

# STATE OF NEW YORK

3200

2017-2018 Regular Sessions

## IN SENATE

January 20, 2017

Introduced by Sens. SERRANO, PARKER, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law, in relation to creating the New York state civilian complaint review board

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 article 43 to  
2 read as follows:

### ARTICLE 43

#### NEW YORK STATE CIVILIAN COMPLAINT REVIEW BOARD

3 Section 930. New York state civilian complaint review board.

4 § 930. New York state civilian complaint review board. 1. Legislative  
5 intent. It is in the interest of the people of the state of New York and  
6 police departments and peace officers throughout the state that the  
7 investigation of complaints concerning misconduct by officers towards  
8 members of the public be complete, thorough and impartial. These  
9 inquiries must be conducted fairly and independently, and in a manner in  
10 which the public and the police have confidence. An independent civilian  
11 complaint review board is hereby established as a body comprised solely  
12 of members of the public with the authority to investigate allegations  
13 of misconduct as provided in this section.

14 2. Definitions. (a) As used in this section, the term "officer" shall  
15 mean "police officers" as defined in paragraphs (a), (e), (f), (h), (j),  
16 (k), (l), (m), (p), (q), (s), and (v) of subdivision thirty-four of  
17 section 1.20 of the criminal procedure law and "peace officers" as  
18 defined in subdivisions three, four, five, six, eight, twelve, thirteen,  
19 fifteen, sixteen, twenty, twenty-one, twenty-two, twenty-three, twenty-  
20 four, twenty-five, twenty-six, twenty-seven, twenty-nine, thirty-two,  
21 thirty-three, thirty-four, thirty-five, thirty-six, thirty-eight, forty,  
22 forty-five, forty-six, forty-seven, fifty-two, fifty-nine, sixty-one,  
23 and sixty-two of the criminal procedure law.

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

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1 sixty-two, sixty-eight, seventy-four, seventy-nine, and eighty-two of  
2 section 2.10 of the criminal procedure law.

3 (b) As used in this section "board" shall mean the New York state  
4 civilian complaint review board.

5 (c) As used in this section, "investigator" shall mean an investigator  
6 as appointed in accordance with the provisions of subdivision three of  
7 this section.

8 3. Appointments. (a) The board shall consist of nine members; three,  
9 including the chair, as selected by the governor; and six members to be  
10 appointed by the governor upon the recommendations, respectively, of the  
11 attorney general, the comptroller, the temporary president of the  
12 senate, the minority leader of the senate, the speaker of the assembly,  
13 and the minority leader of the assembly. Any vacancy in the board shall  
14 be filled for the unexpired term in the same manner as the original  
15 appointment.

16 (b) No member of the board shall hold any other public office or  
17 employment. No members shall have experience as law enforcement profes-  
18 sionals. For the purposes of this section, experience as a law enforce-  
19 ment professional shall include experience as a peace officer, police  
20 officer, criminal investigator, special agent, or a managerial or super-  
21 visory employee who exercised substantial policy discretion on law  
22 enforcement matters, in a federal, state, or local law enforcement agen-  
23 cy, other than experience as an attorney in a prosecutorial agency.

24 (c) The members of the board shall be appointed for terms of three  
25 years.

26 (d) Each member of the board shall be entitled to reimbursement for  
27 his or her actual and necessary expenses incurred in the performance of  
28 his or her official duties and a per diem allowance of one hundred fifty  
29 dollars when rendering service as a member; provided that the aggregate  
30 of such per diem allowance to any one member in any one fiscal year of  
31 the board shall not exceed the sum of five thousand dollars.

32 4. Powers and duties of the board. (a) The board shall appoint an  
33 executive director who shall act in accordance with the policies of the  
34 board.

35 (b) The board is authorized, within appropriations available therefor,  
36 to appoint such employees as are necessary to exercise its powers and  
37 fulfill its duties. The board shall appoint investigators to investigate  
38 civilian complaints. Such investigators shall have investigative experi-  
39 ence as a condition of their appointment by the board.

40 (c) The board shall have the power to adopt, amend and rescind rules  
41 and regulations to govern procedures of the board in accordance with  
42 this section.

43 (d) The board shall have the power to subpoena and require the attend-  
44 ance in this state of witnesses and the production of books and papers  
45 pertinent to the investigation and inquiries hereby authorized and to  
46 examine them and such public records as it shall require relating to any  
47 such matter. A subpoena issued pursuant to this action shall be regu-  
48 lated by the civil practice law and rules.

49 (e) The board may also offer, but may not require, mediation by an  
50 experienced mediator between a complainant and a subject officer as an  
51 alternative to investigation and discipline. The board shall set guide-  
52 lines to determine cases appropriate for mediation.

53 5. Complaint review procedure. (a) Complaints may be initiated by any  
54 person whether or not that person is a victim of, or a witness to, an  
55 incident alleging the use of excessive force or abuse of authority. A  
56 complaint may also be initiated by the board, upon a majority vote ther-

1 eof, if the board determines that there is a clear public interest in  
2 doing so.

3 (b) The board must take reasonable measures to ensure the confiden-  
4 tiality of all complainants.

5 (c) All complaints, other than those in which both the complainant and  
6 the subject officer agree to mediation, shall be assigned to an investi-  
7 gator, who shall take such steps as are necessary to investigate the  
8 complaint, including obtaining a statement from the complainant, witness  
9 statements, documentary evidence, and interviews with subject officers.  
10 When the investigation is complete, it shall be forwarded to the board,  
11 or a panel consisting of at least three members of the board, which  
12 shall read the case, review all of the evidence and vote on the disposi-  
13 tion of each allegation raised by the complaint.

14 (d) The board's vote on each allegation brought before it shall result  
15 in one of the following dispositions:

16 (i) Substantiated; a finding that there is sufficient credible  
17 evidence to believe that the subject officer committed the act charged  
18 in the allegation constituting misconduct;

19 (ii) Exonerated; a finding that the subject officer was found to have  
20 committed the act alleged, but the subject officer's actions were deter-  
21 mined to be lawful and proper;

22 (iii) Unfounded; a finding that there is sufficient credible evidence  
23 to believe that the subject officer did not commit the alleged act of  
24 misconduct;

25 (iv) Unsubstantiated; a finding that the weight of the available  
26 evidence is insufficient to substantiate, exonerate or unfind the alle-  
27 gation;

28 (v) Officer or officers unidentified; a finding that the board was  
29 unable to identify the subject or subjects of the alleged misconduct; or

30 (vi) Miscellaneous; a finding that the subject of the allegation is no  
31 longer an officer.

32 (e) If any of the allegations are substantiated, the board shall  
33 forward the case to the subject officer's employer, and may recommend to  
34 the employer appropriate disciplinary action. If, within thirty days of  
35 a case being forwarded for discipline, no disciplinary action is taken  
36 by an officer's employer with respect to the substantiated allegations  
37 of misconduct, the board shall forward the case to the district attorney  
38 for the jurisdiction in which the misconduct occurred.

39 (f) Except in extenuating circumstances, all investigations shall be  
40 completed within six months of the date when the complaint was initi-  
41 ated.

42 § 2. This act shall take effect immediately.