

Proposed Legislation Creating an Elected Civilian Review Board (ECRB) to Replace the Current Civilian Complaint Review Board

Draft amendment to the NYC City Charter and NYC Administrative Code

Adopted by the Campaign for an Elected Civilian Review Board on March 23, 2017, as amended on September 14, 2019

CHAPTER 18-A OF THE NEW YORK CITY CHARTER IS DELETED IN FULL AND REPLACED BY:

CHAPTER 18-A ELECTED CIVILIAN REVIEW BOARD

§440. Public complaints against members of the police department.

(a) The people of the city of New York require a mechanism for the investigation of complaints of misconduct and possible uses of excessive force by officers and employees of the New York Police Department (NYPD) toward members of the public and determination of appropriate disciplinary actions that is comprehensive, thorough, and impartial. These investigations must be conducted fairly and independently. An independent Elected Civilian Review Board (“ECRB” or “Board”) is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this Section.

(b) Elected Civilian Review Board.

1. The Elected Civilian Review Board shall consist of twenty-one (21) members of the public. One ECRB member shall be elected from each of seventeen (17) ECRB districts, each of which shall be comprised of three (3) adjacent city council districts as follows: Elected Civilian Review Board district (ECRBD) #1 corresponds to City Council districts (CD) 1, 2 and 3; ECRBD #2 corresponds to CDs 4, 5, and 6; ECRBD #3 to CDs 7, 9 and 10; ECRBD #4 to CDs 8, 16 and 17; ECRBD #5 to CDs 11, 14 and 15; ECRBD #6 to CDs 12, 13 and 18; ECRBD #7 to CDs 19, 23 and 27; ECRBD #8 to CDs 20, 24 and 29; ECRBD #9 to CDs 21, 22 and 25; ECRBD #10 to CDs 28, 31 and 32; ECRBD #11 to CDs 26, 30 and 34; ECRBD #12 to CDs 33, 35 and 36; ECRBD #13 to CDs 38, 39 and 40; ECRBD #14 to CDs 37, 41 and 42; ECRBD #15 to CDs 43, 44 and 47; ECRBD #16 to CDs 45, 46 and 48; ECRBD #17 to CDs 49, 50 and 51. Four additional members will be elected as follows: upon creation of the ECRB, Civilian Complaint Review Board data will be used to determine the four ECRB districts that contain police precincts with the highest number of complaints reported in the preceding two (2) calendar years. In subsequent elections, the four ECRB districts apportioned an additional representative will be based on ECRB data regarding the numbers of substantiated complaints received from residents of each ECRB district during the preceding two (2) calendar years prior to the election.

2. In order to stand for election to the ECRB, a prospective candidate is required to have resided in New York City for the preceding three (3) years, in the ECRB district for at least the preceding twelve (12) months, and must submit a petition supporting her or his candidacy signed by 200 residents (either registered voters or holders of IDNYC at least 18 years of age) of the ECRB district she or he seeks to represent.

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3. Residents of New York City 18 years of age or older are eligible to be a candidate for the Board in the district where they reside, without regard to sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, or physical ability. Persons who have been employed by the NYPD at any time, for any length of time are not eligible to be candidates or to serve as ECRB members. Immediate family members (parent, sibling, spouse or child) of same persons above who have been employed by the NYPD at any time, are not eligible to be candidates or to serve as ECRB members, nor are former police officers from any other jurisdiction. No member of the Board shall hold any other public office or employment.

4. The members shall be elected for a term of four (4) years, coinciding with the terms of office and scheduled elections of the mayor and city council members. Upon completion of each term, each Board member shall be eligible to stand for reelection. ECRB members are not subject to charter provisions §1137 and §1138 on Term Limits.

5. In the event of a vacancy on the Board during the term of office of a member by reason of recall, death, resignation, or otherwise, a successor from the same district shall be selected by a majority vote of the ECRB members to serve until the next general election. At the next general election, the position will be filled by election as described in §440(b)2 and 3.

