

**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT**

**COMMITTEE ON PUBLIC SAFETY**

*Hon. Adrienne E. Adams, Chair*

February 16, 2021

**INT. NO. 1671:** By Council Members Adams, Van Bramer, Brannan, Cornegy, Chin, Salamanca, Rosenthal and the Public Advocate (Mr. Williams) (by request of the Queens Borough President)

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report on traffic encounters

**ADMINISTRATIVE CODE:** Adds §14.181

**INT. NO. 2209:** By Council Member Adams, Kallos, the Public Advocate (Mr. Williams), the Speaker (Council Member Johnson), Rosenthal and Ampry-Samuel

**TITLE:** A Local Law to amend the New York city charter, in relation to requiring advice and consent of the council for the police commissioner

**CHARTER:** Amends §31 and §431

**INT. NO. 2220:** By Council Member Levin, Rosenthal and

Kallos

**TITLE:** A Local Law to amend the administrative code of the city of New York, in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and requiring the law department to post online certain information regarding such civil actions

**ADMINISTRATIVE CODE:** Adds Ch. 8 to Title 8, Amends §7-114, and adds subdivision g to §14-106

**RES. NO. 1538:** By Council Members Cumbo, Levin,

Rosenthal, Van Bramer and Kallos

**TITLE:**  Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation removing the New York City Police Commissioner’s exclusive authority over police discipline.

**PRECONSIDERED RES. NO.:** By Council Member Moya

**TITLE:**  Resolution calling upon the New York State Legislature to pass, and the Governor to sign, S2984/A1951, which would require New York Police Department officers to live within the five boroughs of New York City.

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1. **INTRODUCTION**

On February 16, 2021, the Committee on Public Safety, chaired by Council Member Adrienne Adams, will hold a hearing on various items. The items under consideration include: Int. No. 1671, in relation to requiring the police department to report on traffic encounters; Int. No. 2209, in relation to requiring advice and consent of the council for the police commissioner; Int. No. 2220, in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and requiring the law department to post online certain information regarding such civil actions; Res. No. 1538, a resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation removing the New York City Police Commissioner’s exclusive authority over police discipline; and a preconsidered resolution calling upon the New York State Legislature to pass, and the Governor to sign, S2984/A1951, which would require New York Police Department (“NYPD”) officers to live within the five boroughs of New York City. The committee expects to hear testimony from the NYPD, stakeholders, advocates, and members of the public.

1. **BACKGROUND**

**Int. No. 2220**

**Applicability of Qualified Immunity to Police Officers**

In 2020, the United States of America (“U.S.”) began to undergo a period of reckoning regarding race. The broadcasted May 25, 2020 killing of George Floyd, after a Minneapolis police officer kneeled on his neck for more than eight minutes, along with the deaths of hundreds of other Black civilians, sparked months of widespread street protests against racism, bias, and brutality in the country’s law enforcement practices and criminal justice system.[[1]](#footnote-1) This popular unrest has raised questions regarding the regulation of the conduct of police officers.[[2]](#footnote-2) One issue that has risen to the forefront of public discourse and consciousness is qualified immunity, a doctrine created by courts that shields public officials who are performing discretionary functions from civil liability.[[3]](#footnote-3)

Police officers comprise a category of public official that the Supreme Court of the U.S. (“Supreme Court”) has determined possesses qualified immunity.[[4]](#footnote-4) In contrast, the concept of absolute immunity, which courts have not extended to police officers, is the complete and unqualified protection from liability while acting within the scope of official duties.[[5]](#footnote-5) The New York State (“State”) Court of Appeals has held in the same vein that qualified, not absolute, immunity, is appropriately afforded to police officers, “who ordinarily have neither the duty nor the authority to exert control or discipline over the people in society at large, where the right of the individual to be free from unwarranted police regulation and interference is fundamental.”[[6]](#footnote-6)

Law enforcement and courts have presented rationales for the utility of qualified immunity doctrine. Police leaders claim that qualified immunity is necessary to allow officers to respond to situations and make split-second decisions, while victims of police brutality and their families often encounter qualified immunity as an obstacle to obtaining financial or other damages.[[7]](#footnote-7) The Supreme Court has held that qualified immunity “balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably.”[[8]](#footnote-8) The State Court of Appeals has described immunity, whether absolute or qualified, as reflecting a “value judgment that… the broader interest in having government officers and employees free to exercise judgment and discretion in their official functions, unhampered by fear or second-guessing and retaliatory lawsuits, outweighs the benefits to be had from imposing liability for that injury.”[[9]](#footnote-9)

**Development of Federal Qualified Immunity Doctrine**

 The federal statute that provides the basis for qualified immunity doctrine is 42 U.S. Code § 1983 (“Section 1983”), which provides in relevant part that

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress….

This provision, which provides a federal cause of action, was originally part of the 1871 Ku Klux Klan Act, passed by the U.S. Congress to combat violations of constitutional and civil rights, especially in the southern states of the U.S. during the post-Civil War period.[[10]](#footnote-10) A high-profile example of a deprivation of a constitutional right under Section 1983 is the use of “excessive force,” which the federal Second Circuit Court of Appeals (“Second Circuit”) has characterized as an unreasonable “seizure” of a person and thus a violation of the Fourth Amendment that is actionable under Section 1983.[[11]](#footnote-11)

While Section 1983 itself does not present “immunity” as a defense for a person who subjects another person to the deprivation of a constitutional or civil right, the Supreme Court has interpreted immunity to be such a defense, meaning that immunity is purely judicial, or judge-made, doctrine.[[12]](#footnote-12) From 1871 until the 1960s, government actors did not enjoy qualified immunity as a defense for violating rights.[[13]](#footnote-13) In 1961, the Supreme Court made its first foray into immunity doctrine (although no question of immunity was actually presented or decided) in *Monroe v. Pape*; it interpreted the Section 1983 phrase “under color of law” to apply to “those who carry a badge of authority of a State and represent it in some capacity,” including police officers of the city of Chicago.[[14]](#footnote-14) The Supreme Court then made a critical immunity doctrine development in the 1967 case *Pierson v. Ray*. Focusing on police officers, the Supreme Court declared that the common law (custom and judicial precedent) has never granted them absolute immunity, but based on the background of common law tort liability in false arrest and imprisonment actions, police officers are afforded the defense of “good faith and probable cause” in Section 1983 actions.[[15]](#footnote-15)

Fifteen years later, the Supreme Court established modern qualified immunity doctrine in the 1982 case *Harlow v. Fitzgerald*, rejecting a defense based on subjective evaluations of intent and instead embracing one based on public policy. At the outset of its opinion in *Harlow*, the Supreme Court distinguished two kinds of immunity defenses: (i) absolute immunity for officials like legislators in their legislative functions, judges in their judicial functions, and certain officials of the executive branch (such as prosecutors, executive officers engaged in adjudicative functions, and the U.S. President); and (ii) qualified immunity as “the norm” for “executive officials in general.”[[16]](#footnote-16) Broadly speaking, police departments are agencies of the executive branch of government, making police officers executive officials. The Supreme Court then presented a new definition of qualified immunity. Government officials performing “discretionary functions” are protected against liability for civil damages as long as their conduct does not violate “clearly established statutory or constitutional rights” of which a “reasonable person” would have known.[[17]](#footnote-17)

