

[NYAPRS Enews] Coalition Files Emergency Request To Stop NYS Unconstitutional Mental Health Involuntary Removal Policy

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on behalf of

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*NYAPRS Note: NYAPRS greatly welcomes the action taken yesterday by our legal rights and mental health advocacy colleagues to legally challenge New York City's new plan to take more homeless people with 'perceived' mental illnesses to hospitals against their will if they are deemed a danger to themselves. In collaboration with NY Lawyers for the Public Interest, NAMI-NYC, Community Access and Correct Crisis Intervention Today-NYC, a civil rights law firm argued that **the new policy allows a police officer to commit a person to a hospital against his or her will, violating the constitutional right to due process and to protection from improper search and seizure. The motion calls for a temporary restraining order to block the policy from going into effect.***

Police officers, the filing says, have "little to no expertise" in handling people with mental disabilities who could be "forcefully — often violently — detained.

The policy creates a "concrete risk" that people will be detained "for merely living with their illness while in a public place," the motion says and that the new policy violates the Americans With Disabilities Act and the New York City Human Rights Law, as well as constitutional rights.

The group's news release goes on to say "The plaintiffs include people who were arrested simply for having a mental health diagnosis – or even just being perceived of having a mental health diagnosis – and who were not a harm to themselves or others, but were nevertheless forcibly strapped to gurneys or otherwise restrained and taken against their will to a hospital.

Prior to the suit's filing, NYPD was moving ahead with Eric Adams' new mental illness policy, despite lack of training (see NY Post article below). "Big Apple cops have yet to receive

training or detailed guidance on how to enforce [Mayor Adams' new mental health plan](#) — but

NYPD brass wants them to implement it anyway, according to a new order obtained by The

Post." NYPD officials initially said they were first made aware of the new plan when it was

announced, but hours later, walked back that statement, denying leadership was

blindsided and that it's been in the works for "months." Multiple high-placed sources

confirmed to The Post, though, that police brass and NYPD lawyers rushed in the days after

the announcement to get the policy on the books. One police source who has advised on

NYPD Patrol Guide policy raised red flags over the vague wording that leaves the guidance open to wide interpretation."

NYAPRS will continue to send out updates through the days ahead.

Advocates for Mentally Ill New Yorkers Ask Court to Halt Removal Plan

NY Times December 8, 2022

A motion in federal court called for a temporary restraining order, saying Mayor Eric Adams's plan would violate constitutional rights.

Mayor Eric Adams said the city has a "moral obligation" to help people with mental illness living in the streets and subways.

New York City's new plan to take more mentally ill homeless people to hospitals against their will if they are deemed a danger to themselves met its first legal challenge on Thursday.

In a federal court motion filed in an existing lawsuit, a civil rights law firm argues that the new policy allows a police officer to commit a person to a hospital against his or her will, violating the constitutional right to due process and to protection from improper search and seizure. The motion calls for a temporary restraining order to block the policy from going into effect.

Police officers, the filing says, have "little to no expertise" in handling people with mental disabilities who could be "forcefully — often violently — detained."

The request comes nine days after [Mayor Eric Adams announced the plan](#). He said the city had a "moral obligation" to immediately help the hundreds of people whose mental illness prevents them from taking care of basic needs such as food, shelter and health care, even if they pose no threat to others.

New Yorkers in a mental health crisis frequently cycle through hospitals, jails and the streets. Mr. Adams said he would push for hospitals to keep patients until they are stable and a long-term plan for care is in place. But critics note that shortages in hospital beds, appropriate housing and outpatient care will make ending that cycle difficult.

New York's Law Department said in an email that Mayor Adams's plan complies with federal and state laws, and that it would make its case in court.

The new motion came in a case filed last year by the firm Beldock Levine & Hoffman, New York Lawyers for the Public Interest and other lawyers [on behalf of several individuals and advocacy organizations](#). It challenges the way the Police Department handles what it calls an "[emotionally disturbed person](#)." The city moved to dismiss that lawsuit in September, but the federal judge in the case, Paul A. Crotty, has not ruled yet on the city's request.

