File #: Int 0416-2024, **Version:** *

Int. No. 416

By Council Members Restler, Cabán, Ossé, Hudson, Gutiérrez, Nurse, Hanif, Won, Marte, Bottcher and Avilés

A Local Law to amend the administrative code of the city of New York, in relation to requiring the department of investigation to investigate allegations of evidentiary misconduct by police officers

Be it enacted by the Council as follows:

Section 1. Chapter 34 of the New York city charter is amended by adding a new section 809 to read as follows:

809. Evidentiary misconduct complaints in criminal prosecutions. a. Definitions. As used in this section, the following terms have the following meanings

Evidentiary misconduct. The term "evidentiary misconduct" means any conduct that impugns the integrity of a criminal proceeding as defined in the criminal procedure law, including but not limited to:

1. Interrogation tactics that compromise an individual's constitutional rights or the veracity of a suspect's statement;

2. Providing false or misleading testimony or information, or colluding with other individuals to provide such testimony or information to a court or district attorney;

3. Withholding relevant exculpatory evidence;

4. Failing to follow police department protocols related to the use of body-worn cameras;

5. Failing to preserve and disclose to a district attorney in a timely manner evidence or reports that are discoverable pursuant to state law; or

6. Conducting identification procedures in a manner likely to compromise the integrity of the witness

identification or the reliability of the witness.

Interested parties. The term "interested parties" means any defendant, prosecutor, attorney, judge, court attorney, police officer, or other individual who has evidence that an officer engaged in evidentiary misconduct.

b. The department shall create, within 180 days, and maintain an online referral system for receiving complaints from interested parties alleging evidentiary misconduct. The department shall coordinate with the office of criminal justice to notify defense organizations, district attorneys, court staff, and any other interested parties regarding the procedures for filing such a complaint.

c. Investigation of complaints. After receiving a complaint, the department shall fully investigate the merits of the complaint by reviewing all relevant documents provided by the interested party, all available court records including transcripts of any testimony, and any relevant information in the possession of the New York police department including contemporaneous reports, notes, and other case information associated with the arrest. The department may seek to interview the officer who is the subject of the complaint.

2. Upon review of the relevant documentation, the department shall substantiate any case in which it determines that the officer engaged in conduct that impugns the integrity of any criminal court process. The department shall notify the relevant interested party or parties of its determination.

d. Investigation of substantiated cases. For each complaint substantiated pursuant to subdivision c of this section, the department shall make a determination as to whether a preponderance of the evidence indicates that the evidentiary misconduct was knowing or intentional.

1. For any evidentiary misconduct that the department determines was willful, knowing or intentional, the department shall:

(a) determine whether the evidentiary misconduct is part of a pattern of officer misconduct by obtaining records relating to prior arrests, obtaining transcripts of prior court testimony, seeking an order from a criminal court judge to inspect any sealed records that are relevant to the investigation, requesting any relevant documentation from the district attorney in the county in which the prosecution occurred, reviewing any state

or federal civil litigation involving the officer, and by viewing body camera footage of the officer;

(b) publish a report describing its conclusions about the officer's evidentiary misconduct; and

(c) deliver a copy of such report to the relevant interested party or parties and the district attorneys for all five counties of New York city.

2. For any evidentiary misconduct for which the department determines that there was insufficient evidence to establish was a willful, knowing or intentional act, the department shall deliver a report describing such misconduct to the internal affairs bureau of the New York police department for further investigation and a recommendation for whether the complaint warrants retraining of one or more members of service or disciplinary action against one or more members of service.

3. For any evidentiary misconduct that constitutes a criminal offense, the department shall refer the case to the appropriate district attorney.

e. Reporting. Within 60 days of the end of each calendar year, the department shall post on its website a report including:

1. For each type of evidentiary misconduct, the following information for the prior calendar year: the number of complaints received, the number of complaints substantiated, the number of complaints pending substantiation review, the number of substantiated cases pending further investigation, the number of substantiated complaints determined to be willful, knowing or intentional, and the number of substantiated complaints referred to the police department; and

2. A detailed description of the acts constituting evidentiary misconduct for which there was insufficient evidence to determine that such evidentiary misconduct was willful, knowing, or intentional, including the reasons the department determined that there was insufficient evidence to make such determination, and any patterns or practices revealed through the department's investigation, as permitted by law.

§ 2. Title 14 of the administrative code of the city of New York is amended by adding a new section 14

-193 to read as follows:

§14-193. Compliance with investigation of complaints and substantiated allegations of evidentiary misconduct. The department shall provide all information, documents, and relevant body worn camera footage within 7 business days of any request in relation to an investigation of evidentiary misconduct conducted pursuant to section 809 of the charter. The department shall make available for a questioning any employee of the department identified by the department of investigation as a relevant witness to a substantiated allegation of evidentiary misconduct.

§ 3. This local law takes effect immediately.

Session13
LS 8653
1/17/24

Session12
BR
LS 8653
5/2/22