In rejecting an assessment of the “subjective good faith of government officials” in *Harlow*, the Supreme Court cited the substantial costs of that kind of litigation: duty-based costs such as the distraction of officials from their responsibilities, the “inhibition of discretionary action,” and the “deterrence of able people from public service;” and practical costs such as “no clear end to the relevant evidence” and “broad-ranging discovery and the deposing of numerous persons” which can be “peculiarly disruptive of effective government.”[[18]](#footnote-18) The Supreme Court instead decided to hinge the qualified immunity defense on the supposed “objective reasonableness” of an official’s conduct.[[19]](#footnote-19)

**Development of New York Qualified Immunity Doctrine**

According to the Second Circuit, the federal “qualified immunity” doctrine only protects officials from liability arising under a federal cause of action (Section 1983), but “a similar doctrine exists under New York common-law” based on tort immunities, such that if officials “were entitled to qualified immunity under federal law, summary judgment would be similarly appropriate [under State law]….”[[20]](#footnote-20)

State courts have generated their own version of qualified immunity doctrine based in the common law of tort, sometimes calling it by different names and setting forth a qualified immunity standard that seems somewhat similar to the one ultimately established by the Supreme Court. For the most part, State courts seem to have titled qualified immunity as “governmental immunity”[[21]](#footnote-21) or “governmental function immunity.”[[22]](#footnote-22) In the 2011 case *Valdez v. City of New York*, the State Court of Appeals set forth the governmental immunity/governmental function immunity defense as follows: “… [A] defense… is potentially available to the City—the governmental function immunity defense. The common-law doctrine of governmental immunity continues to shield public entities from liability for discretionary acts taken during the performance of governmental functions….”[[23]](#footnote-23) Citing previous holdings, the State Court of Appeals emphasized that the term “discretionary acts” means “conduct involving the exercise of reasoned judgment”[[24]](#footnote-24) which could “typically produce different acceptable results.”[[25]](#footnote-25) The key to this defense is whether the official committed a “discretionary act” (and actually exercised discretion[[26]](#footnote-26)), for which the official would be protected from liability, as opposed to a “ministerial act,” which “envisions direct adherence to a governing rule or standard with a compulsory result” for which the official would not be protected from liability.[[27]](#footnote-27) The State Court of Appeals has held that the “provision of police protection” is “the most complex governmental function,”[[28]](#footnote-28) making clear that the governmental immunity/governmental function immunity defense is available to police officers.

**Significant Deficiencies of Qualified Immunity Doctrine**

*Difficulties for Plaintiffs*

The further evolution of qualified immunity doctrine in the federal and State courts has resulted in significant struggles for plaintiffs alleging violations of Section 1983 and bringing common law tort actions against police officers.

Federal courts resolving qualified immunity claims have made it increasingly difficult for plaintiffs to show, and have not been consistent with holding, that a particular right is “clearly established.”[[29]](#footnote-29) Relatedly, in the 2009 case *Pearson v. Callahan*, the Supreme Court determined that a court addressing a qualified immunity claim does not need to first determine whether the facts alleged or shown by the plaintiff make out a violation of a constitutional right; the court can simply evaluate the qualified immunity defense and resolve on those grounds.[[30]](#footnote-30) The Supreme Court held so based on the “substantial expenditure of scarce judicial resources on difficult questions that have no effect on the outcome of the case” and the wasting of parties’ resources.[[31]](#footnote-31) The consequence of this opinion is that there are fewer federal court decisions on the merits, meaning that there are fewer judicial opportunities to “clearly establish” the law.

Thus, federal qualified immunity doctrine in its current state may have reduced Section 1983 to a less effective tool for allowing plaintiffs to recover for constitutional and civil violations.[[32]](#footnote-32) Supreme Court Justice Sonia Sotomayor went further in a 2015 dissenting opinion, arguing that application of the qualified immunity doctrine “renders the protections of the Fourth Amendment hollow.”[[33]](#footnote-33) Illustrating this phenomenon, a 2020 Reuters report indicates that in a study of 252 appellate cases from 2015 to 2019 involving police officers accused of using excessive force, the courts granted qualified immunity to police officers in more than half of the cases during this period.[[34]](#footnote-34)

Under State qualified immunity doctrine, discretionary acts by public entities are protected. However, acts are discretionary if there is no State statute or court decision requiring the official to act as they did; and there are only a few statutes or decisions requiring so, as most sources of law broadly set forth what the government must do in contrast with setting forth how exactly it must do it.[[35]](#footnote-35) This means that a police officer can ostensibly secure a qualified immunity defense simply by pointing out that there is no State statute or court decision setting forth steps for an officer’s action – a likely situation.[[36]](#footnote-36)

*Failure of Doctrine to Achieve Its Original Policy Goals*

As discussed above, the Supreme Court succinctly articulated the policy objectives of qualified immunity doctrine in *Harlow*, stating that claims against public officials come with certain social costs:

… the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office. Finally, there is the danger that fear of being sued will dampen the ardor of all but the most resolute… in the unflinching discharge of their duties.[[37]](#footnote-37)

However, research seems to show that qualified immunity doctrine does not provide protection against these supposed social costs. Qualified immunity is likely unnecessary to protect law enforcement officers from the financial burdens of being sued because they are almost always indemnified and accordingly do not have to contribute to judgments and settlements against them.[[38]](#footnote-38) A detailed study of 81 state and local law enforcement agencies by University of California, Los Angeles law professor Joanna C. Schwartz, who has studied qualified immunity doctrine in depth,[[39]](#footnote-39) revealed that police officers across the U.S. are “virtually always indemnified” by governments who “almost always satisfy settlements and judgments in full.”[[40]](#footnote-40) Supreme Court Justice Stephen Breyer has argued that an increased likelihood of employee indemnification “reduces the employment-discouraging fear of unwarranted liability.”[[41]](#footnote-41)

 Furthermore, the Supreme Court highlighted in its 2009 case *Ashcroft v. Iqbal* that the “basic thrust of the qualified-immunity doctrine is to free officials from the concerns of litigations, including ‘avoidance of disruptive discovery.’”[[42]](#footnote-42) However, Schwartz concluded that qualified immunity does not necessarily shield a public official from the burdens of participating in discovery and trial, finding in part that there are cases in which qualified immunity cannot play a role and that the timing of qualified immunity motions affects whether a court actually grants immunity.[[43]](#footnote-43) Schwartz also found that when defendants raised qualified immunity in summary judgment motions, courts “more often than not granted those motions on other grounds.”[[44]](#footnote-44)

Additionally, Schwartz has posited based on various studies that the threat of being sued does not play a meaningful role in law enforcement officers’ decisions to apply for jobs or their professional activity.[[45]](#footnote-45) Schwartz has cited criminal justice professor Arthur H. Garrison, who concluded on the basis of a 1995 survey of 50 police officers that police officers as a whole do not think about being sued on a daily basis.[[46]](#footnote-46)

