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June 23, 2020

VIA HAND DELIVERY

Honorable Dermot F. Shea
Police Commissioner
New York City Police Department
One Police Plaza, Room 1400
New York, NY 10038

Re: New Legislation – Request for Training and Guidance from the Department

Dear Commissioner Shea:

On behalf of the well over 7,000 members of the Lieutenants Benevolent Association and Detectives Endowment Association, we are writing on an issue of grave concern to all members of the Department and to request that the Department implement training and guidelines to our members so that they may lawfully comply with the plethora of law enforcement-related legislation recently passed by the New York State Legislature, as well as the New York City Council.

As you know, both our State and City legislators have passed numerous laws in response to the civil unrest which spread across our nation in the wake of the death of George Floyd in Minneapolis, Minnesota. Seemingly with each day that passes new laws, executive orders, directives and regulations are being promulgated which are effecting a potentially monumental shift in the Department's traditional methods of policing and use of force. While all of these new statutes are of concern to our members, ~~we write today specifically regarding the passage of New York State Penal Law section 121.13-a (Aggravated Strangulation) and New York City Administrative Code section 10-181 (Unlawful Methods of Restraint).~~ Both statutes contain numerous flaws and ambiguous requirements, and pose significant and unacceptable risks to our members of even inadvertent violation of these provisions.

Of particular note, N.Y.C. Administrative Code section 10-181 makes it a misdemeanor to "restrain an individual in a manner that restricts the flow of air or blood by compressing the windpipe or the carotid arteries on each side of the neck, or sitting, kneeling or standing on the

chest or back in a manner that compresses the diaphragm, in the course of effecting or attempting to effect an arrest." Noticeably absent from this statute is any requirement of intent to make out a violation of the law. Likewise, justification appears unavailable as an affirmative defense to any alleged violation of the law.

Provisions like these have resulted in officers being apprehensive and concerned to make perfectly lawful arrests. Even though lawful, officers will hesitate to use *any* force, even the most minimal amount of force, for fear of facing criminal charges, civil liability, civilian complaints, Internal Affairs investigations, and a rushed suspension or modification by the Commissioner within 48 hours of an incident. Officers are second-guessing themselves out on the street, which is a recipe for disaster and an invitation to a potentially deadly encounter. Our Unions feel they have no choice but to instruct their members not to use any force except under the most dire of circumstances, where literally their life or a civilian's life is in danger.

In light of these new provisions and the risks to our members resulting therefrom, we are demanding that the Department immediately implement retraining for all members of the Department. Such retraining will be to educate MOS on all of the new laws that have been passed, their various elements, and how such laws have changed the methods of policing previously taught by the Department. Such retraining must also entail physical training of officers in what to do when an individual being placed into custody resists arrest or otherwise refuses to be placed into custody. What force is allowed under those circumstances? What specific techniques are now acceptable in light of the fact that there cannot be any compression – inadvertent or otherwise – of the diaphragm, etc.

Our members want to perform their jobs to the best of their abilities. They are police officers, and took an oath to uphold the law and keep the citizens of our City safe. But they need training and direction from the Department in order to *lawfully* carry out their duties. We ask that the Department do so as soon as possible.

Thank you for your consideration of this critical issue.

Very truly yours,

KARASYK & MOSCHELLA, LLP


JAMES M. MOSCHELLA

cc: ~~Hon. Benjamin Tucker (by hand)~~