

Sent Via Email

July 8, 2020

Donovan J. Richards, Chair
Committee on Public Safety
New York City Council
250 Broadway
New York, NY 10007

Re: NYPD Police Property Seizure During the Recent Black Lives Matter Protests and COVID-19

Dear Chairman Richards and Public Safety Committee Members:

The protests ignited by the murder of George Floyd have sparked renewed debate around the country and in New York City about police conduct and accountability, including this Committee's consideration of new legislation on June 9, and Attorney General Leticia James' investigation into the NYPD's brutal response to the protests. We write to draw your attention to a host of police property seizure and retrieval issues documented during the protests. These practices are only the most recent manifestations of long-standing abusive police practices.

For decades, public defenders have advocated for greater due process and transparency in the NYPD's handling of personal property, most recently culminating in the Council's enactment of Admin. Code § 14-169 ("Local Law 131") in 2017 and The Bronx Defenders' settlement of the federal lawsuit *Encarnacion v. City of New York* in 2018. Yet many problems remain, including deeply troubling practices highlighted in the experiences of people swept up in the mass arrests during the recent protests.

Despite the passage of Local Law 131, the NYPD has not complied with reporting and transparency requirements in connection with its property seizure practices. The NYPD failed to publish any of the 2019 data required by the law on March 1, 2020. Subsequently, it issued a one-page report that by its own admission included "only a subset" of the required data because the "Department is in the process of upgrading computer systems to more efficiently track and report on this data."

I. Mass Protest Arrests Led to a Complete Breakdown in an Already Dysfunctional Property Seizure and Retrieval Process

Unlike most arrests, which begin with processing at a local precinct, protestors who were arrested over the past few weeks were all taken to a single location (often One Police Plaza) regardless of the borough they were arrested in, pursuant to the NYPD's "coordinated arrest processing procedure." Many arrestees were released without their essential property — including wallets, phones, house keys and prescription medication — with no means of retrieving it, because the Property Clerk office at One Police Plaza was closed to the public. Other people were released after arrest without photo identification because officers simply forgot to give the ID back after running warrant checks. The confusion caused by the mass arrests led to a total breakdown in an already dysfunctional process. In addition, officers confiscated a number of bicycles from protestors, failing to voucher them and in some cases simply discarding them on the street.

One particularly shocking story involves a protestor who spent a day in the hospital and another in bookings after he was beaten by police officers during his arrest, suffering a fractured kneecap. When he was finally released from custody, he returned to One Police Plaza to retrieve his belongings, which included his house keys and phone. Upon arrival, however, he was informed by officers that the building was closed to the public and he should

return the next day. The next day, which was June 3, he called One Police Plaza and was once again informed that the property clerk window was closed that day. Ultimately he was not able to access his property until the following day, and only because he went to the window at 9:30am, when it first opened. In the meantime he was forced to sleep at a friend's house while dealing with this severe injury, as he was unable to unlock the door to his apartment without his keys.

Other people who were arrested were not provided with the legally required paperwork ("voucher") documenting their seized property and providing instructions on how to retrieve it. Despite long-standing City rules and a federal consent decree in *Encarnacion v. City of New York* that both require police to provide people their vouchers, the NYPD continues to fail in this regard--even after extensive department-wide training. The Bronx Defenders has collected survey data showing that of our clients in the Bronx, half of people whose property was seized during an arrest did not receive complete vouchers, and many did not receive any paperwork at all.

II. COVID-19 has Exacerbated Problems Retrieving Cell Phones and Cars which are Critical Necessities During the Pandemic

The global COVID-19 pandemic has made the already-byzantine process of retrieving critical property such as cell phones even more difficult. For example, if an officer mislabels a phone as Arrest Evidence (asserting that the property *could* have evidentiary value in the criminal case), the claimant must seek written permission from the District Attorney's office ("DA office") authorizing the NYPD to release it. The DA office has 15 days to issue the written release or provide a legal justification as to why it will not agree to release the phone. In the Bronx, the DA office maintains a public facing Property Release Unit window in the courthouse where these requests must be submitted, but it reduced its hours of operation on March 16, 2020 and closed the public window altogether the following week. It has remained closed to date. Although advocates in our office have been able to contact the unit by phone and email and have also confirmed they can accept *pro se* requests by phone, there are no signs or information posted informing claimants of this when they seek return of their property at the courthouse.

Even cars, which are critical to life necessities during the pandemic and for some their ability to continue to earn a livelihood, have been stuck in this process. Under a 2007 federal court order, vehicles are supposed to receive greater due process consideration because of their significance. Typically, if the NYPD mislabels a car as Arrest Evidence and the DA Office does not provide a release, the owner can then ask the Criminal Court judge to review this and order the vehicle to be released by the DA office. However, since March 22, 2020, NYC Criminal Courts are only open for "essential matters" such as arraignments and emergency applications, and defense attorneys have been precluded from filing motions to compel the release of a vehicle as essential, or even to request an off-the-record case conference to discuss the matter. Furthermore, all other criminal matters and court dates have been postponed indefinitely during the pandemic. During the pandemic, anyone who received a Desk Appearance Ticket, as opposed to being processed through central booking and arraignments, has not had an initial court appearance and has not been appointed a lawyer who might be able to assist in the property retrieval process. This affects a large number of people since DAT's have been mandatory for most misdemeanor offenses and even some felony offenses since January 1, 2020.