**Recent Movement to Limit Qualified Immunity**

*Colorado Statute*

 In June 2020, the Colorado General Assembly passed[[47]](#footnote-47) and Colorado Governor Jared Polis signed into law the Enhance Law Enforcement Integrity Act (SB20-217).[[48]](#footnote-48) Through addition of a new section 13-21-131 to the Colorado Revised Statutes, this Act created a new civil action that allows a person to sue a “peace officer, as defined in section 24-31-901(3) [of the Colorado Revised Statutes]” for damages in state court if that peace officer subjects such person or causes such person to be subjected to a violation of the Colorado Constitution’s bill of rights.[[49]](#footnote-49) This Act explicitly states that “qualified immunity is not a defense to liability” and additionally exempts claims brought under this section from the Colorado Governmental Immunity Act.[[50]](#footnote-50) The Colorado General Assembly also toyed with the reach of indemnification, generally requiring indemnification of peace officers for claims arising under the section, but holding such officers personally liable for 5% of the judgment or settlement or $25,000 (whichever is less) if the officer’s employer “determines that the officer did not act upon a good faith and reasonable belief that the action was lawful.”[[51]](#footnote-51) Through passage of this Act, Colorado became the first state to enact legislation that prohibits qualified immunity as a defense to state constitutional claims.[[52]](#footnote-52)

*Connecticut Statute*

 In July 2020, the Connecticut General Assembly passed and Connecticut governor Ned Lamont signed into law An Act Concerning Police Accountability (H.B. No. 6004).[[53]](#footnote-53) This Act, like Colorado’s Act, created a new civil action that allows a person to sue a “police officer,” as defined in section 7-294a of the Connecticut General Statutes, for damages in Connecticut Superior Court if that police officer deprives such person of a right guaranteed under the Connecticut Constitution’s bill of rights.[[54]](#footnote-54) However, this Act does not completely prohibit qualified immunity as a defense. Rather, it provides that “governmental immunity” is only allowed as a defense to a damages claim when the police officer “had an objectively good faith belief that such officer’s conduct did not violate the law,” and that “governmental immunity” is totally prohibited as a defense in a civil action brought only for equitable relief.[[55]](#footnote-55) This Act requires Connecticut municipalities and law enforcement units (as defined in section 7-294a of the Connecticut General Statutes) to indemnify police officers and pay for their legal defense for claims arising out of this kind of action; but if a court has determined that a police officer’s act was “malicious, wanton or willful,” the police officer must reimburse the municipality for defense expenses and the municipality will not be held liable for financial losses or expenses resulting from the act.[[56]](#footnote-56) Upon passing this Act, Connecticut became the second state to limit qualified immunity as a defense to state constitutional claims.[[57]](#footnote-57)

*New York Bills*

In the summer of 2020, State Senator Zellnor Myrie introduced Senate Bill 8669, or “The Restoring Accountability and Civil Equity Act,” which is currently in the State Senate Rules Committee.[[58]](#footnote-58) This bill seeks to create a new article 3-A in the State Civil Rights Law that would allow a person to bring a civil action in State court against “any person who, under the color of any statute, ordinance, regulation, custom, or usage, of this state or any of its political subdivisions” deprived the person bringing the action of a right guaranteed under the State Constitution.[[59]](#footnote-59) The bill does not explicitly refer to “qualified immunity,” “governmental immunity,” or “governmental function immunity.” The bill justification states that the bill is “intended to operate independently of federal law and the federal doctrine of qualified immunity to the extent that a staff official or officials are acting under the color of the state constitution and the law of the state,” and the bill allows a unique “exemption” defense.[[60]](#footnote-60) The bill also does not broach the subjects of indemnification and personal liability.

During the same summer, State Senator Robert Jackson introduced Senate Bill 8668, which is Senate Bill 1991 in the current 2021-2022 State legislative session (“S1991).[[61]](#footnote-61) S1991 is currently in the State Senate Investigations and Government Operations Committee.[[62]](#footnote-62) S1991 seeks to create a new section 79-Q in the Civil Rights Law and would provide a private civil right of action for deprivation of rights, privileges, or immunities secured by the U.S. or State Constitution or laws caused by “a person or public entity acting under color of law.”[[63]](#footnote-63) Specifically, it would prohibit a qualified immunity defense by providing that “shall not be a defense or immunity… that such defendant was acting in good faith, or that the defendant believed, reasonably or otherwise, that their conduct was lawful at the time such conduct was committed” or that rights “were not clearly established at the time of their deprivation by the defendant, or that the state of law was otherwise such that the defendant could not reasonably have been expected to know whether their conduct was lawful.”[[64]](#footnote-64) This bill would not permit indemnification of a public employee for liability if the employee was convicted of a criminal violation for conduct alleged in a claim arising under the section.[[65]](#footnote-65) Under S1991, the State Attorney General would be authorized to bring a civil action for relief on behalf of the State and the injured party.[[66]](#footnote-66)

*Federal Bill*

In June 2020, now former U.S. Representative for Michigan’s 3rd Congressional District, Justin Amash, a Republican, introduced a federal bill titled the “Ending Qualified Immunity Act.”[[67]](#footnote-67) This bill proposes the amendment of Section 1983 by adding language intended to make clear that qualified immunity is not a defense to any action brought under Section 1983.[[68]](#footnote-68) Specifically, the added language would provide that it would not be a defense that (i) the defendant was acting in good faith or that the defendant believed (reasonably or otherwise) that the defendant’s conduct was lawful or that (ii) constitutional or legal rights were not clearly established at the time of their deprivation by the defendant or that the state of the law was otherwise such that the defendant could not reasonably have been expected to know whether the defendant’s conduct was lawful.[[69]](#footnote-69)

**Int. No. 2209**

**Appointment of Police Commissioners in U.S. Cities**

Requiring the consent of a legislative body for the appointment of various officials is a relatively common tool used to check the power of the head of the executive branch in various jurisdictions, most notably in the process governing presidential appointments established by the U.S. Constitution. In New York City, the City Charter grants the Mayor unconstrained ability to appoint most City officials. In fact, with regard to agencies headed by a single official, only the appointments of the Corporation Counsel and the Commissioner of Investigation require the advice and consent of the Council.[[70]](#footnote-70) Most members of various boards and commissions, including the Art Commission, Board of Health, Board of Standards and Appeals, City Planning Commission, Civil Service Commission, Landmarks Preservation Commission, Tax Commission, Taxi and Limousine Commission, Environmental Control Board, and Conflicts of Interest Board, are also confirmed by the Council.[[71]](#footnote-71)

Other large U.S. cities condition mayoral appointment powers more extensively, including the mayoral power to appoint the leaders of their police departments. For example, in Houston, Texas, the City Council must confirm the Mayor’s appointment of the Chief of Police.[[72]](#footnote-72) In Chicago, the Superintendent of Police is appointed by the Mayor with the advice and consent of the City Council upon the recommendation of the Police Board (which itself consists of members appointed by the Mayor with the advice and consent of the Council).[[73]](#footnote-73) Similarly, in Los Angeles, California, the Chief of Police is appointed by the Mayor with the advice and consent of the City Council after three candidates are recommended by the Board of Police Commissioners (which consists of members appointed by the Mayor and confirmed by the Council).[[74]](#footnote-74)

**Res. No. 1538**

**The New York City Police Commissioner’s Disciplinary Authority**

 The Police Commissioner has the exclusive authority to determine the final disposition of all disciplinary matters concerning members of the NYPD and to impose penalties.[[75]](#footnote-75) This includes such authority over cases investigated internally, most notably by the NYPD’s Internal Affairs Bureau (“IAB”), as well as over cases investigated by the Civilian Complaint Review Board (“CCRB”), an independent body consisting of appointees of the Mayor, the Police Commissioner, the Council, and the Public Advocate. The CCRB investigates civilian complaints involving excessive use of force, abuse of authority, discourtesy, and offensive language (sometimes referred to as “FADO”).[[76]](#footnote-76)

 The most serious cases, known as Charges and Specifications, are adjudicated in a departmental trial before the NYPD Deputy (or Assistant Deputy) Commissioner for Trials (“DCT”), during which the NYPD Department Advocate’s Office, in IAB cases, or the CCRB’s Administrative Prosecution Unit (“APU”), in CCRB cases, prosecutes the case. The APU’s role is governed by a Memorandum of Understanding between the NYPD and the CCRB.[[77]](#footnote-77) The DCT’s decision and recommended penalty, which can include loss of vacation days, suspension without pay, or termination, is ultimately forwarded to the Police Commissioner for a final determination.

