way, perhaps through partnerships similar to what has been launched with the Young Men's Initiative.

As we understand it, as of January 2020, the CCRB was only handling Phase 1 complaints as they were training their staff for Phase 2 expansion. With the designated hearing set for January, we would appreciate an update from the Board on any relevant developments on this.

For questions or more information from GGE, please contact Charlotte Pope at [cpope@ggenyc.org](mailto:cpope@ggenyc.org).