



NEW YORK STATE SENATOR

Velmanette Montgomery

Senator Velmanette Montgomery Speaks on the Passage of Police Reform bills and the Repeal of Civil Rights Law 50-a

VELMANETTE MONTGOMERY June 10, 2020

| ISSUE: **GEORGE FLOYD, POLICE REFORM, POLICE ACCOUNTABILITY**

This week the New York State Legislature passed a collection of bills aimed at holding police offices accountable. Prompted by the ongoing riots in the wake of the brutal murder of George Floyd, at the hands of Minneapolis Police officers. Floyd being the most recent in a running list of innocent young African American people who have been murdered by police officers across the country.

Leading to civilians across the nation calling for reforms and rollbacks of the powers that have been granted to law enforcement officers. Powers that many feel have been abused and need to be restructured. This big push comes as Officers across the nation are caught on camera committing heinous acts behind the guise of maintaining peace. Officers are caught reacting to protestors in some of the most violent ways. Many officers are taking protest as personal attacks on their character, while others feel the need to repair the public trust in law enforcement.

This package of legislation signed into law by the Governor is a major step toward repairing the public trust between Law Enforcement Agencies and the communities they are sworn to protect, together these bills provide sensible accountability for law enforcement across the

state.

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Let me just say to the people of America. Thank you for bringing us to this point and saying in no uncertain terms, that none of us can breathe, if a few of us can't breathe... So I feel this as a legislator, I feel this as a mother, and I feel this as a person in America who has lived with a system that everyday you are in fear that your brother, son or husband is not going to come home. So, thank you Mr. President I vote Aye." Said Senator Montgomery

S.8496: The repeal of Civil Rights law 50-a. Civil Rights Law 50-a shielded the personnel and disciplinary records of police officers, correctional officers, fire fighters and some paramedics. This legislation also added protections for Officers under the Freedom of information laws (FOIL), to ensure their personal information and minor technical infractions are not disclosed.

S.2574-C: Creates an Office of Special Investigation within the Department of Law, under the Attorney General, which will investigate, and, if warranted, prosecute any incident of a person whose death was caused by a police officer or peace officer.

This legislation codifies and significantly expands the Executive Order that granted the Attorney General jurisdiction over deaths caused by the police. Governor Cuomo's Executive Order 147, issued on July 8, 2015, which conferred to the Attorney General jurisdiction to investigate and prosecute matters involving the death of an unarmed civilian, whether in custody or not, caused by a law enforcement officer, including instances where the Attorney General found a significant question as to whether the civilian was armed and dangerous at the time of his or her death.

The Attorney General's jurisdiction supersedes that of the local District Attorney, but the Attorney General may designate powers and duties to the DA as warranted. The Order also directed the Attorney General to issue a report whenever he or she declined to present evidence to a grand jury or when the grand jury declines to return an indictment on any charges. Pursuant to the Order, the Attorney General established the Special Investigations and Prosecutions Unit (SIPU). The bill renames SIPU the Office of Special Investigation (OSI).

The bill expands the Attorney General's jurisdiction in the following ways:

- Applies to peace officers employed or contracted by an education, public health, social service, parks, housing or corrections agency, peace officers as designated by the Department of Corrections and Community Supervision, and correction officers of any state correctional facility or of any penal correctional institution;
- Applies to any death caused by an act or omission of a police or peace officer, or where there was a question whether the officer's act or omission caused the death
- Does not limit jurisdiction to deaths caused while the civilian was unarmed.

Investigations must be full, reasoned and independent, including gathering and analyzing evidence, conducting witness interviews, reviewing and commissioning investigative and scientific reports, and reviewing audio and video recordings. It requires that the AG provide a report where there is no indictment after an investigation, and specifies that the report must include an explanation of the outcome and recommendations for reforms. The legislation would further require annual public reports on the OSI's work.