 The rate at which the Police Commissioner departs from the recommended penalty, especially in CCRB cases, has been pointed out many times over the years and, by any measure, such departure is not infrequent. As noted in Res. No. 1538, an analysis published by *The New York Times* in November 2020 found that the NYPD “regularly ignored the [CCRB’s] recommendations, overruled them or downgraded the punishments, even when police officials confirmed that the officers had violated regulations,” and also found that this “pattern of lenient punishment holds true for about 71 percent of the 6,900 misconduct charges over the last two decades in which the [CCRB] recommended the highest level of discipline and a final outcome was recorded.”[[78]](#footnote-78) In January 2019, the Independent Panel on the Disciplinary System of the NYPD (“Panel”) asserted that both the number of departures from the recommended discipline and the lack of detailed explanations for those departures “may undermine the legitimacy of the trial process.”[[79]](#footnote-79) The Panel also pointed out that the CCRB is, in general, significantly more transparent regarding its cases than the NYPD is, regularly publishing reports that include statistical data about disciplinary outcomes.[[80]](#footnote-80)

**Int. No. 1671**

**Racial Bias in Traffic Stops**

The NYPD Patrol Guide (“Patrol Guide”) contains specific policies to ensure that police officers conducting stops are doing so in a lawful and unbiased manner.[[81]](#footnote-81) In the Patrol Guide, the NYPD explicitly prohibits the use of racial and bias-based profiling in law enforcement actions.[[82]](#footnote-82) Race, color, ethnicity, or national origin cannot be used as a motivating factor for initiating police enforcement action.[[83]](#footnote-83) Further, individuals cannot be targeted for any enforcement action because they are members of a racial or ethnic group that appears more frequently in local crime suspect data; race, color, ethnicity, or national origin may only be considered when a stop is based on a specific and reliable suspect description that includes additional identifying information.[[84]](#footnote-84)

National data shows evidence that there is racial bias in how traffic stops are conducted. Researchers at Stanford University conducted a study of traffic stops made by 21 state patrol agencies and 35 municipal police departments from 2001 to 2018.[[85]](#footnote-85) They looked at how time of day and visibility of the driver impacted the race of the person stopped. Their report concluded that, during daylight hours (before 7 p.m.) on average, Black drivers are 20% more likely than white drivers to be pulled over; however, after 7 p.m., during what they call a “veil of darkness” period, Black drivers are much less likely to be stopped since their race is concealed.[[86]](#footnote-86) Researchers also found that, once pulled over, Black and Hispanic drivers were more likely to have their vehicles searched than white drivers.[[87]](#footnote-87) In Washington and Colorado, where marijuana is legal, there were fewer searches overall, yet Black and Hispanic drivers were still more likely to have their vehicles searched than white drivers who had been pulled over.[[88]](#footnote-88)

Traffic stops began being turned into criminal patrols in the 1980s as part of the War on Drugs.[[89]](#footnote-89) Today, traffic stops continue to be used as a method of searching for drugs or paraphernalia.[[90]](#footnote-90) When a police officer observes a traffic or moving violation and pulls a vehicle over, the officer can use this as an opportunity to do a field interview and even search the car.[[91]](#footnote-91) The Supreme Court ruled on this matter in 1996, holding that if an officer can determine a moving or traffic violation, searching that vehicle does not violate the Fourth Amendment’s protection against unreasonable search and seizure.[[92]](#footnote-92)

Based on recent traffic stop data from North Carolina, researchers found that Black drivers are more than twice as likely to be pulled over and four times as likely to be searched once pulled over than white drivers.[[93]](#footnote-93) Interestingly, researchers found that white drivers, once searched, were more likely to have been found with “contraband” than Black and Hispanic drivers.[[94]](#footnote-94) Researchers noted that it becomes very difficult to argue that searches are based on perceived criminality when a particular demographic is in fact less likely to have illegal paraphernalia.[[95]](#footnote-95)

Perceived and documented bias in traffic stops further erodes the public’s trust in police.[[96]](#footnote-96) Researchers at Yale University have found that Black drivers are significantly less likely than white drivers to believe they were stopped for legitimate reasons and that people subject to a traffic stop in the last year were less likely to go to the police when they needed police intervention.[[97]](#footnote-97)

Currently, the NYPD publishes monthly the number and the type of moving violation summonses issued by borough and precinct.[[98]](#footnote-98) The data does not include demographic information of the person the summons was issued to nor does the NYPD report on the number of traffic stops.

**Preconsidered Res. No.**

**NYPD Residency Requirements**

 Most City employees, including civilian employees of the NYPD, are required to live in New York City during their first two years of employment, after which they are also allowed to reside in Nassau, Suffolk, Rockland, Westchester, Putnam, and Orange counties.[[99]](#footnote-99) Uniformed NYPD officers, on the other hand, can live in one of those surrounding counties from the beginning of their employment, as can firefighters and correction officers.[[100]](#footnote-100) City Department of Education employees are not subject to any residency requirements.[[101]](#footnote-101) Police officers are also not allowed to live in the police precinct to which they are assigned.[[102]](#footnote-102) As of August 2020, 49% of uniformed police officers lived in the City, down from 58% in 2016.[[103]](#footnote-103) A June 2020 *USA Today* analysis found a wide variety of views among advocates and experts regarding the benefits and drawbacks of police officer residency requirements.[[104]](#footnote-104)

1. **ANALYSIS**

**Analysis of Int. No. 1671**

Bill section one of Int. No. 1671 would amend title 14 of the Administrative Code of the City of New York (“Administrative Code”) by adding a new section 14-181.

Subdivision a of new section 14-181 would state that no later than January 30, 2020, and no later than 30 days after the end of each quarter thereafter, the Police Commissioner must submit a report to the Speaker of the Council and the Mayor and post on the NYPD’s website a report. The report would contain the following information for the previous quarter:

1. The total number of traffic stops conducted by officers;

2. The total number of vehicles stopped by officers at roadblocks or checkpoints;

3. The total number of summons issued for traffic infractions; and

4. The total number of arrests made for traffic infractions.

Subdivision b of new section 14-181 would require that the information required pursuant to subdivision a be disaggregated by precinct and further disaggregated by:

1. The apparent race/ethnicity, gender, and age of the driver;

2. Whether the vehicle was a private passenger vehicle, a commercial passenger vehicle, a bus, or a commercial truck;

3. Whether the vehicle was seized as a result of the encounter;

4. Whether a search of the vehicle occurred during the encounter and, if a search occurred, whether consent was provided for such search;

5. Whether a summons was issued, whether it was criminal or civil, and the offense charged;

6. The offense charged if an arrest was made; and

7. Whether a use of force incident as defined in section 14-158 occurred in connection with the encounter.

Subdivision c of new section 14-181 would mandate that the information required by this new section be stored permanently and be accessible from the NYPD’s website and be provided in a format that permits automated processing. Further, each report would be required to include a comparison of the current reporting period to the prior four reporting periods after such information becomes available.

