

*Patrolmen's
Benevolent
Association*

Of The City Of New York, Incorporated



NEW YORK CITY COUNCIL COMMITTEE ON PUBLIC SAFETY
Hearing on Proposed Introductions 539-A, 606-B and 824-A

July 12, 2016, 11:30am

250 Broadway - Committee Rm, 14th Fl.

STATEMENT OF PATRICK J. LYNCH,
PRESIDENT OF THE PATROLMEN'S BENEVOLENT ASSOCIATION
OF THE CITY OF NEW YORK

I write on behalf of the Patrolmen's Benevolent Association of the City of New York and its more than 22,000 active members to express our opposition to the above noted bills.

Intros. 539-A, 606-B and 824-A (together, the "Proposed Bills") propose to amend the administrative code of the city of New York, in relation to requiring the New York City Police Department ("NYPD" or "Department") to publish quarterly and annual reports relating to use of force incidents and encounters, as well as certain information related to police officer deployment.

The reports mandated by the Proposed Bills appear to aggregate force incident data that will be collected by the Department under the recently-issued Patrol Guide Procedure No. 221-03 ("PG 221-03"), entitled "Reporting and Investigation of Force Incident or Injury to Persons During Police Action." The PBA has already raised with the Department its strong objections to PG 221-03 and the related Patrol Guide Procedures comprising the NYPD's new use of force policy, which together create an onerous regime that deprives police officers of all discretion in the use of force, compromises their due process rights, and offers little affirmative guidance regarding what types of force will be considered "appropriate" and under what circumstances. The PBA believes that this regime will result in police officers hesitating to use appropriate force to safeguard themselves and the public, which will endanger the safety of the public and police officers alike.

The Proposed Bills would exacerbate this effect by fostering the public misconception that any use of force by a police officer is unjustified and excessive. The definition of "excessive force" contained in both Intro. 539-A and the NYPD Patrol Guide specifies that the reasonableness of a particular use of force will be determined only after a careful review of the totality of the circumstances surrounding the incident. However, the reports mandated by the Proposed Bills would strip away that context and aggregate unique incidents into broad categories. They would also omit the context of the exponentially greater number of police encounters that do not result in any force being used.

In the PBA's view, these reports are designed to steer the public to the pre-determined conclusion that New York City police officers use force excessively on a routine basis, and to create pressure on the NYPD's existing oversight and disciplinary apparatuses to punish as many police officers as possible, regardless of the merits of individual cases. Moreover, the Proposed Bills impose an additional external deadline on the Department's force reporting and investigation process, creating further pressure on NYPD supervisors to expedite the process by depriving police officers of their due process rights.

We therefore respectfully urge the Council to vote against the Proposed Bills and any similar measures.



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
212.607.3300
212.607.3318
www.nyclu.org

FOR THE RECORD

**Testimony of the New York Civil Liberties Union
Before
City Council Public Safety Committee**

**Regarding
Int. 539-A, 606-B, & 824-A**

July 12, 2016

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony regarding Intros 539-A, 606-B, & 824-A.

I. Introduction

The NYCLU, the New York affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices across the state and nearly 80,000 members and supporters. The NYCLU's mission is to defend and promote the fundamental principles, rights, and constitutional values embodied in the U.S. Constitution and the Constitution of the State of New York.

Protecting New Yorkers’ rights to be free from discriminatory and abusive law enforcement is a core component of our mission. In 2013, the City Council took an important step toward improving policing in New York City with the passage of the Community Safety Act. By creating an Office of the Inspector General for the New York Police Department (“NYPD”) and establishing an enforceable ban on profiling by police officers, the City Council brought much-needed oversight, transparency and accountability to our police force.

Despite this historic victory, the Council’s work is unfinished, as this body has failed to act on two related bills that would improve transparency and accountability in everyday street interactions between police officers and New Yorkers. These bills are still before the Council as the Right to Know Act: Int. 182 will require NYPD officers to identify themselves at the start of a law enforcement encounter and provide an explanation as to why the encounter is taking place; Int. 541 will require officers to obtain proof of informed consent before searching a person without legal justification.

