

S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

June 16, 2009

Introduced by M. of A. CRESPO -- read once and referred to the Committee
on Codes

AN ACT to create a temporary state commission to examine and assess the use of excessive force by law enforcement in the state of New York, to make recommendations relative to the alleviation thereof; to amend the county law, in relation to providing for the appointment of a special prosecutor to investigate and prosecute charges of police misconduct and brutality and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. In New York state, as well as the rest of the nation, the
2 number of reported cases of the use of excessive force by law enforce-
3 ment has increased. The number of police misconduct claims filed with
4 the New York city comptroller's office has been increasing since the
5 late 1980s from 977 complaints in 1987 to more than 2,000 in 1996.
6 Although some of the allegations may be false or exaggerated, the sharp
7 increase in complaints is reason for concern, especially since it is
8 likely that much law enforcement misconduct goes unreported.
9 Many examples of excessive use of force by law enforcement can be
10 cited. Two disturbing examples involve the notorious cases of Anthony
11 Baez and Abner Louima. Anthony Baez, a 29-year-old of Puerto Rican
12 descent, died of injuries sustained during his arrest in December 1994.
13 Witness accounts indicate that the choke-hold used on Baez was unpro-
14 voked and unnecessary. Police officer Francis Livoti was sentenced in
15 federal court to seven years in prison for Baez's death. Officer Livoti
16 had 14 civilian complaints of brutality in his file and was convicted in
17 state court for beating a teenager in 1993 for driving a go-cart on a
18 sidewalk.
19 Four officers were charged with civil rights violations in the federal
20 case of Abner Louima, a Haitian immigrant. According to the indictment,
21 the assault on Louima involved the officers "shoving a wooden stick into

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 his rectum and mouth while his hands were handcuffed behind his back."
2 Louima suffered a torn bladder and intestine and required several
3 surgeries to repair the damage. Two of the officers were also charged
4 with civil rights violations for falsely arresting eyewitness Patrick
5 Antoine, who saw Louima being taken into custody. In addition, the
6 indictment also charges an officer with beating Antoine outside the club
7 and with obstruction of justice for allegedly threatening Louima to keep
8 him from talking about the assault.

9 In its 1996 paper, "Police Brutality and Excessive Force in the New
10 York City Police Department," Amnesty International reports that the
11 information it collected suggests that police brutality and unnecessary
12 force are widespread problems in New York city. The paper recommends an
13 independent inquiry into allegations of the use of excessive force by
14 the New York City Police Department to examine the concerns raised in
15 this report.

16 Although the Civilian Complaint Review Board investigates complaints
17 against the New York city police, it has had problems since its estab-
18 lishment in 1993. The Civilian Complaint Review Board substantiates few
19 complaints, and when it has done so, the police commissioner has often
20 dismissed them. In addition the board recently acknowledged that more
21 than 100 cases of police misconduct were substantiated but were never
22 forwarded to the police department.

23 S 2. a. A temporary state commission is hereby created to be known as
24 "the commission on the use of excessive force by law enforcement". The
25 commission shall consist of eleven members to be appointed as follows:
26 three members shall be appointed by the governor; two members shall be
27 appointed by the temporary president of the senate; two members shall be
28 appointed by the minority leader of the senate; two members shall be
29 appointed by the speaker of the assembly; and two members shall be
30 appointed by the minority leader of the assembly. Any vacancy that
31 occurs in the commission shall be filled in the same manner in which the
32 original appointment was made. The commission shall select from its
33 membership a chair and a vice-chair.

34 b. No member, officer or employee of the commission shall be disquali-
35 fied from holding any other public office or employment, nor shall he or
36 she forfeit any such office or employment by reason of his or her
37 appointment under this section, notwithstanding the provisions of any
38 general, special or local law, ordinance or city charter.

39 S 3. The commission may employ and at pleasure remove such personnel
40 as it may deem necessary for the performance of its functions and fix
41 their compensation within the amounts made available therefor.

42 S 4. The commission may meet within and without the state, shall hold
43 public hearings, and shall have all the powers of a legislative commit-
44 tee pursuant to the legislative law.

