

# STATE OF NEW YORK

2108

2023-2024 Regular Sessions

## IN SENATE

January 18, 2023

Introduced by Sens. BAILEY, RIVERA -- read twice and ordered printed,  
and when printed to be committed to the Committee on Cities 1

AN ACT to amend the New York city charter and the administrative code of  
the city of New York, in relation to providing final discipline  
authority over civilian complaints to the civilian complaint review  
board

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

1 Section 1. Subdivision a of section 434 of the New York city charter  
2 is amended to read as follows:

3 a. The commissioner shall have cognizance and control of the govern-  
4 ment, administration, disposition and discipline of the department, and  
5 of the police force of the department, with the exception of discipli-  
6 nary determinations and adjudications made by the civilian complaint  
7 review board, which shall not be within the discretion of the police  
8 commissioner.

9 § 2. Section 440 of the New York city charter, as added by local law  
10 number 1 of the city of New York for the year 1993, paragraphs 1, 3 and  
11 4 of subdivision (b) as amended by section 1, paragraph 3 of subdivision  
12 (d) as amended by section 4 and subdivision (g) as added by section 5 of  
13 question 2 of local law number 215 of the city of New York for the year  
14 2019, paragraphs 1, 2 and 5 of subdivision (c) as amended by local law  
15 number 24 of the city of New York for the year 2022, paragraphs 3 and 6  
16 of subdivision (c) and paragraphs 1 and 2 of subdivision (d) as amended  
17 by local law 47 of the city of New York for the year 2021, is amended to  
18 read as follows:

19 § 440. Public complaints against members of the police department. (a)  
20 It is in the interest of the people of the city of New York and the New  
21 York city police department that the investigation and prosecution of  
22 complaints concerning misconduct by officers of the department towards  
23 members of the public be complete, thorough and impartial. These

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

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1 inquires must be conducted fairly and independently, and in a manner in  
2 which the public and the police department have confidence. An independ-  
3 ent civilian complaint review board is hereby established as a body  
4 comprised solely of members of the public with the authority to investi-  
5 gate and prosecute allegations of police misconduct as provided in this  
6 section.

7 (b) Civilian complaint review board.

8 1. The civilian complaint review board shall consist of 15 members of  
9 the public. Members shall be residents of the city of New York and shall  
10 reflect the diversity of the city's population. The members of the board  
11 shall be appointed as follows: (i) five members, one from each of the  
12 five boroughs, shall be appointed by the city council; (ii) one member  
13 shall be appointed by the public advocate; (iii) three members with  
14 experience as law enforcement professionals shall be designated by the  
15 police commissioner and appointed by the mayor; (iv) five members shall  
16 be appointed by the mayor; and (v) one member shall be appointed jointly  
17 by the mayor and the speaker of the council to serve as chair of the  
18 board.

19 2. No member of the board shall hold any other public office or  
20 employment. No members, except those designated by the police commis-  
21 sioner, shall have experience as law enforcement professionals, or be  
22 former employees of the New York city police department. For the  
23 purposes of this section, experience as a law enforcement professional  
24 shall include experience as a police officer, criminal investigator,  
25 special agent, or a managerial or supervisory employee who exercised  
26 substantial policy discretion on law enforcement matters, in a federal,  
27 state, or local law enforcement agency, other than experience as an  
28 attorney in a prosecutorial agency.

29 3. The members shall be appointed for terms of three years. The public  
30 advocate shall make the public advocate's first appointment to the board  
31 on or before May 6, 2020. The board member so appointed shall assume  
32 office on July 6, 2020. The mayor and the speaker of the council shall  
33 make their initial joint appointment to the board on or before May 6,  
34 2020. The member so appointed shall serve as the board's chair and shall  
35 assume office on July 6, 2020.

36 4. Members of the board shall serve until their successors have been  
37 appointed and qualified. In the event of a vacancy on the board during  
38 the term of office of a member by reason of removal, death, resignation,  
39 or otherwise, a successor shall be chosen in the same manner as the  
40 original appointment within 60 days from the date such vacancy occurred.  
41 A member appointed to fill a vacancy shall serve for the balance of the  
42 unexpired term. During any period in which the office of the chair is  
43 vacant, the mayor shall select a member of the board to serve as interim  
44 chair until such vacancy has been filled.

