FOR THE RECORD

Patrolmen's Benevolent Association
Of The City Of New York, Incorporated

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NEW YORK CITY COUNCIL COMMITTEE ON OVERSIGHT AND INVESTIGATIONS
Hearing on Proposed Introduction 119-D
August 22, 2017, 10:30am
250 Broadway - Committee Rm, 14th Fl.

MEMORANDUM IN OPPOSITION TO PROPOSED INTRO. NO. 119-D

The Patrolmen's Benevolent Association of the City of New York (NYC PBA) and its over 24,000 members, who patrol New York City's streets and do the difficult and dangerous work of protecting every resident, every visitor and every business operating within the five boroughs, opposes Proposed Int. No. 119-D, which relates to the evaluation of civil actions, claims, complaints, and investigations alleging improper police conduct.

The "evaluation" contemplated by this legislation is apparently designed to reach a foregone conclusion — that New York City police officers engage in widespread, willful violations New Yorkers' rights, and that the NYPD's leadership is incapable of performing the disciplinary and governance duties assigned to it by the City Charter — that is not supported by any available evidence. In this effort, the legislation would do significant harm to police officers' reputations and due process rights by substituting mere *allegations* of misconduct for proof of the same. Moreover, by highlighting and publicizing those allegations for the benefit of entities that profit from the harassment and denigration of police officers, this legislation would undermine the NYPD's governance and operations and diminish public safety for the City as a whole.

Section 1 of the legislation would require the Law Department to publish on its website a list of "civil action filed in state or federal court against the police department or individual police officers." This information is already a matter of public record, as are all civil actions filed against any City agency or employee. In its Annual Claims Report for FY2016, the Office of the Comptroller indicated that more than 60% of all tort claims filed against the City involved agencies other than the NYPD. Yet none of those claims have been targeted for special public scrutiny in a format that strips away all context and prevents any consideration of the specific facts or merits of the case. Aggregating and publicizing claims against police officers in this format serves no purpose other than as a tool of convenience for the lucrative plaintiffs' bar that

profits from the filing of specious claims of police misconduct, which until only recently were not vigorously defended and were routinely settled for nuisance value by the City.

Even the Office of the Inspector General for the New York City Police Department (OIG-NYPD) has recognized that the correlation between mere allegations of misconduct and problems with police officers' behavior or performance is tenuous, at best: in an April 2015 report addressing the use of litigation data to evaluate police officer performance, OIG-NYPD acknowledged that "the fact that a claim or lawsuit is settled is not necessarily proof of liability or improper conduct. Cases are not always resolved on the merits, and non-meritorious cases are sometimes settled for lower amounts to avoid the costs and uncertainties of litigation." The current mayoral administration's announcement in January 2015 that it would devote significant resources to fighting so-called "frivolous" lawsuits against police is also an acknowledgement that a large number of the roughly 3,000 annual lawsuits against the NYPD and its officers are filed without any regard for their merits or any objective other than a quick payout from the City.

Section 2 of this legislation would require the OIG-NYPD to "evaluate information regarding allegations or findings of improper police conduct" and develop recommendations based on that evaluation. Leaving aside the fact that the OIG-NYPD is already empowered under the City Charter to "investigate, review, study, audit and make recommendations" pertaining to the NYPD at its own discretion, this provision is fundamentally flawed because it conflates mere allegations of misconduct with findings of fact, a presumption that is extremely detrimental to police officers' rights and the fairness of the NYPD's disciplinary procedures.

The reality is that the greatest number of allegations fall on the small cadre of NYPD members who engage in proactive enforcement and who are often subject to complaints in retaliation for lawful, appropriate police action. This reality is exemplified by the outcomes of allegations made to Civilian Complaint Review Board (CCRB): according to CCRB data, 42% of active uniformed NYPD members have *never* been the subject of a CCRB allegation. And among the nearly 7,000 allegations of misconduct investigated by CCRB in 2016, only 13% were substantiated based on a lesser evidentiary standard than would apply in a criminal or civil proceeding.

Nevertheless, unfounded or unsubstantiated allegations of misconduct, whether filed with CCRB, as civil suits or through other channels, already have a damaging impact on police officers' careers. The NYPD already tracks the performance and conduct of individual officers through its own Early Intervention System and through its Risk Management Bureau, using lawsuit data, information from the CCRB and other factors. These mechanisms can trigger an officer's placement in the Performance Monitoring Program, an opaque punitive system in which the officer may be delayed or altogether prohibited from securing a desirable assignment, earning overtime or receiving a promotion, without recourse to challenge the designation or access to any other form of due process.

Far from seeking correcting the injustices in the existing system, this legislation amounts to an indictment of the NYPD's leadership and its disciplinary policies for failing to produce a desired or expected outcome: the punishment of as many police officers possible, as harshly as possible, regardless of the merits of the allegations they face. Although the City Charter grants the Police Commissioner exclusive authority over police discipline, this legislation seeks to supplant that authority using the leverage of an OIG-NYPD report that will inevitably find fault with the NYPD's policies, which are themselves derived from existing law. Ultimately, as a result of this overlapping scrutiny and pressure, dedicated police officers will be discouraged from making proactive enforcement efforts that might expose them to retaliatory complaints. The safety of all New Yorkers will suffer as a result.

Section 3 of this bill would compel the NYPD to produce a report "regarding judicial determinations that a police officer's testimony is not credible," with special attention to "the value of such determination in reducing improper police conduct." Inaccuracies or false statements in police officers' testimony are already subject to NYPD discipline and criminal penalties, and there is no evidence is available to suggest that this is a widespread problem. Once again, this legislation is predicated on the notion that the elected District Attorneys of the five boroughs and Police Commissioner are all incapable of discharging the duties assigned to them under the existing law.

In light of the foregoing, the NYCPBA strongly opposes Proposed Intro. 119-D and urges the committee to reject this legislation.