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 Assembly, do enact as follows:

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

a. The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department**, with the exception of disciplinary determinations and adjudications made by the civilian complaint review board, which shall not be within the discretion of the police commissioner**.

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

§ 440. Public complaints against members of the police department. (a) It is in the interest of the people of the city of New York and the New York city police department that the investigation **and prosecution** of complaints concerning misconduct by officers of the department towards 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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inquires must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate **and prosecute** allegations of police misconduct as provided in this section.

(b) Civilian complaint review board.

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

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

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

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

(c) Powers and duties of the board.

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

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

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

3. The board, by majority vote of its members, may compel the attendance of witnesses and require the production of such records and other materials as are necessary for the investigation **and prosecution** of matters within its jurisdiction pursuant to this chapter. The board may request the corporation counsel to institute proceedings in a court of appropriate jurisdiction to enforce the subpoena power exercised pursuant to this chapter, and the board itself may, subject to chapter 17 of the charter, institute such proceedings. The board may, subject to any conditions it deems appropriate, delegate to and revoke from its executive director such subpoena authority and authority to institute proceedings.

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

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

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

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

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

(d) **Hearings.**

1. The executive director shall appoint at least one hearing officer, who shall be a civilian with no law enforcement background, to preside over and adjudicate disciplinary proceedings and make final determinations in cases where the board has substantiated one or more allegations against a police officer and recommended command discipline or charges and specifications.

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

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

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

(e) Cooperation of police department.

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

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

[~~**3. The police commissioner shall report to the board in writing on any action taken, including the level of discipline and any penalty imposed, in all cases in which the board submitted a finding or recommendation to the police commissioner with respect to a matter within its jurisdiction pursuant to this section. In any case substantiated by the board in which the police commissioner intends to impose or has imposed a different penalty or level of discipline than that recommended by the board or by the deputy commissioner responsible for making disciplinary recommendations, the police commissioner shall provide such written 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

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

b. Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force only on written charges made or preferred against them, after such charges have been examined, heard and investigated by the commissioner or one of his or her deputies upon such reasonable notice to the member or members charged, and in such manner or procedure, practice, examination and investigation as such commissioner may, by rules and regulations, from time to time prescribe. **Where the member of the force is subject to being fined, reprimanded, removed, suspended, or dismissed from the force as a result of a complaint substantiated by the civilian complaint review board, the written charges made or preferred against the member of the force shall be examined, heard, and investigated by a hearing officer of the civilian complaint review board upon such reasonable notice to the member charged, and in such manner, or procedure, practice, examination and investigation as prescribed, to the extent applicable under sections 15-03 and 15-04 of the Rules of the City of New York.**

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

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

§ 4. Nothing in this act shall make the discipline of police officers of the police department of the city of New York subject to collective bargaining or arbitration or remove police discipline from local governance.

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