

# STATE OF NEW YORK

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6289

2017-2018 Regular Sessions

## IN ASSEMBLY

March 2, 2017

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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 § 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 § 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 § 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 § 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 § 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 subdi-  
52 vision thereof as it may reasonably request to carry out properly its  
53 powers and duties pursuant to this act.

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10 which time it shall be deemed to be repealed.

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

20 § 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 § 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.