Thursday's motion argues that the new policy violates the Americans With Disabilities Act and the New York City Human Rights Law, as well as constitutional rights. Under the new policy, a police officer could remove someone involuntarily based on the perception of mental illness and "nothing more," according to the motion. The policy creates a "concrete risk" that people will be detained "for merely living with their illness while in a public place," the motion says.

The motion includes a statement from a plaintiff in the suit who has post-traumatic stress disorder and said he was violently detained and involuntarily taken to a hospital in 2020 after someone falsely reported to 911 that he was suicidal. The man, Steven Greene, 27, stated that since the mayor's announcement, he has been afraid to leave his apartment for fear that he will be forcibly hospitalized "simply for being an individual with a mental disability."

Under the mayor's plan, both police officers and mental health workers will be instructed to have people taken to hospitals if their behavior endangers them. A hotline staffed by clinicians will be available to advise the police on whether a person meets that standard.

The [state law on involuntary hospitalization](#) empowers the police to have someone who appears mentally ill taken to the hospital only if the person's conduct is "likely to result in serious harm to the person or others."

[Guidance issued by the state in February](#) said that the standard includes people "who display an inability to meet basic living needs" and that applying it only to people who appear "imminently dangerous" leaves vulnerable people at risk. [Mr. Adams's directive](#), building on that more expansive wording, says that grounds for hospitalization could include "unawareness or delusional misapprehension of surroundings or unawareness or delusional misapprehension of physical condition or health."

The motion seeking the restraining order disputes the hypothetical examples Mr. Adams offered of people who would be covered by the new policy. The mayor said the plan would target "the shadow boxer on the street corner in Midtown, mumbling to himself as he jabs at an invisible adversary," among other examples.

That depiction, the motion says, "does not describe someone who is unable to care for their basic needs, let alone someone who meets the standard of serious danger."

It added that the city's plan "is bereft of details as to how an officer may in fact determine whether Mayor Adams's shadow boxer is unable to take care of his basic needs or is merely exercising."

<https://www.nytimes.com/2022/12/08/nyregion/nyc-mental-health-restraining-order.html>

Coalition Files Emergency Request To Stop New York City's New And Unconstitutional Mental Health Involuntary Removal Policy

December 8, 2022

Emergency request filed in ongoing class action litigation to reform the City's mental health crisis response and stop routine abuses

A broad coalition of public interest groups and people with mental disabilities filed an emergency request to immediately halt New York City's new policy to greatly expand coerced transport to psychiatric hospitals of people perceived to have "an inability to meet their basic needs." The motion for a temporary restraining order is brought in ongoing federal class action litigation challenging the City's use of police officers as the front line response to people with actual or perceived mental disabilities.

Last week, Mayor Eric Adams issued a directive for police officers to forcibly remove people who appear to have a mental illness and to be unable to meet their basic needs, including shelter, food, and medical care. Under this new policy, a person may be detained and transported to a hospital for psychiatric evaluation without the constitutionally-mandated showing that they pose a danger to themselves or others. The policy tramples on the protected rights of people with disabilities, violating the United States Constitution and multiple civil rights laws, including the Americans with Disabilities Act. It is also wholly unworkable – premised on the availability of hospital beds and community mental health services that simply do not exist.

Earlier this year, the plaintiffs in *Baerga v. City of New York* challenged the NYPD's role in the City's response to people with actual or perceived mental disabilities, including the coercive detention and transportation of people by the police to psychiatric facilities for evaluation. The suit seeks to remove police officers as the first responders for those in need of health care, and to end the involuntary arrest, detention, and transport of people with mental disabilities. Instead, New York City must join cities around the country and world which rely upon trained health professionals and peers with lived mental health experience to respond to mental health crises.

The plaintiffs include people who were arrested simply for having a mental health diagnosis – or even just being perceived of having a mental health diagnosis – and who were not a harm to themselves or others, but were nevertheless forcibly strapped to gurneys or otherwise restrained and taken against their will to a hospital.