II. Pass the Right to Know Act

The City Council must pass the Right to Know Act—two bills that have majority support in the council and across the city. In the years since the Right to Know Act was introduced, the

issue of law enforcement violence and abuse directed at communities of color has become one of the most painful, fraught, and urgent of our time. Several New Yorkers have lost their lives in police encounters. Thousands have been unfairly dragged into a racially biased criminal justice system. The Council's efforts to increase transparency at the NYPD are important, but real change cannot happen through mere reporting bills.

New Yorkers are not alone in calling for the Right to Know Act. President Obama's *Task Force on 21st Century Policing* endorsed the Right to Know Act nearly verbatim recommending that police officers "be required to seek consent before a search and explain that a person has the right to refuse consent when there is no warrant or probable cause," and that officers be required "to identify themselves by their full name, rank, and command," and "state the reason for the stop and the reason for the search if one is conducted."¹ This endorsement by a panel that included respected law enforcement leaders solidifies what we already know: the Right to Know Act is neither radical nor dangerous, but would be a step toward fair and respectful policing.

By enacting the Right to Know Act, New York City has the opportunity to become a national leader in the movement to change the culture of policing, and to begin to rebuild trust between police and communities.

III. Qualified Support for Int. 539-A, 606-B, & 824-A

According to data from the Civilian Complaint Review Board (CCRB), the majority of police misconduct complaints involve excessive or unnecessary use of force. Yet many substantiated complaints result in inadequate or no disciplinary action against officers. Int. 539-A, 606-B, and 824-A seek to address some aspects of this problem by making it more transparent. While we support these bills conceptually, we have some suggested amendments. We shared these concerns with the Council previously when these bills were heard in 2015.

The fault with Int. 824-A is that it lacks a mechanism to force behavioral change. It requires the collection of data that would allow the public to monitor the number and deployment of officers who are the subject of repeated CCRB and civil complaints. This is valuable information, but is of limited utility if the Police Commissioner fails or refuses to act on it. There is no legal way for any other government body to hold officers accountable for misconduct, including the CCRB. If this bill is enacted, we hope that the Council will use its oversight authority to urge the Commissioner to take decisive action with regard to reports under this bill, perhaps even amending the bill to require a periodic Council hearing to investigate those reports. We can no longer stand for the protection of abusive police officers by the Commissioner or any other actor. In addition, precincts or commands with a higher-than-average percentage of misconduct should be investigated by the City in an immediate and transparent way. Transparency without action will deepen mistrust.

The NYCLU also expresses qualified support for Int. 539-A and 606-B. These bills require collection and reporting of some valuable information regarding police misconduct and use of force. However, in 2016, it is inexcusable that neither bill includes a requirement for reporting of

¹ President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing*, 27 (2015), available http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

demographic data, which is collected by the CCRB, on police department forms, and new summons forms. We reiterate our prior testimony that demographic data, disaggregated at least by race/ethnicity, age, and gender is an absolute necessity in understanding the disparate impact of targeted police activity on marginalized groups. Without that information, these bills are far less relevant and powerful than they should be.

Further, we urge the Council to collect information on the drawing/pointing of a firearm as a use of force category. Since 2011, the CCRB has received nearly 1,900 complaints related to police officers drawing or pointing a firearm at a person. While having a gun pointed at you does not itself cause physical injury, such as will be reported under this bill, the psychological injury and trauma is enormous. Given the seriousness of this demonstration of force, it should not go unreported, especially in conjunction with low-level enforcement.

IV. Conclusion

The NYCLU urges the City Council to take decisive, meaningful action by passing the Right to Know Act. New Yorkers cannot wait for more quarterly reports of police misconduct—we need to bring behavioral change to the police department. In addition, we hope you will consider our suggestions to strengthen the three reporting bills and make them more responsive to community concerns.