



DETECTIVES' ENDOWMENT ASSOCIATION, INC.

POLICE DEPARTMENT • CITY OF NEW YORK

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Committee on Public Safety
New York City Council
250 Broadway
New York, NY 10007

June 12, 2020

Chairman Richards & Members of the Committee on Public Safety:

My name is Paul DiGiacomo. I am the President of the Detectives' Endowment Association ("DEA"). I have the great privilege of representing more than 19,000 active and retired New York City Police Detectives. Just a few short weeks ago, I had the opportunity to address the Council's Committee on Civil Service & Labor with regard to a proposal to provide health benefits to the surviving families of City workers who died from COVID-19 illnesses which were contracted in the line of duty. The issue was and continues to be of particular significance to the DEA, as six (6) of our members have already died from COVID-19. And while that proposal sits in Committee, leaving families of people who have sacrificed their lives in the line of duty without healthcare coverage in the middle of a global pandemic, I am dumbfounded that the Council is prepared to rush to enact the proposals considered at the June 9, 2020 hearing of the Committee without any meaningful dialogue with law enforcement unions or law enforcement professionals.

Just as concerning are calls to "abolish" and "defund" the police, to bust police unions, and to disavow and return "tainted" political contributions from law enforcement union political action committees that seem to dominate the public discourse over the past few weeks. This rhetoric is antithetical to the democratic process and democratic values, and is intended to undermine and delegitimize police and their unions. As you consider this legislation, I offer the following perspectives of the DEA:

Introduction 536-A

Introduction 536-A would make it a misdemeanor for any person to use a chokehold or other similar unlawful method of restraint to effect an arrest. The New York State legislature has passed, and the Governor has signed, Assembly Bill A.6144/Senate Bill S.6670B, criminalizing the use of chokeholds and similar restraints by Police Officers and Peace Officers. This State law will provide



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greater penalty than is proposed by Int. 536-A, rendering it redundant and moot. Beyond that, however, the proposal is not sound policy.

The New York State Penal Law currently authorizes the use of physical force, including in some circumstances the use of deadly force, by a Police or Peace Officer when making an arrest or in preventing an escape of a person from custody. The law is a recognition of the inherently dangerous nature of a Police Officer's job. A Police Officer should not be prevented from defending himself or herself and be subject to criminal liability while making an arrest if the subject resists and threatens harm to the Officer. This authorization to use physical force, however, is not unlimited nor a license to use it indiscriminately. A "reasonableness" standard applies in all circumstances, and if the use of force is not reasonable, a Police Officer cannot assert a defense of justification under the Penal Law.

Chokeholds are prohibited under the NYPD Patrol Guide. NYPD training instructs Police Officers on other methods of restraint. Criminalizing this conduct, notwithstanding the Penal Law's authorization of deadly physical force by a Police Officer in certain circumstances, however, will only serve to cast doubt — potentially fatal doubt — in the mind of an Officer faced with a split-second decision to use justifiable physical force. As drafted, Int. 536-A establishes a strict liability standard for use of a chokehold or other unlawful restraint. It would not matter whether an Officer intended to apply a chokehold or unlawful restraint, nor would it matter whether the subject suffered any injury.

Introduction 721-A

Introduction 721-A would codify the right to record Police or Peace Officers in their official capacities and provides a private right of action for infringement of the same. As the summary of this bill acknowledges, it is lawful to record police activity in public. The right to record is constitutionally protected. Body-worn cameras are prolific. While recording police activity is permissible, interference with police activity is not. It is a dangerous situation for everyone — Officer, person in custody, and onlookers — when an onlooker attempts to stand in close proximity to Officers making an arrest. We are concerned that this proposal would only encourage interference with police activity, whether intentional or inadvertent. Additionally, we are concerned that a private right of action will



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encourage nuisance lawsuits that will unnecessarily consume precious time and personnel to defend and litigate.

Preconsidered Introduction 6267

Preconsidered Introduction 6267 would require the shield number or rank designation of a uniformed Officer to be visible and would provide penalties for the failure to comply with requests to make the same visible. The bill would establish a private right of action to bring a suit and authorizes punitive damages for violations of the requirement. The NYPD Patrol Guide requires that an Officer's shield number be visible. Disciplinary sanction is available for violations of the procedure as appropriate. This proposal instead unnecessarily creates significant potential liability that is disproportionate to the misconduct. It will encourage frivolous litigation and consume precious Department resources.

For these reasons, the DEA recommends disapproval of Introductions 536-A and 721-A and Preconsidered Introduction 6267. In addition to the concerns I have shared about the legislation, however, I am also gravely concerned about recently released crime statistics from the week of June 1, 2020. These statistics show that violent crimes in New York City have increased significantly: we saw 13 murders last week, compared to five during the same week of the year prior; and we saw 40 shootings (which is the highest since 2015) as compared to 24 during the same week last year in 2019. Those are incredibly troubling numbers. As the tenor of the anti-police sentiment and the calls for abolishing and defunding the police grow, I urge you consider those increases. And I urge you to think about the progress that has been made in making New York City the safest big city in America. We cannot afford to lose that distinction.

Sincerely,


Paul DiGiacomo
President



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