6. Board members are subject to recall by voter referendum. A recall vote may be initiated by a petition signed by 200 residents (either registered voters or holders of IDNYC at least 18 years of age) of the ECRB district the Board member represents. The recall vote will then take place within four months, either at the general election or a specially scheduled election. If the vote to recall is upheld, the ECRB member is immediately removed and replaced as described in §440(b)5. If the vote to recall is defeated, the ECRB member is not subject to an additional recall for the duration of that term and may seek election to additional terms.

(c) Powers and duties of the Elected Civilian Review Board.

1. The ECRB shall have the power to receive, investigate, hear, make findings, and take action upon complaints by members of the public, including employees of the NYPD or any NYC governmental agency or department, against members of the police department that allege police misconduct. These include:

- a. Using unnecessary or excessive force in the performance of duties;
- b. Conducting a false arrest or unlawfully detaining any person;
- c. Conducting an unlawful search or seizure, or unlawful surveillance;
- d. Tampering with evidence;
- e. Falsifying official and/or unofficial reports and/or giving false testimony to the NYPD, ECRB, or other governmental body.
- f. Conducting unauthorized investigations, surveillance, infiltration, or disruption of lawful political, social, economic, religious organizations, or their members, for their political, social, economic, or religious views; or conducting unauthorized investigations or surveillance of individuals for their political, social, economic, or religious views;

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- g. Threatening to arrest or to detain any person without a justifiable legal basis;
- h. Threatening to use force against any person without a justifiable legal basis;
- i. Discriminating on the basis of age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health in the enforcement of the law (evidence of a past or present pattern of discriminatory conduct shall be admissible on the question of the officer's intent);
- j. Using abusive or insulting language including, but not limited to derogating a person's age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health;
- k. Sexually harassing, verbally or physically, any person;
- l. Engaging in abusive or offensive conduct in relation to a person's age, sex, race, ethnicity, religion, creed, national origin, immigration status, political views, union membership, sexual orientation, gender identity and expression, record of criminal conviction and incarceration, physical ability, or state of mental health;
- m. Failing to provide any person their post-arrest rights as guaranteed by the laws and the constitutions of the state of New York and of the United States;
- n. Committing perjury;
- o. Engaging in, soliciting, or arranging for the harassment of or discrimination against any person in relation to a complaint she or he has filed with the ECRB; a family member or associate of such person; an individual who has provided or is about to provide any facts or evidence in any proceeding before the ECRB; or a member or staff of the Board, her or his family member, or associate because of the Board's performance of its duties;
- p. Violating any police department policy or procedure that falls within the jurisdiction of the ECRB as set forth in this Section.

2. The Board may initiate investigations without a civilian complaint in response to evidence of officer misconduct. The Board shall investigate all cases of officer-inflicted serious bodily harm, officer-involved deaths, and officer-involved shootings.

3. The ECRB shall promulgate rules of procedure in accordance with the city administrative procedure act, including rules that prescribe the manner in which investigations are to be conducted and determinations made and the manner by which a member of the public is to be informed of the status of his or her complaint. Such rules may provide for the establishment of panels of no fewer than three (3) members of the Board, which shall be empowered to supervise the investigation of complaints, and to hear, make findings, and determine action on such complaints. These rules of procedure will ensure due process to the charged officer. No finding or determination shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded, or withdrawn complaints be the basis for any such finding or recommendation.

