

**Testimony of
The Legal Aid Society**

at a public hearing on

**The Report and Recommendations of the New York State/New York City
Mental Health Criminal Justice Panel**

Presented to:

**The New York City Council Committee on Public Safety and
the Committee on Mental Health, Mental Retardation, Alcoholism, Drug
Abuse and Disability Services**

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Introduction

Good morning. My name is Claudia Montoya, attorney for The Legal Aid Society's Enhanced Defense-MICA Project. The Legal Aid Society welcomes the opportunity to testify at this joint public hearing before the New York City Council Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse and Disability Services and the Committee on Public Safety regarding Int. No. 799 which requires the New York City Police Department (NYPD) to create and maintain a database of information collected after police contacts with emotionally disturbed people.

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 295,000 cases and legal matters for poor families and individuals. The services we provide reflect the entire gamut of the needs of our clients, from immigration representation for the newest arrivals, to health care benefits for the oldest New Yorkers.

By contract with New York City, The Legal Aid Society serves as the primary defender of poor people prosecuted in the State court system, at both trial and appellate levels. Although newer public defender agencies have been created in New York City, the Society continues to serve as the primary defender and play the central defense role in the City's criminal justice system. The Society is involved in the planning or implementation of specialized court parts dealing with mental health, drug treatment, domestic violence and juvenile offenders. The Society has also sought to compel the State to fund more residential placements for persons with both a mental illness and a chemical addiction (MICA) and has been involved in seeking better

discharge planning for mentally ill inmates so that they have the medication, housing and counseling they need immediately upon release.

The Legal Aid Society employs nearly 50 forensic social workers in the Criminal Defense Practice. Within this large practice is our Enhanced Defense MICA Project, which is geared to break the cycle of arrest by fostering long-term psychiatric and substance abuse treatment among New Yorkers charged with crimes who are dually-diagnosed with serious mental illness and substance abuse/dependence issues. The Society's project teams attorneys and licensed social workers who are experienced in working with clients who have both mental illness and addiction. In addition to providing basic criminal defense legal services, project teams will link clients with other governmental agencies, community-based treatment providers and advocacy groups, and provide case management services to ensure that clients remain in treatment. Additionally, project staff provides training and consultation to other attorneys and criminal justice professionals and also spearheads advocacy for systematic reforms in New York City.

Since the Project's inception in 2002, we have screened over 1200 defendants. Almost 600 have successfully completed the prescribed monitoring period. A recent review of recidivism among our client caseload showed a 50% reduction in re-arrests. In the past year alone the staff consulted on an additional 1200 cases. We dedicate our efforts to improving the quality of services available to our clients in order that their chances of a return to the criminal justice system can be minimized. Whether measured by the volume of cases handled and or the expertise and support provided to each and every client the Society's dedication to constituents living with mental illness is unmatched in the criminal justice field.

Int. No. 799

Int. No. 799, requiring the police department to create and maintain a database of information collected after police contact with emotionally disturbed people (as defined in the New York City Patrol Guide), needs revisions in certain respects that we have detailed below in this testimony in order to protect constituents who may be emotionally disturbed. We agree that there is a need for comprehensive changes to current EDP procedures and policies. However, the proposed legislation should be revised to address the complex issues impacting police responses to EDP calls. First and foremost, the proposed legislation should require best practices in the police department's training and responses to EDP calls. Further, revisions are needed to make sure that the required database provides the police with the most relevant and timely information needed to effectively manage each and every EDP call. The current version of the legislation may both violate the confidentiality rights of constituents who would be included in it and potentially misidentify EDPs as a person with mental illness.

Concerns and Recommendations

This proposed legislation seeks to create and maintain a NYPD database of any individual perceived by the police to be a person with mental illness who is conducting him or herself in a manner likely to result in serious injury to self and others. If enacted, this database would allow the NYPD to track, at a minimum, the "names, addresses and nature of the incident" for all EDPs transported to a local hospital. The proposal raises serious concerns for following reasons:

- Police responses to EDP calls are all unique in terms of the nature of the crisis, the current

presenting behaviors of the EDP and other important facts such as the presence of weapons, hostages, suicidality etc. This vital information is unique to the specific 911 call.