S.6670-B The Eric Gardner Anti-Chokehold Act

This legislation establishes the criminal offense of Aggravated Strangulation. A person is guilty of Aggravated Strangulation when they commit the already-existing crime of criminal obstruction of breathing or blood circulation or use a chokehold or similar restraint, when the action results in the serious injury or death of another, and when they are a police officer or peace officer. The bill classifies the offense of Aggravated Strangulation as a **Class C Violent Felony punishable by a minimum of 3.5 years in prison and maximum of 15 years.**

This offense was created in response to the 2014 death of Eric Garner in Staten Island. Under current law, an officer who kills a civilian in the course of making an arrest can be charged with one of the murder or manslaughter offenses, depending on the facts of the case and the conduct alleged. In the Eric Garner case, a Staten Island grand jury decided against indicting NYPD officer Daniel Pantaleo because they felt that although the force was unwarranted it did not rise to the level of murder or manslaughter. This bill will not preclude District Attorneys from charging an officer who kills a civilian in this way with a murder or manslaughter offense but does provide an alternative charge. It also clarifies the prohibition on use of chokeholds.

The officer may invoke an affirmative defense to any use of force, including the use of deadly force, where statutorily warranted, including when apprehending someone believed to have used a firearm or deadly weapon in the commission of a crime or when defending themselves or another from what they believe to be the imminent use of deadly physical force.

S.1830-C: The STAT Act. The Police Statistics and Transparency (STAT) Act, requires courts to compile and publish racial and other demographic data of all low-level offenses, including misdemeanors and violations. The bill also requires police departments to submit annual reports on arrest-related deaths to be submitted to the Department of Criminal Justice

Services and to the Governor and the Legislature.

Currently, no state agency tracks any information regarding the demographic information of people charged with and convicted of crimes. Further, police agencies are not required to track or re- port similar data. This bill would allow the state to review data and study the impact of policing and prosecuting on various communities, including communities of color. Without this data, it is difficult, if not impossible, to empirically show the effects that marginalized communities experience as a result of policing practices.

S.3595C: This legislation establishes the Law Enforcement Misconduct Investigative Office within the Department of Law. The Attorney General would appoint a Deputy Attorney General to lead the Office. The Office would have jurisdiction over all police agencies of any political subdivision of the State, as well as other agencies and authorities that employ police forces, except those agencies under the jurisdiction of the State Inspector General, the MTA Inspector General, and the Port Authority Inspector General. The Office would have a statutory mission to review, audit, and make recommendations relating to law enforcement operations and policies with the goal of enhancing effectiveness, increasing public safety, protecting civil liberties, civil rights, and constitutional and legal protections, and increasing the public's confidence in law enforcement. In furtherance of this mission, the Office would be able to investigate complaints, issue subpoenas, publish reports, and make recommendations.

The Office would also submit an annual report with a summary of its activities and recommendations for changes in State law to the Governor, the Attorney General, and the four legislative majority and minority leaders. Where the Office makes a recommendation for remedial action to a department, the head of that department must inform the Governor and legislative majority and minority leaders as to what actions their department has taken

in response within 90 days. Under the bill, any officer or employee of an agency under the Office's jurisdiction would have the duty to report corruption, fraud, use of excessive force, criminal activity, conflicts of interest, or abuse to the Office. Knowing failure to report would constitute cause for removal or other appropriate penalty.

Officers and employees who do make reports would be protected from dismissal, discipline, or other adverse personnel action. Lastly, if an agency receives more than five complaints about an individual officer from five separate incidents within a two-year period, the head of that agency must refer the complaints to the Office. The Office must investigate the complaints to determine whether the officer has a pattern or practice of misconduct. The investigation would not supersede other actions against the officer.

S.8492: 911 Biased Reporting. This legislation establishes a private right of action (Civil Action) for a member of a protected class when another person summons a police or peace officer on them without reason to suspect a crime or an imminent threat to person or property existed.

Under current law, penalties exist for the false reporting of a crime where an individual knowingly provides a baseless report of an incident or a warning of an alleged occurrence or impending occurrence of a crime, catastrophe or emergency when they know such occurrence is unlikely to occur.

This bill is distinguished from existing penal law violations for the false reporting of a crime as this right of action is only available when it is clear that the decision to summon law enforcement is motivated in whole or in substantial part because of the other person's actual or perceived race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation and a reasonable person in that situation would not

suspect that there was a present crime or threat to person or property occurring.

Plaintiffs may recover damages and other appropriate relief, as well as receive injunctive relief. The court may issue injunctive relief upon the finding of a violation, without the need to prove injury or damage has already occurred.

