

7810

2015-2016 Regular Sessions

I N A S S E M B L Y

May 27, 2015

Introduced by M. of A. SEPULVEDA, BLAKE, RAMOS, CRESPO -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, the county law and the criminal procedure law, in relation to officer-involved deaths and near deaths

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

1 Section 1. The executive law is amended by adding a new section 842-a
2 to read as follows:

3 S 842-A. BOARD FOR REVIEW OF OFFICER-INVOLVED DEATHS AND NEAR DEATHS.
4 1. THERE IS HEREBY CREATED A TEN MEMBER BOARD FOR THE REVIEW OF OFFI-
5 CER-INVOLVED DEATHS AND NEAR DEATHS. THE PURPOSE OF SUCH BOARD SHALL BE
6 TO INVESTIGATE AND REVIEW THE DEATH OR NEAR DEATH OF ANY PERSON THAT
7 RESULTED FROM OR POTENTIALLY RESULTED FROM INJURIES THAT OCCURRED OR MAY
8 HAVE OCCURRED DURING ANY ENCOUNTER WITH A POLICE OR PEACE OFFICER,
9 POLICE DEPARTMENT OR SHERIFF'S DEPARTMENT IN THIS STATE. THE MEMBERS OF
10 THE BOARD SHALL BE APPOINTED BY THE GOVERNOR, AS FOLLOWS:

11 (A) A FORMER SHERIFF, CHIEF OF POLICE, CHIEF DEPUTY SHERIFF, DEPUTY
12 CHIEF OF POLICE, OR STATE TROOPER.

13 (B) A FORMER DISTRICT ATTORNEY, FORMER UNITED STATES ATTORNEY OR
14 FORMER ATTORNEY GENERAL, OR A FORMER ASSISTANT DISTRICT ATTORNEY, FORMER
15 ASSISTANT ATTORNEY GENERAL OR FORMER ASSISTANT UNITED STATES ATTORNEY
16 WHO SERVED IN AN SUCH CAPACITY FOR AT LEAST THREE YEARS.

17 (C) A PHYSICIAN WHO IS A PRESENT OR FORMER CORONER OR MEDICAL EXAMIN-
18 ER.

19 (D) A PROFESSOR OR RESEARCHER AFFILIATED WITH AN ACCREDITED NEW YORK
20 UNIVERSITY OR COLLEGE WHO HAS EXPERTISE IN THE FIELD OF CRIMINAL LAW OR
21 CRIMINAL JUSTICE, ON THE RECOMMENDATION OF THE PRESIDENT OF THE NEW YORK
22 STATE BAR ASSOCIATION.

23 (E) ONE MEMBER SHALL BE APPOINTED ON THE RECOMMENDATION OF THE TEMPO-
24 RARY PRESIDENT OF THE SENATE.

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

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1 (F) ONE MEMBER SHALL BE APPOINTED ON THE RECOMMENDATION OF THE SPEAKER
2 OF THE ASSEMBLY.

3 (G) ONE MEMBER SHALL BE APPOINTED ON THE RECOMMENDATION OF THE MINORI-
4 TY LEADER OF SENATE.

5 (H) ONE MEMBER SHALL BE APPOINTED ON THE RECOMMENDATION OF THE MINORI-
6 TY LEADER OF THE ASSEMBLY.

7 (I) ONE MEMBER SHALL BE APPOINTED ON THE RECOMMENDATION OF THE NEW
8 YORK STATE BLACK, PUERTO RICAN, HISPANIC AND ASIAN LEGISLATIVE CAUCUS.

9 (J) ONE MEMBER SHALL BE APPOINTED ON THE RECOMMENDATION OF THE
10 NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE LEGAL DEFENSE
11 FUND.

12 2. EACH MEMBER OF THE BOARD SHALL SERVE A TERM OF FOUR YEARS PROVIDED,
13 HOWEVER, THAT THE INITIAL TERM OF THE MEMBERS APPOINTED PURSUANT TO
14 PARAGRAPH (A), (B), (D), (F) AND (H) OF SUBDIVISION ONE OF THIS SECTION
15 SHALL BE FOR A PERIOD OF TWO YEARS. ALL APPOINTMENTS TO THE BOARD SHALL
16 BE MADE NO LATER THAN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS
17 SECTION. A VACANCY ON THE BOARD SHALL BE FILLED PROMPTLY IN THE SAME
18 MANNER AS THE ORIGINAL APPOINTMENT. NO INDIVIDUAL WHO IS ACTIVELY AFFIL-
19 IATED WITH A LAW ENFORCEMENT AGENCY SHALL BE ELIGIBLE FOR APPOINTMENT OR
20 CONTINUED SERVICE AS A MEMBER OF THE BOARD.