Consequently, the proposed database would not provide responding police with the most timely and relevant information related to the 911 call. For example, information collected on John Doe two years ago might be completely irrelevant to the present call. It is well established that persons with mental illness can experience different symptoms and present varying behaviors at different times. Using dated and possibly misleading information about prior EDP responses could jeopardize the safety of all involved. A more effective way to inform police responding to EDP calls should focus on collecting the most relevant information during the current 911 call. This would require training 911 dispatchers to better elicit crucial information from the 911 caller. Implementation of such a training protocol is one of the recommendations made by the New York State/New York City Criminal Justice Panel in June 2008 (“Panel” hereafter).

- The legislation should also be revised to address the inadequate training provided to police officers responding to EPD situations. Far too many EDP calls result in the subject of the EDP call being arrested or injured. Likewise, too often police officers are injured during the intervention. Police responding to these EDP calls are not adequately trained in understanding mental illness, substance abuse, and trauma, nor do they have the skills to most effectively engage this population and de-escalate highly volatile situations. The Panel recommended a review of NYPD training to reflect “best practices,” and the legislation should be amended to address this police training issue. We recommend that the New York City Police Department be required to create Crisis Intervention Teams (CIT) to improve police encounters with persons with mental illness. The nationally recognized CIT model

provides police officers with extensive training on mental health issues and crisis intervention techniques and teams police officers with mental health professionals who together respond to EDP calls. The CIT programs are closely linked with the community mental health system which provides resources for resolving EDP calls in an effective and humane manner. This model has been adopted in thirty-five states. The outcome studies indicate that CIT programs are successful in reducing arrests and re-arrests, increasing referrals and participation in mental health treatment, reducing officers injuries, reducing involvement of SWAT teams, and decreasing police shootings of individuals with mental illness.

- The proposed legislation should also be amended to take into account the reality that many EDP calls are generated in situations involving persons who have no mental illness. For example, a person under the influence of mind altering substances, one suffering from a medical crisis (seizure or reaction to a medication), or someone who experienced a significant trauma or loss of a loved one might all be the subject of an EDP and require transport to a local hospital. These EDP subjects have no mental illness and should not be subject to database monitoring, particularly in light of the possible stigmatization of persons listed in the database (non-mentally-ill and mentally –ill).
- The current language in the legislation is overly broad and does not specifically instruct the NYPD and DOH-MH what information other than “name, address and nature of the incident” should be collected and entered into a database. Any “pertinent information” collected for the a database cannot violate the EDPs right to privacy and confidentiality. The Panel concluded that even with improved information sharing, confidentiality concerns impose a substantial limitation on the data that can be shared. For this reason the Panel’s

recommendations did not include the use of individual names or their addresses or any other information specific to that person with mental illness. To the contrary, the Panel report recommends a database that flags for “locations” rather than people. Accordingly, we recommend that the database include locations of prior EDP calls and supportive housing for the mentally-ill. The proposed legislation should be amended to reflect the Panel’s recommendations.

- The legislation requiring the creation of an EDP database should be amended to include a due process mechanism by which an identified subject can challenge their inclusion. Other groups tracked by databases, such as sex offenders or those convicted of weapon possession, have due process protections to challenge mistakes. We believe the involuntary inclusions of EDPs have a right to the same protections.

Conclusion

The Legal Aid Society has a long history of defending the rights of New York City’s most vulnerable groups, including those in crisis. We have noted several significant aspects of the pending legislation that require revisions. We stand ready to work with the Council to effectuate these revisions. Thank you for this opportunity to testify. If you have any questions you can contact me at (718) 579-3117 or John Volpe, the Director of our MICA Project at (212) 577-3340.