"New York City's reliance on the police as first responders when someone is experiencing a mental health crisis has already resulted in police killings of too many people, the majority of whom are Black or other people of color," said **Marinda van Dalen, an attorney with New York Lawyers for the Public Interest (NYLPI)**, one of the civil rights groups that filed the suit. "The new involuntary removal policy doubles down on decades of failed, police-centered City mandates just when we should be creating health-centered supports for people with mental illnesses."

NYLPI recently produced a [report](#) based on a survey of 154 New Yorkers who

experienced mental health crises; it confirmed that NYPD responses routinely cause trauma and undermine health care.

"This lawsuit has been pending for a year and we felt the need to take further legal action to halt sweeping involuntary hospitalizations and prevent further harm towards New Yorkers living with serious mental illness and their families," stated **Matt Kudish, CEO of National Alliance on Mental Illness of NYC (NAMI-NYC)**, one of the organizational plaintiffs.

"I cannot stress enough the countless individual harms and incredible trauma that will occur in widespread ways if this initiative goes forward. There will be more deaths at the hands of law enforcement, more tasing (which has also led to fatal cardiac events), more arrests, and an overall increase of the criminalization of human distress," said **Cal Hedigan, CEO of Community Access**, another of the organizational plaintiffs. "We have a moral obligation to refrain from trampling on the rights of unhoused New Yorkers, and to create a comprehensive plan to develop the housing and community-based voluntary supports that are so desperately needed."

"Under the City's plan, NYPD officers will undoubtedly end up in situations in which individuals with mental disabilities are discriminated against and unconstitutionally detained, merely because they appear to be mentally ill," said **Felix Guzman, member of the Steering Committee of Correct Crisis Intervention Today – NYC (CCIT-NYC)**, the third organizational plaintiff.

The class action, filed in the U.S. District Court for the Southern District of New York on December 28, 2021 sets forth the City's violations of the Fourth and Fourteenth Amendments to the United States Constitution; the New York State Constitution; the Americans with Disabilities Act; New York City's Human Rights Law; and various other civil rights statutes. The Mayor's new involuntary detention policy makes it even easier for police officers to violate the rights of New Yorkers with mental health issues, targeting in particular those who live in the street and subway system.

"The City's latest policy change lowers the standard to such a level that almost anyone can be forcibly detained and hospitalized against their will," said **Luna Droubi, Partner at Beldock Levine & Hoffman LLP**. "We are filing this emergency request to put a stop to its implementation immediately."

Jenny Marashi of Marashi Legal, another attorney for the plaintiffs, noted: "Historically, the City has failed at its attempts to provide social care for black, brown, and marginalized people. Families and communities are best for caring and uplifting each other. This plan – like almost all City 'justice' type plans – ignored stakeholders – the communities and families most impacted by this move. The expansion of City powers – leaves any person in opposition or outspoken against its structures (Mayor, Comptroller, DA, NYPD, ACS, etc.) vulnerable to arrest. It is a draconian violation of civil liberties that both left and right pundits should take note of and oppose."

"The City's new policy will exacerbate the already egregious treatment of individuals with mental disabilities. Having police officers detain individuals solely

because they are perceived as being unable to care for themselves due to a mental disability is unacceptable and unlawful. We are taking action to prevent this policy from coming into effect and destroying the lives of more New Yorkers with mental disabilities” said **Richard Schwed, the partner at Shearman & Sterling LLP** leading this pro bono representation.

NYPD Moves Ahead With Eric Adams’ New Mental Illness Policy, Despite Lack Of Training

New York Post December 9, 2022

Big Apple cops have yet to receive training or detailed guidance on how to enforce [Mayor Adams’ new mental health plan](#) — but NYPD brass wants them to implement it anyway, according to a new order obtained by The Post.

The one-page memo mostly reiterates NYPD’s existing policy: Cops are allowed to bring a homeless person to the hospital for a psych evaluation against their will if they pose a threat to themselves or others.