Bill section two of Int. No. 1671 specifies that this local law would take effect immediately.

**Analysis of Int. No. 2209**

 Bill section one of Int. No. 2209 would add the Police Commissioner to the list of officers in section 31 of the City Charter who are required to be appointed by the Mayor with the advice and consent of the Council after a public hearing.

 Bill section two of Int. No. 2209 would amend subdivision a of section 431 of the City Charter by specifying that the Police Commissioner be appointed by the Mayor with the advice and consent of the Council and by changing the length of the term of the Police Commissioner from five years to four years. It would also amend subdivision c of section 431 by specifying that within 10 days following the occurrence of a vacancy in the office of the Police Commissioner, the Mayor would be required to submit to the Council the name of the Mayor’s nominee; if the Council disapproves a nomination while the office is vacant, the Mayor would be required to submit a new nomination to the Council within 10 days of Council disapproval and each subsequent Council disapproval of a mayoral nomination would begin a new 10-day period.

 Bill section three of Int. No. 2209 specifies that the local law would take effect immediately upon its approval by the voters of the City in a referendum that would be held at the next general election that occurs after its enactment.

**Analysis of Int. No. 2220**

Int. No. ­­­2220 would create a right of security against unreasonable search and seizure that is enforceable by civil action and explicitly prohibit qualified immunity as a defense to such an action. It would also require the City Law Department to post online certain information about such civil actions.

Bill section one would add a new chapter 8 to title 8 of the Administrative Code:

Proposed section 8-801 would define for the chapter the term “covered individual,” meaning an employee of the NYPD or a peace officer (as defined in section 2.10 of the State Criminal Procedure Law) who is employed by the City or appointed by the Police Commissioner as a special patrolman pursuant to subdivision c or e of section 14-106 of the Administrative Code. This definition is intended to capture law enforcement employees with a nexus to the City. This section would also define the terms “person aggrieved” and “prevailing plaintiff” for the chapter.

Proposed section 8-802 would establish a local civil right of natural persons to have security against unreasonable searches and seizures, based on the language of section 12 of article I of the State Constitution and section 8 of the State Civil Rights Law.

Proposed section 8-803 would create a civil action for deprivation of the right established by proposed section 8-802. Under subdivision a, a “covered individual,” who, under color of any law, ordinance, rule, regulation, custom or usage, violates (including through failure to intervene) a person’s right under proposed section 8-802 would be liable to such person for legal or equitable relief, or any other appropriate relief. Under subdivision b, such person would be able to make a claim of deprivation of a right under proposed section 8-802 in court by filing a complaint detailing facts pertaining to such deprivation and requesting relief. Subdivision c provides that proposed section 8-803 would not limit or abolish any claim or cause of action that such person has under common law or pursuant to any other law or rule. Even if there is an alternative remedy available under common law or pursuant to another law or rule, such person would be able to maintain a private right of action under proposed section 8-803. Such person would not be required to exhaust other administrative remedies before commencing a civil action under proposed section 8-803. Such person would not be limited to the remedies provided by the proposed chapter.

Proposed section 8-804 makes clear that immunity would not be available as a defense to liability for a “covered individual” subject to an action brought under proposed section 8-803. For comprehensiveness, this section provides that neither absolute nor qualified immunity would be an available defense. In a further effort to make clear that immunity is not a defense, this section then describes State governmental immunity/governmental function immunity doctrine followed by versions of federal qualified immunity doctrine, and provides that none of these immunities would be acceptable defenses to liability.

Subdivision a of proposed section 8-805 would impose requirements on a court addressing a civil action involving a claim made under proposed section 8-803 to follow with discretion: (1) (i) award compensatory damages, and punitive damages at the court’s discretion, to the plaintiff or (ii) $1,000 in damages if the plaintiff alternatively chooses; (2) award reasonable attorney’s fees and court costs to the plaintiff; and (3) issue a restraining order against the covered individual from engaging in further conduct in violation of proposed section 8-803. Subdivision b would require such court, when choosing to factor an hourly rate into calculation of an attorney’s fee award, to use the hourly rate charged by attorneys of similar skill and experience litigating similar causes in New York County.

Subdivision a of proposed section 8-806 would provide that a covered individual employed by the City would be personally liable for $25,000 or 5% of any judgment or settlement against such individual for claims arising under proposed section 8-803, whichever is less. However, if such amount (or any part of it) cannot be collected from such individual and the City would have otherwise been required or reasonably likely to indemnify such individual for such amount, the City or an appropriate insurer of the City would be required to pay such amount. This subdivision would additionally make clear that it is not intended to change or limit the rights and obligations of any insurer, or to actually authorize or require indemnification of a covered individual. Subdivision b provides that indemnification of a covered individual who is not a City employee would be governed by subdivision g of section 14-106 of the Administrative Code (see analysis below).

Proposed section 8-807 would require a person who wishes to bring a claim under proposed section 8-803 to do so within three years after the alleged deprivation of a right established by such section.

Proposed section 8-808 would require that any right established by proposed section 8-802 be interpreted in the same manner as any right established by section 8 of the State Civil Rights Law and section 12 of article I of the State Constitution, except as otherwise provided in the proposed chapter and despite any language to the contrary in section 8-130 of the Administrative Code (construction of title 8 of the Administrative Code).

Bill section two would amend section 7-114 of the Administrative Code, which concerns civil actions regarding the NYPD. It would provide that the section also applies to civil actions regarding certain peace officers. Subdivision a of such section would be amended to define the term “covered individual” for the section with reference to proposed section 8-801 of the Administrative Code. This bill section would move the existing language in current subdivision a into a new subdivision b. New subdivision b would require the City Law Department to post on its website, and provide notice of the posting to the individual responsible for implementing the duties set forth in paragraph 1 of subdivision c of section 803 of the City Charter, the City Comptroller, the NYPD, the Civilian Complaint Review Board, and the Commission to Combat Police Corruption, certain information regarding civil actions filed in local, State, or federal court against covered individuals resulting from allegations of deprivation of a right under proposed chapter 8 of title 8 of the Administrative Code. The City Law Department is already required to post online (and provide notification) regarding civil actions filed in State or federal court against the NYPD resulting from allegations of improper police conduct.

Paragraph 1 of proposed subdivision b of section 7-114 of the Administrative Code would require the City Law Department to post (and provide notification of such posting) a list of civil actions filed against a covered individual during the five-year period before each January 1 or July 1 immediately preceding each posting. Paragraph 2 of proposed subdivision b would require the City Law Department to post the identities of the plaintiffs and defendants for each action filed against the NYPD or a covered individual. Paragraph 2 of proposed subdivision b would also require the City Law Department to post, for an action filed against a covered individual, the court in which the action was filed, the name of the law firm representing the plaintiff, the name of the law firm or agency representing each defendant, the date the action was filed, and whether the plaintiff alleged improper police conduct, including deprivation of a right under proposed chapter 8 of title 8 of the Administrative Code. Paragraph 3 of proposed subdivision b would require the City Law Department to post, if an action against a covered individual has been resolved, (i) the date on which it was resolved, (ii) the manner in which it was resolved; and (iii) whether the resolution included the City, the covered individual, or an employer or other person paying on behalf of a covered individual making a payment to the plaintiff, as well as the amount of any such payment.

