STATE OF NEW YORK

3392

2021-2022 Regular Sessions

IN SENATE

January 29, 2021

Introduced by Sens. BAILEY, KRUEGER, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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:

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

§ 842-a. Board for review of officer-involved deaths and near deaths. 1. There is hereby created a ten member board for the review of officer-involved deaths and near deaths. The purpose of such board shall be to investigate and review 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. The members of the board shall be appointed by the governor, as follows:

(a) A former sheriff, chief of police, chief deputy sheriff, deputy chief of police, or state trooper.

(b) A former district attorney, former United States attorney or former attorney general, or a former assistant district attorney, former assistant attorney general or former assistant United States attorney who served in an such capacity for at least three years.

(c) A physician who is a present or former coroner or medical examiner.

(d) A professor or researcher affiliated with an accredited New York university or college who has expertise in the field of criminal law or criminal justice, on the recommendation of the president of the New York state bar association.

(e) One member shall be appointed on the recommendation of the temporary president of the senate.

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

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(f) One member shall be appointed on the recommendation of the speaker of the assembly.

(g) One member shall be appointed on the recommendation of the minority leader of senate.

(h) One member shall be appointed on the recommendation of the minority leader of the assembly.

(i) One member shall be appointed on the recommendation of the New York state black, puerto rican, hispanic and asian legislative caucus.

(j) One member shall be appointed on the recommendation of the national association for the advancement of colored people legal defense fund.

2. Each member of the board shall serve a term of four years provided, however, that the initial term of the members appointed pursuant to paragraph (a), (b), (d), (f) and (h) of subdivision one of this section shall be for a period of two years. All appointments to the board shall be made no later than thirty days after the effective date of this section. A vacancy on the board shall be filled promptly in the same manner as the original appointment. No individual who is actively affiliated with a law enforcement agency shall be eligible for appointment or continued service as a member of the board.

3. The members of the board shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their function under this section. The office of the superintendent of state police shall provide staff, a main office and other financial support so that the board may effectively engage in its functions under this section.

4. A chairperson of the board shall be selected by majority vote representing more than half of the statutorily-authorized membership of the board. The chairperson or any five members of the board may call a meeting. The board shall meet as necessary to perform its duties under law, including but not limited to this section and subdivision one-a of section two hundred sixteen of this chapter. Meetings shall be conducted in accordance with article seven of the public officers law.

5. The board shall establish procedures necessary to prevent the unauthorized disclosure of any information or material related to an investigation received by any member of the board.

6. A member of the board may be removed by the appointing authority solely for substantial neglect of duty or material violation of a confidentiality restriction, after advance written notice to the board member and, where applicable, the nominating authority and a reasonable opportunity for each to be heard.

7. The board shall meet regularly to consider any relevant information and shall meet promptly to consider any report received pursuant to paragraph (c) of subdivision one-a of section two hundred sixteen of this chapter, provided that such a meeting shall not be required to consider an interim report received pursuant to such paragraph. Upon consideration of any such report or other relevant information, the board may request additional information, clarification and/or an in-person interview with any person who assisted in the preparation of the report.

8. Promptly after the board completes its review of a detailed written report of an investigation received pursuant to paragraph (c) of subdivision one-a of section two hundred sixteen of this chapter, the board shall make written recommendations to the district attorney in the county where the death or near death occurred, the governor and other relevant 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.

§ 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 injures 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.

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

§ 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.

§ 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

have occurred during any encounter with a police or peace officer, police department or sheriff's department in this state, it shall be the duty of the district attorney to cooperate and, to the greatest extent permitted by law, share relevant information with the bureau of criminal investigation engaged in or partnering in an investigation pursuant to subdivision one-a of section two hundred sixteen of the executive law, and with the board for review of officer-involved deaths and near deaths established pursuant to section eight hundred forty-two-a of such law.

(b) The district attorney shall carefully consider any information and recommendation received from such bureau in accordance with subdivision one-a of section two hundred sixteen of the executive law, as well as any recommendation received from such board for review of officer-involved deaths and near deaths, and any member thereof, pursuant to subdivision eight of section eight hundred forty-two-a of the executive law. Notwithstanding the provisions of any other law, the district attorney shall notify such board promptly and in writing and with appropriate detail upon commencement of any grand jury proceeding potentially relevant to the investigation of such an encounter; provided, however, that the failure to provide such notice or any delay in providing such notice shall not affect the validity of any indictment that may result from such grand jury proceeding.

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

(a) Grand jury proceedings are secret, and no grand juror, or other person specified in subdivision three of this section or section 215.70 of the penal law, may, except in the lawful discharge of his duties or upon written order of the court, disclose the nature or substance of any grand jury testimony, evidence, or any decision, result or other matter attending a grand jury proceeding. For the purpose of assisting the grand jury in conducting its investigation, evidence obtained by a grand jury may be independently examined by the district attorney, members of his staff, police officers specifically assigned to the investigation, including officers of the bureau of criminal investigation participating pursuant to subdivision one-a of section two hundred sixteen of the executive law, members of the board of review of officer-involved deaths and near deaths serving pursuant to section eight hundred forty-two-a of such law and such other persons as the court may specifically authorize. Such evidence may not be disclosed to other persons without a court order. Nothing contained herein shall prohibit a witness from disclosing his own testimony.

§ 6. This act shall take effect immediately.