

Keeping Current with the Latest Police Reform in New York State

Following nationwide protests, federal, state and local lawmakers across the country have considered adopting legislation aimed at addressing racial inequalities in policing and modernizing longstanding police strategies, policies and procedures. In June 2020, the Governor of New York signed an executive order mandating police reform, and the New York Legislature passed a series of laws that will have a significant impact on police operations throughout the State – ranging from small, local police departments to large, regional agencies.

On June 12, 2020, New York Governor Andrew Cuomo signed [Executive Order 203](#) (the Order), entitled New York State Police Reform and Reinvention Collaborative. The Order requires every local government that has a police agency employing police officers (as defined under the Criminal Procedure Law § 1.20) to conduct a comprehensive review of its department's force deployments, strategies, policies, procedures and practices.

In addition, Executive Order 203 requires each local government to develop a plan to improve deployments, strategies, policies, procedures and practices of its police departments to address the particular needs of the community and promote community engagement to foster trust, fairness and legitimacy and address any racial bias and disproportionate policing of communities of color.

In developing their own plan, the local government is required to consider evidence-based policing strategies, such as:

- Use of force policies;
- Procedural justice;
- Studies addressing systemic racial bias or racial justice in policing;
- Implicit bias awareness training;
- De-escalation training and practices;
- Law enforcement assisted diversion programs;
- Restorative justice practices;
- Community-based outreach and conflict resolution;
- Problem-oriented policing;
- Hot spots policing;
- Focused deterrence;
- Crime prevention through environmental design;
- Violence prevention and reduction interventions;
- Model policies and guidelines promulgated by the NYS Municipal Police Training Council; and
- Standards promulgated by the NYS Law Enforcement Accreditation Program.

The Order requires the local government to consult with community stakeholders to develop its plan, which should include recommendations to modify existing law enforcement policies. Stakeholders in the community may include membership and leadership of the police agency; members of the community, with emphasis in areas with high numbers of police and community interactions; interested non-profit and faith-based community groups; the local office of the district attorney; the local public defender; and local elected officials. The plan must be offered for public comment and, after consideration of public comments, adopted by local law or resolution by [April 1, 2021](#).

In order to have an appropriately prepared plan in place by April 1, 2021, local governments and their police departments should begin this process now. As local governments create plans and review existing policies, they should take into consideration the laws recently passed by the New York State Legislature in June 2020. These laws require revisions and additions to many current police department policies and procedures.

Below is a list of the laws and a short summary of each:

- 1. Repeal of N.Y. Civil Rights Law § 50-a** (Senate Bill 8496 / Assembly Bill 10611): N.Y. Civil Rights Law § 50-a, a law that largely prohibited the disclosure of police (as well as fire and corrections) personnel records, was repealed effective June 12, 2020. As a result of the repeal of Section 50-a, many police disciplinary records now fall within the scope of New York's Freedom of Information Law (FOIL). However, the new legislation also includes important amendments to those FOIL provisions of the Public Officers Law that now require or allow for the redaction of certain information contained in "law enforcement disciplinary records" prior to public disclosure. There are also legal issues related to the true scope of the law and whether the disclosure extends, for example, to unsubstantiated complaints. At least one opinion issued by the NYS Committee on Open Government (FOIL AO 19775, issued July 27, 2020) found that the law does not require a law enforcement agency to disclose "unsubstantiated and unfounded complaints against an officer" where such agency determines that disclosure of the complaint would constitute an unwarranted invasion of personal privacy, but also does not require an agency to withhold such a record." Police departments should consult with their counsel, public records officer or those who respond to the agency's FOIL requests to ensure compliance with this change in the law. Police department policies relating to police disciplinary records, personnel files and civilian complaints may also need to be reviewed and/or revised. (Effective: June 12, 2020).¹
- 2. Office of Special Investigation** (Senate Bill 2574C / Assembly Bill 1601C): Created the Office of Special Investigation within the NYS Department of Law, which will investigate and prosecute any deaths caused by an act or omission of a police officer, or which the Attorney General determines might have been caused by an act or omission of a police officer. (Effective: April 1, 2021).
- 3. The Eric Garner Anti-Chokehold Act** (Senate Bill 6670B / Assembly Bill 6144B): Established the crime of aggravated strangulation for police officers where such officer commits the crime of criminal obstruction of breathing or blood circulation or uses a chokehold or similar restraint and causes serious physical injury or death. Police agencies should review and update use of force policies to include the prohibition of chokeholds. (Effective: June 12, 2020).
- 4. Civil Action for Summoning a Police Officer Without Reason** (Senate Bill 8492 / Assembly Bill 1531B): Established civil penalties where a person summons a police officer on a member of a protected class (i.e., race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation) and alleges a crime or an imminent threat to person or property existed, but where a reasonable person would not suspect a crime or threat to have existed. Police officers should be informed of this development in the law. (Effective: June 12, 2020).
- 5. New Yorker's Right to Monitor Act** (Senate Bill 3253): Clarified that a person not under arrest or in police custody has the right to record police activity and to maintain custody and control of the recording and any instruments used to record it. Police departments should consider adopting a policy that informs officers of the public's right to record police activity. (Effective: July 14, 2020).