45 (c) Powers and duties of the board.

46 1. The board shall have the power to receive, investigate, hear, make  
47 findings and recommend action upon complaints filed by members of the  
48 public, or information received by the board or complaints initiated by  
49 the board against members of the police department that allege miscon-  
50 duct involving excessive use of force, abuse of authority including  
51 bias-based policing and racial profiling, discourtesy, or use of offen-  
52 sive language, including, but not limited to, slurs relating to race,  
53 ethnicity, religion, gender, sexual orientation and disability. The  
54 board shall also have the power to investigate, hear, make findings and  
55 recommend action regarding the truthfulness of any material official  
56 statement made by a member of the police department who is the subject

1 of a complaint received or initiated by the board, if such statement was  
2 made during the course of and in relation to the board's resolution of  
3 such complaint. The findings and recommendations of the board, and the  
4 basis therefor, shall be submitted to the police commissioner, who shall  
5 have no discretion in whether to impose the recommended discipline.  
6 Where the board substantiates one or more allegations against a member  
7 of the police department and recommends a level of discipline that  
8 would subject the member of the department to being fined, reprimand-  
9 ed, removed, suspended or dismissed from the force, the complaint  
10 shall be adjudicated by a hearing officer pursuant to subdivision (d) of  
11 this section. No finding or recommendation shall be based solely upon  
12 an unsworn complaint or statement, nor shall prior unsubstantiated,  
13 unfounded or withdrawn complaints be the basis for any such finding or  
14 recommendation.

15 2. The board shall promulgate rules of procedure in accordance with  
16 the city administrative procedure act, including rules that prescribe  
17 the manner in which investigations and prosecutions are to be conducted  
18 and recommendations made and the manner by which, when a member of the  
19 public is the complainant, such member of the public is to be informed  
20 of the status of his or her complaint. Such rules may provide for the  
21 establishment of panels, which shall consist of not less than three  
22 members of the board, which shall be empowered to supervise the investi-  
23 gation of matters within the board's jurisdiction pursuant to this  
24 section, and to hear, make findings and recommend action on such  
25 matters. No such panel shall consist exclusively of members appointed by  
26 the council, or designated by the police commissioner, or appointed by  
27 the mayor.

28 3. The board, by majority vote of its members, may compel the attend-  
29 ance of witnesses and require the production of such records and other  
30 materials as are necessary for the investigation and prosecution of  
31 matters within its jurisdiction pursuant to this chapter. The board may  
32 request the corporation counsel to institute proceedings in a court of  
33 appropriate jurisdiction to enforce the subpoena power exercised pursu-  
34 ant to this chapter, and the board itself may, subject to chapter 17 of  
35 the charter, institute such proceedings. The board may, subject to any  
36 conditions it deems appropriate, delegate to and revoke from its execu-  
37 tive director such subpoena authority and authority to institute  
38 proceedings.

39 4. The board shall establish a mediation program pursuant to which a  
40 complainant may voluntarily choose to resolve a complaint by means of  
41 informal conciliation.

42 5. The board is authorized, within appropriations available therefor,  
43 to appoint such employees as are necessary to exercise its powers,  
44 including but not limited to the power to initiate complaints in accord-  
45 ance with paragraph 1 of this subdivision, and fulfill its duties. The  
46 board shall employ civilian investigators to investigate all matters  
47 within its jurisdiction. The board shall create an administrative prose-  
48 cution unit, staffed by attorneys and the necessary support staff, that  
49 shall handle the prosecution of substantiated cases before a hearing  
50 officer.

51 6. The board shall issue to the mayor and the city council a semi-an-  
52 nual report which shall describe its activities and summarize its  
53 actions. Such report shall include, for each investigation initiated  
54 pursuant to section 441, such investigation's date of initiation,  
55 current status and any date of completion or termination, a description  
56 of any investigative findings and recommendations set forth in a written

1 statement of final determination and a description of any written  
2 reports from the police commissioner in response to a written statement  
3 of final determination.

4 7. The board shall have the responsibility of informing the public  
5 about the board and its duties, and shall develop and administer an  
6 on-going program for the education of the public regarding the  
7 provisions of this chapter.

