

# 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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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 inves-  
36 tigation 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 confi-  
39 dentiality 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 subdivi-  
53 sion 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

1 advisability of any action by a grand jury, and may include any other  
2 relevant recommendations. Any member of the board may also make and  
3 provide such written recommendations, copies of which shall also be  
4 provided to all other members of the board.

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

7 1-a. (a) In addition to its other assigned duties, the superintendent  
8 shall assign the bureau of investigation, established pursuant to this  
9 section, responsibility to investigate, on its own or, as applicable, as  
10 an active partner with any other police or sheriff's department of  
11 appropriate jurisdiction, the death or near death of any person that  
12 resulted from or potentially resulted from injuries that occurred or may  
13 have occurred during any encounter with a police or peace officer,  
14 police department or sheriff's department in this state.

15 (b) Every such investigation shall be commenced promptly upon the  
16 superintendent learning of such incident. Every police department, sher-  
17 iff's department and state and local agency, including every local  
18 district attorney's office, shall assist and cooperate with the bureau  
19 in the conduct of such investigations, and shall ensure that the bureau  
20 has access to locations it deems relevant, as well as access to records,  
21 information and physical items that deems relevant, to such investi-  
22 gation.

23 (c) The bureau shall provide interim written reports at least bi-week-  
24 ly updating the board of review of officer-involved deaths and near  
25 deaths, and the district attorney and superintendent concerning the  
26 progress of such investigation. Upon the conclusion of such investi-  
27 gation, the bureau shall promptly issue to the board of review of offi-  
28 cer-involved deaths and near deaths, the district attorney, the super-  
29 intendent and the governor a detailed written report of the  
30 investigation, which shall include, but not be limited to, a statement  
31 of the apparent cause and circumstances of the death or near death, as  
32 the case may be, and specify any potential criminal charges. Notwith-  
33 standing the provisions of any other law, any such report shall consti-  
34 tute a record available for public disclosure, within the meaning of  
35 subdivision four of section eighty-six of the public officer's law,  
36 provided that any portion of such report may be redacted before release  
37 when and to the extent authorized pursuant to subdivision two of section  
38 eighty-seven of the public officers law.

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

41 § 839-a. Certain deaths and near deaths to be reported. Every case of  
42 the death of or near death of a person that resulted from or potentially  
43 resulted from injuries that occurred or may have occurred during any  
44 encounter with a police or peace officer, police department or sheriff's  
45 department in this state shall be reported promptly to the superinten-  
46 dent of state police by such officer or the chief law enforcement offi-  
47 cer of such department. Such report shall be in sufficient detail as to  
48 permit the superintendent to commence a meaningful investigation of such  
49 matter in accordance with subdivision one-a of section two hundred  
50 sixteen of the chapter. Upon receiving such notification or otherwise  
51 learning of such a death or near death, the superintendent of state  
52 police shall proceed in the manner described in such subdivision.

53 § 4. Section 700 of the county law is amended by adding a new subdivi-  
54 sion 14 to read as follows:

55 14. (a) In the case of the death or near death of any person that  
56 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 involved 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 § 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 § 6. This act shall take effect immediately.