45 S 5. The members of the commission shall receive no compensation for
46 their services but shall be allowed their actual and necessary expenses
47 incurred in the performance of their duties pursuant to this act.

48 S 6. To the maximum extent feasible, the commission shall be entitled
49 to request and receive and shall utilize and be provided with such
50 facilities, resources and data of any court, department, division,
51 board, bureau, commission or agency of the state or any political subdivi-
52 sion thereof as it may reasonably request to carry out properly its
53 powers and duties pursuant to this act.

54 S 7. The commission shall undertake a comprehensive study of the
55 existence of the use of excessive force by law enforcement throughout
56 the state of New York and make recommendations with respect to the

1 eradication of such actions, such recommendations shall include but not
2 be limited to training, funding, recruiting requirements and any other
3 relevant data necessary to the elimination of police brutality.

4 S 8. The commission shall make a report to the governor and the legis-
5 lature of its findings, conclusions and recommendations no later than
6 two years after the effective date of this act and shall submit with its
7 report such legislative proposals as it deems necessary to implement its
8 recommendations.

9 S 9. The commission shall continue in existence for two years, at
10 which time it shall be deemed to be repealed.

11 S 10. The sum of one hundred thousand dollars (\$100,000), or so much
12 thereof as may be necessary, is hereby appropriated to pay the expenses
13 including personal service, in carrying out the provisions of this act.
14 Such moneys shall be payable out of the state treasury after audit by
15 and on the warrant of the comptroller upon vouchers certified or
16 approved by the chair or vice-chair of the temporary state commission on
17 the use of excessive force by law enforcement as prescribed by law.

18 S 11. The county law is amended by adding a new section 702-b to read
19 as follows:

20 S 702-B. SPECIAL COUNTY PROSECUTOR FOR POLICE BRUTALITY OR MISCONDUCT.
21 1. WHENEVER THE DISTRICT ATTORNEY OF ANY COUNTY RECEIVES A CRIMINAL
22 COMPLAINT, A CIVILIAN COMPLAINT OR AN ACCUSATORY INSTRUMENT ON A POLICE
23 OFFICER, AS DEFINED IN SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, A
24 SUPERIOR OR CRIMINAL COURT IN THE COUNTY WHEREIN THE ACTION MAY BECOME
25 TRIABLE SHALL HAVE THE AUTHORITY TO APPOINT A SPECIAL PROSECUTOR TO
26 INVESTIGATE AND WHERE APPROPRIATE PROSECUTE CHARGES OF POLICE MISCONDUCT
27 OR BRUTALITY. THE SUPERIOR OR CRIMINAL COURT MAY BY ORDER APPOINT AN
28 ATTORNEY AT LAW HAVING AN OFFICE IN OR RESIDING IN THE COUNTY, TO ACT AS
29 SPECIAL PROSECUTOR, OR IN THE CASE OF ORLEANS COUNTY THE ATTORNEY AT LAW
30 MAY BE APPOINTED FROM AN ADJOINING COUNTY, TO ACT AS SPECIAL PROSECUTOR
31 FOR POLICE BRUTALITY OR MISCONDUCT.

32 2. WHEN A SPECIAL PROSECUTOR IS APPOINTED PURSUANT TO THIS SECTION,
33 THE APPOINTMENT SHALL BE FOR ALL PURPOSES, INCLUDING DISPOSITION, AND
34 ANY APPEALS.

35 3. A SPECIAL PROSECUTOR APPOINTED PURSUANT TO THIS SECTION SHALL
36 POSSESS ALL THE POWERS OF AN ASSISTANT DISTRICT ATTORNEY UNDER SECTION
37 1.20 OF THE CRIMINAL PROCEDURE LAW, OR OF AN ASSISTANT ATTORNEY GENERAL
38 PURSUANT TO ARTICLE FIVE OF THE EXECUTIVE LAW.

39 S 12. This act shall take effect on the one hundred twentieth day
40 after it shall have become a law; provided, however, that effective
41 immediately, the addition, amendment and/or repeal of any rule or regu-
42 lation necessary for the implementation of this act on its effective
43 date is authorized and directed to be made and completed on or before
44 such effective date.