21 3. THE MEMBERS OF THE BOARD SHALL RECEIVE NO COMPENSATION FOR THEIR
22 SERVICES BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES
23 INCURRED IN THE PERFORMANCE OF THEIR FUNCTION UNDER THIS SECTION. THE
24 OFFICE OF THE SUPERINTENDENT OF STATE POLICE SHALL PROVIDE STAFF, A MAIN
25 OFFICE AND OTHER FINANCIAL SUPPORT SO THAT THE BOARD MAY EFFECTIVELY
26 ENGAGE IN ITS FUNCTIONS UNDER THIS SECTION.

27 4. A CHAIRPERSON OF THE BOARD SHALL BE SELECTED BY MAJORITY VOTE
28 REPRESENTING MORE THAN HALF OF THE STATUTORILY-AUTHORIZED MEMBERSHIP OF
29 THE BOARD. THE CHAIRPERSON OR ANY FIVE MEMBERS OF THE BOARD MAY CALL A
30 MEETING. THE BOARD SHALL MEET AS NECESSARY TO PERFORM ITS DUTIES UNDER
31 LAW, INCLUDING BUT NOT LIMITED TO THIS SECTION AND SUBDIVISION ONE-A OF
32 SECTION TWO HUNDRED SIXTEEN OF THIS CHAPTER. MEETINGS SHALL BE CONDUCTED
33 IN ACCORDANCE WITH ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW.

34 5. THE BOARD SHALL ESTABLISH PROCEDURES NECESSARY TO PREVENT THE UNAU-
35 THORIZED DISCLOSURE OF ANY INFORMATION OR MATERIAL RELATED TO AN INVE-
36 STIGATION RECEIVED BY ANY MEMBER OF THE BOARD.

37 6. A MEMBER OF THE BOARD MAY BE REMOVED BY THE APPOINTING AUTHORITY
38 SOLELY FOR SUBSTANTIAL NEGLECT OF DUTY OR MATERIAL VIOLATION OF A CONFID-
39 ENTIALITY RESTRICTION, AFTER ADVANCE WRITTEN NOTICE TO THE BOARD MEMBER
40 AND, WHERE APPLICABLE, THE NOMINATING AUTHORITY AND A REASONABLE OPPOR-
41 TUNITY FOR EACH TO BE HEARD.

42 7. THE BOARD SHALL MEET REGULARLY TO CONSIDER ANY RELEVANT INFORMATION
43 AND SHALL MEET PROMPTLY TO CONSIDER ANY REPORT RECEIVED PURSUANT TO
44 PARAGRAPH (C) OF SUBDIVISION ONE-A OF SECTION TWO HUNDRED SIXTEEN OF
45 THIS CHAPTER, PROVIDED THAT SUCH A MEETING SHALL NOT BE REQUIRED TO
46 CONSIDER AN INTERIM REPORT RECEIVED PURSUANT TO SUCH PARAGRAPH. UPON
47 CONSIDERATION OF ANY SUCH REPORT OR OTHER RELEVANT INFORMATION, THE
48 BOARD MAY REQUEST ADDITIONAL INFORMATION, CLARIFICATION AND/OR AN
49 IN-PERSON INTERVIEW WITH ANY PERSON WHO ASSISTED IN THE PREPARATION OF
50 THE REPORT.

51 8. PROMPTLY AFTER THE BOARD COMPLETES ITS REVIEW OF A DETAILED WRITTEN
52 REPORT OF AN INVESTIGATION RECEIVED PURSUANT TO PARAGRAPH (C) OF SUBDI-
53 VISION ONE-A OF SECTION TWO HUNDRED SIXTEEN OF THIS CHAPTER, THE BOARD
54 SHALL MAKE WRITTEN RECOMMENDATIONS TO THE DISTRICT ATTORNEY IN THE COUN-
55 TY WHERE THE DEATH OR NEAR DEATH OCCURRED, THE GOVERNOR AND OTHER RELE-
56 VANT OFFICIALS. SUCH RECOMMENDATIONS SHALL ADDRESS IN DETAIL THE NEED OR

ADVISABILITY OF ANY ACTION BY A GRAND JURY, AND MAY INCLUDE ANY OTHER RELEVANT RECOMMENDATIONS. ANY MEMBER OF THE BOARD MAY ALSO MAKE AND PROVIDE SUCH WRITTEN RECOMMENDATIONS, COPIES OF WHICH SHALL ALSO BE PROVIDED TO ALL OTHER MEMBERS OF THE BOARD.