Bill section three would amend section 14-106 of the Administrative Code by adding a new subdivision g. Proposed subdivision g would prohibit the Police Commissioner from appointing a special patrolman on the application of any person, corporation, agency, or public authority or from renewing such an appointment – unless the applicant shows to the Police Commissioner’s satisfaction that the appointee has agreed in writing that the appointee will be personally liable for a portion of any judgment or settlement entered against such appointee on the basis of a proposed section 8-803 claim. The personal liability amount would be $25,000 or 5% of the judgment or settlement, whichever is less. This prohibition language is intended to result in the same indemnification requirements being applied to special patrolmen appointed by the Police Commissioner (particular nexus to the City) as applied to NYPD employees and special patrolmen employed by the City. As with indemnification of NYPD employees and special patrolmen employed by the City, if such amount (or any part of it) cannot be collected from such appointee and such applicant would have otherwise been required or reasonably likely to indemnify such appointee for such amount, such applicant or an appropriate insurer of the applicant would be required to pay such amount. This subdivision would additionally make clear that it is not intended to change or limit the rights and obligations of any insurer or actually authorize or require indemnification of any such appointee.

Bill section four provides that this local law would take effect immediately.

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Int. No. 1671

By Council Members Adams, Van Bramer, Brannan, Cornegy, Chin, Salamanca, Rosenthal and the Public Advocate (Mr. Williams) (by request of the Queens Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to requiring the police department to report on traffic encounters

Be it enacted by the Council as follows:

Section 1. Title 14 of the administrative code of the city of New York is amended by adding a new section 14-181 to read as follows:

§ 14-181 Traffic encounter reports. a. No later than January 30, 2020, and no later than 30 days after the end of each quarter thereafter, the commissioner shall submit to the speaker of the council and the mayor and post on the department’s website a report containing the following information for the previous quarter:

1. The total number of traffic stops conducted by officers;

2. The total number of vehicles stopped by officers at roadblocks or checkpoints;

3. The total number of summons issued for traffic infractions; and

4. The total number of arrests made for traffic infractions.

b. The information required pursuant to subdivision a shall be disaggregated by precinct and further disaggregated by:

1. The apparent race/ethnicity, gender, and age of the driver;

2. Whether the vehicle was a private passenger vehicle, a commercial passenger vehicle, a bus, or a commercial truck;

3. Whether the vehicle was seized as a result of the encounter;

4. Whether a search of the vehicle occurred during the encounter and, if a search occurred, whether consent was provided for such search;

5. Whether a summons was issued, whether it was criminal or civil and the offense charged;

6. The offense charged if an arrest was made; and

7. Whether a use of force incident as defined in section 14-158 occurred in connection with the encounter.

c. The information required pursuant to this section shall be stored permanently and shall be accessible from the department’s website, and shall be provided in a format that permits automated processing. Each report shall include a comparison of the current reporting period to the prior four reporting periods, after such information becomes available.

§ 2. This local law takes effect immediately.

AM

LS #9749

6/27/19

Int. No. 2209

By Council Members Adams, Kallos, the Public Advocate (Mr. Williams), the Speaker (Council Member Johnson), Rosenthal and Ampry-Samuel

A Local Law to amend the New York city charter, in relation to requiring advice and consent of the council for the police commissioner

Be it enacted by the Council as follows:

                     Section 1. Section 31 of the New York city charter, as amended by a vote of the electors on November 5, 2019, is amended to read as follows:

§ 31. Power of advice and consent. Appointment by the mayor of the commissioner of investigation, the police commissioner and the corporation counsel, and of the members of the art commission, board of health (other than the chair), board of standards and appeals, city planning commission (other than the chair), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission and the public members of the environmental control board shall be made with the advice and consent of the council after a public hearing. Within 30 days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.

§ 2. Section 431 of the New York city charter is amended to read as follows:

§ 431 Department; commissioner. a. There shall be a police department the head of which shall be the police commissioner who shall be appointed by the mayor with the advice and consent of the council and shall, unless sooner removed, hold office for a term of [five] four years.

b. Whenever in the judgment of the mayor or the governor the public interests shall so require, the commissioner may be removed from office by either, and shall be ineligible for reappointment thereto.

c. [Whenever a vacancy shall occur in the office of police commissioner, a police commissioner shall be appointed by the mayor within ten days thereafter.] Within 10 days following the occurrence of a vacancy in the office of the police commissioner, the mayor shall submit to the council the name of the mayor’s nominee for police commissioner. If the council disapproves a nomination while the office of the police commissioner is vacant, the mayor shall submit a new nomination to the council within 10 days of council disapproval. Each subsequent council disapproval of a mayoral nomination shall begin a new 10-day period.

§ 3. This local law takes effect immediately after it is submitted for the approval of the qualified electors of the city at the next general election held after its enactment and approved by a majority of such electors voting thereon.

1/27/21

12:47PM

Int. No. 2220

By Council Member Levin, Rosenthal and Kallos

A Local Law to amend the administrative code of the city of New York, in relation to creating a right of security against unreasonable search and seizure that is enforceable by civil action and requiring the law department to post online certain information regarding such civil actions

Be it enacted by the Council as follows:

Section 1. Title 8 of the administrative code of the city of New York is amended by adding a new chapter 8 to read as follows:

CHAPTER 8

THE RIGHT OF SECURITY AGAINST UNREASONABLE SEARCH AND SEIZURE

§ 8-801 Definitions.

§ 8-802 Right of security against unreasonable search and seizure.

§ 8-803 Civil action for deprivation of rights.

§ 8-804 Immunity not a defense.

§ 8-805 Relief.

§ 8-806 Indemnification.

§ 8-807 Statute of limitations.

§ 8-808 Construction.

§ 8-801 Definitions. For purposes of this chapter, the following terms have the following meanings:

Covered individual. The term “covered individual” means:

1. An employee of the police department; or

2. A peace officer, as defined in section 2.10 of the criminal procedure law, who is employed by the city or appointed by the police commissioner as a special patrolman pursuant to subdivision c or e of section 14-106.

Person aggrieved. The term “person aggrieved” means a natural person who is allegedly subjected to, or allegedly caused to be subjected to, the deprivation of a right created, granted or protected by section 8-802 by a covered individual even if the only injury allegedly suffered by such natural person is the deprivation of such right.

Prevailing plaintiff. The term “prevailing plaintiff” means a plaintiff whose suit was a substantial factor or significant catalyst in obtaining the results sought by the litigation.