8 (d) Hearings.

9 1. The executive director shall appoint at least one hearing officer,  
10 who shall be a civilian with no law enforcement background, to preside  
11 over and adjudicate disciplinary proceedings and make final determi-  
12 nations in cases where the board has substantiated one or more allega-  
13 tions against a police officer and recommended command discipline or  
14 charges and specifications.

15 2. The hearing officer, upon approval of the board chair, shall have  
16 the power to punish an officer, upon a plea of guilty or a finding of  
17 guilty after an administrative trial, by reprimand, forfeiting and with-  
18 holding pay for a specified time, suspension, suspension without pay, or  
19 by dismissal from the force. No more than thirty days' salary shall be  
20 forfeited or deducted for any offense. Members of the police department  
21 may be fined, reprimanded, removed, suspended or dismissed from the  
22 force only on written charges made and preferred against them, after  
23 such charges have been examined, heard and investigated by the hearing  
24 officer, by a preponderance of the evidence, upon such reasonable notice  
25 to the member of service charged, and in such manner or procedure, prac-  
26 tice, examination and investigation as prescribed, to the extent appli-  
27 cable under sections 15-03 and 15-04 of the Rules of the City of New  
28 York.

29 3. The conduct of such hearings shall follow, to the extent applica-  
30 ble, the parameters specified in sections 15-03 and 15-04 of the Rules  
31 of the City of New York.

32 4. Attorneys from the board's administrative prosecution unit shall be  
33 responsible for the prosecution of cases before the hearing officer.

34 (e) Cooperation of police department.

35 1. It shall be the duty of the police department to provide such  
36 assistance as the board may reasonably request, to cooperate fully with  
37 investigations by the board, and to provide to the board upon request  
38 records and other materials which are necessary for investigations  
39 undertaken pursuant to this chapter, except such records or materials  
40 that cannot be disclosed by law.

41 2. The police commissioner shall ensure that officers and employees of  
42 the police department appear before and respond to inquiries of the  
43 board and its civilian investigators in connection with investigations  
44 and prosecutions undertaken pursuant to this chapter, provided that such  
45 inquiries are conducted in accordance with department procedures for  
46 interrogation of members.

47 ~~[3. The police commissioner shall report to the board in writing on~~  
48 ~~any action taken, including the level of discipline and any penalty~~  
49 ~~imposed, in all cases in which the board submitted a finding or recom-~~  
50 ~~mendation to the police commissioner with respect to a matter within its~~  
51 ~~jurisdiction pursuant to this section. In any case substantiated by the~~  
52 ~~board in which the police commissioner intends to impose or has imposed~~  
53 ~~a different penalty or level of discipline than that recommended by the~~  
54 ~~board or by the deputy commissioner responsible for making disciplinary~~  
55 ~~recommendations, the police commissioner shall provide such written~~  
56 ~~report, with notice to the subject officer, no later than 45 days after~~

~~the imposition of such discipline or in such shorter time frame as may be required pursuant to an agreement between the police commissioner and the board. Such report shall include a detailed explanation of the reasons for deviating from the board's recommendation or the recommendation of the deputy commissioner responsible for making disciplinary recommendations and, in cases in which the police commissioner intends to impose or has imposed a penalty or level of discipline that is lower than that recommended by the board or such deputy commissioner, shall also include an explanation of how the final disciplinary outcome was determined, including each factor the police commissioner considered in making his or her decision.~~

~~(e)] (f)~~ The provisions of this section shall not be construed to limit ~~[or impair the authority of the police commissioner to discipline members of the department. Nor shall the provisions of this section be construed to limit]~~ the rights of members of the department with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise.

~~(f)] (g)~~ The provisions of this section shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency or body.

~~(g)] (h)~~ 1. Beginning in fiscal year 2021 and for each fiscal year thereafter, the appropriations available to pay for the personal services expenses of the civilian complaint review board during each fiscal year shall not be less than an amount sufficient to fund personal services costs for the number of full-time personnel plus part-time personnel, calculated based on full-time equivalency rates, equal to 0.65 percent of the number of uniform budgeted headcount of the police department for that fiscal year, as determined consistent with published budgeted headcount documents of the office of management and budget. The calculation to determine the minimum appropriations for the personal services expenses of the civilian complaint review board pursuant to this paragraph shall be set forth in the preliminary expense budget, the executive expense budget, and the adopted budget.