S 2. Section 216 of the executive law is amended by adding a new subdivision 1-a to read as follows:

1-A. (A) IN ADDITION TO ITS OTHER ASSIGNED DUTIES, THE SUPERINTENDENT SHALL ASSIGN THE BUREAU OF INVESTIGATION, ESTABLISHED PURSUANT TO THIS SECTION, RESPONSIBILITY TO INVESTIGATE, ON ITS OWN OR, AS APPLICABLE, AS AN ACTIVE PARTNER WITH ANY OTHER POLICE OR SHERIFF'S DEPARTMENT OF APPROPRIATE JURISDICTION, THE DEATH OR NEAR DEATH OF ANY PERSON THAT RESULTED FROM OR POTENTIALLY RESULTED FROM INJURIES THAT OCCURRED OR MAY HAVE OCCURRED DURING ANY ENCOUNTER WITH A POLICE OR PEACE OFFICER, POLICE DEPARTMENT OR SHERIFF'S DEPARTMENT IN THIS STATE.

(B) EVERY SUCH INVESTIGATION SHALL BE COMMENCED PROMPTLY UPON THE SUPERINTENDENT LEARNING OF SUCH INCIDENT. EVERY POLICE DEPARTMENT, SHERIFF'S DEPARTMENT AND STATE AND LOCAL AGENCY, INCLUDING EVERY LOCAL DISTRICT ATTORNEY'S OFFICE, SHALL ASSIST AND COOPERATE WITH THE BUREAU IN THE CONDUCT OF SUCH INVESTIGATIONS, AND SHALL ENSURE THAT THE BUREAU HAS ACCESS TO LOCATIONS IT DEEMS RELEVANT, AS WELL AS ACCESS TO RECORDS, INFORMATION AND PHYSICAL ITEMS THAT DEEMS RELEVANT, TO SUCH INVESTIGATION.

(C) THE BUREAU SHALL PROVIDE INTERIM WRITTEN REPORTS AT LEAST BI-WEEKLY UPDATING THE BOARD OF REVIEW OF OFFICER-INVOLVED DEATHS AND NEAR DEATHS, AND THE DISTRICT ATTORNEY AND SUPERINTENDENT CONCERNING THE PROGRESS OF SUCH INVESTIGATION. UPON THE CONCLUSION OF SUCH INVESTIGATION, THE BUREAU SHALL PROMPTLY ISSUE TO THE BOARD OF REVIEW OF OFFICER-INVOLVED DEATHS AND NEAR DEATHS, THE DISTRICT ATTORNEY, THE SUPERINTENDENT AND THE GOVERNOR A DETAILED WRITTEN REPORT OF THE INVESTIGATION, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, A STATEMENT OF THE APPARENT CAUSE AND CIRCUMSTANCES OF THE DEATH OR NEAR DEATH, AS THE CASE MAY BE, AND SPECIFY ANY POTENTIAL CRIMINAL CHARGES. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, ANY SUCH REPORT SHALL CONSTITUTE A RECORD AVAILABLE FOR PUBLIC DISCLOSURE, WITHIN THE MEANING OF SUBDIVISION FOUR OF SECTION EIGHTY-SIX OF THE PUBLIC OFFICER'S LAW, PROVIDED THAT ANY PORTION OF SUCH REPORT MAY BE REDACTED BEFORE RELEASE WHEN AND TO THE EXTENT AUTHORIZED PURSUANT TO SUBDIVISION TWO OF SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW.

S 3. The executive law is amended by adding a new section 839-a to read as follows:

S 839-A. CERTAIN DEATHS AND NEAR DEATHS TO BE REPORTED. EVERY CASE OF THE DEATH OF OR NEAR DEATH OF A PERSON THAT RESULTED FROM OR POTENTIALLY RESULTED FROM INJURIES THAT OCCURRED OR MAY HAVE OCCURRED DURING ANY ENCOUNTER WITH A POLICE OR PEACE OFFICER, POLICE DEPARTMENT OR SHERIFF'S DEPARTMENT IN THIS STATE SHALL BE REPORTED PROMPTLY TO THE SUPERINTENDENT OF STATE POLICE BY SUCH OFFICER OR THE CHIEF LAW ENFORCEMENT OFFICER OF SUCH DEPARTMENT. SUCH REPORT SHALL BE IN SUFFICIENT DETAIL AS TO PERMIT THE SUPERINTENDENT TO COMMENCE A MEANINGFUL INVESTIGATION OF SUCH MATTER IN ACCORDANCE WITH SUBDIVISION ONE-A OF SECTION TWO HUNDRED SIXTEEN OF THE CHAPTER. UPON RECEIVING SUCH NOTIFICATION OR OTHERWISE LEARNING OF SUCH A DEATH OR NEAR DEATH, THE SUPERINTENDENT OF STATE POLICE SHALL PROCEED IN THE MANNER DESCRIBED IN SUCH SUBDIVISION.