¹ For more information about the repeal of Section 50-a, please see the blogpost entitled "Repeal of Civil Rights Law Section 50-a: What This Means for the Disclosure of Police Disciplinary Records," June 12, 2020, available [here](#).

6. **Law Enforcement Misconduct Investigative Office** (Senate Bill 3595B / Assembly Bill 10002B): Created the Law Enforcement Misconduct Investigative Office (Investigative Office) within the NYS Department of Law to review, study, audit and make recommendations regarding operations, policies, programs and practices of local law enforcement agencies. Pursuant to this law, every officer is required to promptly report to the Investigative Office any information concerning police corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by another officer or employee relating to his/her office or employment, or by a person having business dealings with a covered agency relating to those dealings. An officer's known failure to report such information shall be cause for removal or other appropriate penalty. Police departments are also required to report to the Investigative Office any officer who is named in five or more complaints, relating to five separate incidents, within a two-year period. In an effort to ensure compliance with this law, police departments should adopt a policy regarding the duty to report information to the Investigative Office. (Effective: April 1, 2021, with the exception of Section 4 of the Act relating to the Port Authority).
7. **Reporting of Criminal Offenses and Arrest-Related Deaths** (Senate Bill 1830C / Assembly Bill 10609): Requires courts to compile and publish racial and other demographic data of all low-level offenses, including misdemeanors and violations. Police departments are also required, under this law, to promptly report any arrest-related deaths to the Department of Criminal Justice Services (DCJS) and submit annual reports containing that same information to the DCJS, the Governor and the Legislature. (Effective: December 12, 2020, with the exception of Section 1 of the Act relating to forms referenced in Section 10.40(1) of the Criminal Procedure Law).
8. **Right to Medical and Mental Health Attention While In Police Custody** (Senate Bill 6601A / Assembly Bill 8226A): Affirmed the right to medical and mental health attention while in police custody and established a private right of action against an officer if the individual did not receive reasonable and good faith attention, assistance or treatment and as a result suffered injury or significant exacerbation of injury. Police officers should be advised by their department of the addition of a private right of action for failure to provide reasonable and good faith attention, assistance or treatment to a person in police custody. (Effective: June 15, 2020).
9. **NYS Police Body-Worn Camera Program** (Senate Bill 8493 / Assembly Bill 8674): Established a Police Body-Worn Camera Program for the Division of State Police to provide all State police officers with body-worn cameras. This only applies to State police officers. (Effective: April 1, 2021).
10. **Reporting Police Officer's Discharge of Weapon** (Senate Bill 2575B / Assembly Bill 10608): Requires state and local police officers to report on- and off-duty incidents when they discharge their weapon and where a person could have been struck by a bullet. Officers are required to make a verbal report to their supervisor within six hours and a written report within 48 hours of the occurrence. Police department policies should be revised to include this new reporting requirement. (Effective: September 13, 2020).

Dozens of additional bills relating to law enforcement training and procedures are currently pending in the State Senate and Assembly, including proposed laws that would require police officers and other first responders to receive diversity and inclusion training and a law that would prohibit police officers from utilizing racial and ethnic profiling. Another pending bill that has received widespread media attention and pushback from police unions would rescind police officers' right to defense and indemnification under the Public Officers Law, and require officers to obtain individual liability insurance for claims arising from acts or omissions that occur while the officer is performing duties within the scope of his/her employment.

Notably, many municipalities are now adopting local laws and ordinances aimed at police reform, some of which go beyond the State's new laws and requirements. New York City passed a local law,² effective July 15, 2020, prohibiting officers from restraining an individual by "sitting, kneeling or standing on the chest or back in a manner that compresses the diaphragm." The New York City law went beyond the restrictions contained in the State's Eric Garner Anti-Chokehold Act, and some have argued it unreasonably restricts the ability of police officers to perform arrests, resulting in some neighboring police departments directing its members not to respond to law enforcement calls in New York City.

As local governments and police departments begin to review existing policies and develop plans pursuant to Executive Order 203, those working on the plans should keep apprised of any updates from the State, the NYS Division of Criminal Justice Services, Municipal Police Training Council and Law Enforcement Accreditation Program. Police departments should consider adding or amending existing policies pertaining to de-escalation, use of force and disciplinary/personnel records. In light of the recently passed legislation, police departments, in consultation with local stakeholders, should also consider implementing policies to address the public recording of police activity and bias-free policing.

If you have any questions about this information memo, please contact [Jacqueline A. Smith](#), [Christopher T. Kurtz](#) or the attorney at the firm with whom you are regularly in contact.

² A copy of the New York City law, which amends N.Y.C. Administrative Code § 10-181, is available [here](#).