2. Notwithstanding paragraph 1 and in addition to any action that may be undertaken pursuant to section 106, the appropriations available to pay for the personal services expenses of the civilian complaint review board may be less than the minimum appropriations required by paragraph 1 provided that, prior to adoption of the budget pursuant to section 254 or prior to the adoption of a budget modification pursuant to section 107, the mayor determines that such reduction is fiscally necessary and that such reduction is part of a plan to decrease overall appropriations or is due to unforeseen financial circumstances, and the mayor sets forth the basis for such determinations in writing to the council and the civilian complaint review board at the time of submission or adoption, as applicable, of any budget or budget modification containing such reduction.

§ 3. Section 14-115 of the administrative code of the city of New York is amended to read as follows:

§ 14-115 Discipline of members. a. The commissioner shall have power, in his or her discretion, except civilian complaints determined by the civilian complaint review board, in which the commissioner shall have no discretion, on conviction by the commissioner, or by any court or officer of competent jurisdiction, of a member of the force of any criminal

1 offense, or neglect of duty, violation of rules, or neglect or disobedi-  
2 ence of orders, or absence without leave, or any conduct injurious to  
3 the public peace or welfare, or immoral conduct or conduct unbecoming an  
4 officer, or any breach of discipline, to punish the offending party by  
5 reprimand, forfeiting and withholding pay for a specified time, suspen-  
6 sion, without pay during such suspension, or by dismissal from the  
7 force; but no more than thirty days' salary shall be forfeited or  
8 deducted for any offense. All such forfeitures shall be paid forthwith  
9 into the police pension fund.

10 b. Members of the force, except as elsewhere provided herein, shall be  
11 fined, reprimanded, removed, suspended or dismissed from the force only  
12 on written charges made or preferred against them, after such charges  
13 have been examined, heard and investigated by the commissioner or one of  
14 his or her deputies upon such reasonable notice to the member or members  
15 charged, and in such manner or procedure, practice, examination and  
16 investigation as such commissioner may, by rules and regulations, from  
17 time to time prescribe. Where the member of the force is subject to  
18 being fined, reprimanded, removed, suspended, or dismissed from the  
19 force as a result of a complaint substantiated by the civilian complaint  
20 review board, the written charges made or preferred against the member  
21 of the force shall be examined, heard, and investigated by a hearing  
22 officer of the civilian complaint review board upon such reasonable  
23 notice to the member charged, and in such manner, or procedure, prac-  
24 tice, examination and investigation as prescribed, to the extent appli-  
25 cable under sections 15-03 and 15-04 of the Rules of the City of New  
26 York.

27 c. The commissioner is also authorized and empowered in his or her  
28 discretion, except civilian complaints determined by the civilian  
29 complaint review board, in which the commissioner shall have no  
30 discretion, to deduct and withhold salary from any member or members of  
31 the force, for or on account of absence for any cause without leave,  
32 lost time, sickness or other disability, physical or mental; provided,  
33 however, that the salary so deducted and withheld shall not, except in  
34 case of absence without leave, exceed one-half thereof for the period of  
35 such absence; and provided, further, that not more than one-half pay for  
36 three days shall be deducted on account of absence caused by sickness.

37 d. Upon having found a member of the force guilty of the charges  
38 preferred against him or her, either upon such member's plea of guilty  
39 or after trial, the commissioner or the deputy examining, hearing and  
40 investigating the charges, in his or her discretion, except civilian  
41 complaints determined by the civilian complaint review board, in which  
42 the commissioner shall have no discretion, may suspend judgment and  
43 place the member of the force so found guilty upon probation, for a  
44 period not exceeding one year; and the commissioner may impose punish-  
45 ment at any time during such period.

46 § 4. Nothing in this act shall make the discipline of police officers  
47 of the police department of the city of New York subject to collective  
48 bargaining or arbitration or remove police discipline from local gover-  
49 nance.

50 § 5. This act shall take effect on the thirtieth day after it shall  
51 have become a law.