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4. To address the cases in which disciplinary action is warranted, the ECRB shall establish a disciplinary matrix, which shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior substantiated complaints. The ECRB may opt to recommend that a combination of sanctions be imposed in cases of repeated offense and/or drastic consequence. The ECRB shall review the disciplinary matrix no less frequently than every five (5) years. As part of developing the disciplinary matrix and periodically reviewing it, the Board will seek comment, suggestions and testimony from concerned agencies, organizations and the public.
5. Determinations by the ECRB may include that allegations are unsubstantiated and no action is required, or that disciplinary action is warranted. Such disciplinary actions may include mandatory counseling and/or re-training; suspension; reassignment; or dismissal. When there is the potential for criminal charges against the police department officer or employee, the results of the ECRB investigation and findings will be submitted to the Independent Prosecutor, as described in §440(g)3.
6. The findings and determinations of the Board and the basis therefore shall be submitted to the police commissioner for implementation.
7. The ECRB shall establish procedures and accessible means for members of the public residing throughout the city to report complaints against members of the police department on a 24-hour/day basis.
8. The ECRB as a body or any duly constituted subcommittee may compel the attendance of witnesses and require the production of such records and other materials as are relevant for the investigation of complaints submitted pursuant to this Section, including the power to issue subpoenas. The ECRB members, by a majority vote, may delegate the board's power to the ECRB Executive Director to issue and seek enforcements of subpoenas to compel the attendance of witnesses and the production of records.
9. The Board shall establish a mediation program pursuant to which a complainant may voluntarily choose to resolve a complaint by means of informal conciliation.
10. The ECRB shall have the responsibility of informing the public about the Board and its duties and shall develop and administer an ongoing program for the education of the public regarding the provisions of this chapter, how to initiate a complaint, and the work accomplished by the Board.
11. Each member of the Board shall convene and organize, once each month, a Community Assembly in his or her district, open to all interested persons. Each public meeting will offer an opportunity for community members to discuss police- and community-related issues and to comment and present complaints and proposals relating to the Board and its work.

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a. Each member shall publicly advertise the time and place of the Assembly and ensure that meeting notification and outreach gives particular emphasis to persons most affected by police misconduct, including people of color, women, LGBQ and transgender persons, immigrants, the undocumented, persons who have been imprisoned, political and union activists, and the disabled.

b. At each Assembly, the Board member, or his or her designee, shall present a report on the work of the ECRB, including information and statistics on the number and type of complaints received and actions taken by the Board.

c. Minutes of each Assembly shall be taken by ECRB staff and shall be made available to the public upon request.

12. The ECRB shall issue to the mayor and city council a semi-annual report, which shall describe its activities and summarize its actions.

13. The Board is authorized, within appropriations available, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The ECRB will appoint a staff of civilian investigators. Hiring of investigators and other staff shall ensure representation of groups most impacted by police misconduct. The Board and staff shall participate in a broad range of training annually. The Executive Director is charged with developing a proposal to be approved by the Board for training and needed educational resources to effectively fulfill the ECRB's mandates.

14. In order to fulfill its mandate as an effective mechanism for accountability of police conduct to the communities they serve, the ECRB shall be funded at an annual amount of not less than 1% of the concurrent, non-capital budget of the New York Police Department.

(d) Cooperation of police department.

1. As a condition of continued employment with the NYPD, all officers shall fully cooperate with the ECRB pursuant to their investigations and mandates as outlined in §440(c), including but not limited to providing to the ECRB and its investigators upon request records and other materials necessary for the investigation of complaints submitted pursuant to this Section, except such records or materials that cannot be disclosed by law. All such ECRB requests must receive a written response within 30 days. Refusal to comply shall be grounds for disciplinary action, including dismissal.

2. The police commissioner shall ensure that officers and employees of the police department appear before and respond to inquiries of the Board and its civilian investigators in connection with the investigation of complaints submitted pursuant to this Section, provided that such inquiries are conducted in accordance with department procedures for interrogation of its members.

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3. The police commissioner is charged with carrying out the disciplinary actions of the ECRB pursuant to their findings upon investigation of complaints as described in §440(c) and shall report the completion of each action to the Board. The Board's determination of discipline shall be binding on the police commissioner, who shall impose the discipline determined by the Board within five (5) days of receipt of the Board's decision. The police commissioner will provide the board with a written documentation of the discipline imposed within 30 days of receiving the Board's determination.

(e) Authority of police commissioner.

The provisions of this Section shall not be construed to limit or impair the authority of the police commissioner to discipline members of the department, except as outlined in this Section pursuant to the ECRB's investigation and issuing of determinations regarding complaints submitted to it. Nor shall the provisions of this Section be construed to limit the rights of members of the department with respect to disciplinary action, including, but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise, except as specified in §440(c)1 and 2.