But under Adams’ hastily rolled out policy, police must decide whether to bring someone in if they’re unable to take care of themselves — and can do so even without that person’s cooperation.

“Officers should continue to remove a person for evaluation when that person appears mentally ill and the person’s actions present a threat of serious harm to themselves or others,” reads the order from Police Commissioner Keechant Sewell dated Tuesday morning.

“But officers should also be aware that removal is also appropriate when a person appears to be mentally ill and incapable of meeting basic human needs and such neglect is likely to result in serious harm to that person.”

Sewell’s directive provides one example of an “incoherent person” with three general factors to consider for an involuntary transport: if the person is “unable to assess and safely navigate their surroundings;” if the officers believe they can’t find shelter or food, or other things “need for survival.”

Police must decide whether to bring someone in if they’re unable to take care of themselves — and can do so even without that person’s cooperation.

The order — issued one week after Adams’ announcement — says “additional training will be forthcoming to all members of service.”

It also advises cops to reach out to the NYPD’s Legal Bureau “at all times” for direction.

Under the old policy, cops could only ask a person if they wanted to be taken to the hospital for mental treatment.

A police spokesperson said that the memo was written in consultation with the city Law Department and police attorneys.

"Officers already receive significant training on encounters with those experiencing mental illness as well as their authority to conduct removals," the spokesman said, adding that training has started in the police academy.

The new memo comes amid a scramble by police leadership to enact the mayor's plan, the announcement of which The Post [previously reported caught brass off guard](#).

NYPD officials initially said they were first made aware of the new plan when it was announced, but hours later, walked back that statement, denying leadership was blindsided and that it's been in the works for "months."

Multiple high-placed sources confirmed to The Post, though, that police brass and NYPD lawyers rushed in the days after the announcement to get the policy on the books.

One police source who has advised on NYPD Patrol Guide policy raised red flags over the vague wording that leaves the guidance open to wide interpretation.

Mayor Adams' new plan seeks to have more homeless people with mental illness involuntarily taken to hospitals by the NYPD.

"Just to say mentally ill is such a broad statement ... I don't even know if they know what it means," the source said, adding they didn't believe the mayor's policy would hold up in court.

But the source said the Adams administration — specifically the mayor — doesn't want any pushback when rolling out his plans.

"So now what you have is NYPD Legal trying to almost make up stuff to appease whoever the decision-maker is without any disagreement," the source said.

The NYPD has a training program for dealing with mentally ill people on the streets, though it does not include anything on involuntary transports, sources say.

Police have tens of thousands of interactions with homeless people each year. In 2019, cops made contact with roughly 125,000 people with only about 3,000 accepting various services, not just for mental health.

On Thursday, lawyers and activists filed the first legal challenge to Adams' new plan, asking a judge to halt its implementation because of alleged human rights violations.

<https://nypost.com/2022/12/08/nypd-moves-ahead-with-eric-adams-new-mental-illness-policy-despite-lack-of-training/>

Public Interest Coalition Says Adams' Mental Illness Plan Is

Unconstitutional

[Jacqueline Neber](#) And [Jasmine Sheena](#) Crain's Health Pulse December 9, 2022

A coalition of stakeholders, including New York Lawyers for the Public Interest, National Alliance on Mental Illness of NYC, Community Access and people with disabilities, filed an emergency request Thursday to immediately halt Mayor Eric Adams's new plan to try to address [severe mental illness](#) in the city.

The request, which is a motion for a temporary restraining order against the city, is part of federal litigation that challenges the city's use of police officers as front-line responders dealing with people with mental illnesses, or who are perceived to have mental illnesses. The litigation ultimately aims to remove police from that role and rely instead on mental health professionals and peers.

The coalition says that Adams's directive violates the rights of people with disabilities, the U.S. Constitution and multiple civil rights laws, and is "wholly unworkable—premised on the availability of hospital beds and community mental health services that simply do not exist," according to a release.

