STATE OF NEW YORK

5248--A

2021-2022 Regular Sessions

IN SENATE

February 26, 2021

Introduced by Sens. BRISPORT, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation establishing reporting duties of law enforcement agencies with respect to police misconduct allegations and outcomes

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 837-x to read as follows:

§ 837-x. Reporting duties of law enforcement agencies with respect to police misconduct allegations and outcomes. 1. Definitions. For the purposes of this section:

a. "Action pending investigation" means an action taken by a law enforcement agency in response to the opening of an investigation into an alleged infraction, including but not limited to placing an officer on modified duty, unpaid suspension, or paid suspension.

b. "Encounter" means the contact between the subject officer and an individual that resulted in either a police misconduct complaint or an alleged infraction.

c. "Alleged infraction" means any alleged violation of agency rules or policies or violations of law by an officer. An alleged infraction includes any rule violation regardless of whether it is associated with a police misconduct complaint. The term alleged infraction does not include technical infractions as defined in section eighty-six of the public officers law.

d. "Disciplinary action" means any action taken by the law enforcement agency as a result of an investigation concerning an alleged infraction. Disciplinary action includes but is not limited to charges and specifi-

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

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cations, termination, forced separation, probation, suspension, loss of vacation days, training, instructions, mandated drug screenings, mandated counseling, divesture of interest, command discipline, or any other such category of discipline maintained by the law enforcement agency. The term "disciplinary action" also includes a recommendation or decision not to impose any penalty.

e. "Investigating agency" means the agency responsible for investigating the alleged infraction.

f. "Law enforcement agency" means a police agency or department of the state or any political subdivision thereof, including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law, or a sheriff's department.

g. "Officer" means a police officer, as defined in subdivision thirty-four of section 1.20 of the criminal procedure law, or a peace officer as defined in section 2.10 of the criminal procedure law.

h. "Originating agency" means the agency that first identified an alleged infraction or that received a police misconduct complaint.

i. "Police misconduct complaint" means any complaint of misconduct alleged by a member of the public or an employee of a law enforcement agency where the subject of such a complaint is an officer. Police misconduct complaint includes any complaint made to the law enforcement agency or any other agency authorized to investigate misconduct by an officer. Police misconduct complaints may be brought against one or more officers and may contain one or more alleged infractions.

j. "Subject officer" means an officer who is alleged to have committed an alleged infraction. There may be multiple subject officers involved in a single police misconduct complaint.

k. "Unique, permanent, and stable identifying number" means a number that is assigned to each officer by the employing agency, municipality, or the division that is unique, permanently associated with the officer and which does not change during the officer's lifetime. Such number shall be the tax identification number assigned to the officer by the agency where such number is issued.

2. The division shall establish and maintain on its official website a public, searchable database of alleged infractions and police misconduct complaints. Such database shall consist of the information described in subdivision three of this section. Such database shall include all records described in subdivision three of this section regardless of when those records were produced or created, and regardless of the disposition of any investigation into an alleged infraction or police misconduct complaint.

3. The database described in subdivision two of this section shall include the following:

a. the name of the subject officer for each alleged infraction;

b. the law enforcement agency that employees the subject officer;

c. the shield number of the subject officer at the time of the alleged encounter;

d. the unique, permanent, and stable identifying number of the subject officer;

e. the rank of the subject officer at the time of the alleged encounter;

f. the command of the subject officer at the time of the alleged encounter;

g. the precinct of the subject officer at the time of the alleged encounter;

h. whether the subject officer is currently on active duty, retired, or has been terminated;

i. demographic information on the subject officer, including race, ethnicity, gender, and age;

j. whether an allegation is concerning an improper use of force; racial profiling; biased policing; sexual misconduct; an unlawful stop; an unlawful search; an unlawful arrest; falsifying official statements; unlawful entry; interfering with documenting police activity; tampering with evidence; failure to provide aid or medical attention; interfering with investigations into alleged infractions; an officer's failure to identify themselves; or other;

k. the alleged infraction;

l. the date of the encounter;

m. the date of the alleged infraction;

n. the location where the encounter occurred;

o. whether the contact was officer-initiated or in response to a dispatch or a request for assistance by a member of the public;

p. whether the encounter was a result of a pedestrian stop, car stop, aided request, execution of a warrant, witness interview, police dispatch to respond to a person experiencing a mental health or substance use emergency, or other;

q. demographic information of the alleged victim, including race, ethnicity, gender, and age, to the extent that such information is recorded;

r. a unique serial case identification number;

s. the originating agency;

t. the investigating agency;

u. the date the investigating agency began its investigation;

v. the status of an investigation (open or closed);

w. whether witnesses to the alleged encounter or other witnesses were interviewed. If so, the database shall indicate whether the witnesses were officers, civilians, or both;

x. whether the investigating agency reviewed video footage, photographic images, or other recordings of the alleged encounter;

y. the date of the finding by the investigating agency;

z. the finding of the investigating agency, including any disposition category maintained by the agency regardless of the nature of such disposition;

aa. the disciplinary action recommended by the investigating agency;

bb. any action pending investigation taken by the law enforcement agency;

cc. whether the subject officer was subject to an administrative prosecution. If so, the database shall also include and be searchable by the following:

i. the charges against the subject officer;

ii. the finding per charge, including guilty or not guilty; and

iii. the disciplinary action recommended by the person presiding over such prosecution;

dd. the disciplinary action taken by the law enforcement agency; and

ee. the justification for any divergence between the disciplinary action taken by the law enforcement agency and the disciplinary action recommended by the investigating agency.

4. Where the name of an officer is unknown at the time of the initial complaint or opening of an investigation, the database shall indicate "officer unknown". If an officer's name is discovered in the course of an investigation, the investigating agency shall provide that informa-

tion to the division within thirty days. The division shall update the database with such officer's name within thirty days of receipt of such information.

5. The information in the database required by subdivision two of this section shall be updated monthly.

6. The database described in subdivision two of this section shall not include the name of or any other individually identifying information for any person other than the subject officer.

7. The information included in the database required by subdivision two of this section shall be available in a format that permits automated processing and shall be available without any registration requirement, license requirement or restrictions on their use, provided that the division may require a third party providing the public any data from such database, or any application utilizing such data, to explicitly identify the source and version of the data, and a description of any modifications made to such data.

8. The chief of every police department, each county sheriff, and the superintendent of state police shall report to the division on a monthly basis all information described in subdivision three of this section.

9. For records in existence prior to the effective date of this section, the chief of every police department, each county sheriff, and the superintendent of the state police shall provide all information described in subdivision three of this section to the extent such information exists.

10. The division shall promulgate regulations to effectuate the reporting of information from law enforcement agencies sufficient to establish the database described in subdivision two of this section.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.