III. Longstanding Abusive NYPD Property Practices Continue Unchecked

The improper seizure of people's property under the auspices of investigation and law enforcement is not solely an issue arising out of COVID-19; it has existed for years and is a consequence of the invoicing officer's tremendous discretion afforded by Admin. Code § 14-140 as to how and when to seize property. As observed by the leading practitioner and scholar on New York City police property seizure, Steven L. Kessler, the mislabeling of seized property "is one of the final frontiers of governmental abuse" following earlier legal reforms governing police property seizure. "The reason for this is simple: the labeling of property is inherently an act of government discretion, time consuming and expensive to challenge and review, and easily capable of abuse." In addition to mislabeling people's belongings as "Arrest Evidence," the NYPD also improperly robs people of their personal necessities through the use of Investigatory holds and Civil Forfeiture.

The NYPD, through its Civil Enforcement Unit, seizes and classifies money and cars for Forfeiture by asserting they were used as part of a crime. Although the NYPD states that this is to "deprive criminals of financial

benefits and instrumentalities of their crimes,” it has been weaponized in low-level, misdemeanor arrests. It relies on Admin. Code § 14-140, enacted in 1881 and largely unchanged since then, which is completely devoid of due process. Furthermore, this provision is wholly unnecessary in light of the District Attorney’s authority to pursue criminal forfeiture under Penal Law Article 480 or civil forfeiture under Civil Practice Law and Rules (“CPLR”) Article 13-A. In most cases, the NYPD never files a civil forfeiture action in court, often because the claimant is unable or does not know how to make the requisite legal demand that requires the NYPD to even begin the process.

Because the NYPD has failed to comply with Local Law 131, the complete picture of how many cars and how much cash is ensnared in this process has not been revealed. Local Law 131 requires the NYPD to disclose the dollar amount of currency and the number of vehicles classified and held for Forfeiture. The law further requires that this information be disaggregated by borough, police precinct, the month that the property was vouchered, and noting the amount of money and the number of vehicles returned to claimants. In its limited 2019 data, the NYPD only reported the amount of currency and cars retained through a court judgment or settlement in a civil forfeiture case. The report states that only \$3,616.42 in currency was permanently retained through settlement agreements in a civil forfeiture claim, and \$0 from a court judgment in the NYPD’s favor. Similarly, the NYPD reported only 35 cars retained after settlement or judgment in civil forfeiture actions. If the NYPD reported the amount of currency and the number of vehicles seized and initially held as Forfeiture, these figures would be far greater. Moreover, this does not reflect the amount of currency that remained “unclaimed.”

Indeed, the NYPD also has the power to indefinitely hold low-income people’s cars, cell phones, and other property for “investigatory” purposes with absolute discretion on whether or not to release it. Often, the police hold people’s belongings for years without concluding their investigation or even providing the property owner a justification for holding it. In one case, the NYPD improperly vouchered a client’s iPhone seized at the time of arrest as Investigatory evidence. When the client made an inquiry with the Property Clerk, she was told that she needed a written release from the DA’s office since the criminal case was pending. This information was incorrect. A District Attorney’s release was not needed. An inquiry as to whether or not the phone was actually needed for an investigation should have been sent to the arresting officer by the NYPD staff who attended her. At the time, she was not informed of this and decided to wait until the case was resolved to follow up on her property believing it would be much easier to do it then. Two years later, In January of 2020, her case was finally concluded. She was referred to a Civil Legal Advocate at the Bronx Defenders to assist her in retrieving her property, only to learn that her cell phone was marked for destruction in May 2019, and it was actually destroyed in August 2019. The category was always left as Investigatory, and the officer never made any remark on the voucher to notify that a hold was needed for an investigation. She is still paying the cell phone off.

IV. Conclusion and Demands

First, the Committee should hold an oversight hearing on the NYPD’s failure to comply with Local Law 131 and require it to provide the required data. The Committee should also use the hearing to investigate the abusive property seizure practices described above. Additionally, we recommend that the Council should:

1. Require the NYPD to establish means for people to obtain and submit documents and information to the Property Clerk Division via email and phone, to minimize the need for time-consuming in-person trips, which are particularly dangerous now during the pandemic. The Property Clerk Division must respond to such requests within 48 hours.
2. Abolish the NYPD’s authority to bring civil forfeiture actions under Admin. Code § 14-140, which is outdated and unnecessary.
3. Expand the opportunity to seek judicial review of Arrest Evidence holds to all forms of property including cell phones, as already required for vehicles by *Krimstock v. Kelly*.
4. Require the NYPD to release property held as Investigatory evidence upon request unless they obtain a judicial warrant.
5. Institute oversight, audits, and consequences for officers’ failure to provide people with voucher paperwork documenting the seizure of their personal property.

Sincerely,



Adam Shoop, Legal Director, Civil Action Practice
Ivan Bohorquez, Legal Advocate, Civil Action Practice
Maryan Rosa, Legal Advocate, Civil Action Practice
Niji Jain, Staff Attorney, Impact Litigation Practice

cc:

Ernest F. Hart, Deputy Commissioner of Legal Matters
New York City Police Department
One Police Plaza
New York, NY 10038
Sent Via Email