§ 8-802 Right of security against unreasonable search and seizure. The right of natural persons to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrants shall be issued but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

§ 8-803 Civil action for deprivation of rights. a. A covered individual who, under color of any law, ordinance, rule, regulation, custom or usage, subjects or causes to be subjected, including through failure to intervene, any other natural person to the deprivation of any right that is created, granted or protected by section 8-802 is liable to the person aggrieved for legal or equitable relief or any other appropriate relief.

b. A person aggrieved may make a claim pursuant to subdivision a of this section in a civil action in any court of competent jurisdiction by filing a complaint setting forth facts pertaining to the deprivation of any right created, granted or protected by section 8-802 and requesting such relief as such person aggrieved considers necessary to insure the full enjoyment of such right.

c. This section does not limit or abrogate any claim or cause of action a person aggrieved has under common law or pursuant to any other law or rule. Despite the availability of an alternative remedy under common law or pursuant to any other law or rule, the person aggrieved has and maintains a private right of action pursuant to this section. Exhaustion of any administrative remedies is not required for a person aggrieved to commence a civil action pursuant to this section. The remedies provided by this chapter are in addition to any other remedies that may be provided for under common law or pursuant to any other law or rule.

§ 8-804 Immunity not a defense. Immunity is not a defense to liability pursuant to this chapter, including any form of absolute or qualified immunity. It is not a defense to liability pursuant to this chapter that a covered individual has governmental or governmental function immunity, including but not limited to any immunity for discretionary acts involving the exercise of reasoned judgment taken during the performance of governmental functions. It is also not a defense to liability pursuant to this chapter that (i) the covered individual was acting in good faith or believed, reasonably or otherwise, that the conduct of such individual was lawful at the time it was committed or (ii) any right created, granted or protected by section 8-802 was not clearly established at the time of its deprivation by the covered individual or (iii) the state of the law was otherwise such that the covered individual could not reasonably have been expected to know whether the conduct of such covered individual was lawful.

§ 8-805 Relief. a. In any civil action involving a claim made pursuant to section 8-803 against a covered individual, a court shall, in addition to awarding any other relief, including injunctive or other equitable relief, as such court determines to be appropriate:

1. Award to a prevailing plaintiff on such claim (i) compensatory damages and, in such court’s discretion, punitive damages or (ii) at the election of such plaintiff, damages of $1,000;

2. Award to such plaintiff reasonable attorney’s fees and court costs; and

3. Issue an order restraining such covered individual from engaging in further conduct in violation of such section.

b. The court shall apply the hourly rate charged by attorneys of similar skill and experience litigating similar cases in New York county when it chooses to factor the hourly rate into an attorney’s fee award.

§ 8-806 Indemnification. a. Notwithstanding any provision to the contrary in section 50-k of the general municipal law or any other provision of law, a covered individual who is employed by the city shall, with respect to any judgment or settlement entered against such individual for claims arising pursuant to section 8-803, be personally liable for a portion of such judgment or settlement equal to the lesser of $25,000 or 5 percent of the amount of such judgment or settlement, and the city shall not indemnify or save harmless any covered individual, whether employed by the city or otherwise, for such portion; provided that, if such portion or a part thereof is uncollectible from such individual and the city would, in the absence of this section, have been required or reasonably likely to indemnify or save harmless such individual for such portion or part thereof, the city or an appropriate insurer thereof shall satisfy any such portion or part thereof not satisfied by such individual. The provisions of this section shall not be construed to (i) impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance or (ii) authorize or require indemnification of a covered individual.

b. Indemnification of a covered individual who is not employed by the city shall be governed by subdivision g of section 14-106 and any other applicable laws.

§ 8-807 Statute of limitations. Notwithstanding any provision to the contrary in section 50-k of the general municipal law or any other provision of law, a person aggrieved must make a claim pursuant to section 8-803 in a civil action within 3 years after the alleged deprivation of a right created, granted or protected by section 8-802 occurred.

§ 8-808 Construction. Except as otherwise provided in this chapter and notwithstanding section 8-130, any right created, granted or protected by section 8-802 shall be construed in the same manner as any right created, granted or protected by section 8 of the civil rights law and section 12 of article I of the state constitution.

§ 2. Section 7-114 of the administrative code of the city of New York, as added by local law number 166 for the year 2017, is amended to read as follows:

§ 7-114 Civil actions regarding the police department and certain peace officers. a. For purposes of this section, the term “covered individual” has the meaning ascribed to such term in section 8-801.

b. No later than January 31, 2018 and no later than each July 31 and January 31 thereafter, the law department shall post on its website, and provide notice of such posting to the individual responsible for implementing the duties set forth in paragraph one of subdivision c of section 803 of the charter, the comptroller, the police department, the civilian complaint review board, and the commission to combat police corruption the following information regarding civil actions filed in local, state or federal court against the police department or [individual police officers] a covered individual, or both, resulting from allegations of improper police conduct, including, but not limited to, claims involving the use of force, assault and battery, malicious prosecution, [or] false arrest or imprisonment, or deprivation of a right pursuant to chapter 8 of title 8:

1. a list of civil actions filed against the police department or [individual police officers] a covered individual, or both, during the five-year period preceding each January 1 or July 1 immediately preceding each report;

2. for each such action: (i) the identities of the plaintiffs and defendants; (ii) the court in which the action was filed; [(ii)] (iii) the name of the law firm representing the plaintiff; [(iii)] (iv) the name of the law firm or agency representing each defendant; [(iv)] (v) the date the action was filed; and [(v)] (vi) whether the plaintiff alleged improper police conduct, including, but not limited to, claims involving use of force, assault and battery, malicious prosecution, [or] false arrest or imprisonment, or deprivation of a right pursuant to chapter 8 of title 8; and

3. if an action has been resolved: (i) the date on which it was resolved; (ii) the manner in which it was resolved; and (iii) whether the resolution included a payment to the plaintiff by the city, or by a covered individual or an employer or other person paying on behalf of a covered individual, and, if so, the amount of such payment.

§ 3. Section 14-106 of the administrative code of the city of New York is amended by adding a new subdivision g to read as follows:

g. The commissioner shall not make a special patrolman appointment on the application of any person, corporation, agency or public authority, or renew any such appointment, under subdivision c or e of this section unless such applicant shows to the satisfaction of the commissioner that, pursuant to a written agreement, such appointee shall, with respect to any judgment or settlement entered against such appointee for claims arising pursuant to section 8-803, be personally liable for a portion of such judgment or settlement equal to the lesser of $25,000 or 5 percent of the amount of such judgment or settlement and such applicant will not indemnify or save harmless such appointee for such portion; provided that, if such portion or a part thereof is uncollectible from such appointee and such applicant would, in the absence of this section, have been required or reasonably likely to indemnify or save harmless such appointee for such portion or part thereof, such applicant or an appropriate insurer thereof shall satisfy any such portion or part thereof not satisfied by such appointee. The provisions of this subdivision shall not be construed to (i) impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance or (ii) authorize or require indemnification of any such appointee.

§ 4. This local law takes effect immediately.

JJ

LS 15280

01/27/2021 5:14PM

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Res. No. 1538

Resolution calling on the New York State Legislature to pass, and the Governor to sign, legislation removing the New York City Police Commissioner’s exclusive authority over police discipline.

