STATE OF NEW YORK

2186--A

2021-2022 Regular Sessions

IN SENATE

January 20, 2021

Introduced by Sens. SEPULVEDA, HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to requiring police officers to report the misconduct of a police officer and requiring the division of criminal justice to establish a protocol to be followed by police agencies when handling and recording mandatory reports of misconduct by a police officer; and to amend the penal law, in relation to establishing the crime of failure to report misconduct by a police officer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 837 of the executive law is amended by adding a new subdivision 23 to read as follows:

23. Promulgate a standardized and detailed written protocol to be followed by police agencies for the handling and recording of mandatory reports of misconduct by a police officer as required pursuant to section eight hundred thirty-seven-w of this article. The protocol shall include provisions protecting police officers who are mandated to report misconduct from retaliation against such officer as a result of filing such report. The division shall also promulgate a standardized "officer misconduct incident report form" for use by police agencies in the reporting, recording and investigation of all alleged incidents of officer misconduct, regardless of whether an arrest is made as a result of such investigation. Such form shall be prepared in multiple parts, one of which shall be immediately forwarded to the division, and shall include designated spaces for: the recordation of the results of the investigation by the police agency and the basis for any action taken; the recordation of the reporting officer's allegations of misconduct; and immediately thereunder a space on which the reporting officer shall

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

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sign and verify his or her allegations. Such protocol shall include provisions regarding the failure to report misconduct which, notwithstanding any provision of a labor contract to the contrary, shall authorize the police agency to terminate from employment and/or bring criminal charges against the officer who failed to report the misconduct.

§ 2. The executive law is amended by adding a new section 837-w to read as follows:

§ 837-w. Mandatory reporting of misconduct. Every police officer shall be required to report in accordance with this section when he or she has reasonable cause to suspect that a police officer, acting in his or her professional or official capacity, has used excessive force or otherwise acted with misconduct in relation to the use of excessive force. Whenever such officer is required to report under this section, he or she shall immediately notify his or her police agency, which then shall be responsible to forward such report to the division and to follow the protocol established by the division pursuant to subdivision twenty-three of section eight hundred thirty-seven of this article. A police officer who fails to comply with the requirements of this section shall be charged with failure to report misconduct by a police officer pursuant to section 195.01 of the penal law.

§ 3. The penal law is amended by adding a new section 195.01 to read as follows:

§ 195.01 Failure to report misconduct by a police officer.

A police officer is guilty of failure to report misconduct by a police officer when he or she:

1. has reasonable cause to suspect that a police officer, acting in his or her professional or official capacity, has used excessive force or otherwise acted with misconduct in relation to the use of excessive force; and

2. fails to report such misconduct as required pursuant to section eight hundred thirty-seven-w of the executive law.

Failure to report misconduct by a police officer is a class D felony.

§ 4. This act shall take effect immediately.