The mayor's plan re-emphasizes that police officers, emergency medical responders and outreach workers are authorized under existing state law to transport people who appear to be unable to meet their basic needs to the hospital involuntarily. It focuses on people who have refused voluntary treatment but pose a danger to themselves.

Attorneys from several firms, including Shearman & Sterling and Marashi Legal, are working on the case, arguing that having police officers detain people who are perceived as unable to care for themselves is "unacceptable and unlawful," said Richard Schwed, a partner at Shearman.

Ruth Lowenkron, the director of the disability justice program at New York Lawyers for the Public Interest, told *Crain's* a temporary restraining order would stop the mayor's plan on a "very expedited basis with just about no proofs before the judge."

The attorneys on the case have to show the judge the harms their clients are facing because of the issue, she said, and the judge could sign off on the TRO without hearing from the other side of the issue.

The attorneys are waiting to hear the court's decision about the TRO, she added.

Regardless of whether the judge grants the TRO, the next step in the process would be a preliminary injunction hearing with involvement from both the coalition and the city, which would also happen on an expedited basis. From there, the court would decide whether a halt on the mayor's plan would be more permanent, Lowenkron said.

She added that the attorneys representing the plaintiffs have asked for more detailed information from the city about the mayor's plan, on an expedited basis, in order to show the court why the plan is problematic.

The coalition argues that Adams' plan is unconstitutional because, while the constitution requires people to present a danger to themselves or others, the plan says that authorized police, emergency responders and outreach workers can involuntarily transport people who cannot meet their basic needs. Meanwhile, Adams said at a press conference last week that the idea that someone needs to present a danger to themselves or others is a "misunderstanding" and a "myth."

When asked about that discrepancy, Lowenkron said the mayor's argument is incorrect.

"His statement of it being a misconception is a misconception," she said. "That's exactly what this litigation is about: that the mayor [is] ignoring well-established constitutional and New York state mental hygiene law, that absolutely do require a danger to self or others."

Involuntary transport should only happen if a person's inability to take care of their basic needs rises to the level of being a danger to themselves, she added.

Adams's plan includes several proposals for hospital policy changes that would require changes to state law, including mandatory Kendra's Law eligibility screenings for psychiatric patients, and a requirement that hospitals must notify patients' community providers when they are admitted or released. These policies aim to improve communications between inpatient and outpatient providers. A *Crain's* investigation earlier in the fall revealed communications have been historically disjointed, leaving patients [without the care they need](#).

Last month *Crain's* reported that more than 1,000 New Yorkers living with a serious mental illness are on [waiting lists](#) for government-funded mental health and social

service programs, and that many psychiatric patients who are denied admission to a hospital bed and are discharged from the emergency room effectively disappear.

Advocates have been critical of Adams's plan since he announced it last week, saying it is "draconian" and rebuking the involvement of police in mental health crises. Adams has since [defended](#) the plan, saying it is a tailored approach and would not violate laws.

Following the mayor's announcement, City Council Speaker Adrienne Adams and City Council member Linda Lee, who chairs the Mental Health, Disabilities and Addiction Committee, shared a response that questions the specifics of the plan and asks for clarity.

"Our city needs a robust response to this crisis, but how we respond matters greatly. We have many questions and need to see more concrete details related to the mayor's announcement," the statement reads. "The vague and broad definitions surrounding mental illness and the delegated authority to nonmental health professionals for involuntary removal and admission raise serious concerns. The way this new policy will be implemented and the agencies and individuals being tasked with this response need to be more carefully considered."

Despite her challenges to his plan, Lowenkron did not completely criticize Adams.

"We are not trying to say that the mayor is not right to think about people who have mental health issues and that we need to be doing something for them," she said. "I loved his statement when he said no longer are we going to pass by people who are on the streets and having mental health problems and do nothing about it. And if that were all he said, I would applaud."

The city estimates that 250,000 adult New Yorkers have a serious mental illness. The mayor's office did not respond to a request for comment by publication time. —
Jacqueline Neber