S.2575B: This legislation requires state and local law enforcement officers, as well as peace officers, to report, within six hours, when they discharge their weapon where a person could have been struck, whether they were on or off duty. The officer must verbally report the discharge to his or her supervisor within six hours, and must file a written report of the incident within 48 hours.

The bill explicitly allows officers to invoke their Fifth Amendment right against self-incrimination, in the event that an officer commits a criminal discharge of a firearm while on duty. The bill does not attach a penalty, so failure to report would be handled internally by each individual agency.

Further, as the bill only requires reporting where a person could have been struck by the discharged bullet, this bill will not require reports for use of a firearm at a firing range, unless the firearm is discharged inappropriately at the range.

Currently, law enforcement officers are bound only by department policy in reporting firearm discharge. It is unclear whether any department requires the reporting of all firearm discharges when a person could have been struck, but several departments only require reporting when a person actually is struck by a bullet fired by an officer. This bill would require all discharges to be reported to superior officers, which will help police departments keep track of shooting incidents. Reporting required under this bill could include accidental firings where a person could have been struck.

This bill establishes an affirmative right for people who are not under arrest or in police custody to film or otherwise record police activity, and to maintain control of the recordings and any equipment used to record. When a person is subsequently arrested or taken into custody, he or she does not automatically forfeit the right to maintain possession of the recordings and equipment.

The bill does not allow interference in police activity. Further, the bill allows for civil causes of action against police when a police officers interferes with lawful recording, unlawfully seizes a recording or equipment, threatens the person recording, or commands the person to stop recording. The plaintiff may seek damages, including punitive damages, and injunctive relief.

This bill is intended to address the growing situation where civilians record police behavior (especially police misconduct), and are ordered to stop or have their equipment or the recording seized. With the rise of social media and smartphones, more police misconduct has been recorded and distributed, and often shows a situation that contradicts the official police report. Although the Supreme Court has never specifically discussed the right to record, several U.S. Circuit Courts of Appeals have held that the First Amendment protects the filming of officers and public.

This bill establishes the required use of body cameras by New York State Police officers and establishes rules for the use of body-worn cameras by State police officers. This bill directs the Division of State Police to provide all State police officers with body-worn cameras that are to be used any time an officer conducts a patrol. Officers would be mandated to have the camera turned on and recording:

(a) immediately before an officer exits a patrol vehicle to interact with a person or situation;

(b) all uses of force, including any physical aggression and use of a non-lethal or lethal weapon; (c) all arrests and summonses;

(d) all interactions with people suspected of criminal activity;

(e) all searches of persons and property;

(f) any call to a crime in progress;

(g) investigative actions where there are interactions with members of the public;

(h) any interaction with an emotionally disturbed person; and

(i) any instances where officers feel any imminent danger or the need to document their time on duty. The bill does not require officers to record sensitive situations, such as a strip searches or discussion with confidential informants. Officers may turn the camera off if the person they are interacting with requests it, though they are not mandated to do so and may continue to record if they believe it is an instance that should be recorded. The Division of State Police is further mandated to ensure that the cameras are in working condition in order to be able to record all required events, including being sufficiently charged, and is responsible for storing the recordings. The Attorney General is authorized to investigate any instance in which a record is missing for an interaction that should have been recorded. This bill establishes a duty for law enforcement to provide attention to the medical and mental health needs of a person in their custody. This bill additionally provides individuals who do not receive said attention with a cause of action should they suffer an exacerbation of an injury or condition as a result of the lack of care. Officers routinely interact with individuals who have serious health issues or underlying conditions that can be exposed and

exacerbated in the course of effecting an arrest. Individual departments have distinct policies for providing care to individuals that they detain.

The New York Police Department Patrol Guide, for example, describes proper protocols for officers to provide treatment for an individual in their custody who has demonstrated a need for such care. State law, however, does not mandate such care be provided. This bill will require officers seek medical attention on behalf of the individuals that they arrest when such attention is needed. The bill allows the court to award actual damages and costs and reasonable attorney's fees to a plaintiff.