(f) Investigation or prosecution of members of the police department by other authorized parties.

The provisions of this Section shall not be construed to prevent or hinder the investigation or prosecution of members of the police department for violations of law by any court of competent jurisdiction, a grand jury, district attorney, or other authorized officer, agency, or body.

(g) Establishment of an Independent Prosecutor (IP) to work in conjunction with the ECRB.

1. The Independent Prosecutor will be elected to serve for a term of four (4) years, coinciding with the terms of office and scheduled elections of the mayor and city council members. In order to stand for election as IP, the prospective candidate is required to have resided in New York City for at least the three (3) preceding years and must submit a petition supporting her or his candidacy signed by 100 residents (either registered voters or holders of IDNYC at least 18 years of age) of New York City.

2. The IP must be qualified to practice in all courts of this State and must have been so qualified for at least five (5) years preceding the election. The IP shall devote her or his entire time to the duties of the office.

3. The powers and duties of the Independent Prosecutor shall be as follows:

a. The IP shall institute, attend, and conduct, on behalf of the people, all criminal cases against police officers acting under color of law arising in New York City and upon violation of the provisions of this Charter or the ordinances of the City in the court of original jurisdiction, and on appeal.

b. Whenever it shall be authorized by the laws of this state, the IP shall prosecute on behalf of the people, any or all offenses committed by police officers acting under color of law arising upon violation of the laws of the State and appeals arising therefrom.

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- c. The IP shall draw complaints for offenses committed against the laws of this State as described in §440(g)3, prosecute all recognizance and bail bonds forfeited in such offense cases, and prosecute all actions for the recovery of fines, penalties, and forfeitures accruing to New York City in said cases.
 - d. The IP shall give advice or opinions in writing to any member of the ECRB or to the Board itself upon request by such a member or by the Board.
 - e. The IP shall keep in her or his office proper books of record and registry of all actions in her or his charge in which the City or any member of the ECRB is a party or is interested.
4. The IP is authorized, within appropriations available, to appoint such employees as are necessary to exercise its powers and fulfill its duties. The IP will appoint a staff of civilian investigators. Hiring of investigators and other staff shall ensure representation of groups most impacted by police misconduct.
 5. The IP shall have access to the complaints, arrest reports, investigation reports, and evidence made, kept, or obtained by the New York police department, the ECRB, or other city agencies that maintain records or files concerning the actions of its employees when they act in the capacity of police officers within the scope or course of their employment.
 6. The IP shall request from the ECRB all cases considered by that Board for disciplinary action, for the purposes of review in deciding whether criminal prosecution is warranted.
 7. The office of the IP is separate, apart from, and independent of the City Attorney's office, the police department, and the City Council. The City Council shall not have control of litigation undertaken by the IP pursuant to this Charter.
- §457(c). Protocols is amended as follows: Wherever "Civilian Complaint Review Board" appears, it is to be replaced by "Elected Civilian Review Board."

Proposed Change in Chapter 18: POLICE DEPARTMENT

Amend § 434 as follows (proposed change capitalized):

§ 434. Commissioner; powers and duties. a. The commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department, EXCEPT AS LIMITED IN CHAPTER 18A, §440 (C) AND (D) AND THE NEW YORK CITY ADMINISTRATIVE CODE § 14-115.

Amend § 457 c. to replace "Civilian Complaint Review Board" with ELECTED CIVILIAN REVIEW BOARD.