S 4. Section 700 of the county law is amended by adding a new subdivision 14 to read as follows:

14. (A) IN THE CASE OF THE DEATH OR NEAR DEATH OF ANY PERSON THAT RESULTED FROM OR POTENTIALLY RESULTED FROM INJURIES THAT OCCURRED OR MAY

1 HAVE OCCURRED DURING ANY ENCOUNTER WITH A POLICE OR PEACE OFFICER,
2 POLICE DEPARTMENT OR SHERIFF'S DEPARTMENT IN THIS STATE, IT SHALL BE THE
3 DUTY OF THE DISTRICT ATTORNEY TO COOPERATE AND, TO THE GREATEST EXTENT
4 PERMITTED BY LAW, SHARE RELEVANT INFORMATION WITH THE BUREAU OF CRIMINAL
5 INVESTIGATION ENGAGED IN OR PARTNERING IN AN INVESTIGATION PURSUANT TO
6 SUBDIVISION ONE-A OF SECTION TWO HUNDRED SIXTEEN OF THE EXECUTIVE LAW,
7 AND WITH THE BOARD FOR REVIEW OF OFFICER-INVOLVED DEATHS AND NEAR DEATHS
8 ESTABLISHED PURSUANT TO SECTION EIGHT HUNDRED FORTY-TWO-A OF SUCH LAW.

9 (B) THE DISTRICT ATTORNEY SHALL CAREFULLY CONSIDER ANY INFORMATION AND
10 RECOMMENDATION RECEIVED FROM SUCH BUREAU IN ACCORDANCE WITH SUBDIVISION
11 ONE-A OF SECTION TWO HUNDRED SIXTEEN OF THE EXECUTIVE LAW, AS WELL AS
12 ANY RECOMMENDATION RECEIVED FROM SUCH BOARD FOR REVIEW OF OFFICER-IN-
13 VOLVED DEATHS AND NEAR DEATHS, AND ANY MEMBER THEREOF, PURSUANT TO
14 SUBDIVISION EIGHT OF SECTION EIGHT HUNDRED FORTY-TWO-A OF THE EXECUTIVE
15 LAW. NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, THE DISTRICT
16 ATTORNEY SHALL NOTIFY SUCH BOARD PROMPTLY AND IN WRITING AND WITH APPRO-
17 PRIATE DETAIL UPON COMMENCEMENT OF ANY GRAND JURY PROCEEDING POTENTIALLY
18 RELEVANT TO THE INVESTIGATION OF SUCH AN ENCOUNTER; PROVIDED, HOWEVER,
19 THAT THE FAILURE TO PROVIDE SUCH NOTICE OR ANY DELAY IN PROVIDING SUCH
20 NOTICE SHALL NOT AFFECT THE VALIDITY OF ANY INDICTMENT THAT MAY RESULT
21 FROM SUCH GRAND JURY PROCEEDING.

22 S 5. Paragraph (a) of subdivision 4 of section 190.25 of the criminal
23 procedure law, as amended by chapter 677 of the laws of 1985, is amended
24 to read as follows:

25 (a) Grand jury proceedings are secret, and no grand juror, or other
26 person specified in subdivision three of this section or section 215.70
27 of the penal law, may, except in the lawful discharge of his duties or
28 upon written order of the court, disclose the nature or substance of any
29 grand jury testimony, evidence, or any decision, result or other matter
30 attending a grand jury proceeding. For the purpose of assisting the
31 grand jury in conducting its investigation, evidence obtained by a grand
32 jury may be independently examined by the district attorney, members of
33 his staff, police officers specifically assigned to the investigation,
34 INCLUDING OFFICERS OF THE BUREAU OF CRIMINAL INVESTIGATION PARTICIPATING
35 PURSUANT TO SUBDIVISION ONE-A OF SECTION TWO HUNDRED SIXTEEN OF THE
36 EXECUTIVE LAW, MEMBERS OF THE BOARD OF REVIEW OF OFFICER-INVOLVED DEATHS
37 AND NEAR DEATHS SERVING PURSUANT TO SECTION EIGHT HUNDRED FORTY-TWO-A OF
38 SUCH LAW and such other persons as the court may specifically authorize.
39 Such evidence may not be disclosed to other persons without a court
40 order. Nothing contained herein shall prohibit a witness from disclos-
41 ing his own testimony.

42 S 6. This act shall take effect immediately.