NYS Police Reform & Reinvention Collaborative

- Will require local Governments and Police Agencies **to develop a plan that reinvents and modernizes police strategies and programs** in their community
- Must formulate a plan addressing use of force by police officers, crowd management, community policing, implicit bias awareness training, de-escalation training and practices, restorative justice practices, community-based outreach, a transparent citizen complaint disposition procedure, and other issues raised by that community
- must enact plan by April 1st to be eligible for state funding
- Goal is to restore trust

RELATED LEGISLATION

2019-S8496

- Introduced
- - In Committee Assembly
 - In Committee Senate
- - On Floor Calendar Assembly
 - On Floor Calendar Senate
- - Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Relates to the disclosure of law enforcement disciplinary records; and to repeal section 50-a of the civil rights law relating thereto

June 06, 2020

Signed by Governor

Sponsored by **Jamaal T. Bailey**

Do you support this bill?

2019-S1830C

- Introduced
- - In Committee Assembly
 - In Committee Senate
- - On Floor Calendar Assembly
 - On Floor Calendar Senate
- - Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Relates to the functions of the chief administrator of the courts

January 16, 2019

Senate Floor Calendar

Sponsored by **Brad Hoylman-Sigal**

Do you support this bill?

2019-S2574C

-
- Introduced
 - - In Committee Assembly
 - In Committee Senate
 - - On Floor Calendar Assembly
 - On Floor Calendar Senate
 - - Passed Assembly
 - Passed Senate
 - Delivered to Governor
 - Signed By Governor
 -

Creates an office of special investigation within the office of the attorney general

January 28, 2019

Signed by Governor

Sponsored by Jamaal T. Bailey

Do you support this bill?

2019-S6670B

- Introduced
 - ◦ In Committee Assembly
 - In Committee Senate
 - ◦ On Floor Calendar Assembly
 - On Floor Calendar Senate
 - ◦ Passed Assembly
 - Passed Senate
 - Delivered to Governor
 - Signed By Governor
 -

Establishes the crime of aggravated strangulation

August 26, 2019

Senate Floor Calendar

Sponsored by **Brian Benjamin**

Do you support this bill?

2019-S3595C

- Introduced

- ◦ In Committee Assembly
 - In Committee Senate
- ◦ On Floor Calendar Assembly
 - On Floor Calendar Senate
- ◦ Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Creates the law enforcement misconduct investigative office

February 11, 2019

Signed by Governor

Sponsored by Kevin S. Parker

Do you support this bill?

2019-S8492

- Introduced

- - In Committee Assembly
 - In Committee Senate
- - On Floor Calendar Assembly
 - On Floor Calendar Senate
- - Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Relates to reporting a nonemergency incident involving a member of a protected class

June 05, 2020

Senate Floor Calendar

Sponsored by **Kevin S. Parker**

Do you support this bill?

2019-S2575B

- Introduced

- ◦ In Committee Assembly
 - In Committee Senate
- ◦ On Floor Calendar Assembly
 - On Floor Calendar Senate
- ◦ Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Requires a law enforcement officer or peace officer who discharges his or her weapon under circumstances where a person could be struck by a bullet to immediately report the incident

January 28, 2019

Senate Floor Calendar

Sponsored by **Jamaal T. Bailey**

Do you support this bill?

2019-S8493

- Introduced

- ◦ In Committee Assembly
 - In Committee Senate
- ◦ On Floor Calendar Assembly
 - On Floor Calendar Senate
- ◦ Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Relates to the use of body-worn cameras by New York state police officers

June 06, 2020

Signed by Governor

Sponsored by Kevin S. Parker

Do you support this bill?

2019-S6601B

- Introduced

- ◦ In Committee Assembly
 - In Committee Senate
- ◦ On Floor Calendar Assembly
 - On Floor Calendar Senate
- ◦ Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Relates to medical attention for persons under arrest

June 18, 2019

Signed by Governor

Sponsored by Jamaal T. Bailey

Do you support this bill?

2019-S3253A

- Introduced

- ◦ In Committee Assembly
 - In Committee Senate
- ◦ On Floor Calendar Assembly
 - On Floor Calendar Senate
- ◦ Passed Assembly
 - Passed Senate
- Delivered to Governor
- Signed By Governor
-

Relates to recording certain law enforcement activities

February 05, 2019

Signed by Governor

Sponsored by Kevin S. Parker

Do you support this bill?