By Council Members Cumbo, Levin, Rosenthal, Van Bramer and Kallos

Whereas, The Civilian Complaint Review Board (CCRB) is a police oversight body made up of appointees from the Mayor, the Police Commissioner, the City Council, and the Public Advocate; and

Whereas, The CCRB is responsible for receiving, investigating, hearing, making findings, and recommending actions regarding complaints against members of the New York City Police Department (NYPD) alleging excessive use of force, abuse of authority, discourtesy, or use of offensive language; and

Whereas, While the CCRB can recommend discipline against officers, the Police Commissioner has final authority over discipline and can choose to disregard these recommendations and may impose lesser or greater discipline, or no discipline at all; and

Whereas, The CCRB tracks the rate at which the Police Commissioner follows the CCRB’s recommendations, which is known as the “concurrence rate”; and

Whereas, According to the CCRB’s most recent annual report, the concurrence rate was only 51 percent in 2019, and for the most serious cases-those where “charges and specifications” are recommended by the CCRB for prosecution at an administrative trial-the concurrence rate was only 32 percent; and

Whereas, An analysis published by *The* *New York Times* in November 2020 found that the NYPD “regularly ignored the [CCRB’s] recommendations, overruled them or downgraded the punishments, even when police officials confirmed that the officers had violated regulations,” and found this “pattern of lenient punishment holds true for about 71 percent of the 6,900 misconduct charges over the last two decades in which the [CCRB] recommended the highest level of discipline and a final outcome was recorded”; and

Whereas, That same analysis “shows that since [Mayor] de Blasio took office in 2014, the [NYPD] has overruled the [CCRB’s] recommendations in more than half of the cases in which the [CCRB] sought the most severe discipline”; and

Whereas, Removing the Police Commissioner’s exclusive authority over police discipline and allowing the CCRB to impose discipline in certain cases would increase accountability and public trust in the NYPD; now, therefore, be it

                     Resolved, That the Council of the City of New York calls on the New York State Legislature to pass, and the Governor to sign, legislation removing the New York City Police Commissioner’s exclusive authority over police discipline.

LS # 9759

1/27/21 11:00AM

Preconsidered Res. No.

Resolution calling upon the New York State Legislature to pass, and the Governor to sign, S2984/A1951, which would require New York Police Department officers to live within the five boroughs of New York City

By Council Member Moya

Whereas, S2984/A1951, sponsored by State Senator Kevin Parker and Assembly Member Catalina Cruz, were introduced in the New York State Senate to establish a residency requirement for police officers in cities with a population of one million or more residents, which includes New York City; and

Whereas, S2984/A1951, if passed, would require newly hired New York Police Department (NYPD) officers to live within one of the five boroughs of New York City within a year of appointment; and

Whereas, According to the NYPD Patrol Guide, NYPD officers are currently allowed to live in the five boroughs or the counties of Nassau, Suffolk, Rockland, Westchester, Putnam, or Orange, unlike NYPD’s own civilian staff and other City agency staff who are subject to a two year New York City residency requirement; and

Whereas, Data from the NYPD shows that a majority of uniformed officers—51%—currently live outside of New York City, which is a decline from 2016 when 58% of officers lived in New York City; and

Whereas, A city residency requirement for NYPD officers has the potential to improve community-police relations, with officers having more of a stake in the city they patrol, and would increase the likelihood New York City taxpayer dollars, which pay for officers’ salaries, remain in the communities served by the NYPD; now therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, S2984/A1951, which would require New York Police Department officers to live within the five boroughs of New York City.

LS #15914

2/16/2021 9:57 AM

M.T.

1. *In Pictures: A Racial Reckoning in America*, CNN (July 9, 2020, 9:35 PM), <https://www.cnn.com/2020/05/27/us/gallery/george-floyd-demonstrations/index.html>. [↑](#footnote-ref-1)
2. Congressional Research Service, *Policing the Police: Qualified Immunity and Considerations for Congress*, Congressional Research Service (June 25, 2020), at 1, *available at* <https://crsreports.congress.gov/product/pdf/LSB/LSB10492>. [↑](#footnote-ref-2)
3. *See id.* [↑](#footnote-ref-3)
4. *See* *Pierson v. Ray*, 386 U.S. 547 (1967). [↑](#footnote-ref-4)
5. *Pierson v. Ray*, 386 U.S. 547, 555 (1967) (stating that the “common law has never granted police officers an absolute and unqualified immunity….”). [↑](#footnote-ref-5)
6. *Arteaga v. State*, 72 N.Y.2d 212, 220 (1988) (contrasting the situation of correctional officers who make “difficult decisions” in “closed setting[s]”). [↑](#footnote-ref-6)
7. Hailey Fuchs, *Qualified Immunity Protection for Police Emerges as Flash Point Amid Protests*, The New York Times (July 20, 2020), <https://www.nytimes.com/2020/06/23/us/politics/qualified-immunity.html>. [↑](#footnote-ref-7)
8. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). [↑](#footnote-ref-8)
9. *Haddock v. City of New York*, 75 N.Y.2d 478, 484 (1990). [↑](#footnote-ref-9)
10. Ending Qualified Immunity Act, H.R. 7085, 116th Cong. § 2 (2020), *available at* <https://www.congress.gov/bill/116th-congress/house-bill/7085/text>; *see* Congressional Research Service, *supra* note 2, at 2. [↑](#footnote-ref-10)
11. *Shamir v. City of New York*, 804 F.3d 553, 556 (2d Cir. 2015) (holding in an analysis of a Section 1983 action that “use of excessive force renders a seizure of the person unreasonable and for that reason violates the Fourth Amendment.”). [↑](#footnote-ref-11)
12. Congressional Research Service, *supra* note 2, at 1. [↑](#footnote-ref-12)
13. Ending Qualified Immunity Act, H.R. 7085, 116th Cong. § 2 (2020), *available at* <https://www.congress.gov/bill/116th-congress/house-bill/7085/text>. [↑](#footnote-ref-13)
14. *See* *Monroe v. Pape*, 365 U.S. 167, 169, 172 (1961), *overruled by Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978). [↑](#footnote-ref-14)
15. *Pierson*, 386 U.S. at 555-57. [↑](#footnote-ref-15)
16. *Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982). [↑](#footnote-ref-16)
17. *Id.* at 818. [↑](#footnote-ref-17)
18. *Id.* at 816-17. [↑](#footnote-ref-18)
19. *Id.* at 818. [↑](#footnote-ref-19)
20. *Jenkins v. City of New York*, 478 F.3d 76, 86-87 (2d Cir. 2007). [↑](#footnote-ref-20)
21. *In re World Trade Ctr. Bombing Litig.*, 17 N.Y.3d 428, 452 (2011). [↑](#footnote-ref-21)
22. *Valdez v. City of New York*, 18 N.Y.3d 69, 75 (2011). [↑](#footnote-ref-22)
23. *Id.* at 75-76. [↑](#footnote-ref-23)
24. *Lauer v. City of New York*, 95 N.Y.2d 95, 99 (2000). [↑](#footnote-ref-24)
25. *Tango v. Tulevech*, 61 N.Y.2d 34, 41 (1983). [↑](#footnote-ref-25)
26. *Metz v. State*, 86 A.D.3d 748, 751, *rev'd*, 20 N.Y.3d 175 (2012) (asserting that “it is well settled that, where a government actor is entrusted with discretionary authority, but fails to exercise any discretion in carrying out that authority, defendant will not be entitled to governmental immunity from liability,” though the court order was overturned on other grounds). [↑](#footnote-ref-26)
27. *Tango*, 61 N.Y.2d at 41. [↑](#footnote-ref-27)
28. *In re World Trade Ctr. Bombing Litig.*, 17 N.Y.3d at 446. [↑](#footnote-ref-28)
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