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~~c. Civilian Complaint Review Board.~~ ELECTED CIVILIAN REVIEW BOARD Within ninety days after the ~~appointment of the last member~~ ELECTION of the board pursuant to section four hundred and fifty, the board and the ~~civilian complaint review board~~ ELECTED CIVILIAN REVIEW BOARD established pursuant to chapter eighteen-a of this charter shall establish a protocol pursuant to which (i) the board, if in the course of any assessment, audit or investigation undertaken pursuant to subdivision a of section four hundred and fifty-one, forms a reasonable belief that any act of misconduct, as defined in paragraph one of subdivision c of section four hundred and forty of this charter, has occurred or is occurring, shall as soon as practicable, report the facts that support such belief to the ~~civilian complaint review board~~ ELECTED CIVILIAN REVIEW BOARD; (ii) the ~~civilian complaint review board~~, ELECTED CIVILIAN REVIEW BOARD if in the course of an investigation authorized pursuant to chapter eighteen-a of the charter, forms a reasonable belief that any act of corruption has occurred or is occurring, shall as soon as practicable, report the facts that support such belief to the board; and (iii) information shall be exchanged and cooperation between the boards facilitated.

Proposed change in NYC Administrative Code to be implemented in concert with changes in City Charter establishing the Elected Civilian Review Board

Amend as indicated by ITEMS IN CAPS
New York City Administrative Code

Title 14, Chapter 1 POLICE DEPARTMENT
§14-115 Discipline of members.

a. The commissioner shall have power, in his or her discretion, on conviction by the commissioner, or by any court or officer of competent jurisdiction, of a member of the force of any criminal offense, or neglect of duty, violation of rules, or neglect or disobedience of orders, or absence without leave, or any conduct injurious to the public peace or welfare, or immoral conduct or conduct unbecoming an officer, or any breach of discipline, to punish the offending party by reprimand, forfeiting and withholding pay for a specified time, suspension, without pay during such suspension, or by dismissal from the force; but no more than thirty days' salary shall be forfeited or deducted for any offense. All such forfeitures shall be paid forthwith into the police pension fund. THE COMMISSIONER SHALL HAVE POWER TO ENACT DISCIPLINARY DECISIONS OF THE ELECTED CIVILIAN REVIEW BOARD (ECRB) AS SPECIFIED IN THE NEW YORK CITY CHARTER, CHAPTER 18A, §440(c)1-5.

b. Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force only:
i) on written charges made or preferred against them, after such charges have been examined, heard and investigated by the commissioner or one of his or her deputies upon such reasonable notice to the member or members charged, and in such manner or procedure, practice, examination, and investigation as such commissioner may, by rules and regulations, from time to time prescribe ; OR

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ii) AFTER WRITTEN COMPLAINTS HAVE BEEN EXAMINED AND INVESTIGATED; A HEARING HELD BY THE ECRB IN ACCORDANCE WITH THE MANNER AND PROCEDURE AS DETERMINED BY THE ECRB AND WITH DUE PROCESS FOR THE CHARGED MEMBER OF THE FORCE; AND A WRITTEN DETERMINATION AND DISCIPLINARY ACTION HAS BEEN PRESENTED TO THE POLICE COMMISSIONER FOR IMPLEMENTATION, AS SPECIFIED IN THE NEW YORK CITY CHARTER, CHAPTER 18A, §440(c)1-5.

c. The commissioner is also authorized and empowered in his or her discretion, to deduct and withhold salary from any member or members of the force, for or on account of absence for any cause without leave, lost time, sickness or other disability, physical or mental; provided, however, that the salary so deducted and withheld shall not, except in case of absence without leave, exceed one-half thereof for the period of such absence; and provided, further, that not more than one-half pay for three days shall be deducted on account of absence caused by sickness.

d. Upon having found a member of the force guilty of the charges preferred against him or her, either upon such member's plea of guilty or after trial, the commissioner or the deputy examining, hearing, and investigating the charges, in his or her discretion, may suspend judgment and place the member of the force so found guilty upon probation, for a period not exceeding one year; and the commissioner may impose punishment at any time during such period. THIS DISCRETIONARY SUSPENSION OF JUDGMENT AND PLACEMENT ON PROBATION DOES NOT APPLY TO DISCIPLINARY ACTIONS DETERMINED BY THE ECRB, WHICH HAS THE SOLE AUTHORITY TO MAKE DETERMINATIONS AND MANDATE DISCIPLINARY ACTION ON COMPLAINTS INVESTIGATED AND HEARD BY THE ECRB.